

**WSR 07-21-080**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed October 16, 2007, 3:45 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The department is repealing all existing sections in chapter 388-76 WAC, Adult family home minimum licensing requirements, and is adopting new sections in chapter 388-76 WAC, Adult family home minimum licensing requirements.

The purpose of the rules are to:

- (1) Comply with the Governor's Executive Order 05-03 plain talk;
- (2) Simplify language, eliminate the question and answer format, reorganize and renumber the chapter so that the requirements are clearer for adult family home providers to understand;
- (3) Clarify issues that have been brought to the attention of the department; and
- (4) Update rules to comply with statute changes.

The department is withdrawing WAC 388-76-11000 through 388-76-11045 and has filed [filed] a new preproposal statement of inquiry (CR-101) for the resident protection program with the code reviser in WSR 07-15-026.

The effective date of this rule is January 1, 2008.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 388-76-535, 388-76-540, 388-76-545, 388-76-550, 388-76-555, 388-76-560, 388-76-565, 388-76-570, 388-76-575, 388-76-580, 388-76-585, 388-76-590, 388-76-59000, 388-76-59010, 388-76-59050, 388-76-59060, 388-76-59070, 388-76-59080, 388-76-59090, 388-76-595, 388-76-600, 388-76-60000, 388-76-60010, 388-76-60020, 388-76-60030, 388-76-60040, 388-76-60050, 388-76-60060, 388-76-60070, 388-76-605, 388-76-610, 388-76-61000, 388-76-61010, 388-76-61020, 388-76-61030, 388-76-61040, 388-76-61050, 388-76-61060, 388-76-61070, 388-76-61080, 388-76-615, 388-76-61500, 388-76-61510, 388-76-61520, 388-76-61530, 388-76-61540, 388-76-61550, 388-76-61560, 388-76-61570, 388-76-620, 388-76-625, 388-76-630, 388-76-635, 388-76-64010, 388-76-64015, 388-76-64020, 388-76-64025, 388-76-64030, 388-76-64035, 388-76-64040, 388-76-64045, 388-76-64050, 388-76-64055, 388-76-645, 388-76-650, 388-76-655, 388-76-660, 388-76-665, 388-76-670, 388-76-675, 388-76-680, 388-76-685, 388-76-690, 388-76-695, 388-76-700, 388-76-705, 388-76-710, 388-76-715, 388-76-720, 388-76-725, 388-76-730, 388-76-735, 388-76-740, 388-76-745, 388-76-750, 388-76-755, 388-76-760, 388-76-76505, 388-76-76510, 388-76-76515, 388-76-76520, 388-76-770, 388-76-775, 388-76-780, 388-76-785, 388-76-790, and 388-76-795.

Statutory Authority for Adoption: RCW 70.128.040.

Other Authority: Chapters 70.128 and 74.34 RCW.

Adopted under notice filed as WSR 07-14-082 on June 29, 2007.

Changes Other than Editing from Proposed to Adopted Version:

**WAC 388-76-10000 Definitions.**

**"Abandonment"** means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means:

(1) ~~The~~ willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult;

(2) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain or mental anguish; and

(3) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means a willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, ~~chocking~~ choking, kicking, shoving, prodding, or chemical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

**"Adult family home"** means:

(1) A residential home in which a person or entity are licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services; and

(2) For the purposes of this chapter, any person or entity who has been granted a license to operate an adult family home.

**"Affiliated with an applicant"** means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse of the applicant.

**"Applicant"** means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

**"Capacity"** means:

(1) ~~The~~ maximum number of persons in need of personal or special care permitted in an adult family home at a given time; and

(2) ~~Includes~~ related children or adults in the home who receive personal or special care and services.

**"Caregiver"** for purposes other than training, means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, ~~or~~ a student or volunteer.

**"Dementia"** is defined as a condition documented through the assessment process required by WAC 388-76-10335.

**"Department"** means the Washington state department of social and health services.

**"Department case manager"** means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

**"Developmental disability"** means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age ~~twenty-two~~ eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

- (i) Self-care;
- (ii) Understanding and use of language;
- (iii) Learning;
- (iv) Mobility;
- (v) Self-direction; and
- (vi) Capacity for independent living.

**"Direct supervision"** means oversight by a person who:

(1) Has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

- (a) On the premises; and
- (b) Quickly and easily available to the caregiver.

**"Direct supervision"** means oversight by a person who:

(1) ~~Has~~ demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

- (~~a~~1) On the premises; and
- (~~b~~2) Quickly and easily available to the caregiver.

**"Entity provider"** means any corporation, partnership, association, or limited liability company that is licensed under this chapter to operate an adult family home.

**"Entity representative"** means the individual designated by an entity provider who is responsible for the daily operation of the adult family home.

**"Financial exploitation"** means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.

**"Home"** means adult family home.

**"Indirect supervision"** means oversight by a person who:

(1) Has demonstrated competency in the basic training and specialty training if required; or

(2) Has been exempted from the basic training requirements; and

(3) Is quickly and easily available to the care giver, but not necessarily on-site.

**"Inspection"** means an on-site visit by department personnel to determine the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations.

**"Mandated reporter"** means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW.

For the purpose of the definition of a mandated reporter, "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW (boarding homes), chapter 18.51 RCW (nursing homes), chapter 70.128 (adult family homes), chapter 72.36 RCW (soldiers' homes), or chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

**"Medical device"** as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

**"Medication administration"** means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

**"Medication organizer"** is a container with separate compartments for storing oral medications organized in daily doses.

**"Mental illness"** is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

**"Multiple facility provider"** means an individual or entity provider who is licensed to operate more than one adult family home.

**"Neglect"** means:

(1) a pattern of conduct or inaction by a person or entity with a duty ~~to~~ of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.41.100.

**"Nurse delegation"** means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

**"Over-the-counter medication"** is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

**"Personal care services"** means:

~~(1) Both~~ physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs; ~~and~~

~~(2) Does not include~~ assistance with tasks performed by a licensed health professional.

**"Physical restraint"** means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and is not required to treat the resident's medical symptoms.

**"Practitioner"** includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

**"Prescribed medication"** refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

**"Provider"** means any person or entity that is licensed under this chapter to operate an adult family home.

**"Qualified staff"** means a person who:

(1) Is employed, directly or by contract, by an adult family home; and

(2) Meets all of the requirements of a provider, entity representative, resident manager or caregiver.

**"Resident"** means:

~~(1) Any~~ adult unrelated to the provider who lives in the adult family home and who is in need of care; ~~and~~

~~(2) For~~ decision-making purposes, the term "resident" includes the resident's surrogate decision maker following state law or at the resident's request.

**"Resident manager"** means a person employed or designated by the provider or entity representative to manage the adult family home.

**"Significant change"** means:

(1) A lasting change, decline or improvement, in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

**"Special care"** means care beyond personal care services as defined in this section.

**"Staff"** means any person who:

(1) Is employed, directly or by contract, by an adult family home; and

(2) Provides care and services to any resident.

**"Unsupervised"** means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

**"Usable floor space"** means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules, and

(6) The space required for the door to swing ~~if the bedroom door opens into the resident bedroom the space required for the door to swing.~~

**"Willful"** means the deliberate or nonaccidental action or inaction by an alleged perpetrator that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

**"Vulnerable adult"** includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(2) Found incapacitated under chapter 11.88 RCW;

(3) Who has a developmental disability as defined under RCW 71A.10.020;

(4) Admitted to any facility;

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from a provider.

**WAC 388-76-10020 License—Ability to provide care and services.**

The adult family home must have the understanding, ability, emotional stability and physical health suited to meet the emotional and physical personal and special care needs of vulnerable adults.

**WAC 388-76-10040 License requirements—Provider or entity representative residence.**

(1) The adult family home provider or entity representative must ~~either~~:

(a) Live in the home; or

(b) Employ or contract with a qualified resident manager who lives in the home and is responsible for the care and services of each resident at all times; ~~or:~~

~~(2) The provider, entity representative or resident manager is exempt from the live-in requirement if the home has:~~

~~(a) Provide Twenty-four hour staffing; and~~

~~(b) A Ensure that a qualified staff person who can make needed decisions is always present.~~

**WAC 388-76-10120 License—Must be denied.**

The department must deny a license if the department finds any person or entity unqualified as follows:

(1) Has a history of prior violations of chapter 70.128 RCW or any law regulating to residential care facilities within the past five years that resulted in revocation, suspension, or nonrenewal of a license or contract with the department;

(2) When providing care or services to children or vulnerable adults:

(a) Has been found to be in significant noncompliance with federal or state regulations; or

(b) Had a license for the care of children or vulnerable adults suspended or revoked.

(3) For a period of twenty years after a provider surrendered or relinquished an adult family home license after notification of the department's intention to deny, suspend, not renew or revoke, in lieu of appealing the department's action;

(4) Been enjoined from operating a facility for the care and services of children or adults;

(5) A stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, final order issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW;

(6) Had a revocation or suspension of a license for the care of children or adults;

(7) Had a revocation, cancellation, suspension or nonrenewal of:

(a) A medicaid or medicare provider agreement by the contracting agency; or

(b) Any agreement with a public agency for the care and treatment of children or vulnerable adults, when the action was taken by the public agency.

(8) Been convicted of any crime listed in RCW 43.43.830 or 43.43.842;

(9) Been found by a court:

(a) In a protection proceeding under chapter 74.34 RCW to have abandoned, neglected, abused, or financially exploited a vulnerable adult; or

(b) In a domestic relations proceeding under Title 26 RCW to have sexually or physically abused, neglected or exploited any minor.

(10) Been found in any final decision issued by a disciplinary board to have:

(a) Sexually or physically abused, neglected or exploited any minor or a person with a developmental disability; or

(b) Abandoned, abused, neglected or financially exploited any vulnerable adult.

(11) Been found in any final decision by any federal or state agency or department to have abandoned, neglected, abused or financially exploited a vulnerable adult;

(12) Found in any dependency action under RCW 13.34.030 (5)(b) to have sexually or physically abused, neglected or exploited any minor;

(13) The home is currently licensed:

(a) As a boarding home; or

(b) To provide care for children in the same home, unless:

(i) It is necessary in order to allow a resident's child(ren) to live in the same home as the resident or to allow a resident who turns eighteen to remain in the home;

(ii) The applicant provides satisfactory evidence to the department of the home's capacity to meet the needs of children and adults residing in the home; and

(iii) The total number of persons receiving care and services in the home does not exceed the number permitted by the licensed capacity of the home.

~~(14) After January 1, 2007, if~~ If the provider or entity representative has not successfully completed a department-approved forty-eight hour adult family home administration and business planning class.

**WAC 388-76-10240 Durable power of attorney for health care or financial decisions.**

The adult family home must not allow a provider, entity representative, owner, administrator, or employees of the home to act as a resident's ~~power of attorney~~ in fact for health care decisions, according to chapter 11.94 RCW, unless the provider, entity representative, owner, administrator, or employee is the resident's:

(1) Spouse;

(2) Adult child; or

(3) Brother or sister.

**WAC 388-76-10400 Care and services.**

The adult family home must ensure each resident receives:

(1) The care and services identified in the negotiated care plan.

(2) The necessary care and services to help the resident reach the highest level of physical, mental, and psychosocial well-being consistent with resident choice, current functional status and potential for improvement or decline.

(3) The care and services in a manner and in an environment that:

(a) Actively supports, maintains or improves each resident's quality of life;

(b) Actively supports the safety of each resident; and

(c) Reasonably accommodates each resident's individual needs and preferences except when the accommodation endangers the health or safety of the individual or another resident.

(4) Services by the appropriate professionals based upon the resident's assessment and negotiated care plan, including nurse delegation if needed.

**WAC 388-76-10420 Meals and snacks.**

The adult family home must:

(1) Serve at least three meals:

- (a) In each twenty-four hour period;
  - (b) At regular times comparable to normal meal times in the community; and
  - (c) That meet the nutritional needs of each resident.
- (2) ~~Provide~~ Make nutritious snacks available to residents:
- (a) Between meals; and
  - (b) In the evening.
- (3) Get input from residents' in meal planning and scheduling;
- (4) Serve nutrient concentrates, supplements, and modified diets only with written approval of the resident's physician;
- (5) Only serve pasteurized milk; and
- (6) Process any home-canned foods served in the home, according to the latest guidelines of the county cooperative extension service.

**WAC 388-76-10430 Medication system.**

- (1) If the adult family home admits residents who need medication assistance or medication administration services by a legally authorized person, the home must have systems in place to ensure:
- ~~(a) The services provided meet the medication needs of each resident; and~~
  - ~~(b) Meet all related laws and rules relating to medications.~~
- (2) When providing medication assistance or medication administration for any resident, the home must ensure each resident:
- (a) Assessment indicates the amount of medication assistance needed by the resident;
  - (b) Negotiated care plan identifies the medication service that will be provided to the resident;
  - (c) Medication log is kept current as required in WAC 388-76-~~10480~~10475;
  - (d) Receives medications as required.
- (3) Records are kept which include a current list of prescribed and over-the-counter medications including name, dosage, frequency and the name and phone number of the practitioner as needed.

**WAC 388-76-10440 Medication—Assessment—Identification of amount of assistance needed when taking medications.**

- (1) The adult family home must:
- (a) Ensure each resident assessment identifies the amount of assistance the resident needs when taking medications; and
  - (b) Let the practitioner know when the following may affect the resident's ability to take their medications:
    - (i) Resident's physical or mental limitations; and
    - (ii) The setting or environment where the resident lives.
- (2) The amount of assistance needed by a resident when taking their medications is as follows:
- (a) *Independent with self-administration* is when the resident does not need help taking medications and is able to directly take medications by eating or drinking, inhaling, by shot, through the skin or other means;

(b) *Self-administration with assistance*, as described in chapter 246-888 WAC, is when a resident is assisted in taking their medication by a non-practitioner; and

(c) *Medication administration* is when medications are administered to the resident by a person legally authorized to do so, such as but not limited to a physician, nurse or pharmacist or through nurse delegation.

(3) The home must contact the resident's practitioner who will decide if a reassessment is necessary when:

(a) The resident has a change in the health status, medications, physical or mental limitations, or environment that might change the resident's need for medication assistance; or

(b) There is a need for a resident to have more than one type of medication assistance.

**WAC 388-76-10445 Medication—Independent—Self-administration.**

The adult family home must ensure residents who have medication assistance assessed as independent ~~with~~ self-administration:

- (1) Administer their own medications; and
- (2) Are allowed to keep their prescribed and over-the-counter medications securely locked in either their room or another agreed upon area if documented in the resident negotiated care plan.

**WAC 388-76-10470 Medication—Timing—Special directions.**

- (1) The adult family home must ensure medications are given:
- (a) At the specific time(s) ordered by the practitioner; and
  - (b) As follows, when the practitioner does not order a medication to be given at a specific time:
    - (i) One time per day, approximately every twenty four hours;
    - (ii) Two times a day, approximately twelve hours apart;
    - (iii) Three times a day, approximately six hours apart; and
    - (iv) Four times a day, approximately four hours apart.
- (2) The home must ensure all directions given by the practitioner are followed when assisting or giving each resident medication. This includes but is not limited to:
- (a) Before meals;
  - (b) After meals;
  - (c) With or without food; and
  - (d) At bed time.

**WAC 388-76-10540 Resident rights—Disclosure of fees and notice requirements—Deposits.**

(1) Before admission, if the adult family home requires payment of an admissions fee, deposit, or a minimum stay fee, by or on behalf of a person seeking admission, the home must give the resident full disclosure in writing in a language the resident understands.

- (2) The disclosure must include:
- (a) A statement of the amount of any admissions fees, deposits, prepaid charges, or minimum stay fees;
  - (b) The home's advance notice or transfer requirements; and

(c) The amount of the deposits, admission fees, prepaid charges, or minimum stay fees that will be refunded to the resident ~~or his~~ if the resident leaves the home.

(3) The home must ensure that the receipt of the disclosures required under subsection (1) of this section is in writing and signed and dated by the resident and the home.

(4) If the home does not provide these disclosures, the home must not keep the deposits, admission fees, prepaid charges, or minimum stay fees.

(5) If a resident dies, is hospitalized or is transferred and does not return to the home, the adult family home:

(a) Must refund any deposit or charges already paid less the home's per diem rate for the days the resident actually resided, reserved or retained a bed in the home in spite of any minimum stay policy or discharge notice requirements; except that

(b) May keep an additional amount to cover its reasonable and actual expenses incurred as a result of a private-pay resident's move, not to exceed five days per diem charges; unless the resident has given advance notice in compliance with the admission agreement.

(6) All adult family homes covered under this section are required to refund any and all refunds due the resident ~~or his~~ ~~or~~ within thirty days from the resident's date of discharge from the home.

(7) Nothing in this section applies to provisions in contracts negotiated between a home or and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(8) If the home requires the implementation of an admission ~~contract~~ agreement by or on behalf of an individual seeking admission the home must ensure the terms of the ~~contract~~ agreement are consistent with the requirements of this section, chapters 70.128, 70.129 and 74.34 RCW, and other applicable state and federal laws.

#### **WAC 388-76-10585 Resident rights—Examination of inspection results.**

The adult family home must:

(1) Ensure each resident is given ~~the ability~~ an opportunity to examine the most recent inspection report of the home and related plans of correction; and

(2) ~~Publicly post~~ Post a notice in a visible location in the home ~~a notice that~~ indicating the inspection report is available for review.

#### **WAC 388-76-10780 Toilets and bathing facilities.**

(1) The adult family home must ensure the home has toilets and bathing facilities that provide each resident with privacy and include:

(a) One indoor flush toilet for each five persons including residents and household members in the home; and

(b) Sinks with hot and cold running water.

(2) Homes licensed after July 1, 2007, must ensure each resident has access to a toilet, shower ~~and~~ or tub without going through another resident's room.

#### **WAC 388-76-10810 Fire extinguishers.**

(1) The adult family home must have an approved five pound 2A:10B-C rated fire extinguisher on each floor of the home.

(2) The home must ensure the fire extinguishers are:

(a) Installed according to manufacturer recommendations;

(b) Inspected and serviced annually;

(c) In proper working order; and

(d) Readily available for use at all times.

(2) If required by the local fire authority, the home must provide different fire extinguishers as in place of the fire extinguishers required in subsection (1) of this section.

#### **WAC 388-76-10845 Emergency drinking water supply.**

The adult family home must have an on-site emergency supply of drinking water that:

(1) Will last for a minimum of seventy-two hours for each resident;

(2) Is at least three gallons for each resident; ~~and~~

(3) Is stored in food grade plastic or glass containers; ~~rated for the storage of drinking water.~~

(4) Is chemically treated or replaced every six months; ~~and~~

(5) Is stored appropriately.

#### **WAC 388-76-10920 Inspection and investigation reports—Provided by department.**

The department will mail or hand deliver the department's ~~inspection~~ report to the provider or entity representative:

(1) Within ten working days of completion of the inspection of the home; or

(2) Within ten calendar days of completion of ~~complaint investigation~~ the investigation if the home does not have a deficiency.

The department is withdrawing **WAC 388-76-11000 through 388-76-11045** and has filed a new preproposal statement of inquiry (CR-101) for the resident protection program with the code reviser, WSR 07-15-026.

### **RESIDENT PROTECTION PROGRAM**

#### **~~WAC 388-76-11000 Resident protection program—Abuse and neglect reporting—Required.~~**

~~(1) In accordance with chapter 74.34 RCW, all adult family home providers, entity representatives, resident managers, owners, caregivers, staff, and students if the students provide care and services to residents; are mandated reporters and must report to the department when there is:~~

~~(a) A reasonable cause to believe that a vulnerable adult has been abandoned, abused, neglected, exploited or financially exploited, or~~

~~(b) Suspected abandonment, abuse, neglect, exploitation or financial exploitation of a vulnerable adult.~~

~~(2) Reports must be made to:~~

~~(a) The centralized toll free telephone number for reporting abandonment, abuse, neglect, exploitation or financial exploitation of vulnerable adults, provided by the department; and~~

~~(b) Law enforcement agencies, as required under chapter 74.34 RCW.~~

~~(3) The home must have policies and procedures complying with state law that specify reporting requirements for~~

abandonment, abuse, neglect, exploitation, and financial exploitation of vulnerable adults.

**~~WAC 388-76-11005 Resident protection program— Investigation of mandated reports.~~**

(1) The department will decide whether a report of abandonment, abuse, neglect, exploitation, or financial exploitation needs to be investigated, as per established procedures.

(2) The department investigation will include an investigation of allegations about one or more of the following:

- (a) A provider;
- (b) Entity representative;
- (c) Anyone affiliated with a provider;
- (d) Caregiver;
- (e) Student or volunteer;
- (f) Person living in the home who is not a resident; and
- (g) A resident receiving care and services under this chapter.

(3) If, after completing an investigation, the department concludes that more likely than not the alleged perpetrator abandoned, abused, neglected, exploited, or financially exploited a resident, the department will make an initial finding against the perpetrator.

**~~WAC 388-76-11010 Resident protection program— Notice of initial finding.~~**

(1) The department will notify the alleged perpetrator in writing within ten working days of making an initial finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a resident. The written notice must not include the identities of the alleged victim, reporter and witnesses.

(2) The department must make a reasonable, good faith effort to find the last known address of the alleged perpetrator.

(3) The time frame for notification can be extended beyond ten working days to include the time needed to translate the notification letter or make provisions for the safety of the alleged victim.

(4) Notice of the initial finding will be served as provided in chapter 388-02 WAC.

**~~WAC 388-76-11015 Resident protection program— Reporting initial finding.~~**

(1) In a manner consistent with confidentiality requirements concerning the resident, witnesses, and reporter, the department may provide notification of an initial finding to:

- (a) Other divisions within the department;
- (b) The agency or program identified under RCW 74.34.068 with which the alleged perpetrator is associated as an employee, volunteer, student or contractor;
- (c) Law enforcement; and
- (d) Other investigative authorities consistent with chapter 74.34 RCW.

(2) The notification will identify the finding as an initial finding.

**~~WAC 388-76-11020 Resident protection program— Disputing an initial finding.~~**

(1) An alleged perpetrator of abandonment, abuse, neglect, exploitation, or financial exploitation of a resident

may ask for an administrative hearing to challenge an initial finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the alleged perpetrator's written request for a hearing within thirty calendar days of the date the individual was served with notice of the initial finding.

(4) The written request for a hearing must include:

- (a) The full legal name, current address and phone number of the alleged perpetrator;
- (b) A brief explanation of why the alleged perpetrator disagrees with the initial finding;
- (c) A description of any assistance needed in the administrative appeal process by the alleged perpetrator, including a foreign or sign language interpreter or any accommodation for a disability; and
- (d) The alleged perpetrator's signature.

**~~WAC 388-76-11025 Resident protection program— Disclosure of investigative and finding information.~~**

(1) The alleged perpetrator may only use confidential information provided by the department as needed to challenge initial findings through the appeal process.

(2) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the resident will be redacted from documents by the department unless otherwise ordered by the administrative law judge consistent with chapter 74.34 RCW and other applicable state and federal laws.

**~~WAC 388-76-11030 Resident protection program— Hearing procedures to dispute initial finding.~~**

(1) Chapters 34.05 and 74.34 RCW, chapter 388-02 WAC, and the provisions of this chapter govern any appeal regarding an initial finding.

(2) If a conflict between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter prevail.

(3) The administrative law judge must decide whether a preponderance of the evidence supports the initial finding that the alleged perpetrator abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult, and must issue an initial order.

**~~WAC 388-76-11035 Resident protection program— Appeal of administrative law judge's initial order or finding.~~**

(1) If the alleged perpetrator or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapter 34.05 RCW and chapter 388-02 WAC.

(2) If the department appeals the administrative law judge's decision, the department will not change the finding in the department's records until a final hearing decision is issued.

**~~WAC 388-76-11040 Resident protection program— Finalizing an initial finding.~~**

(1) An initial finding becomes a final finding when:

(a) The department gives the alleged perpetrator notice of the initial finding pursuant to WAC 388-101-1110 and the alleged perpetrator does not ask for an administrative hearing;

(b) The administrative law judge:

(i) Dismisses the hearing following withdrawal of the appeal or default; or

(ii) Issues an initial order upholding the finding and the alleged perpetrator fails to appeal the initial order to the department's board of appeals; or

(c) The board of appeals issues a final order upholding the finding;

(2) The final finding is permanent and will not be removed from the department's records unless:

(a) Rescinded following judicial review; or

(b) The department decides to remove a single finding of neglect from its records based upon a written petition by the

The changes were made because:

alleged perpetrator provided that at least one calendar year has passed since the finding was finalized and recorded.

**~~WAC 388-76-11045 Resident protection program—Reporting final findings.~~**

The department will report a final finding of abandonment, abuse, neglect, exploitation, and financial exploitation within ten working days to the following:

(1) The perpetrator;

(2) The provider or entity representative that was associated with the perpetrator during the time of the incident;

(3) The adult family home that is currently associated with the perpetrator, if known;

(4) The appropriate licensing authority; and

(5) The department's list of findings of abandonment, abuse, neglect, exploitation and financial exploitation.

(6) The findings may be disclosed to the public upon request.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><b>General comment not tied to any specific section of the proposed rule:</b>                      DSHS should reissue the notice of proposed rule making and extend the deadline for public comment for an additional three months to allow for the development and publishing of a "crosswalk" between the existing rule and the proposed rule.</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>The rule will not be reissued or delayed as the entire draft of the rule, section-by-section has been shared with multiple representatives of industry, advocacy groups, internal and external stakeholders and persons identified as interested parties throughout the drafting process.</li> <li>The entire rule section-by-section has been posted on the agency web for review and comment as each area of the proposed rule was developed.</li> <li>A crosswalk will not be developed as it is not required by law.</li> </ul>
<p><b>General comment not tied to any specific section of the proposed rule:</b>                      The timing of adoption of this rule may be in conflict with the public employee relations commission, WAC 391-25-140(2).</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>The adoption of the rule is not in conflict with WAC 391-25-140(2) as the rule does not make any changes to the status quo.</li> <li>The proposed rule-making process has followed the statutory requirements of chapter 34.05 RCW.</li> </ul>
<p><b>WAC 388-76-10000 "Neglect" means:</b>                      (1) a pattern of conduct or inaction by a person or entity with a duty to of care that fails to provide ...</p>	<p><b>A change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>The change was made to mirror the language of "neglect" in chapter 74.34 RCW.</li> </ul>
<p><b>WAC 388-76-10020</b> This section uses the phrase "emotional and physical care needs." This may or may not be the same as "personal care needs" or "special care needs" which are defined. The difference is subtle and implied, and leaves the reader to interpret.</p>	<p><b>A change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>The change is made to provide consistent language defined in the rule for "personal care and special care."</li> </ul>
<p><b>WAC 388-76-10040</b> Recommend adding clarifying and simpler language to have the AFH provider or entity rep either:                      (a) Live in the home; or                      (b) Employ or contract with a qualified mgr ... OR                      (c) Have twenty-four hour staffing and a qualified person who can ...</p>	<p><b>A change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>The suggested change was made to simplify the rule language.</li> </ul>



SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><b>WAC 388-76-10085</b> Recommend adding clarifying and simpler language to have title read: "Application—Affiliated parties," and could be combined with WAC 388-76-1190.</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>• The term "affiliated with the applicant" is consistent with statutory language in chapter 70.128 RCW.</li> <li>• Did not combine WAC 388-76-10085 and 388-76-1190 as recommended:               <ul style="list-style-type: none"> <li>◦ WAC 388-76-1185 relates to "provider and coprovider;" and</li> <li>◦ WAC 388-76-1190 relates to an "entity."</li> </ul> </li> </ul>
<p><b>WAC 388-76-10095</b> Clarifying language would have the title read: "Application—Identification of <i>involved</i> landlord—Required.</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>• Adding the word "involved" potentially adds confusion to the regulation.</li> <li>• The common definition of "involved" is too broad in context and potentially increases the possibility of different interpretations of the regulation.</li> </ul>
<p><b>WAC 388-76-10120(14)</b> Leaves the reader to ponder who this rule could "reach back" to.</p> <ul style="list-style-type: none"> <li>• All providers?</li> <li>• All making application?</li> <li>• All providers making application for additional licenses?</li> </ul> <p>The "After January 1, 2007" creates further confusion and is unnecessary as that time has passed.</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>• The licensing statute, chapter 70.128 RCW, states the department must not license an applicant if the prospective provider has not completed the required training.</li> </ul> <p><b>A change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>• The "After January 1, 2007" language was deleted from the rule to eliminate confusion.</li> </ul>
<p><b>WAC 388-76-10240</b> Recommend the following changes so the regulation is consistent with RCW 11.94.010 (3)(b):</p> <p><b>WAC 388-76-10240 Durable power of attorney for health care <u>or</u> financial decisions.</b></p> <p>(1) The adult family must not allow a provider, entity representative, owner, administrator, or employees of the home to act as a resident's power of attorney for health care <u>or</u> financial decisions, according to chapter 11.94 RCW, unless the provider, entity representative, owner, administrator, or employee is the resident's: ...</p>	<p><b>A change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>• The recommended section title change is consistent with chapter 11.94 RCW and helps to clarify the requirements.</li> <li>• The term "attorney in fact" was added to mirror the language in chapter 11.94 RCW.</li> </ul>
<p><b>WAC 388-76-10315</b> The requirement to keep resident records for only three years may put the provider in conflict with the requirements of WAC 296-20-02005 which requires records must be maintained for audit purposes for a minimum of five years.</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>• The proposed rule language does not put the provider in conflict with WAC 296-20-02005.</li> <li>• The provider is required to meet the retention of records requirement of WAC 296-20-02005 <u>only</u> if the provider is receiving payment from the department of labor and industries to provide care and services to a resident who is an industrially injured worker.</li> <li>• The proposed language in WAC 388-76-10315 is consistent with current rule language.</li> <li>• Increasing the resident record retention requirement would be a new requirement and could add additional cost for the provider.</li> </ul>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><b>WAC 388-76-10330(1)</b> Is not a <i>current</i> written assessment the objective of this section, compared to requiring a <b>new</b> assessment?</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>The objective of this section is to require a "new" assessment to ensure the assessment is current so the new provider can develop an appropriate negotiated care and services plan that meets the needs of the new resident being admitted to the adult family home.</li> </ul>
<p><b>WAC 388-76-10395</b> This section allows for the emergency admission of a resident, but only if a true emergency exists. The term "emergency" is not defined in WAC 388-76-10000. A resident's "life, health, and safety" may or may not bring some generally accepted understanding, but what constitutes a "serious risk" has a much broader connotation.</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>WAC 388-76-10395(2) establishes the parameters of a "true emergency" and states: To establish that a true emergency exists, the home must verify that the resident's life, health or safety is at serious risk due to circumstances in the resident's current place of residence or harm to the resident has occurred.</li> </ul>
<p><b>WAC 388-76-10400(3)(c)</b> States that care and services be provided in a manner that reasonably accommodates individual needs and preferences <u>except</u> when it endangers the health and safety of another (but not the person himself?).</p>	<p><b>Changes were made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>Language was added to the section to mirror the statutory language of RCW 70.129.140 (5)(a) which clarifies the intent to also protect the person themselves.</li> </ul>
<p><b>WAC 388-76-10405</b> If an AFH does not provide nursing care, and identifies that a resident has need for such care, this section requires the AFH to hire or contract with a licensed nurse to provide for the care. Is this "care and services," or is this "special care"? Who will pay? The language leaves the impression the AFH must pay for the licensed nurse. Without clarifying language, one must assume there would be an economic impact on the provider, unaddressed by a small business economic impact statement. This section further implies a provider must retain a resident, even though the care and services they now need are not provided by the provider, and may not be reasonably accommodated. This WAC requirement is not consistent with WAC 388-76-10390(1).</p>	<p><b>No change was made in response to these comments.</b></p> <ul style="list-style-type: none"> <li>The proposed language is consistent with current regulations and poses no new cost requirements on the provider.</li> <li>The provider must disclose what services and costs the provider offers or will not offer in the preadmission agreement.</li> <li>The provider must develop a negotiated care plan with the resident based on the resident's assessed needs.</li> <li>The resident has the right to indicate what services they will accept or not accept from the provider.</li> <li>If the provider does not disclose the costs of a service such as nursing service, the provider must comply with the requirements of chapter 70.129 RCW and/or work with the agency case manager, if the resident services are paid by the state, to change any costs charged to the resident.</li> <li>This section of the rule is consistent with WAC 388-76-10390 (1)(b), which requires reasonable accommodation.</li> </ul>
<p><b>WAC 388-76-10420(2)</b> Says the adult family home must provide nutritious snacks to residents between meals; and in the evening. Some residents have weight problems and lack will power. They do not need to be encouraged to take in additional calories. "Provide" could be modified to read "make available."</p>	<p><b>A change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>The proposed rule was changed to use the term "make available" which is current rule language.</li> </ul>
<p><b>WAC 388-76-10425</b> A clarifying language change might be found in subsection (3)(b) reading "Until" served.</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>The intention of this section is clear.</li> <li>The food must be at the appropriate and safe temperature when served.</li> </ul>
<p><b>WAC 388-76-10430</b> Clarifying language could read: (1) If the adult family home admits residents who need medication assistance by a legally authorized person, the home must have systems in place..."</p>	<p><b>A change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>Recommendation helps to add clarity.</li> </ul>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
Subsection [(1)](c) references an incorrect WAC - should be WAC 388-76-10475.	<p><b>A change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>WAC reference corrected.</li> </ul>
<p><b>WAC 388-76-10440</b> Recommend changing the title of the section to: "Medication <i>Assistance</i>—Identification of the <i>type</i> of assistance needed when taking medications."</p> <p>Recommend using the terms "type or level" instead of using the term "amount" of assistance.</p> <p>Subsections (2)(a), (b), and (c) terms in italics should match exactly to their following section titles.</p> <p>Subsections (1)(b) and (3):</p> <ul style="list-style-type: none"> <li>Require the AFH to communicate with a resident's medical practitioner would constitute a HIPPA violation; and</li> <li>The practitioner is not generally privy to the assessments done by the resident's case manager, and is likely not able or involved to decide if a reassessment is necessary.</li> </ul>	<p><b>No change was made in response to these comments.</b></p> <ul style="list-style-type: none"> <li>The layout for medication regulations is consistent throughout and includes the word "Medication" followed by an identifying statement for each section.</li> <li>The use of the term "type" of assistance, is not consistent with either the board of pharmacy rules or the Nurse Practice Act language.</li> </ul> <p><b>Changes were made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>The language in WAC 388-76-11040 and 388-76-11045 was changed to be consistent with the terms in <i>italics</i> which is consistent with the board of pharmacy regulations.</li> </ul> <p><b>No change was made in response to these comments.</b></p> <ul style="list-style-type: none"> <li>This requirement is consistent with current rule language and is not a violation of HIPPA.</li> <li>The provider must work with the resident and if the resident has a case manager, the case manager to provide the practitioner with the appropriate information.</li> </ul>
<p><b>WAC 388-76-10460(1)</b> It is recommend[ed] to add the following clarifying language as follows: The adult family home must ensure that each resident's negotiated care plan addresses the <i>type</i> of medication assistance needed ...</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>The use of the term "type" of assistance, is not consistent with either the board of pharmacy rules or the Nurse Practice Act language.</li> </ul>
<p><b>WAC 388-76-10470</b> The special directions do not use "approximately" in WAC 388-76-10470 [(1)](b)(i), but then use the term in (ii).</p> <p>Suggest adding medically acceptable timeframes to each appropriate subsection such as: "<i>plus or minus fifteen minutes</i>" or "<i>within fifteen minutes</i>" or "<i>within a half hour</i>" to provide the necessary detail so the provider is not left to a subjective judgment as to what constitutes an appropriate "approximate."</p>	<p><b>A change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>The term "approximately" was added to subsection [(1)](b)(i) to be consistent with the term used in subsections [(1)](b)(ii), (iii) and (iv).</li> </ul> <p><b>No change was made in response to these comments.</b></p> <ul style="list-style-type: none"> <li>The text of the proposed rule indicates that medications must be given at a specific time if "ordered by a practitioner."</li> <li>Medically acceptable timeframes will not be added to the proposed rule. The "approximate" text and examples in subsections (2)(a) through (d) provide a reality based medication administration system.</li> </ul>
<p><b>WAC 388-76-10510, 388-76-10515, 388-76-10520</b> A concern is raised that while adult family home WACs are established to protect the rights of residents, they do not afford a resident the right to deny any other person their same and equal rights and all people should be afforded the same civil rights that any other American receives.</p>	<p><b>No change was made in response to these comments.</b></p> <ul style="list-style-type: none"> <li>The comments made no specific recommend[ation] for changes.</li> <li>Chapter 388-76 WAC establishes the licensing requirements for the adult family home provider to follow to remain licensed not what other individuals must do for the provider.</li> <li>The proposed rule enabling chapter 70.129 RCW, Long-term care resident rights is focused on the rights, of the residents and not on other civil rights.</li> <li>WAC 388-76-10545(4) requires compliance with other state and federal laws regarding nondiscrimination.</li> </ul>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><b>WAC 388-76-10520, 388-76-10530, 388-76-10815</b> A concern is raised that there is a language of some sort (both written and verbal) that can be understood by a resident with profound mental retardation/developmental disabilities, and that rules and regulations regarding personal rights and personal conduct responsibilities can be clearly communicated with that language and that this is not a realistic expectation to place on providers for a notable number of others, especially providers who serve those severely challenged by a developmental disability.</p>	<p><b>No change was made in response to these comments.</b></p> <ul style="list-style-type: none"> <li>• The comments made no specific recommend[ation] for changes.</li> <li>• The definition of "resident" in the proposed WAC 388-76-10000 includes the following statement in subsection (2): "For decision-making purposes, the term "resident" includes the resident's surrogate decision maker following state law or at the resident's request."</li> <li>• A resident's surrogate decision maker can be appointed to act on behalf of the resident.</li> </ul>
<p><b>WAC 388-76-10525 Resident rights—Description.</b> To help inform residents how to exercise their rights, it is recommend[ed] to add the following language to subsection (3):</p> <p>A statement informing the resident that he or she may file a complaint with the appropriate state licensing agency concerning alleged abandonment, abuse, neglect, or financial exploitation, <u>or violation of any resident right contained within this chapter.</u></p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>• Residents may file a complaint on any issue.</li> <li>• Adding the recommended statement may be limiting and may confuse the resident into believing they can only file a complaint if the complaint relates to abandonment, abuse, neglect, exploitation or financial exploitation.</li> </ul>
<p><b>WAC 388-76-10540(8)</b> It is recommended to add the following language: If the homes require the implementation <u>signing</u> of an admission contract by or on behalf of an individual seeking admission the home must ...</p> <p>The current term used is: "admission contract." "Admission agreement" would be a better term.</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>• The proposed rule language requires the signing and dating of the admission agreement required in WAC 388-76-10540(3).</li> </ul> <p><b>A change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>• The term was changed to "admission agreement" to be consistent with the language in other sections of the rule.</li> </ul>
<p><b>WAC 388-76-10545(4)</b> Refers to all applicable federal and state requirements regarding nondiscrimination and is a very broad statement. Suggest DSHS offer an adult family home targeted class on this subject.</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>• The proposed rule language will not be changed as the language clearly informs the provider they must comply with all laws and regulations relating to nondiscrimination.</li> </ul>
<p><b>WAC 388-76-10550 (2)(e)</b> This section appears to be in conflict with WAC 388-76-10405, wherein the provider must provide a nurse and/or a nurse delegate. May the provider declare they will not provide for these services?</p>	<p><b>No change was made in response to these comments.</b></p> <ul style="list-style-type: none"> <li>• The language is not in conflict with WAC 388-76-10404.</li> <li>• The provider can designate the services the provider will and will not provide in the providers preadmission agreement.</li> </ul>
<p><b>WAC 388-76-10585</b> An adult family home cannot give a resident "the <i>ability</i> to examine" reports but can provide the "opportunity" to examine.</p> <p>Suggest changing the language in subsection (2) to post "in a visible location in the home, a notice ..."</p>	<p><b>Changes were made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>• Changed the wording in the section to "opportunity" for clarity.</li> </ul> <p><b>Changes were made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>• Changed the wording to help clarify the posting requirement.</li> </ul>
<p><b>WAC 388-76-10655</b> Recommend incorporating the following language into the WAC: "A resident who is injuring himself/herself or is threatening physical harm to others may be restrained in an emergency to safeguard the resident and others."</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>• Current proposed rule language clearly states the requirements and limitations for the use of restraints.</li> </ul>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<b>WAC 388-76-10685(2)</b> It is recommended to add the following language to state that window and door screens are in fact required: Ensure <i>there are</i> window and door screens: ...	<b>No change was made in response to this comment.</b> <ul style="list-style-type: none"> <li>• Screens are not required. However, if windows or doors have screens, they must comply with the requirements in the proposed rule.</li> <li>• The provider is required to keep the bedroom free of flies and other insects as per WAC 388-76-685 (2)(b).</li> </ul>
<b>WAC 388-76-10690 Bedroom usable floor space— In adult family homes after the effective date of this chapter.</b> A concern was raised for changing bedroom size square footage calculations by the elimination of space for closets and door swing.	<b>No change was made in response to these comments.</b> <ul style="list-style-type: none"> <li>• Current proposed rule language clarifies preexisting agency practice for calculating bedroom floor space which has been in effect for at least two years.</li> </ul>
<b>WAC 388-76-10750(4)</b> A concern is raised regarding the difficulty a home has in meeting and maintaining the 120° Fahrenheit maximum temperature for hot water due to the limitations of hot water systems.	<b>No change was made in response to this comment.</b> <ul style="list-style-type: none"> <li>• The maximum temperature is a current regulation requirement and will not be changed for the safety of the residents.</li> </ul>
<b>WAC 388-76-10775 (1)(c)</b> Recommend raising the maximum temperature to 80° instead of the required 79° as on hot days the interior temperature can reach 79 to 80°.	<b>No change was made in response to this comment.</b> <ul style="list-style-type: none"> <li>• The 78° temperature requirement required by the state adopted energy code.</li> </ul>
<b>WAC 388-76-10780</b> Refers to "toilet, shower and tub." Must homes licensed after July 1, 2007, actually have a tub? We installed handicapped showers which accept a wheelchair. Is "tub" really required?	<b>A change was made in response to this comment.</b> <ul style="list-style-type: none"> <li>• The building code requires the installation of a tub <u>or</u> shower.</li> <li>• The word "or" was added to add clarification of the building code requirement.</li> </ul>
<b>WAC 388-76-10810</b> Suggest adding clarifying language to clarify whether "the home must have different fire extinguishers <i>"in addition to"</i> or <i>"in place of,"</i> as required in ...."	<b>A change was made in response to this comment.</b> <ul style="list-style-type: none"> <li>• Added clarifying language indicating the required fire extinguishers would be "in place of."</li> </ul>
<b>WAC 388-76-10820</b> Questions were raised about the definition of grade level.	<b>No change was made in response to this comment.</b> <ul style="list-style-type: none"> <li>• The comments made no specific recommend[ation] for changes.</li> <li>• The definition of grade level is complex and is established in the state adopted building code.</li> <li>• Building code officials are given the authority to enforce "grade level" facility regulations in chapter 19.27 RCW.</li> </ul>
<b>WAC 388-76-10845 Emergency drinking water supply.</b> Due to the importance of having a good clean supply of drinking water during an emergency, suggest adding very specific language to this section.	<b>A change was made in response to these comments.</b> <ul style="list-style-type: none"> <li>• Added clarifying language for : <ul style="list-style-type: none"> <li>◦ The type of storage containers used to store the drinking water;</li> <li>◦ Chemical treatment or replaced; and</li> <li>◦ Appropriate storage.</li> </ul> </li> </ul>
<b>WAC 388-76-10850 Emergency medical supplies.</b> Recommend adding very specific language to this section so the expectations required for first-aid supplies are clear.	<b>No change was made in response to these comments.</b> <ul style="list-style-type: none"> <li>• Current proposed language allows the provider flexibility to provide the required first-aid supplies consistent with: <ul style="list-style-type: none"> <li>◦ The number and needs of the residents served by the home.</li> </ul> </li> <li>• Proposed language is consistent with currently adopted language.</li> </ul>

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><b>WAC 388-76-10920</b> The title to this section includes both inspections and investigations, while the body of the text only speaks to the inspection report. Striking the word "inspection" (to read: "<i>the department's report</i>") in the first part allows subsections (1) and (2) to clarify the separate delivery timeframes for inspections and investigations.</p> <p>Subsection (2) refers to calendar days related to a complaint investigation and should refer to calendar days related to an inspection of the facility has no violations.</p>	<p><b>Changes were made in response to these comments.</b></p> <ul style="list-style-type: none"> <li>Removed the word "inspection" to provide clarity within the section.</li> <li>Changed subsection (2) to be consistent with statutory language in chapter 70.128 RCW.</li> </ul>
<p><b>WAC 388-76-10930</b> Suggest adding the following clarifying language: "<i>If a plan of correction is indicated on the inspection or investigation report. It must: ....</i>"</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>The department report states if a plan of correction is or is not required.</li> </ul>
<p><b>WAC 388-76-10955</b> That the department "<b>must</b> impose" a remedy under subsection (6)(a) in a situation where a medicaid/medicare provider agreement is suspended, rather than "<b>may</b> impose" (WAC 300-76-10960 [388-76-10960]) (<i>until the situation is resolved,</i>) would appear arbitrary, unless required by law.</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>The proposed language provides the department flexibility relating to the imposition of remedies based upon the specific circumstances of the situation.</li> </ul>
<p><b>WAC 388-76-10990</b> Recommend amending this section to clarify that the resident has the right to participate in IDR and will likely encourage them to do so.</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>Department policy provides an opportunity for residents to participate in the informal dispute resolution process.</li> <li>Department policy will not be placed in the proposed rule.</li> </ul>
<p><b>WAC 388-76-11040 (2)(b)</b> A reasonable change would have the department able to decide to remove a "<i>single finding of violation with this chapter</i>" (in lieu of only "<u>neglect</u>").</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>The department is withdrawing this section and has filed a new preproposal statement of inquiry (CR-101) for the resident protection program with the code reviser, WSR 07-15-026.</li> </ul>
<p><b>WAC 388-76-11045(6)</b> Suggest adding the following clarifying language: "<i>the public, upon request.</i>"</p>	<p><b>No change was made in response to this comment.</b></p> <ul style="list-style-type: none"> <li>The department is withdrawing this section and has filed a new preproposal statement of inquiry (CR-101) for the resident protection program with the code reviser, WSR 07-15-026.</li> </ul>

A final cost-benefit analysis is available by contacting Roger A. Woodside, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3204, fax (360) 438-7903, e-mail woodsr@dshs.wa.gov. The cost-benefit analysis was not changed.

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 199, Amended 0, Repealed 97.

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 199, Amended 0, Repealed 97.

Date Adopted: October 16, 2007.

Robin Arnold-Williams  
Secretary

**Chapter 388-76 WAC**

**ADULT FAMILY HOME MINIMUM LICENSING REQUIREMENTS**

**DEFINITIONS**

NEW SECTION

**WAC 388-76-10000 Definitions. "Abandonment"** means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulner-

able person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult:

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain or mental anguish; and

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means a willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or chemical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

**"Adult family home"** means:

(1) A residential home in which a person or entity are licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services; and

(2) For the purposes of this chapter, any person or entity who has been granted a license to operate an adult family home.

**"Affiliated with an applicant"** means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse of the applicant.

**"Applicant"** means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

**"Capacity"** means the maximum number of persons in need of personal or special care permitted in an adult family home at a given time and includes related children or adults

in the home who receive personal or special care and services.

**"Caregiver"** for purposes other than training, means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

**"Dementia"** is defined as a condition documented through the assessment process required by WAC 388-76-10335.

**"Department"** means the Washington state department of social and health services.

**"Department case manager"** means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

**"Developmental disability"** means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

(i) Self-care;

(ii) Understanding and use of language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for independent living.

**"Direct supervision"** means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

(1) On the premises; and

(2) Quickly and easily available to the caregiver.

**"Entity provider"** means any corporation, partnership, association, or limited liability company that is licensed under this chapter to operate an adult family home.

**"Financial exploitation"** means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.

**"Entity representative"** means the individual designated by an entity provider who is responsible for the daily operation of the adult family home.

**"Home"** means adult family home.

**"Indirect supervision"** means oversight by a person who:

(1) Has demonstrated competency in the basic training and specialty training if required; or

(2) Has been exempted from the basic training requirements; and

(3) Is quickly and easily available to the care giver, but not necessarily on-site.

**"Inspection"** means an on-site visit by department personnel to determine the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations.

**"Mandated reporter"** means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (boarding homes), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

**"Medical device"** as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

**"Medication administration"** means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

**"Medication organizer"** is a container with separate compartments for storing oral medications organized in daily doses.

**"Mental illness"** is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

**"Multiple facility provider"** means an individual or entity provider who is licensed to operate more than one adult family home.

**"Neglect"** means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.41.100.

**"Nurse delegation"** means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

**"Over-the-counter medication"** is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

**"Personal care services"** means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

**"Physical restraint"** means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and is not required to treat the resident's medical symptoms.

**"Practitioner"** includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

**"Prescribed medication"** refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

**"Provider"** means any person or entity that is licensed under this chapter to operate an adult family home.

**"Qualified staff"** means a person who:

(1) Is employed, directly or by contract, by an adult family home; and

(2) Meets all of the requirements of a provider, entity representative, resident manager or caregiver.

**"Resident"** means any adult unrelated to the provider who lives in the adult family home and who is in need of care and for decision-making purposes, the term "resident" includes the resident's surrogate decision maker following state law or at the resident's request.

**"Resident manager"** means a person employed or designated by the provider or entity representative to manage the adult family home.

**"Significant change"** means:

(1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

**"Special care"** means care beyond personal care services as defined in this section.

**"Staff"** means any person who:

(1) Is employed, directly or by contract, by an adult family home; and

(2) Provides care and services to any resident.

**"Unsupervised"** means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or



(2) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

**"Usable floor space"** means resident bedroom floor space exclusive of:

- (1) Toilet rooms;
- (2) Closets;
- (3) Lockers;
- (4) Wardrobes;
- (5) Vestibules, and
- (6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

**"Willful"** means the deliberate or nonaccidental action or inaction by an alleged perpetrator that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

**"Vulnerable adult"** includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;
- (2) Found incapacitated under chapter 11.88 RCW;
- (3) Who has a developmental disability as defined under RCW 71A.10.020;
- (4) Admitted to any facility;
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or
- (6) Receiving services from a provider.

## LICENSE

### NEW SECTION

**WAC 388-76-10005 License—Required.** (1) Any person or entity must have a license by the department to operate an adult family home.

(2) No person or entity may provide personal care, special care, and room and board for more than one resident without a license.

### NEW SECTION

**WAC 388-76-10010 License—Valid and not transferable.** (1) The adult family home is not required to renew the license each year.

- (2) The license remains valid unless:
  - (a) The department takes enforcement action to suspend or revoke the license per law;
  - (b) The home voluntarily surrenders the license and closes the home;
  - (c) The home relinquishes the license; or
  - (d) The home fails to pay the annual licensing fee.
- (3) The home license is:
  - (a) Not transferable; and
  - (b) Valid only for the provider and address listed on the license.

### NEW SECTION

**WAC 388-76-10015 License—Adult family home—Compliance required.** (1) The licensed adult family home must comply with all the requirements established in chapters 70.128, 70.129, 74.34 RCW and this chapter or other applicable laws and regulations; and

(2) The provider or entity representative is ultimately responsible for the operation of the adult family home.

### NEW SECTION

**WAC 388-76-10020 License—Ability to provide care and services.** The adult family home must have the understanding, ability, emotional stability and physical health suited to meet the personal and special care needs of vulnerable adults.

### NEW SECTION

**WAC 388-76-10025 License annual fee.** (1) The license fee is fifty dollars per adult family home per year.

(2) The home must send the annual license fee to the department upon receipt of notice of fee due.

(3) If the department does not renew the license, the annual license fee is refundable.

### NEW SECTION

**WAC 388-76-10030 License capacity.** (1) The department will only issue an adult family home license for more than one but not more than six residents.

(2) In determining the home's capacity, the department must consider the:

- (a) Structural design of the house;
- (b) Number and qualifications of staff;
- (c) Total number of people living in the home who require personal or special care, including:
  - (i) Children; and
  - (ii) Other household members;
- (d) The number of people for whom the home provides adult day care; and
- (e) The ability for the home to safely evacuate all people living in the home.

### NEW SECTION

**WAC 388-76-10035 License requirements—Multiple family home providers.** To be licensed to operate more than one adult family home, the applicant must have:

(1) Evidence that the provider or entity representative has successfully completed the forty-eight hour residential care administrator's training to meet the related requirements of chapter 388-112 WAC.

(2) Operated an adult family home in Washington for at least one year without a significant violation of chapters 70.128, 70.129 or 74.34 RCW, this chapter or other applicable laws and regulations; and

(3) The ability to operate more than one home.

(4) The following plans for each home the applicant intends to operate:

- (a) A twenty-four hour a day, seven day a week staffing plan;
- (b) A plan for how the provider entity representative, or resident manager will manage the daily operations of each home; and
- (c) A plan for emergencies, deliveries, staff and visitor parking.
- (5) A credit history considered if the history relates to the ability to provide care and services.
- (6) An applicant, entity representative or a qualified resident manager at each home who is responsible for the care of each resident at all times.

NEW SECTION

**WAC 388-76-10040 License requirements—Provider or entity representative residence.** (1) The adult family home provider or entity representative must:

- (a) Live in the home; or
- (b) Employ or contract with a qualified resident manager who lives in the home and is responsible for the care and services of each resident at all times; or
- (c) Provide twenty-four hour staffing.
- (2) Ensure that a qualified staff person who can make needed decisions is always present.

NEW SECTION

**WAC 388-76-10045 Licensing—Certain state employees and employee household members—Prohibited.** The department must not issue an adult family home license to employees or members of the employees' household of:

- (1) Aging and disability services administration; or
- (2) The department when the employee's duties include:
  - (a) Placement of persons in an adult family home; or
  - (b) Authorizing payments for any resident's care and services in an adult family home.

NEW SECTION

**WAC 388-76-10050 License—Relinquishment.** (1) The adult family home must relinquish the adult family home license to the department:

- (a) Within thirty days of the last resident leaving the home; or
- (b) When the home moves all residents out of the home for purposes other than remodeling or construction.
- (2) The department may revoke the license if the home does not:
  - (a) Relinquish the adult family home license; or
  - (b) Relinquish the adult family home license within the specified timeframe.

**LICENSE APPLICATION**NEW SECTION

**WAC 388-76-10055 Application—Generally.** (1) The applicant must send an application to the department for:

- (a) An initial adult family home license;

- (b) A change of ownership of the adult family home; or
- (c) A change of the adult family home location or address.

(2) Prior to sending the application to the department, the applicant must ensure:

- (a) The people listed on the application meet the minimum qualifications listed in WAC 388-76-10130 through 388-76-10145 as required; and
- (b) After January 1, 2007, the provider and entity representative must successfully complete the department approved forty-eight hour adult family home administration and business planning class as required in chapter 388-112 WAC.

NEW SECTION

**WAC 388-76-10060 Application—Department orientation class—Required.** (1) An applicant or any person who has not held an adult family home license within the last twelve months must attend a department approved orientation class before receiving an application form; and

- (2) If an applicant has not obtained an adult family home license within one calendar year of submitting the application to the department the applicant must attend department orientation again.

NEW SECTION

**WAC 388-76-10065 Application—Required information.** To apply for a license, an applicant must:

- (1) Provide all information required on the application form;
- (2) Provide any additional information requested by the department; and
- (3) Send the complete application form to the department.

NEW SECTION

**WAC 388-76-10070 Application—Fee required.** (1) The applicant must send a one hundred dollar fee with the application form:

- (a) Fifty dollars of this fee is the application processing fee; and
- (b) Fifty dollars is the annual license fee.
- (2) The fifty dollar annual license fee will be returned to the applicant by the department if the application is withdrawn, voided or the license is denied.

NEW SECTION

**WAC 388-76-10075 Application—Becomes void.** The department must consider the application void when the applicant:

- (1) Does not return information to the department within sixty calendar days of the department's first request for additional information for an incomplete application; or
- (2) Has not obtained an adult family home license within one calendar year of first submitting the application to the department.

NEW SECTION

**WAC 388-76-10080 Application—Co-provider.** Couples considered legally married under Washington state law:

- (1) May not apply for separate licenses for each spouse; and
- (2) May apply jointly as co-providers.

NEW SECTION

**WAC 388-76-10085 Application—Individual or co-provider.** The applicant must include in the application a list of all facilities or homes in which the applicant or persons affiliated with the applicant, provided care and services to children or vulnerable adults within the last ten years.

NEW SECTION

**WAC 388-76-10090 Application—Entity application.** An entity submitting an application must:

- (1) Include a list of all facilities or homes in which the applicant or persons affiliated with the applicant, managerial employee, or owner of five percent or more of the entity provided care and services to children or vulnerable adults within the last ten years;
- (2) Designate an entity representative who:
  - (a) Is responsible for the daily operations of the adult family home;
  - (b) Will be considered the department's primary contact person; and
  - (c) May act as both the entity representative and the resident manager in only one home.
- (3) Designate a qualified resident manager for the home if the entity representative is not the designated resident manager in subsection (2)(c) of this section.

NEW SECTION

**WAC 388-76-10095 Application—Identification of landlord—Required.** (1) Applicants must name the landlord of the building if the building to be used as an adult family home is leased, under contract, or rented and the landlord takes an active interest in the operation of the home.

- (2) An active interest includes but is not limited to:
  - (a) The charging of rent as a percentage of the business;
  - (b) Assistance with start-up and/or operational costs;
  - (c) Collection of resident fees;
  - (d) Recruitment of residents;
  - (e) Management oversight;
  - (f) Assessment and/or negotiated care plan development of residents; or
  - (g) The provision of personal or special care of residents.

NEW SECTION

**WAC 388-76-10100 Application—Subject to review.** (1) Adult family home license applications are subject to review under this chapter.

- (2) The department will not process an incomplete application and will return the application requesting the missing information.

NEW SECTION

**WAC 388-76-10105 Application—Change of ownership.** (1) A change of ownership of an adult family home requires both a new license application and a new license.

- (2) A change of ownership occurs when there is a change in:

- (a) The provider or entity representative ultimately responsible for the daily operational decisions of the home; or

- (b) Control of an entity provider.

- (3) Events which constitute a change of ownership include, but are not limited to:

- (a) The form of legal organization of the provider is changed, such as when a provider forms:

- (i) A partnership;

- (ii) Corporation;

- (iii) Association; or

- (iv) A dissolution or merger of a licensed entity with another legal organization.

- (b) The provider or entity representative transfers business operations and management responsibility to another party, whether there is a partial or whole transfer of adult family home real property and/or personal property assets.

- (c) Two people are both licensed as a married couple to operate an adult family home and an event, such as a divorce or death results in only one person operating the home.

- (d) An event dissolves the partnership, if the provider or entity representative is a business partnership.

- (e) If the provider or entity representative is a corporation and the corporation:

- (i) Is dissolved;

- (ii) Merges with another corporation which is the survivor; or

- (iii) Consolidates with one or more corporations to form a new corporation;

- (iv) Whether by a single transaction or multiple transactions within a continuous twenty-four month period, transfers fifty percent or more of the stock to one or more:

- (A) New or former stockholders; or

- (B) Present stockholders each having less than five percent of the stock before the initial transaction.

- (f) Any other event or combination of events which results in a substitution of or control of the provider or entity representative.

- (4) The new owner:

- (a) Must correct all deficiencies that exist at the time of the ownership change;

- (b) Is subject to the provisions of chapters 70.128, 70.129, 74.34 RCW, this chapter and other applicable laws and regulations;

- (c) Must obtain a new license from the department before the transfer of ownership; and

- (d) Must not begin operation of the adult family home as the new owner, provider or entity representative until the department has granted the license.

- (5) The home must notify each resident, in writing at least thirty days before the effective date of the ownership change.

- (6) If a currently licensed provider or entity representative seeking to change ownership wants the department to

give priority to processing an application to minimize or prevent disruption of residents that live in the existing home, the applicant must:

- (a) Make the request to the department in writing, including the reason for changing the location of the home; and
- (b) Explain how or why the reason for the change is beyond the control of the home.

#### NEW SECTION

**WAC 388-76-10110 Application—Change of location or address.** (1) A change of the adult family home location or address requires both a new license application and a new license.

(2) The home must not start operations of the home at a new location until the department has granted the license for the new location.

(3) The home must notify each resident or resident representative, in writing at least thirty days before the effective date of the change of the home location or address.

(4) If a currently licensed provider or entity representative, seeking to change the home location or address wants the department to give priority to processing an application to minimize or prevent the disruption of residents that live in the existing home, the applicant must:

- (a) Make the request in writing, including the reason for changing the location of the home to the department; and
- (b) Explain how or why the reason for change is beyond the control of the home.

### GRANTING OR DENYING A LICENSE

#### NEW SECTION

**WAC 388-76-10115 Granting or denying a license—Generally.** In making a determination of whether to grant an adult family home license, the department must consider:

- (1) Separately and jointly as applicants each person and entity named in an application, including each person or entity affiliated with the applicant;
- (2) Information in the application;
- (3) Other documents and information the department deems relevant which may include, but not be limited to:
  - (a) Inspection and complaint investigation findings in each facility or home in which the applicant, person affiliated with the applicant, or owner of five percent or more of the entity provided care or services to children or vulnerable adults; and
  - (b) Credit information.
- (4) The history of each individual listed on the application for negative findings identified in WAC 388-76-10120 and 388-76-10125, including, but not limited to the following:
  - (a) Applicant;
  - (b) Person affiliated with the applicant;
  - (c) Entity representative;
  - (d) Caregiver;
  - (e) An owner who:
    - (i) Exercised daily control over the operations; or
    - (ii) Owns fifty-one percent or more of the entity.

(f) Any person who has unsupervised access to residents in the home; and

(g) Any person who lives in the home and is not a resident.

(5) Applicants who are licensed to care for children in the same home to determine if:

(a) It is necessary to allow a resident's child(ren) to live in the same home as the resident or allow a resident's child(ren) who turn eighteen to stay in the home;

(b) The applicant provides satisfactory evidence to the department of the home's ability to meet the needs of children and adults residing in the home; and

(c) The total number of persons receiving care and services in the home do not exceed the licensed capacity of the adult family home.

#### NEW SECTION

**WAC 388-76-10120 License—Must be denied.** The department must deny a license if the department finds any person or entity unqualified as follows:

(1) Has a history of prior violations of chapter 70.128 RCW or any law regulating residential care facilities within the past five years that resulted in revocation, suspension, or nonrenewal of a license or contract with the department;

(2) When providing care or services to children or vulnerable adults:

(a) Has been found to be in significant noncompliance with federal or state regulations; or

(b) Had a license for the care of children or vulnerable adults suspended or revoked.

(3) For a period of twenty years after a provider surrendered or relinquished an adult family home license after notification of the department's intention to deny, suspend, not renew or revoke, in lieu of appealing the department's action;

(4) Been enjoined from operating a facility for the care and services of children or adults;

(5) A stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, final order issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW;

(6) Had a revocation or suspension of a license for the care of children or adults;

(7) Had a revocation, cancellation, suspension or nonrenewal of:

(a) A medicaid or medicare provider agreement by the contracting agency; or

(b) Any agreement with a public agency for the care and treatment of children or vulnerable adults, when the action was taken by the public agency.

(8) Been convicted of any crime listed in RCW 43.43.-830 or 43.43.842;

(9) Been found by a court:

(a) In a protection proceeding under chapter 74.34 RCW to have abandoned, neglected, abused, or financially exploited a vulnerable adult; or

(b) In a domestic relations proceeding under Title 26 RCW to have sexually or physically abused, neglected or exploited any minor.

(10) Been found in any final decision issued by a disciplinary board to have:

(a) Sexually or physically abused, neglected or exploited any minor or a person with a developmental disability; or

(b) Abandoned, abused, neglected or financially exploited any vulnerable adult.

(11) Been found in any final decision by any federal or state agency or department to have abandoned, neglected, abused or financially exploited a vulnerable adult;

(12) Found in any dependency action under RCW 13.34.030 (5)(b) to have sexually or physically abused, neglected or exploited any minor;

(13) The home is currently licensed:

(a) As a boarding home; or

(b) To provide care for children in the same home, unless:

(i) It is necessary in order to allow a resident's child(ren) to live in the same home as the resident or to allow a resident who turns eighteen to remain in the home;

(ii) The applicant provides satisfactory evidence to the department of the home's capacity to meet the needs of children and adults residing in the home; and

(iii) The total number of persons receiving care and services in the home does not exceed the number permitted by the licensed capacity of the home.

(14) If the provider or entity representative has not successfully completed a department-approved forty-eight hour adult family home administration and business planning class.

#### NEW SECTION

**WAC 388-76-10125 License—May be denied.** The department may deny a license if the department finds any person or entity unqualified as follows:

(1) Been convicted of a crime:

(a) As defined under RCW 43.43.830 or 43.43.842;

(b) Relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842;

(c) A felony against a person if the conviction reasonably relates to the competency of the person to own or operate an adult family home;

(d) Involving a firearm used in the commission of a felony or in any act of violence against a person; or

(e) Engaged in illegally selling or distributing drugs illegal use of drugs or excessive use of alcohol within the past five years without the evidence of rehabilitation.

(2) Found by a court in a protection proceeding under chapter 74.34. RCW to have abandoned, abused, neglected, or financially exploited a vulnerable adult;

(3) Found in a final decision issued by a disciplinary board to have sexually or physically abused, neglected or exploited any minor person or a person with a developmental disability or to have abused or financially exploited any vulnerable adult;

(4) Found in any dependency action under RCW 13.34.-030(5) to have sexually abused, neglected or exploited any minor or to have physically abused any minor;

(5) Found in a court in a domestic relations proceeding under Title 26 RCW to have:

(a) Sexually abused, neglected or exploited any minor or to have physically abused any minor; or

(b) Committed an act of domestic violence toward a family or household member.

(6) Had sanction, corrective, or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(7) Obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(8) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application or in any matter under investigation by the department;

(9) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;

(10) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation or monitoring visit made by the department;

(11) Failed or refused to comply with:

(a) A condition imposed on a license or a stop placement order; or

(b) The applicable requirements of chapters 70.128, 70.129, 74.34 RCW or this chapter.

(12) Misappropriated property of a resident;

(13) Denied a license or license renewal to operate a facility that was licensed to care for children or vulnerable adults;

(14) Exceeded licensed capacity in the operation of an adult family home;

(15) Operated a facility for the care of children or adults without a license or revoked license;

(16) Relinquished or returned a license in connection with the operation of any facility for the care of children or adults, or did not seek license renewal following written notification of the licensing agency's intention of denial, suspension, cancellation or revocation of a license;

(17) Had resident trust funds or assets of an entity providing care to children or vulnerable adults seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(18) Failed to meet financial obligations as the obligations fell due in the normal course of business, thereby impeding the ability to provide care and services to residents;

(19) Refused to permit authorized department representatives to interview residents or to have access to resident records or home;

(20) Interfered with a long-term care ombudsman or department staff in the performance of his or her duties; or

(21) Found to be in non-compliance with the requirements established in chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations.

**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.

## QUALIFICATIONS OF INDIVIDUALS PROVIDING CARE AND SERVICES

### NEW SECTION

**WAC 388-76-10130 Qualifications—Provider, entity representative and resident manager.** The adult family home must ensure that the provider, entity representative and resident manager have the following minimum qualifications:

- (1) Be twenty-one years of age or older;
- (2) Have a United States high school diploma or general education development certificate, or any English translated government document of the following:
  - (a) Successful completion of government approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction a year for twelve years, or no less than twelve thousand hours of instruction;
  - (b) Graduation from a foreign college, foreign university, or United States community college with a two-year diploma, such as an Associate's degree;
  - (c) Admission to, or completion of coursework at a foreign or United States college or university for which credit was awarded;
  - (d) Graduation from a foreign or United States college or university, including award of a Bachelor's degree;
  - (e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded, including award of a Master's degree; or
  - (f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education was required.
- (3) Meet the department's training requirements of chapter 388-112 WAC;
- (4) Have good moral and responsible character and reputation;
- (5) Be literate in the English language, or meet alternative requirements by assuring that a person is on staff and available at the home who is:
  - (a) Able to communicate or make provisions for communicating with the resident in his or her primary language; and
  - (b) Capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read, understand and implement resident negotiated care plans.
- (6) Be able to carry out the management and administrative requirements of chapters 70.128, 70.129 and 74.34 RCW, this chapter and other applicable laws and regulations;
- (7) Have completed at least three hundred and twenty hours of successful direct care experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting before operating or managing a home;
- (8) Have no criminal convictions listed in RCW 43.43.-830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation;
- (9) Obtain and keep valid cardio-pulmonary resuscitation (CPR) and first-aid card or certificate as required in chapter 388-112 WAC; and

- (10) Have tuberculosis screening to establish tuberculosis status per this chapter.

### NEW SECTION

**WAC 388-76-10135 Qualifications—Caregiver.** The adult family home must ensure each caregiver has the following minimum qualifications:

- (1) Be eighteen years of age or older;
- (2) Have a clear understanding of the caregiver job responsibilities and knowledge of each resident's negotiated care plan to provide care specific to the needs of each resident;
- (3) Have basic communication skills to:
  - (a) Be able to communicate or make provisions to communicate with the resident in his or her primary language;
  - (b) Understand and speak English well enough to:
    - (i) Respond appropriately to emergency situations; and
    - (ii) Read, understand and implement resident negotiated care plans.
- (4) Meet the department's training requirements of chapter 388-112 WAC;
- (5) Have no criminal convictions listed in RCW 43.43.-830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation;
- (6) Have a current valid first-aid and cardio-pulmonary resuscitation (CPR) card or certificate as required in chapter 388-112 WAC; and
- (7) Have tuberculosis screening to establish tuberculosis status per this chapter.

### NEW SECTION

**WAC 388-76-10140 Qualifications—Students—Volunteers.** The adult family home must ensure that students and volunteers meet the following minimum qualifications:

- (1) Be eighteen years old or older;
- (2) Meet the department's training requirements of chapter 388-112 WAC;
- (3) Have no criminal convictions listed in RCW 43.43.-830 and 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation; and
- (4) Tuberculosis screening to establish tuberculosis status per this chapter.

### NEW SECTION

**WAC 388-76-10145 Qualifications—Licensed nurse as provider, entity representative or resident manager.** The adult family home must ensure that a licensed nurse who is a provider, entity representative or resident manager has:

- (1) No criminal convictions listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation; and
- (2) A current valid first-aid and cardio-pulmonary resuscitation (CPR) card or certificate as required in chapter 388-112 WAC.

NEW SECTION**WAC 388-76-10150 Qualifications—Assessor.** (1)

The adult family home must ensure that an assessor, except for an authorized department case manager, performing an assessment for any resident meets the following qualifications:

(a) A master's degree in social services, human services, behavioral sciences or an allied field and two years social service experience working with adults who have functional or cognitive disabilities; or

(b) A bachelor's degree in social services, human services, behavioral sciences or an allied field and three years social service experience working with adults who have functional or cognitive disabilities; or

(c) Have a valid Washington state license to practice as a nurse under chapter 18.79 RCW and three years of clinical nursing experience; or

(d) Is currently a licensed physician, including an osteopathic physician, in Washington State.

(2) The home must ensure that an assessor who meets the requirements of subsections (1)(a), (b), or (c) of this section does not have unsupervised access to any resident unless the assessor has:

(a) A current criminal history background check; and

(b) Has not been convicted of any crime listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation.

**CRIMINAL HISTORY BACKGROUND CHECK**NEW SECTION

**WAC 388-76-10155 Unsupervised access to vulnerable adults—Prohibited.** The adult family home must not allow the following persons to have unsupervised access to residents until the home receives successful results from the criminal history background check:

(1) Caregivers;

(2) Staff;

(3) Volunteers or students acting as a caregiver; and

(4) Household members over the age of eleven.

NEW SECTION

**WAC 388-76-10160 Criminal history background check—Required.** To assist in determining the character, suitability, and competence of a potential employee and before the adult family home employs, directly or by contract, a resident manager, entity representative or caregiver, or accepts as a caregiver any volunteer or student, or allows a household member over the age of eleven unsupervised access to residents, the home must:

(1) Require the person to complete the residential care services background inquiry form which includes:

(a) A disclosure statement; and

(b) A statement authorizing the home, the department, and the Washington state patrol to conduct a background inquiry.

(2) Verbally inform the person:

(a) That he or she may ask for a copy of the background inquiry result; and

(b) Of the inquiry result within ten days of receiving the result.

(3) Send the information to the department and any additional documentation and information as requested by the department to satisfy the requirements of this section; and

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

NEW SECTION

**WAC 388-76-10165 Criminal history background check—Valid for two years.** (1) A background inquiry result is valid for two years from the date conducted;

(2) The adult family home must have a valid criminal history background check for all persons in the home who may have unsupervised access to any resident; and

(3) The home must submit, receive and keep the results of the check every two years.

NEW SECTION

**WAC 388-76-10170 Criminal history background check—Information—Confidentiality—Use restricted.** The adult family home must:

(1) Establish and implement procedures that ensure:

(a) All disclosure statements background inquiry applications, responses, related information, and all copies are kept in a confidential and secure manner;

(b) All background inquiry results and disclosure statements are used for employment purposes only;

(c) Background inquiry results and disclosure statements are not disclosed to any person except:

(i) The person about whom the home made the disclosure or background inquiry;

(ii) Authorized state and federal employees; and

(iii) The Washington state patrol auditor.

(2) Keep a record of inquiry results for eighteen months after the date an employee either quits or is terminated.

NEW SECTION

**WAC 388-76-10175 Employment—Conditional—Pending results.** An adult family home may conditionally employ a person pending the result of a background inquiry, provided the home:

(1) Asks the individual if they have been convicted of a crime listed under RCW 43.43.830 or 43.43.842 and the individual denies they have a conviction;

(2) Requests the background inquiry within seventy-two hours of the conditional employment;

(3) Does not allow, the conditionally hired person, to have unsupervised access to any resident without direct supervision; and

(4) Ensures the individual is competent and receives the necessary training to perform assigned tasks and meets the staff training requirements in chapter 388-112 WAC.

NEW SECTION

**WAC 388-76-10180 Employment—Certain criminal history—Prohibited.** The adult family home must not employ any person, directly or by contract, or accept as a volunteer or student any person who may have unsupervised access to residents, or allow a household member over the age of eleven unsupervised access to any resident if the person or background inquiry discloses that the person has a history of:

(1) A stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, final order issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW; or

(2) Convicted of a crime against persons as defined under RCW 43.43.830 or 43.43.842.

NEW SECTION

**WAC 388-76-10185 Employment—Certain criminal history—Permitted.** (1) Nothing in this section may be interpreted to require the employment of any person against the judgment of the provider or entity representative.

(2) The adult family home may choose to employ a person if the person has one or more convictions for a past offense and the offense was:

(a) Simple assault, assault in the fourth degree and three or more years has passed between the most recent conviction and the date of the application for employment;

(b) Prostitution and three or more years has passed between the most recent conviction and the date of the application for employment;

(c) Theft in the third degree and three or more years has passed between the most recent conviction and the date of the application for employment;

(d) Theft in the second degree and five or more years has passed between the most recent conviction and the date of the application for employment; or

(e) Forgery and five or more years has passed between the most recent conviction and the date of the application for employment.

**ADMINISTRATION GENERAL**NEW SECTION

**WAC 388-76-10190 Adult family home—Compliance with regulations—Required.** The adult family home must comply with:

- (1) This chapter;
- (2) Chapters 70.128, 70.129 and 74.34 RCW; and
- (3) Other applicable state and federal laws.

NEW SECTION

**WAC 388-76-10195 Adult family home—Staff—Generally.** The adult family home must ensure:

(1) Enough staff is available in the home to meet the needs of each resident if residents are in the home or not, except as per WAC 388-76-10200;

(2) Staff are readily available to meet resident needs if the home takes the resident out to another location and the resident negotiated care plan does not indicate it is safe for the resident to be left unattended for a specific time period; and

(3) All staff are skilled and able to do the tasks assigned to meet the needs of each resident.

NEW SECTION

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

(1) Designate an experienced, capable staff member of responding on behalf of the provider or entity representative:

(a) By phone or pager;

(b) At all times including:

(i) When no residents are present in the home; and

(ii) When the provider entity representative and residents are on vacation or away from the home.

(2) Give residents the telephone or pager number for the contact required in subsection (1) of this section;

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

(a) Each resident;

(b) Residents' representatives;

(c) Caregivers; and

(d) Authorized state staff.

NEW SECTION

**WAC 388-76-10205 Medicaid or state funded residents.** When the adult family home accepts medicaid or state funded residents, the home must follow the terms and conditions of the department contract and chapter 388-105 WAC.

NEW SECTION

**WAC 388-76-10210 Resident relocation due to closure.** When an adult family home chooses to voluntarily close, the home must:

(1) Notify the following in writing of the closure at least thirty days before the home closes:

(a) The department;

(b) Each resident; and

(c) Each resident's representative.

(2) Develop, organize, and carry out a discharge plan that meets the needs of each resident.

NEW SECTION

**WAC 388-76-10215 Resident funds—Protection, liquidation or transfer.** (1) The adult family home must meet the requirements of RCW 70.129.040 to protect any funds the resident may have deposited with the adult family home.



(2) If a deceased resident had some of his or her adult family home care paid for by the department, then the home must:

(a) Send the final accounting and funds payable to:

Secretary, Department of Social and Health Services  
Office of Financial Recovery  
Estate Recovery Unit

(b) Include with the final accounting required in subsection (2)(a) of this section:

- (i) The deceased resident's name; and
- (ii) The deceased resident's social security number.

(3) When a resident is missing from the home, in addition to other licensing requirements, the home must make a reasonable effort to find the missing resident before transferring resident funds to the department of revenue as per subsection (4) of this section.

(4) The adult family home must notify the department of revenue of abandoned property when:

(a) A resident is missing from the home for more than ninety days; and

(b) The missing resident:

(i) Gave money to the home to manage or for safekeeping;

(ii) Does not have a legal guardian;

(iii) Did not appoint a power of attorney to handle his or her financial affairs;

(iv) Did not name a family member to act on the resident's behalf; and

(v) Did not have his or her care paid for by the department.

(5) The home must send any money received from the missing resident, to the department of revenue:

(a) According to chapter 63.29 RCW;

(b) Within twenty days of notifying the department of revenue per subsection (2) of this section.

(6) Before the adult family home changes its owner, the home must:

(a) Give each resident a written statement that accounts for any personal funds held by the home;

(b) Give the prospective adult family home owner a written statement that accounts for all of the residents' funds that home will transfer to the new adult family home owner; and

(c) Get a written receipt of the transferred residents' funds from the new adult family home owner.

#### NEW SECTION

**WAC 388-76-10220 Incident log.** The adult family home must keep a log of:

(1) Alleged or suspected instances of abandonment, neglect, abuse or financial exploitation;

(2) Accidents or incidents affecting a resident's welfare; and

(3) Any injury to a resident.

#### NEW SECTION

**WAC 388-76-10225 Reporting requirement.** (1) The adult family home must ensure all staff:

(a) Report suspected abuse, neglect, exploitation or abandonment of a resident:

(i) According to chapter 74.34 RCW;

(ii) To the department by calling the complaint toll-free hotline number; and

(iii) To the local law enforcement agency when required by RCW 74.34.035.

(b) Report the following to the department by calling the complaint toll-free hotline number:

(i) Any actual or potential event requiring any resident to be evacuated;

(ii) Conditions that threaten the provider's or entity representative's ability to continue to provide care or services to each resident; and

(iii) A missing resident.

(2) When there is a significant change in a resident's condition, or a serious injury, trauma, or death of a resident, the adult family home must immediately notify:

(a) The resident's family;

(b) The resident's representative, if one exists;

(c) The resident's physician;

(d) Other appropriate professionals working with the resident;

(e) Persons identified in the negotiated care plan; and

(f) The resident's case manager if the resident is a department client.

(3) Whenever an outbreak of suspected food poisoning or communicable disease occurs, the adult family home must notify:

(a) The local public health officer; and

(b) The department's complaint toll-free hotline number.

#### NEW SECTION

**WAC 388-76-10230 Pets.** The adult family home must ensure any animal visiting or living on the premises:

(1) Does not compromise any resident rights, preferences or medical needs;

(2) Has a suitable temperament, is clean and healthy, and otherwise poses no significant health or safety risks to any resident, staff, or visitors; and

(3) Has proof of regular immunizations.

### **HEALTH CARE DECISION MAKING**

#### NEW SECTION

**WAC 388-76-10235 Guardianship.** The adult family home may be a resident's guardian if:

(1) A court has appointed the home to be the guardian under chapter 11.88 RCW; and

(2) The home has petitioned the court in writing according to RCW 11.92.040(6) to:

(a) Inform the court:

(i) The home provides care for the resident in the home;

(ii) The fees the home is paid to care for the resident, the home's duties, and the types of care provided to the resident for those fees; and

(iii) Why the guardianship fees would not be duplicative of the fees paid.

(b) Request the court to direct payment to the home from the resident's funds for the resident's care, maintenance and education.

#### NEW SECTION

**WAC 388-76-10240 Durable power of attorney for health care or financial decisions.** The adult family home must not allow a provider, entity representative, owner, administrator, or employees of the home to act as a resident's attorney in fact, according to chapter 11.94 RCW, unless the provider, entity representative, owner, administrator, or employee is the resident's:

- (1) Spouse;
- (2) Adult child; or
- (3) Brother or sister.

#### NEW SECTION

**WAC 388-76-10245 Resident self-determination—Health care decision making.** The adult family home must provide care and services consistent with the federal patient self-determination act and other statutes related to a resident legal representative and health care decision making, including but not limited to:

- (1) Chapter 7.70 RCW;
- (2) Chapter 70.122 RCW;
- (3) Chapter 11.88 RCW;
- (4) Chapter 11.92 RCW; and
- (5) Chapter 11.94 RCW.

#### NEW SECTION

**WAC 388-76-10250 Medical emergencies—Contacting emergency medical services—Required.** (1) The adult family home must develop and implement policies and procedures which require immediate contact of the local emergency medical services when a resident has a medical emergency. This requirement applies:

- (a) Unless the caregiver, present at the time of the emergency, is a licensed physician or registered nurse acting within his or her scope of practice;
- (b) Whether or not:
  - (i) Any order exists directing medical care for the resident;
  - (ii) The resident has provided an advance directive for medical care; or
  - (iii) The resident has expressed any wishes involving medical care.
- (2) If available, the home must immediately give arriving emergency medical services personnel a copy of:
  - (a) Any order that exists directing medical care for the resident; and
  - (b) The resident's advance directive for medical care.
- (3) The home must inform the resident of the requirements in this section.
- (4) The home is not required to contact emergency medical services when a resident is receiving hospice care by a licensed hospice agency and the:
  - (a) Emergency relates to the expected hospice death; and
  - (b) Situation is monitored by the hospice agency.

## INFECTION CONTROL AND COMMUNICABLE DISEASE

#### NEW SECTION

**WAC 388-76-10255 Infection control.** The adult family home must develop and implement an infection control system that:

- (1) Uses nationally recognized infection control standards;
- (2) Emphasizes frequent hand washing and other means of limiting the spread of infection;
- (3) Follows the requirements of chapter 49.17 RCW, Washington Industrial Safety and Health Act to protect the health and safety of each resident and employees; and
- (4) Directs all staff to:
  - (a) Dispose of razor blades, syringes, and other sharp items in a manner that will not risk the health and safety of residents, staff, other persons residing in the home or the public; and
  - (b) Use all disposable and single-service supplies and equipment only one time as specified by the manufacturer.

#### NEW SECTION

**WAC 388-76-10260 Communicable disease—Preventing spread.** If the adult family home suspects anyone working or living in the home has or may have a communicable disease, the home must implement nationally recognized infection control measures.

## TUBERCULOSIS SCREENING

#### NEW SECTION

**WAC 388-76-10265 Tuberculosis—Testing—Required.** (1) The adult family home must develop and implement a system to ensure the following persons have tuberculosis testing within three days of employment:

- (a) Provider;
  - (b) Entity representative;
  - (c) Resident manager;
  - (d) Caregiver;
  - (e) Staff; and
  - (f) Any student or volunteer providing any resident care and services.
- (2) For the purposes of the tuberculosis sections "person" means the people listed in this section as required to have tuberculosis testing.

#### NEW SECTION

**WAC 388-76-10270 Tuberculosis—Testing method—Required.** The adult family home must ensure that all tuberculosis testing is done through a nationally recognized testing method such as by intradermal (Mantoux) administration or a TB Gold Test and the test result is read:

- (1) Within forty-eight to seventy-two hours of the test; and
- (2) By a trained professional.

NEW SECTION**WAC 388-76-10275 Tuberculosis—No skin testing.**

The adult family home is not required to have a person tested for tuberculosis if the person has:

- (1) A documented history of a previous positive test, ten or more millimeters in duration; or
- (2) Documented evidence of:
  - (a) Adequate therapy for active disease; or
  - (b) Preventive therapy of infection.

NEW SECTION**WAC 388-76-10280 Tuberculosis—One step testing.**

The adult family home is only required to have a person take a one-step skin test if the person has any of the following:

- (1) A positive result from the person's first skin test - a person who has a positive result from an initial first step test should not have a second test;
- (2) A documented history of a negative result from previous two step testing; or
- (3) A documented negative result from one step testing in the previous twelve months.

NEW SECTION**WAC 388-76-10285 Tuberculosis—Two step testing.**

Unless the person meets the requirement for having no skin testing or only a one step skin test, the adult family home must ensure that each person has the following two-step testing:

- (1) An initial skin test within three days of employment; and
- (2) A second test done one to three weeks after the first test; except
- (3) A two-step test is not required for the TB Gold Test which is only a one-step test.

NEW SECTION

**WAC 388-76-10290 Tuberculosis—Positive skin reaction.** The adult family home must ensure that a person with a positive reaction to tuberculosis skin testing has a chest x-ray within seven days and follows the recommendation of health care officials.

NEW SECTION

**WAC 388-76-10295 Tuberculosis—Negative skin reaction.** The adult family home may be required by the public health official or licensing authority to ensure that persons with negative test results have follow-up skin testing in certain circumstances, such as:

- (1) After exposure to active tuberculosis;
- (2) When tuberculosis symptoms are present; or
- (3) For periodic testing as determined by health official.

NEW SECTION**WAC 388-76-10300 Tuberculosis—Declining a test.**

The adult family home may accept a signed statement from a person who has reason to decline skin testing; if:

- (1) The signed statement includes the reason for declining; and
- (2) Additional evidence is provided to support the reason.

NEW SECTION

**WAC 388-76-10305 Tuberculosis—Reporting positive skin reactions—Required.** The adult family home must:

- (1) Report any person with tuberculosis symptoms or a positive chest x-ray to the appropriate public health authority; and
- (2) Follow the infection control and safety measures ordered by the public health authority, the person's personal physician, or other licensed health care professional.

NEW SECTION

**WAC 388-76-10310 Tuberculosis—Skin test records.** The adult family home must:

- (1) Keep the records of tuberculosis test results, reports of x-ray findings, and physician or public health orders and waivers;
- (2) Make them readily available to the appropriate health authority and licensing agency; and
- (3) Keep them for eighteen months after the date an employee either quits or is terminated.

**RESIDENT RECORDS**NEW SECTION

**WAC 388-76-10315 Resident record—Required.** The adult family home must:

- (1) Create, maintain, and keep records for residents in the home where the resident lives and ensure that the records:
  - (a) Contain enough information so home can provide the needed care and services to each resident;
  - (b) Be in a format useful to the home;
  - (c) Be kept confidential so that only authorized persons see their contents;
  - (d) Are only released to the following persons:
    - (i) A health care institution;
    - (ii) When requested by the law;
    - (iii) To department representatives; and
    - (iv) To the resident;
  - (e) Be protected to prevent loss, alteration or destruction and unauthorized use;
  - (f) Be kept for three years after the resident leaves the home or death of the resident;
  - (g) Be available so that department staff may review them when requested; and
  - (h) Provide access to the resident to review their record and obtain copies of their record at a reasonable cost.
- (2) Ensure staff has access to the parts of residents' records needed by staff to provide care and services; and
- (3) Allow representatives of the long-term care ombudsman access to a resident record if approved by the resident.

NEW SECTION

**WAC 388-76-10320 Resident record—Content.** The adult family home must ensure that each resident record contains, at a minimum, the following information:

- (1) Identifying information about the resident;
- (2) The name, address and telephone number of the resident's:
  - (a) Representative;
  - (b) Health care providers;
  - (c) Significant family members identified by the resident; and
  - (d) Other individuals the resident wants involved or notified.
- (3) Current medical history;
- (4) The resident assessment information;
- (5) The preliminary service plan;
- (6) The negotiated care plan;
- (7) List of resident medications;
- (8) The resident's social security number;
- (9) When the resident was:
  - (a) Admitted to the home;
  - (b) Absent from the home; and
  - (c) Discharged from the home.
- (10) A current inventory of the resident's personal belongings dated and signed by:
  - (a) The resident; and
  - (b) The adult family home.
- (11) Financial records.

NEW SECTION

**WAC 388-76-10325 Resident record—Legal documents—If available.** When available, the adult family home must obtain copies of the following legal documents for the resident's records:

- (1) Any powers of attorney granted by the resident, including for health care decision making and financial; and
- (2) Court order of guardianship for the resident.

**RESIDENT ASSESSMENT**NEW SECTION

**WAC 388-76-10330 Resident assessment.** The adult family home must:

- (1) Obtain a new written assessment before admitting a resident to the home;
- (2) Not admit a resident without an assessment except in cases of a genuine emergency;
- (3) Ensure the assessment contains all of the information required in WAC 388-76-10335 unless the assessor can not:
  - (a) Obtain an element of the required assessment information; and
  - (b) The assessor documents the attempt to obtain the information in the assessment.
- (4) Be knowledgeable about the needs and preferences of each resident documented in the assessment.

NEW SECTION

**WAC 388-76-10335 Resident assessment topics.** (1) For the purposes of this section, "body care" means:

- (a) How the resident performs with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet; and
- (b) Dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC.
- (2) Body care includes:
  - (a) Foot care if the resident is diabetic or has poor circulation; or
  - (b) Changing bandages or dressings when sterile procedures are required.
- (3) The adult family home must ensure that each resident's assessment includes the following minimum information:
  - (a) Recent medical history;
  - (b) Current prescribed medications, and contraindicated medications, including but not limited to, medications known to cause adverse reactions or allergies;
  - (c) Medical diagnosis reported by the resident, the resident representative, family member, or by a licensed medical professional;
  - (d) Medication management:
    - (i) The ability of the resident to be independent in managing medications;
    - (ii) The amount of medication assistance needed;
    - (iii) If medication administration is required; or
    - (iv) If a combination of the elements in (i) through (iii) above is required.
  - (e) Food allergies or sensitivities;
  - (f) Significant known behaviors or symptoms that may cause concern or require special care, including:
    - (i) The need for and use of medical devices;
    - (ii) The refusal of care or treatment; and
    - (iii) Any mood or behavior symptoms that the resident has had within the last five years.
  - (g) Cognitive status, including an evaluation of disorientation, memory impairment, and impaired judgment;
  - (h) History of depression and anxiety;
  - (i) History of mental illness, if applicable;
  - (j) Social, physical, and emotional strengths and needs;
  - (k) Functional abilities in relationship to activities of daily living including:
    - (i) Eating;
    - (ii) Toileting;
    - (iii) Walking;
    - (iv) Transferring;
    - (v) Positioning;
    - (vi) Specialized body care;
    - (vii) Personal hygiene;
    - (viii) Dressing; and
    - (ix) Bathing.
  - (l) Preferences and choices about daily life that are important to the resident, including but not limited to:
    - (i) The food that the resident enjoys;
    - (ii) Meal times; and
    - (iii) Sleeping and nap times.

- (m) Preferences for activities; and
- (n) A preliminary service plan.

NEW SECTION

**WAC 388-76-10340 Preliminary service plan.** The adult family home must ensure that each resident has a preliminary service plan that includes:

- (1) The resident's specific problems and needs identified in the assessment;
- (2) The needs for which the resident chooses not to accept or refuses care or services;
- (3) What the home will do to ensure the resident's health and safety related to the refusal of any care or service;
- (4) Resident defined goals and preferences; and
- (5) How the home will meet the resident's needs.

NEW SECTION

**WAC 388-76-10345 Assessment—Qualified assessor—Required.** The adult family home must ensure the person performing resident assessments is:

- (1) A qualified assessor; or
- (2) For a resident who receives care and services paid for by the department, an authorized department case manager.

NEW SECTION

**WAC 388-76-10350 Assessment—Updates required.** The adult family home must ensure each resident's assessment is reviewed and updated to document the resident's ongoing needs and preferences as follows:

- (1) When there is a significant change in the resident's physical or mental condition;
- (2) When the resident's negotiated care plan no longer reflects the resident's current status, needs and preferences;
- (3) At the resident's request or at the request of the resident's representative; or
- (4) At least every twelve months.

**NEGOTIATED CARE PLAN**NEW SECTION

**WAC 388-76-10355 Negotiated care plan.** The adult family home must use the resident assessment and preliminary service plan to develop a written negotiated care plan. The home must ensure each resident's negotiated care plan includes:

- (1) A list of the care and services to be provided;
- (2) Identification of who will provide the care and services;
- (3) When and how the care and services will be provided;
- (4) How medications will be managed, including how the resident will get their medications when the resident is not in the home;
- (5) The resident's activities preferences and how the preferences will be met;
- (6) Other preferences and choices about issues important to the resident, including, but not limited to:

- (a) Food;
- (b) Daily routine;
- (c) Grooming; and
- (d) How the home will accommodate the preferences and choices.

(7) If needed, a plan to:

- (a) Follow in case of a foreseeable crisis due to a resident's assessed needs;
- (b) Reduce tension, agitation and problem behaviors;
- (c) Respond to resident's special needs, including, but not limited to medical devices and related safety plans;
- (d) Respond to a resident's refusal of care or treatment, including when the resident's physician or practitioner should be notified of the refusal;
- (8) Identification of any communication barriers the resident may have and how the home will use behaviors and nonverbal gestures to communicate with the resident;
- (9) A statement of the ability for resident to be left unattended for a specific length of time; and
- (10) A hospice care plan if the resident is receiving services for hospice care delivered by a licensed hospice agency.

NEW SECTION

**WAC 388-76-10360 Negotiated care plan—Timing of development—Required.** The adult family home must ensure the negotiated care plan is developed and completed within thirty days of the resident's admission.

NEW SECTION

**WAC 388-76-10365 Negotiated care plan—Implementation—Required.** The adult family home must implement each resident's negotiated care plan.

NEW SECTION

**WAC 388-76-10370 Negotiated care plan—Persons involved in development.** The adult family home must involve the following people in developing the negotiated care plan:

- (1) The resident, to the greatest extent he or she can participate;
- (2) The resident's family, if approved by the resident;
- (3) The resident's representative, if the resident has a representative;
- (4) Professionals involved in the care of the resident;
- (5) Other individuals the resident wants included; and
- (6) The department case manager, if the resident is receiving care and services paid for by the department.

NEW SECTION

**WAC 388-76-10375 Negotiated care plan—Signatures—Required.** The adult family home must ensure that the negotiated care plan is agreed to and signed and dated by the:

- (1) Resident; and
- (2) Adult family home.

NEW SECTION

**WAC 388-76-10380 Negotiated care plan—Timing of reviews and revisions.** The adult family home must ensure that each resident's negotiated care plan is reviewed and revised as follows:

- (1) After an assessment for a significant change in the resident's physical or mental condition;
- (2) When the plan, or parts of the plan, no longer address the resident's needs and preferences;
- (3) At the request of the resident or the resident representative; or
- (4) At least every twelve months.

NEW SECTION

**WAC 388-76-10385 Negotiated care plan—Copy to department case manager—Required.** When the resident's services are paid for by the department, the adult family home must give the department case manager a copy of the negotiated care plan each time the plan is completed or updated, and after it has been signed and dated.

**CARE AND SERVICES**NEW SECTION

**WAC 388-76-10390 Admission and continuation of services.** The adult family home must only admit or continue to provide services to a person when:

- (1) The home can safely and appropriately meet the assessed needs and preferences of the person:
  - (a) With available staff; and
  - (b) Through reasonable accommodation.
- (2) Admitting the resident does not negatively affect the ability of the home to:
  - (a) Meet the needs and does not endanger the safety of other residents; or
  - (b) Safely evacuate all people in the home during an emergency.

NEW SECTION

**WAC 388-76-10395 Emergency admissions.** (1) The adult family home may only admit a resident to the home without an assessment or a preliminary service plan if a true emergency exists.

(2) To establish that a true emergency exists, the home must verify that the resident's life, health or safety is at serious risk due to circumstances in the resident's current place of residence or harm to the resident has occurred.

(3) After establishing that a true emergency exists, the home must:

- (a) Ensure the assessment and preliminary service plan are completed within five working days after admitting the resident, if the resident pays for services with private funds; or
- (b) Obtain approval from an authorized department case manager before admission if the resident's care and services are paid by the department; and

(c) If approval is obtained verbally, document the time, date, and name of the case manager who gave approval.

NEW SECTION

**WAC 388-76-10400 Care and services.** The adult family home must ensure each resident receives:

- (1) The care and services identified in the negotiated care plan.
- (2) The necessary care and services to help the resident reach the highest level of physical, mental, and psychosocial well-being consistent with resident choice, current functional status and potential for improvement or decline.
- (3) The care and services in a manner and in an environment that:
  - (a) Actively supports, maintains or improves each resident's quality of life;
  - (b) Actively supports the safety of each resident; and
  - (c) Reasonably accommodates each resident's individual needs and preferences except when the accommodation endangers the health or safety of the individual or another resident.
- (4) Services by the appropriate professionals based upon the resident's assessment and negotiated care plan, including nurse delegation if needed.

NEW SECTION

**WAC 388-76-10405 Nursing care.** If the adult family home identifies that a resident has a need for nursing care and the home is not able to provide the care per chapter 18.79 RCW, the home must:

- (1) Contract with a nurse currently licensed in the state of Washington to provide the nursing care and service; or
- (2) Hire or contract with a nurse to provide nurse delegation.

NEW SECTION

**WAC 388-76-10410 Laundry services.** The adult family home must:

- (1) Provide laundry services as needed; and
- (2) Launder sheets and pillowcases weekly or more often if soiled.

**FOOD SERVICES**NEW SECTION

**WAC 388-76-10415 Food services.** The adult family home must:

- (1) Ensure the provider, entity representative and all staff meet the safe food handling training requirements of chapter 388-112 WAC; and
- (2) Serve meals:
  - (a) In the home where each resident lives; and
  - (b) That accommodate each resident's:
    - (i) Preferences;
    - (ii) Food allergies and sensitivities;
    - (iii) Caloric needs;
    - (iv) Cultural and ethnic background; and

(v) Physical condition that may make food intake difficult such as being hard for the resident to chew or swallow.

#### NEW SECTION

**WAC 388-76-10420 Meals and snacks.** The adult family home must:

- (1) Serve at least three meals:
  - (a) In each twenty-four hour period;
  - (b) At regular times comparable to normal meal times in the community; and
  - (c) That meet the nutritional needs of each resident.
- (2) Make nutritious snacks available to residents:
  - (a) Between meals; and
  - (b) In the evening.
- (3) Get input from residents in meal planning and scheduling;
- (4) Serve nutrient concentrates, supplements, and modified diets only with written approval of the resident's physician;
- (5) Only serve pasteurized milk; and
- (6) Process any home-canned foods served in the home, according to the latest guidelines of the county cooperative extension service.

#### NEW SECTION

**WAC 388-76-10425 Off-site food preparation.** The adult family home must ensure:

- (1) Persons preparing food, at a location separate from the home, have a current food handler's permit issued by the department of health;
- (2) Prepared food transported to the home is in airtight containers; and
- (3) Food stays at the appropriate and safe temperature:
  - (a) During transportation; and
  - (b) When served.

### RESIDENT MEDICATIONS

#### NEW SECTION

**WAC 388-76-10430 Medication system.** (1) If the adult family home admits residents who need medication assistance or medication administration services by a legally authorized person, the home must have systems in place to ensure the services provided meet the medication needs of each resident and meet all laws and rules relating to medications.

(2) When providing medication assistance or medication administration for any resident, the home must ensure each resident:

- (a) Assessment indicates the amount of medication assistance needed by the resident;
  - (b) Negotiated care plan identifies the medication service that will be provided to the resident;
  - (c) Medication log is kept current as required in WAC 388-76-10475;
  - (d) Receives medications as required.
- (3) Records are kept which include a current list of prescribed and over-the-counter medications including name,

dosage, frequency and the name and phone number of the practitioner as needed.

#### NEW SECTION

**WAC 388-76-10435 Medication refusal.** (1) Each resident has the right to refuse to take medications.

(2) If the adult family home is assisting with or administering a resident's medications and the resident refuses to take or does not receive a prescribed medication:

- (a) The home must notify the resident's practitioner; unless
- (b) The provider, entity representative, resident manager or caregiver is a nurse or other health professional, acting within their scope of practice, is able to make a judgment about the impact of the resident's refusal.

(3) If the home becomes aware that a resident who self-administers, or takes their own medications, refuses to take a prescribed medication:

- (a) The home must notify the practitioner; unless
- (b) The provider, entity representative, resident manager or caregiver is a nurse or other health professional, acting within their scope of practice, is able to make a judgment about the impact of the resident's refusal.

#### NEW SECTION

**WAC 388-76-10440 Medication—Assessment—Identification of amount of assistance needed when taking medications.** (1) The adult family home must:

- (a) Ensure each resident assessment identifies the amount of assistance the resident needs when taking medications; and
- (b) Let the practitioner know when the following may affect the resident's ability to take their medications:
  - (i) Resident's physical or mental limitations; and
  - (ii) The setting or environment where the resident lives.
- (2) The amount of assistance needed by a resident when taking their medications is as follows:

(a) *Independent self-administration* is when the resident does not need help taking medications and is able to directly take medications by eating or drinking, inhaling, by shot, through the skin or other means;

(b) *Self-administration with assistance*, as described in chapter 246-888 WAC, is when a resident is assisted in taking their medication by a non-practitioner; and

(c) *Medication administration* is when medications are administered to the resident by a person legally authorized to do so, such as but not limited to a physician, nurse or pharmacist or through nurse delegation.

(3) The home must contact the resident's practitioner who will decide if a reassessment is necessary when:

- (a) The resident has a change in the health status, medications, physical or mental limitations, or environment that might change the resident's need for medication assistance; or
- (b) There is a need for a resident to have more than one type of medication assistance.

NEW SECTION

**WAC 388-76-10445 Medication—Independent—Self-administration.** The adult family home must ensure residents who have medication assistance assessed as independent self-administration:

- (1) Administer their own medications; and
- (2) Are allowed to keep their prescribed and over-the-counter medications securely locked in either their room or another agreed upon area if documented in the resident negotiated care plan.

NEW SECTION

**WAC 388-76-10450 Medication—Self-administration with assistance.** (1) For the purposes of this section "enabler" means a physical device used to facilitate a resident's self-administration of a prescribed or over-the-counter medication. Physical devices include, but are not limited to a medicine cup, glass, cup, spoons, bowl, pre-filled syringes, syringes used to measure oral liquids, specially adapted table surfaces, drinking straw, piece of cloth, and the resident's hand.

- (2) The adult family home must ensure that the resident can:
  - (a) Put the medication into their own mouth; or
  - (b) Apply, inject, or instill the medications.
  - (3) The home must:
    - (a) Provide set-up assistance just before the resident takes or applies the medication; or
    - (b) Only give oral medications through a gastrostomy or "g-tube" when ordered by the practitioner; and
    - (c) Ensure the resident is aware they are taking a medication, however the resident does not have to name the medication, effects or side effects.
    - (4) Self-administration with assistance:
      - (a) Does not include shots or intravenous medications as defined in WAC 246-888-020, except for a pre-filled insulin syringe;
      - (b) May include steadying or guiding a resident's hand while applying or instilling medications such as ointments, eye, ear and nasal preparations, but does not include the practice of "hand-over-hand" (total physical assistance) administration;
      - (c) May include transferring the medications from one container to another to make a single dose such as pouring a liquid from the medication container to a calibrated spoon or measuring cup;
      - (d) May include reminding or coaching the resident to take their medication;
      - (e) Does not include direct assistance with intravenous and injectable medications except the home may carry a pre-filled insulin syringe which the resident can administer;
      - (f) May include using an enabler; and
      - (g) Could include delivering a pre-filled insulin syringe to the resident if the resident independently self-administers the injection per WAC 246-888-020.

NEW SECTION

**WAC 388-76-10455 Medication—Administration.** For residents assessed with requiring the administration of medications, the adult family home must ensure medication administration is:

- (1) Performed by a person as defined in chapter 69.41 RCW; or
- (2) By nurse delegation per WAC 246-840-910 through 970; unless
- (3) Done by a family member or legally appointed resident representative.

NEW SECTION

**WAC 388-76-10460 Medication—Negotiated care plan.** The adult family home must ensure that each resident's negotiated care plan addresses:

- (1) The amount of medication assistance needed by each resident, including but not limited to:
  - (a) The reasons why a resident needs that amount of medication assistance; and
  - (b) When there is a need for the resident to have more than one type of medication assistance.
- (2) How the resident will get their medications when the resident is away from the home or when a family member or resident representative is assisting with medications is not available.

NEW SECTION

**WAC 388-76-10465 Medication—Altering—Requirements.** (1) For the purposes of this section "altering a medication" means the alteration of prescribed or over the counter medications and includes, but is not limited to crushing tablets, cutting tablets in half; opening capsules and mixing powdered medications with food or liquids.

- (2) The adult family home must consult with the practitioner or pharmacist before altering a medication and if the practitioner or pharmacist agrees with altering a medication, record the:
  - (a) Time;
  - (b) Date; and
  - (c) Name of the person who provided the consultation.
- (3) The home must ensure the resident is aware that a medication is:
  - (a) Altered; and/or
  - (b) Put in the resident's food or drink.

NEW SECTION

**WAC 388-76-10470 Medication—Timing—Special directions.** (1) The adult family home must ensure medications are given:

- (a) At the specific time(s) ordered by the practitioner; and
- (b) As follows, when the practitioner does not order a medication to be given at a specific time:
  - (i) One time per day, approximately every twenty four hours;
  - (ii) Two times a day, approximately twelve hours apart;



- (iii) Three times a day, approximately six hours apart; and
  - (iv) Four times a day, approximately four hours apart.
- (2) The home must ensure all directions given by the practitioner are followed when assisting or giving each resident medication. This includes but is not limited to:
- (a) Before meals;
  - (b) After meals;
  - (c) With or without food; and
  - (d) At bed time.

NEW SECTION

**WAC 388-76-10475 Medication—Log.** The adult family home must:

- (1) Keep an up-to-date daily medication log for each resident except for residents assessed as medication independent with self-administration.
- (2) Include in each medication log the:
  - (a) Name of the resident;
  - (b) Name of all prescribed and over-the-counter medications;
  - (c) Dosage of the medication;
  - (d) Frequency which the medications are taken; and
  - (e) Approximate time the resident must take each medication.
- (3) Ensure the medication log includes:
  - (a) Initials of the staff who assisted or gave each resident medication(s);
  - (b) If the medication was refused and the reason for the refusal; and
  - (c) Documentation of any changes or new prescribed medications including:
    - (i) The change;
    - (ii) The date of the change;
    - (iii) A logged call requesting written verification of the change; and
    - (iv) A copy of written verification of the change from the practitioner received by the home by mail, facsimile, or other electronic means, or on new original labeled container from the pharmacy.
- (4) Ensure that the changed or new medication is received from the pharmacy.

NEW SECTION

**WAC 388-76-10480 Medication organizers.** The adult family home must ensure:

- (1) A licensed nurse, pharmacist, the resident or the resident's family member fills a resident's medication organizer;
- (2) Prescribed and over-the-counter medications placed in a medication organizer come from the original container labeled for the resident by the pharmacist or pharmacy service;
- (3) Each resident and anyone giving care to a resident can readily identify medications in the medication organizer;
- (4) Medication organizer labels clearly show the following:
  - (a) The name of the resident;
  - (b) A list of all prescribed and over-the-counter medications;

- (c) The dosage of each medication;
- (d) The frequency which the medications are given.
- (5) The person filling the medication organizer updates the labels on the medication organizer when the practitioner changes a medication.

NEW SECTION

**WAC 388-76-10485 Medication storage.** The adult family home must ensure all prescribed and over-the-counter medications are stored:

- (1) In locked storage;
- (2) In the original container with legible and original labels; and
- (3) Appropriately for each medication, such as if refrigeration is required for a medication and the medication is kept in refrigerator in locked storage.

NEW SECTION

**WAC 388-76-10490 Medication disposal—Written policy—Required.** The adult family home must have and implement a written policy addressing the disposition of resident prescribed medications that are unused, leftover, or remaining after the resident leaves the home.

**SPECIALTY CARE**NEW SECTION

**WAC 388-76-10495 Specialty care—Designations.** The department may designate an adult family home to provide specialty care in one or more of the following areas:

- (1) Developmental disability;
- (2) Mental illness; and
- (3) Dementia.

NEW SECTION

**WAC 388-76-10500 Granting specialty care designation—Requirements.** The department will grant a specialty designation when:

- (1) The provider, entity representative and resident manager has successfully completed training in one or more of the specialty care designated areas;
- (2) The home provides the department with written documentation:
  - (a) Of successful completion of the required specialty care training or challenge test for each person in subsection (1) of this section; and
  - (b) For the specialty care training for all caregivers in the adult family home provided by a person knowledgeable in specialty care.
- (3) The home ensures the specialty care need of each resident is met.

NEW SECTION

**WAC 388-76-10505 Specialty care—Admitting and retaining residents.** The provider or entity representative must not admit or keep a resident with specialty care needs,

such as developmental disability, mental illness or dementia as defined in WAC 388-76-10000, if the provider, entity representative, resident manager and staff have not completed the specialty care training required by chapter 388-112 WAC.

### RESIDENT RIGHTS

#### NEW SECTION

##### **WAC 388-76-10510 Resident rights—Basic rights.**

The adult family home must ensure that each resident:

- (1) Receives appropriate services;
- (2) Is treated with courtesy;
- (3) Continues to enjoy basic civil and legal rights;
- (4) Has the chance to exercise reasonable control over life decisions such as choice, participation, and privacy;
- (5) Is provided the opportunity to engage in religious, political, civic, recreational, and other social activities of their choice;
- (6) Is cared for in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life including a safe, clean, comfortable, and home-like environment; and
- (7) Is allowed to use his or her personal belongings to the extent possible.

#### NEW SECTION

**WAC 388-76-10515 Resident rights—Exercise of rights.** The adult family home must:

- (1) Protect each resident's right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the home;
- (2) Protect and promote the rights of each resident and assist the resident to exercise his or her rights as a resident of the home, as a citizen or resident of the United States and the state of Washington.
- (3) Be free of interference, coercion, discrimination, and reprisal from the home in exercising his or her rights; and
- (4) Ensure the resident's right to choose a representative who may exercise the resident's rights to the extent provided by law.

#### NEW SECTION

**WAC 388-76-10520 Resident rights—General notice.** The adult family home must:

- (1) Inform each resident both orally and in writing in a language the resident understands of resident rights and all rules and regulations governing resident conduct and responsibilities during the stay in the home;
- (2) Ask the resident to sign and date they received the information; and
- (3) Provide a statement indicating whether the provider or entity representative will accept medicaid or other public funds as a source of payment for services.

#### NEW SECTION

##### **WAC 388-76-10525 Resident rights—Description.**

The adult family home must give each resident a written description of resident's rights that includes a:

- (1) Description of how the home will protect personal funds;
- (2) Posting of names, addresses, and telephone numbers of the:
  - (a) State survey and certification agency;
  - (b) State licensing office;
  - (c) State ombudsmen program; and
  - (d) Protection and advocacy systems.
- (3) Statement informing the resident that he or she may file a complaint with the appropriate state licensing agency concerning alleged abandonment, abuse, neglect, or financial exploitation.

#### NEW SECTION

**WAC 388-76-10530 Resident rights—Notice of services.** The adult family home must provide each resident notice in writing and in a language the resident understands before admission, and at least once every twenty-four months after admission of the:

- (1) Services, items, and activities customarily available in the home or arranged for by the home as permitted by the license;
- (2) Charges for those services, items, and activities including charges for services, items, and activities not covered by the home's per diem rate or applicable public benefit programs; and
- (3) Rules of the home's operations.

#### NEW SECTION

**WAC 388-76-10535 Resident rights—Notice of change to services.** (1) The adult family home must inform each resident:

- (a) In writing; and
- (b) In advance of changes in the availability of, or the charges for services, items, or activities, or of changes in the home's rules.
- (2) The home must provide notice:
  - (a) Thirty days before the change, except in emergencies; or
  - (b) Fourteen days before the change, if there has been a substantial and continuing change in the resident's condition necessitating substantially greater or lesser services, items, or activities.
- (3) The home is not required to give notice:
  - (a) If the home gives each resident written notice of the availability and charges of services, items and activities before admission, when there are changes and every twenty-four months; and
  - (b) If the resident is provided different or additional services, items or activities from the home.

NEW SECTION

**WAC 388-76-10540 Resident rights—Disclosure of fees and notice requirements—Deposits.** (1) Before admission, if the adult family home requires payment of an admissions fee, deposit, or a minimum stay fee, by or on behalf of a person seeking admission, the home must give the resident full disclosure in writing in a language the resident understands.

(2) The disclosure must include:

(a) A statement of the amount of any admissions fees, deposits, prepaid charges, or minimum stay fees;

(b) The home's advance notice or transfer requirements; and

(c) The amount of the deposits, admission fees, prepaid charges, or minimum stay fees that will be refunded to the resident if the resident leaves the home.

(3) The home must ensure that the receipt of the disclosures required under subsection (1) of this section is in writing and signed and dated by the resident and the home.

(4) If the home does not provide these disclosures, the home must not keep the deposits, admission fees, prepaid charges, or minimum stay fees.

(5) If a resident dies, is hospitalized or is transferred and does not return to the home, the adult family home:

(a) Must refund any deposit or charges already paid less the home's per diem rate for the days the resident actually resided, reserved or retained a bed in the home in spite of any minimum stay policy or discharge notice requirements; except that

(b) May keep an additional amount to cover its reasonable and actual expenses incurred as a result of a private-pay resident's move, not to exceed five days per diem charges; unless the resident has given advance notice in compliance with the admission agreement.

(6) All adult family homes covered under this section are required to refund any and all refunds due the resident within thirty days from the resident's date of discharge from the home.

(7) Nothing in this section applies to provisions in contracts negotiated between a home or and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(8) If the home requires the implementation of an admission agreement by or on behalf of an individual seeking admission the home must ensure the terms of the agreement are consistent with the requirements of this section, chapters 70.128, 70.129 and 74.34 RCW, and other applicable state and federal laws.

NEW SECTION

**WAC 388-76-10545 Resident rights—Admitting and keeping residents.** The adult family home must:

(1) Only admit or keep individuals whose needs the home can safely serve in the home:

(a) With appropriate available staff; and

(b) Through the provision of reasonable accommodations required by state and federal law.

(2) Not admit an individual before obtaining a thorough assessment of the resident's needs and preferences, except in cases of a genuine emergency;

(3) Ensure that the admission of the individual does not negatively affect the ability of the home to meet the needs of or endangers the safety of other residents; and

(4) Comply with all applicable federal and state requirements regarding nondiscrimination.

NEW SECTION

**WAC 388-76-10550 Resident rights—Adult family home staffing—Notification required.** The adult family home must provide the following information to prospective residents and current residents:

(1) Information about the provider, entity representative and resident manager, if there is a resident manager:

(a) Availability in the home, including a general statement about how often he or she is in the home;

(b) Education and training relevant to resident caregiving;

(c) Caregiving experience;

(d) His or her primary responsibilities, including whether he or she makes daily general care management decisions; and

(e) How to contact the provider, entity representative or resident manager when he or she is not in the home.

(2) Information about a licensed practical nurse or registered nurse, if there is one, who is in any way involved in the care of residents:

(a) Who the licensed practical nurse or registered nurse is employed by;

(b) The specific routine hours that the licensed practical nurse or registered nurse is on-site, if they are on-site routinely;

(c) His or her primary responsibilities, including whether he or she makes daily general care management decisions;

(d) The non-routine times when the licensed practical nurse or registered nurse will be available, such as on-call; and

(e) A description of what the provider or entity representative will do to make available the services of a licensed nurse in an emergency or change in a resident's condition.

(3) A statement indicating whether the provider, entity provider, caregiver or staff is qualified or willing to become qualified to perform nurse delegation as allowed under state law.

NEW SECTION

**WAC 388-76-10555 Resident rights—Financial affairs.** Each resident has the right to manage his or her financial affairs, and the adult family home cannot require any resident to deposit their personal funds with the home.

NEW SECTION

**WAC 388-76-10560 Resident rights—Adult family home management of resident financial affairs.** If the adult family home agrees to manage a resident's personal funds, the home must do all of the following:

- (1) Hold, safeguard, manage, and account for the personal funds of the resident deposited with the home;
- (2) Have a written authorization from the resident;
- (3) Deposit a resident's personal funds in excess of one hundred dollars in an interest-bearing account or accounts separate from any of the home's operating accounts, and that credits all interest earned on residents' funds to that account;
- (4) If funds are pooled accounts, there must be a separate accounting for each resident's share; and
- (5) Keep a resident's personal funds that do not exceed one hundred dollars in a non-interest-bearing account, interest-bearing account, or petty cash fund.

NEW SECTION

**WAC 388-76-10565 Resident rights—Adult family home system for management of resident financial affairs.** The adult family home that manages resident funds must:

- (1) Develop and maintain a system that assures a full, complete, and separate accounting of each resident's personal funds given to the home on the resident's behalf;
- (2) Ensure the:
  - (a) System prevents resident funds from being mixed with the home's funds or with the funds of any person other than another resident; and
  - (b) Individual financial record is available upon request to the resident.

NEW SECTION

**WAC 388-76-10570 Resident rights—Financial affairs related to resident death.** If a resident's personal funds are deposited with the adult family home, the home must give the resident's funds and a final accounting of the funds within forty-five days after the resident's death to the individual or probate jurisdiction administering the resident's estate; except for a resident who received long-term care services paid by the state, the home must send funds and accounting to the state of Washington, department of social and health services, office of financial recovery.

NEW SECTION

**WAC 388-76-10575 Resident rights—Privacy.** (1) The adult family home must ensure the right of each resident to personal privacy that includes:

- (a) The home;
  - (b) Medical treatment;
  - (c) Clinical or resident records;
  - (d) Personal care; and
  - (e) Visits and meetings of family and resident groups; however
- (2) The resident right to personal privacy does not require the home to provide a private room for each resident.

NEW SECTION

**WAC 388-76-10580 Resident rights—Grievances.** The adult family home must:

- (1) Ensure each resident's right to voice grievances, including those about care and treatment given or not given that has been furnished as well as that which has not been furnished; and
- (2) Make prompt efforts to resolve grievances the resident may have, including those about the behavior of other residents.

NEW SECTION

**WAC 388-76-10585 Resident rights—Examination of inspection results.** The adult family home must:

- (1) Ensure each resident is given an opportunity to examine the most recent inspection report of the home and related plans of correction; and
- (2) Post a notice in a visible location in the home indicating the inspection report is available for review.

NEW SECTION

**WAC 388-76-10590 Resident rights—Contact with client advocates.** The adult family home must ensure that each resident:

- (1) Receives information from client advocate agencies; and
- (2) Has opportunities to contact client advocate agencies.

NEW SECTION

**WAC 388-76-10595 Resident rights—Advocacy access and visitation rights.** The adult family home must not interfere with each resident's right to have access to and from:

- (1) Any representative of the state;
- (2) The resident's own physician;
- (3) The state long-term care ombudsman program as established under chapter 43.190 RCW;
- (4) The agency responsible for the protection and advocacy system for developmentally disabled individuals as established under Part C of the developmental disabilities assistance and bill of rights act;
- (5) The agency responsible for the protection and advocacy system for mentally ill individuals as established under the protection and advocacy for mentally ill individuals act;
- (6) Immediate family or other relatives of the resident and others who are visiting with the consent of the resident, subject to reasonable limits to protect the rights of others and to the resident's right to deny or withdraw consent at any time;
- (7) The agency responsible for the protection and advocacy system for individuals with disabilities as established under section 509 of the rehabilitation act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law; and
- (8) The resident's representative or an entity or individual that provides health, social, legal, or other services to the

resident, subject to the resident's right to deny or withdraw consent at any time.

#### NEW SECTION

**WAC 388-76-10600 Resident rights—Mail and telephone privacy.** The adult family home must ensure each resident's right to privacy in communications, including the right to:

- (1) Send and receive unopened mail without delay;
- (2) Have writing paper, postage, and pens or pencils available that have been paid for by resident; and
- (3) Be able to use a telephone where calls can be made without being overheard.

#### NEW SECTION

**WAC 388-76-10605 Resident rights—Personal property and storage space.** The adult family home must ensure each resident's right to keep and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

#### NEW SECTION

**WAC 388-76-10610 Resident rights—Waiver of liability.** The adult family home must not ask the resident for, or make the resident sign waivers of:

- (1) Potential liability for losses of personal property or injury; and
- (2) Residents' rights set forth in chapters 70.128, 70.129, 74.34 RCW, this chapter or in the applicable licensing laws.

#### NEW SECTION

**WAC 388-76-10615 Resident rights—Transfer and discharge.** (1) The adult family home must allow each resident to stay in the home, and not transfer or discharge the resident unless:

- (a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the home;
- (b) The safety or health of individuals in the home is or would otherwise be endangered;
- (c) The resident has failed to make the required payment for his or her stay; or
- (d) The home ceases to operate.

(2) Before a home transfers or discharges a resident, the home must:

- (a) First attempt through reasonable accommodations to avoid the transfer or discharge, unless agreed to by the resident;
- (b) Notify the resident and representative and make a reasonable effort to notify, if known, an interested family member of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;
- (c) Record the reasons in the resident's record; and
- (d) Include in the notice the items described in subsection (5) of this section.

(3) Except as specified in (4) of this section, the home must give notice of the transfer or discharge at least thirty days before the resident is transferred or discharged.

(4) The home may make the notice as soon as practicable before transfer or discharge when:

- (a) The safety and health of the individuals in the home would be endangered;
  - (b) An immediate transfer or discharge is required by the resident's urgent medical needs; or
  - (c) A resident has not resided in the home for thirty days.
- (5) The home must include the following in the written notice specified in subsection (2) of this section:

- (a) The reason for transfer or discharge;
- (b) The effective date of transfer or discharge;
- (c) The location where the resident is transferred or discharged;
- (d) The name, address, and telephone number of the state long-term care ombudsman;

(e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals; and

(f) For residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals.

(6) The home must give residents enough preparation and orientation to ensure a safe and orderly transfer or discharge from the home.

(7) If the home discharges a resident in violation of this section, the home must readmit the resident to the home as soon as a gender-appropriate bed becomes available.

### QUALITY OF LIFE

#### NEW SECTION

**WAC 388-76-10620 Resident rights—Quality of life—General.** (1) The adult family home must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(2) Within reasonable home rules designed to protect the rights and quality of life of residents, the home must ensure the resident's right to:

- (a) Choose activities, schedules, and health care consistent with his or her interests, assessments, and negotiated care plan;
- (b) Interact with members of the community both inside and outside the home;
- (c) Make choices about aspects of his or her life in the home that are significant to the resident;
- (d) Wear his or her own clothing and decide his or her own dress, hair style, or other personal effects according to individual preference;
- (e) Unless adjudged incompetent or otherwise found to be legally incapacitated to:
  - (i) Be informed in advance about recommended care and services and of any recommended changes in the care and services;

(ii) Participate in planning care and treatment or changes in care and treatment;

(iii) Direct his or her own service plan and changes in the service plan, or

(iv) Refuse any particular service so long as such refusal is documented in the record of the resident.

#### NEW SECTION

**WAC 388-76-10625 Resident rights—Quality of life—Meetings.** The adult family home must ensure:

(1) A resident's right to:

(a) Organize and take part in resident groups in the home;

(b) Have family meet in the home with the families of other residents; and

(c) Have staff or visitors attend meetings at the group's invitation.

(2) The home must provide a resident or family group, if one exists, with meeting space.

#### NEW SECTION

**WAC 388-76-10630 Resident rights—Quality of life—Adult family home response to issues.** When a resident or family group exists, the adult family home must listen to the views and act upon the grievances and recommendations of residents and families about proposed policy and operational decisions affecting resident care and life in the home.

#### NEW SECTION

**WAC 388-76-10635 Resident rights—Quality of life—Work.** The adult family home must respect the resident's right to refuse to perform services for the home except as voluntarily agreed to by the resident and the home and documented in the resident's negotiated care plan.

#### NEW SECTION

**WAC 388-76-10640 Resident rights—Quality of life—Resident participation.** The adult family home must ensure each resident's right to join in social, religious, and community activities that do not interfere with the rights of other residents in the home.

#### NEW SECTION

**WAC 388-76-10645 Resident rights—Quality of life—Reasonable accommodation.** The adult family home must ensure each resident:

(1) Receives reasonable accommodation to meet the needs and preferences of the resident, except when the reasonable accommodation endangers the health or safety of the individual or other residents; and

(2) Has the ability to share a double room with his or her spouse when both spouses consent to the arrangement.

## MEDICAL DEVICES AND RESTRAINTS

#### NEW SECTION

**WAC 388-76-10650 Medical devices.** Before the adult family home uses medical devices for any resident, the home must:

(1) Review the resident assessment to determine the resident's need for and use of a medical device;

(2) Ensure the resident negotiated care plan includes the resident use of a medical device or devices; and

(3) Provide the resident and family with enough information about the significance and level of the safety risk of use of the device to enable them to make an informed decision about whether or not to use the device.

#### NEW SECTION

**WAC 388-76-10655 Physical restraints.** The adult family home must ensure:

(1) Each resident's right to be free from physical restraints used for discipline or convenience;

(2) Less restrictive alternatives have been tried;

(3) That physical restraints used have been assessed as necessary to treat the resident's medical symptoms; and

(4) That if physical restraints are used to treat a resident's medical symptoms that the restraints are applied and immediately supervised on-site by a:

(a) Licensed registered nurse;

(b) Licensed practical nurse; or

(c) Licensed physician; and

(d) For the purposes of this subsection, immediate supervised means that the licensed person is in the home and quickly and easily available.

#### NEW SECTION

**WAC 388-76-10660 Chemical restraints.** (1) For the purposes of this section "chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms.

(2) The adult family home must ensure that:

(a) Each resident is free from chemical restraints used for discipline or convenience;

(b) The resident assessment indicates that a chemical restraint is necessary to treat the resident's medical symptoms;

(c) In situations when a psychopharmacological drug is used for a resident, the home must ensure that the:

(i) Drug is prescribed by a physician or health care professional with prescriptive authority;

(ii) Resident's negotiated care plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

(iii) Changes in medication only occur when the prescriber decides it is medically necessary; and

(iv) Resident has given informed consent for its use.

NEW SECTION

**WAC 388-76-10665 Involuntary seclusion.** The adult family home must ensure a resident's right to be free from involuntary seclusion or isolation of the resident against his or her will.

**ABUSE**NEW SECTION

**WAC 388-76-10670 Prevention of abuse.** The adult family home must:

- (1) Meet the requirements of chapter 74.34 RCW;
- (2) Ensure each resident's right to be free from abandonment, verbal, sexual, physical and mental abuse, exploitation, financial exploitation, neglect, and involuntary seclusion;
- (3) Protect each resident who is an alleged victim of abandonment, verbal, sexual, physical and mental abuse, exploitation, financial exploitation, neglect, and involuntary seclusion; and
- (4) Prevent future potential abandonment, verbal, sexual, physical and mental abuse, exploitation, financial exploitation, neglect, and involuntary seclusion from occurring.

NEW SECTION

**WAC 388-76-10675 Adult family home rules and policies related to abuse—Required.** The adult family home must develop and implement written rules and policies that:

- (1) Do not allow abandonment, abuse, neglect of any resident, exploitation or financial exploitation of any resident;
- (2) Require staff to report possible abuse, and other related incidents, as required in chapter 74.34 RCW; and
- (3) Do not interfere with the requirement that employees and other mandated reporters file reports directly with the department, and with law enforcement, if they suspect sexual or physical assault to have occurred.

NEW SECTION

**WAC 388-76-10680 Staff behavior related to abuse.** The adult family home must ensure that staff do not abandon, abuse, neglect, seclude, exploit, or financially exploit any resident.

**PHYSICAL PLANT BASIC REQUIREMENTS**NEW SECTION

**WAC 388-76-10685 Bedrooms.** The adult family home must:

- (1) Ensure each resident's bedroom is an outside room, which allows entrance of natural light;
- (2) Ensure window and door screens:
  - (a) Do not hinder emergency escape; and
  - (b) Prevent entrance of flies and other insects.
- (3) Ensure each resident's bedroom has direct access to hallways and corridors and unrestricted or free access to common use areas;

- (4) Make separate bedrooms available for each sex;
- (5) Make reasonable efforts to accommodate residents wanting to share the room;
- (6) Provide each bedroom with a minimum usable floor space as required in WAC 388-76-10690.
- (7) Ensure no more than two residents to a bedroom;
- (8) Unless the resident chooses to provide their own furniture and bedding, the home must provide each resident a bed thirty-six inches or more wide with:
  - (a) A clean, comfortable mattress;
  - (b) A waterproof cover for use when needed or requested by the resident;
  - (c) Clean sheets and pillow cases;
  - (d) Adequate clean blankets to meet the needs of each resident; and
  - (e) Clean pillows.
- (9) Not use the upper bunk of double-deck beds for a resident's bed;
- (10) Provide a call bell or intercom system if the provider, entity representative, resident manager or caregiver bedroom is not within hearing distance of each resident bedroom and the system is required by the department;
- (11) Ensure that members of the household, other than residents, do not share bedrooms with residents; and
- (12) Ensure a resident does not share a bedroom with a person under eighteen years of age, unless the person is the resident's own child.

NEW SECTION

**WAC 388-76-10690 Bedroom usable floor space—In adult family homes after the effective date of this chapter.**

- (1) For the purposes of this section "vestibule" means a small room or hall between an outer door and the main part of the resident bedroom.
- (2) The adult family home must ensure each resident bedroom has a minimum usable floor space as follows, excluding the floor space for toilet rooms, closets, lockers, wardrobes and vestibules:
  - (a) Single occupancy bedrooms with at least eighty square feet; and
  - (b) Double occupancy bedrooms with at least one-hundred twenty square feet.

NEW SECTION

**WAC 388-76-10695 Building codes—Structural requirements.** (1) For single family dwellings used as an adult family home after July 1, 2007, the home must ensure the building meets the requirements of WAC 51-51-0325 Section R325 if the building is:

- (a) New; or
  - (b) An existing building converted for use as an adult family home.
- (2) For buildings licensed as a home before July 1, 2007, the requirement of subsection (1) of this section does not apply if:
- (a) The building sells or transfers to a new owner; and
  - (b) The new owner takes possession of the building before the issuance of the license.

(3) The home must ensure that every area used by residents:

- (a) Has direct access to at least one exit which does not pass through other areas such as a room or garage subject to being locked or blocked from the opposite side; and
- (b) Is not accessible only by or with the use of a:
  - (i) Ladder;
  - (ii) Folding stairs; or
  - (iii) Trap door.

#### NEW SECTION

**WAC 388-76-10700 Building official—Inspection and approval.** The adult family home must have the building inspected and approved for use as an adult family home by the local building official:

- (1) Before licensing; and
- (2) After any construction changes that:
  - (a) Affect resident's ability to exit the home; or
  - (b) Change, add or modify a resident's bedroom.

#### NEW SECTION

**WAC 388-76-10705 Common use areas.** (1) For the purposes of this section, common use areas:

- (a) Are areas and rooms of the adult family home that residents use each day for tasks such as eating, visiting, and leisure activities; and
  - (b) Include but are not limited to dining and eating rooms, living and family rooms, and any entertainment and recreation areas.
- (2) The adult family home must ensure common use areas are:
- (a) Homelike, with furnishings that each resident may use;
  - (b) Large enough for all residents to use at the same time; and
  - (c) Not used as bedrooms or sleeping areas.

#### NEW SECTION

**WAC 388-76-10710 Construction and remodeling—Relocation of residents.** Before moving all residents out of the adult family home for construction or remodeling, the home must:

- (1) Notify the residents of the move date and the resident's options consistent with chapter 70.129 RCW;
- (2) Notify the department at least thirty days before the anticipated move, including:
  - (a) The location to which the residents will be moved;
  - (b) The home's plans for providing and ensuring care and services during the relocation;
  - (c) The home's plans for returning residents to the building; and
  - (d) The projected timeframe for completing the construction or remodeling.
- (3) Obtain the department's approval of the relocation plans before moving the residents.

#### NEW SECTION

**WAC 388-76-10715 Doors—Ability to open.** The adult family home must ensure:

- (1) Every bedroom and bathroom door opens from the inside and outside;
- (2) Every closet door opens from the inside and outside; and
- (3) All exit doors leading to the outside will open from the inside without a key or any special knowledge or effort by residents.

#### NEW SECTION

**WAC 388-76-10720 Electronic monitoring equipment—Audio monitoring and video monitoring.** (1) The adult family home must not use audio monitoring equipment:

- (a) In the home;
  - (b) In combination with video monitoring equipment; and
  - (c) Except as provided in section WAC 388-76-10725.
- (2) The home may video monitor and video record activities in the home, without an audio component, only in the following areas:
- (a) Entrances and exits if the cameras are:
    - (i) Focused only on the entrance or exit doorways; and
    - (ii) Not focused on areas where residents gather.
  - (b) Outdoor areas not commonly used by residents; and
  - (c) Designated smoking areas, subject to the following conditions when:
    - (i) Residents are assessed as needing supervision for smoking;
    - (ii) A staff person watches the video monitor at any time the area is used by such residents;
    - (iii) The video camera is clearly visible;
    - (iv) The video monitor is not viewable by general public; and
    - (v) The home notifies all residents in writing of the video monitoring equipment.

#### NEW SECTION

**WAC 388-76-10725 Electronic monitoring equipment—Resident requested use.** (1) The adult family home must limit resident-requested audio or video monitoring equipment to the sleeping room of the resident who requested the monitoring.

- (2) If the resident requests audio or video monitoring, before any electronic monitoring occurs the home must ensure:
  - (a) Appropriate actions are taken to ensure electronic monitoring is consistent with and does not violate chapter 9.73 RCW;
  - (b) The resident has identified a threat to the resident's health, safety or personal property and has requested electronic monitoring;
  - (c) The resident's roommate has provided written consent to electronic monitoring, if the resident has a roommate; and



(d) The resident and the home have agreed upon a specific duration for the electronic monitoring documented in writing.

(3) The home must reevaluate the need for the electronic monitoring with the resident at least quarterly and:

- (a) Must document the reevaluation in writing; and
- (b) Have each reevaluation signed and dated by the resident.

(4) The home must immediately stop electronic monitoring if the:

- (a) Resident no longer wants electronic monitoring;
- (b) Roommate objects or withdraws the consent to the electronic monitoring, or
- (c) Resident becomes unable to give consent.

#### NEW SECTION

**WAC 388-76-10730 Grab bars and hand rails.** (1) The adult family home must install grab bars or hand rails to meet the needs of each resident.

(2) At a minimum, grab bars must be installed and securely fastened in:

- (a) Bathing facilities such as tubs and showers; and
- (b) Next to toilets, if needed by any resident.

(3) If needed by any resident, hand rails must be installed and conveniently located on:

- (a) A step or steps; and
- (b) Ramps.

#### NEW SECTION

**WAC 388-76-10735 Kitchen facilities.** (1) The adult family home must ensure the kitchen facilities include adequate space for:

- (a) Food handling;
- (b) Preparation; and
- (c) Food storage.

(2) The home must keep the kitchen and equipment in a clean and sanitary manner.

#### NEW SECTION

**WAC 388-76-10740 Lighting.** The adult family home must provide:

- (1) Adequate light fixtures for each task a resident or staff does; and
- (2) Emergency lighting, such as working flashlights for staff and residents that are readily accessible.

#### NEW SECTION

**WAC 388-76-10745 Local codes and ordinances.** The adult family home must:

- (1) Meet all applicable local licensing, zoning, building and housing codes as they pertain to a single family dwelling;
- (2) Meet state and local fire safety regulations as they pertain to a single family dwelling; and
- (3) Check with local authorities to ensure the home meets all local codes and ordinances.

#### NEW SECTION

**WAC 388-76-10750 Safety and maintenance.** The adult family home must:

(1) Keep the home both internally and externally in good repair and condition with a safe, comfortable, sanitary, home-like environment that is free of hazards;

(2) Provide clean, functioning, safe, adequate household items and furnishings to meet the needs of each resident;

(3) Provide safe and functioning systems for:

- (a) Heating;
- (b) Cooling, which may include air circulating fans;
- (c) Hot and cold water;
- (d) Electricity;
- (e) Plumbing;
- (f) Garbage disposal;
- (g) Sewage;
- (h) Cooking;
- (i) Laundry;
- (j) Artificial and natural light;
- (k) Ventilation; and
- (l) Any other feature of the home.

(4) Ensure water temperature does not exceed one hundred twenty degrees Fahrenheit at all fixtures used by or accessible to residents, such as:

- (a) Tubs;
- (b) Showers; and
- (c) Sinks.

(5) Provide storage for toxic substances, poisons, and other hazardous materials that is only accessible to residents under direct supervision, unless the resident is assessed for and the negotiated care plan indicates it is safe for the resident to use the materials unsupervised;

(6) Provide rapid access for all staff to any bedroom, toilet room, shower room, closet, other room occupied by each resident;

(7) Keep all firearms locked and accessible only to authorized persons; and

(8) Keep the home free from:

- (a) Rodents;
- (b) Flies;
- (c) Cockroaches, and
- (d) Other vermin.

#### NEW SECTION

**WAC 388-76-10755 Sewage and liquid wastes.** The adult family home must ensure sewage and liquid wastes are discharged into:

(1) A public sewer system; or

(2) An independent sewage system approved by the local health authority.

#### NEW SECTION

**WAC 388-76-10760 Site.** The adult family home must ensure the home:

- (1) Is on a well drained site free from:
  - (a) Hazardous conditions;
  - (b) Excessive noise;
  - (c) Dust; and

- (d) Smoke or odors.
- (2) Has a road accessible at all times to emergency vehicles.

NEW SECTION

**WAC 388-76-10765 Storage.** The adult family home must:

- (1) Supply each resident with adequate and reasonable storage space for:
  - (a) Clothing;
  - (b) Personal possessions; and
  - (c) Upon request, lockable container or storage space for small items, unless the:
    - (i) Resident has a private room; and
    - (ii) The resident room can be locked by the resident.
- (2) Provide locked storage for all prescribed and over-the-counter medications as per WAC 388-76-10485.

NEW SECTION

**WAC 388-76-10770 Telephones.** The adult family home must provide:

- (1) At least one working non-pay telephone in the home;
- (2) Residents reasonable access to the telephone; and
- (3) Privacy for the resident when making or receiving calls.

NEW SECTION

**WAC 388-76-10775 Temperature and ventilation.** The adult family home must:

- (1) Keep room temperature at:
  - (a) Sixty-eight degrees Fahrenheit or more during waking hours;
  - (b) Sixty degrees Fahrenheit or more during sleeping hours; and
  - (c) Not more than seventy-eight degrees Fahrenheit day or night.
- (2) Provide ventilation in the home to ensure the health and comfort of each resident is met.

NEW SECTION

**WAC 388-76-10780 Toilets and bathing facilities.** (1) The adult family home must ensure the home has toilets and bathing facilities that provide each resident with privacy and include:

- (a) One indoor flush toilet for each five persons including residents and household members in the home; and
- (b) Sinks with hot and cold running water.
- (2) Homes licensed after July 1, 2007, must ensure each resident has access to a toilet, shower or tub without going through another resident's room.

NEW SECTION

**WAC 388-76-10785 Water hazards—Enclosures and safety devices.** (1) For the purposes of this section "water hazard" means any body of water over twenty-four inches in

depth that can be accessed by a resident, and includes but is not limited to:

- (a) In-ground, above-ground, and on-ground pools;
- (b) Hot tubs, spas; or
- (c) Fixed-in-place wading pools.
- (2) The adult family home must:
  - (a) Protect each resident from risks of bodies of water of any depth and water hazards;
  - (b) Ensure that water hazard protection complies with this section and the requirements of the:
    - (i) International Residential Code (IRC); and
    - (ii) Washington state amendments to the International Residential Code (IRC).
  - (c) Provide each area which allows direct access to a water hazard with:
    - (i) A minimum of forty-eight inch high fences and gates to enclose or protect each resident from the water hazard;
    - (ii) Alarms that produce an audible warning when opened on all doors and screens, if present and gates.
- (3) After July 1, 2007, existing adult family homes are required to meet the requirements of this section when installing or making construction changes to the following:
  - (a) In-ground, above-ground and on-ground pools;
  - (b) Hot tubs, spas;
  - (c) Decorative water features; or
  - (d) Fixed-in-place wading pools.

NEW SECTION

**WAC 388-76-10790 Water supply.** The adult family home must:

- (1) Obtain local health authority approval to use a private water supply;
- (2) Provide a clean and healthy drinking water supply for the home; and
- (3) Label any non-potable water to avoid use as a drinking water source.

NEW SECTION

**WAC 388-76-10795 Windows.** (1) The adult family home must ensure the sill height of the bedroom window is not more than forty-four inches above the floor.

(2) For homes licensed after July 1, 2007, the department will not approve alternatives to the sill height requirement such as step(s), raised platform(s) or other devices placed by or under the window openings.

- (3) The bedroom window must have the following:
  - (a) A minimum opening area of 5.7 square feet except a grade level floor window openings may have a minimum clear opening of 5.0 square feet;
  - (b) A minimum opening height of twenty-four inches; and
  - (c) A minimum opening width of twenty inches.
- (4) The home must ensure the bedroom window can be opened from inside the room without keys or tools.
- (5) When resident bedroom windows are fitted with storm windows, the home must equip the storm windows with release mechanisms that:
  - (a) Easily open from the inside; and

(b) Do not require a key or special knowledge or effort to open.

(6) The home must ensure that each basement and each resident bedroom window, that meets the requirements of subsection (1), (2) and (3) of this section, are kept free from obstructions that might block or interfere with access for emergency escape or rescue.

## FIRE PROTECTION

### NEW SECTION

**WAC 388-76-10800 Adult family home located outside of public fire protection.** If the adult family home is located in an area without public fire protection, the home must have written verification of adequate fire protection from the fire authority.

### NEW SECTION

**WAC 388-76-10805 Automatic smoke detectors.** The adult family home must ensure approved automatic smoke detectors are:

- (1) Installed, at a minimum, in the following locations:
  - (a) Every bedroom used by a resident;
  - (b) In proximity to the area where the resident or adult family home staff sleeps; and
  - (c) On every level of a multilevel home.
- (2) Installed in a manner so that the fire warning is heard in all parts of the home upon activation of a single detector; and
- (3) Kept in working condition at all times.

### NEW SECTION

**WAC 388-76-10810 Fire extinguishers.** (1) The adult family home must have an approved five pound 2A:10B-C rated fire extinguisher on each floor of the home.

- (2) The home must ensure the fire extinguishers are:
  - (a) Installed according to manufacturer recommendations;
  - (b) Inspected and serviced annually;
  - (c) In proper working order; and
  - (d) Readily available for use at all times.
- (2) If required by the local fire authority, the home must provide different fire extinguishers in place of the fire extinguishers required in subsection (1) of this section.

**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 388-76-10815 Notice required—Compliance with building code and fire protection.** Before a resident is admitted, the adult family home must disclose in writing in a language understood by the prospective resident the following:

- (1) Whether or not resident bedrooms comply with the current building code including evacuation standards; and

(2) If the home is located outside a public fire district, the source and plan for on-site fire protection.

### NEW SECTION

**WAC 388-76-10820 Resident evacuation capabilities and location of resident bedrooms.** (1) The adult family home must ensure each resident who has an evacuation capability of Level 2 or Level 3, as defined in WAC 388-76-10870, has a bedroom located on grade level and exiting the building does not require the use of:

- (a) Stairs;
- (b) Elevator; or
- (c) Lift.

(2) The home must install alternative emergency evacuation protection equipment when serving hearing or visually impaired residents.

### NEW SECTION

**WAC 388-76-10825 Space heaters and stoves.** The adult family home must ensure:

- (1) The following space heaters are not used in a home except during a power outage and the portable heater is only safe source of heat:
  - (a) Oil;
  - (b) Gas;
  - (c) Kerosene; and
  - (d) Electric.
- (2) Stoves and heaters do not block residents, staff or household members from escaping.

## DISASTER AND EMERGENCY PREPAREDNESS

### NEW SECTION

**WAC 388-76-10830 Emergency and disaster plan—Required.** The adult family home must have written emergency and disaster plan and procedures to meet the needs of each resident during emergencies and disasters.

### NEW SECTION

**WAC 388-76-10835 Elements of an emergency and disaster plan.** The adult family home must ensure the emergency and disaster plan includes:

- (1) Plans for responding to natural and man-made emergencies and disasters that may reasonably occur at the home;
- (2) Actions to be taken by staff and residents when an emergency or disaster strikes; and
- (3) The fire drill plan for evacuation of the home.

### NEW SECTION

**WAC 388-76-10840 Emergency food supply.** The adult family home must have an on-site emergency food supply that can be stored with other food in the home and that:

- (1) Will last for a minimum of seventy-two hours; and
- (2) Meets the dietary needs of each resident, including any specific dietary restrictions any resident may have.

NEW SECTION

**WAC 388-76-10845 Emergency drinking water supply.** The adult family home must have an on-site emergency supply of drinking water that:

- (1) Will last for a minimum of seventy-two hours for each resident;
  - (2) Is at least three gallons for each resident;
  - (3) Is stored in food grade or glass containers;
  - (4) Is chemically treated or replaced every six months;
- and
- (5) Is stored appropriately.

NEW SECTION

**WAC 388-76-10850 Emergency medical supplies.** The adult family home must have emergency medical supplies that include:

- (1) First aid supplies; and
- (2) A first-aid manual.

NEW SECTION

**WAC 388-76-10855 Emergency and disaster plan training—Required.** The adult family home must ensure all staff are trained on the emergency and disaster plan and procedures when they begin work in the home and all staff and residents review the emergency and disaster plan and procedures at least annually.

### FIRE DRILL PLAN FOR EMERGENCY EVACUATION

NEW SECTION

**WAC 388-76-10860 Fire drill plan and procedures for emergency evacuation—Required.** The adult family home must:

- (1) Have a fire drill plan and procedures for the emergency evacuation of all residents from the adult family home; and
- (2) Not admit and keep residents the provider or entity representative cannot safely evacuate from the adult family home.

NEW SECTION

**WAC 388-76-10865 Emergency evacuation from adult family home.** The adult family home must be able to evacuate all people living in the home:

- (1) From the home to a safe location outside the home; and
- (2) In five minutes or less.

NEW SECTION

**WAC 388-76-10870 Resident evacuation capability levels—Identification required.** The adult family home must ensure that each resident preliminary service plan and negotiated care plan contains the resident's ability to evacuate the home according to the following levels:

(1) **Level 1** - resident is capable of walking or traversing a normal pathway to safety without the physical assistance of another individual;

(2) **Level 2** - resident is physically and mentally capable of traversing a normal pathway to safety with mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual; and

(3) **Level 3** - resident is unable to walk or transverse a normal pathway to safety without the physical assistance of another individual.

NEW SECTION

**WAC 388-76-10880 Emergency evacuation adult family home floor plan.** The adult family home must ensure each resident with an evacuation capability of Level 2 or Level 3 has a bedroom on a ground-level floor which:

- (1) Has at least two means of exiting the bedroom; and
- (2) Exiting from the bedroom does not require the use of:
  - (a) Stairs;
  - (b) Elevators; or
  - (c) A platform lift.

NEW SECTION

**WAC 388-76-10885 Elements of emergency evacuation floor plan.** The adult family home must ensure the emergency evacuation floor plan has:

- (1) An accurate floor plan of the home, including rooms, hallways, exits (such as doorways and windows) to the outside of the home;
- (2) Emergency evacuation routes showing the paths to take to exit the home; and
- (3) The location for the residents to meet outside the home.

NEW SECTION

**WAC 388-76-10890 Posting the emergency evacuation floor plan—Required.** The adult family home must display an emergency evacuation floor plan on each floor of the home in:

- (1) A visible location in the home; and
- (2) Common areas normally used by residents, staff and visitors.

NEW SECTION

**WAC 388-76-10895 Emergency evacuation drills—Frequency and participation.** The adult family home must ensure:

- (1) Emergency evacuation drills occur at least every two months; and
- (2) All residents take part in at least one emergency evacuation drill each calendar year involving full evacuation from the home to a safe location.

NEW SECTION

**WAC 388-76-10900 Documentation of emergency evacuation drills—Required.** The adult family home must

document in writing the emergency evacuation drills which must include:

- (1) Names of each resident and staff involved in the drill;
- (2) Name of the person conducting the drill;
- (3) Date and time of the drill; and
- (4) The length of time it took to evacuate all residents.

#### NEW SECTION

**WAC 388-76-10905 Emergency evacuation—Notification of department required.** The adult family home must immediately call the department's complaint toll free complaint telephone number of:

- (1) Any fire; or
- (2) Emergency evacuation from the home.

#### **INSPECTIONS—COMPLAINT INVESTIGATIONS—MONITORING VISITS**

#### NEW SECTION

**WAC 388-76-10910 Inspections—Complaint investigations—Monitoring visits—General.** The department must conduct unannounced inspections, complaint investigations and monitoring visits to determine if the adult family home is in compliance with chapters 70.128, 70.129 and 74.34 RCW, this chapter and other applicable laws and regulations.

#### NEW SECTION

**WAC 388-76-10915 Department staff access—Willful interference prohibited.** The adult family home must ensure:

- (1) Department staff have access to:
  - (a) The home, residents, including former residents;
  - (b) Resident records, includes former residents records; and
  - (c) Facility staff and relevant staff records.
- (2) The home and staff do not willfully interfere or fail to cooperate with department staff in the performance of official duties.

#### NEW SECTION

**WAC 388-76-10920 Inspection and investigation reports—Provided by department.** The department will mail or hand deliver the department's report to the provider or entity representative:

- (1) Within ten working days of completion of the inspection process; or
- (2) Within ten calendar days of completion of the inspection if the home does not have a deficiency.

#### NEW SECTION

**WAC 388-76-10925 Disclosure of inspection and complaint investigation reports.** Upon request, the department must provide the public with copies, subject to applicable public disclosure and confidentiality requirements, of:

- (1) Inspection and complaint investigation reports as soon as they are completed;
- (2) The home's plan of correction, if a copy is available at the time of the request; and
- (3) Any final written decision by the department to take an enforcement action.

#### NEW SECTION

**WAC 388-76-10930 Plan of correction (POC)—Required.** The plan of correction included on the inspection report must:

- (1) Be completed by the adult family home and returned to the department within ten days of receiving the inspection report;
- (2) Include an attestation statement stating:
  - (a) What the home did or will do to correct each deficiency;
  - (b) That all deficiencies are or will be corrected;
  - (c) The home will stay in compliance with the licensing requirements;
  - (d) Dates, acceptable to the department, by which each cited deficiency has been or will be corrected; and
  - (e) A signature by the home, certifying that the home has or will correct each deficiency.

#### **RESIDENT ADVOCATE ACCESS**

#### NEW SECTION

**WAC 388-76-10935 Washington protection and advocacy—Long-term care Ombudsman—Official duties—Penalty for interference.** The adult family home must not willfully interfere with a representative of the following in the performance of official duties:

- (1) Washington protection and advocacy system as defined under RCW 71A.10.080; or
- (2) Long-term care ombudsman as defined under chapter 43.190 RCW, the state regulations for the long-term care ombudsman and under federal law.
- (3) The department must impose a civil penalty as per WAC 388-76-10975 for any such willful interference with a representative of the long-term care ombudsman program.

#### **REMEDIES**

#### NEW SECTION

**WAC 388-76-10940 Remedies—Generally.** The department may take one or more of the following actions in any case which the department finds that an adult family home failed or refused to comply with the applicable requirements of chapters 70.128, 70.129, or 74.34 RCW or this chapter:

- (1) Denial of an application for a license;
- (2) Impose reasonable conditions on a license;
- (3) Impose civil penalties;
- (4) Order stop placement; and/or
- (5) Suspension or revocation of a license.

NEW SECTION

**WAC 388-76-10945 Remedies—Serious risk—Recurring violations—Uncorrected violations.** The department must impose a remedy or remedies listed in WAC 388-76-10940 when violations of chapter 70.128, 70.129 and 74.34 RCW and this chapter pose a serious risk to any resident, are recurring or are uncorrected.

NEW SECTION

**WAC 388-76-10950 Remedies—History and actions by individuals.** The department will consider the history and actions of the following individual or combination of individuals when imposing remedies:

- (1) Applicant;
- (2) Provider;
- (3) Entity representative;
- (4) Person affiliated with the applicant;
- (5) Resident manager;
- (6) A partner, officer, director or managerial employee of the entity;
- (7) Spouse of the provider or entity representative;
- (8) An owner:
  - (a) Of fifty-one percent or more of the entity;
  - (b) Who exercises control over the daily operations of the home.
- (9) A caregiver; or
- (10) Any person who:
  - (a) Has unsupervised access to residents in the home; and
  - (b) Lives in the home but who is not a resident.

NEW SECTION

**WAC 388-76-10955 Remedies—Department must impose remedies.** The department must impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950 has:

- (1) A history of prior violations of chapter 70.128 RCW or any law relating to residential care facilities within the past five years that resulted in revocation, suspension, or non-renewal of a license or contract with the department;
- (2) When providing care or services to children or vulnerable adults:
  - (a) Been found to be in significant noncompliance with federal or state regulations; or
  - (b) Had a license for the care of children or vulnerable adults suspended or revoked.
- (3) Been enjoined from operating a facility for the care and services of children or adults;
- (4) A stipulated finding of fact, conclusion of law, an agreed order, finding of fact, conclusion of law, final order issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW;
- (5) Had a revocation or suspension of a license for the care of children or adults;

(6) Had a revocation, cancellation, suspension or nonrenewal of:

(a) A Medicaid or Medicare provider agreement by the contracting agency; or

(b) Any agreement with a public agency for the care and treatment of children or vulnerable adults, when the action was taken by the public agency.

(7) Been convicted of any crime listed in RCW 43.43.830 or 43.43.842;

(8) Been found by a court:

(a) In a protection proceeding under chapter 74.34 RCW to have abandoned, neglected, abused, or financially exploited a vulnerable adult; or

(b) In a domestic relations proceeding under Title 26 RCW to have sexually or physically abused, neglected or exploited any minor.

(9) Been found in any final decision issued by a disciplinary board to have:

(a) Sexually or physically abused, neglected or exploited any minor or a person with a developmental disability; or

(b) Abandoned, abused, neglected or financially exploited any vulnerable adult.

(10) Found in any dependency action under RCW 13.34.030 (5)(b) to have sexually or physically abused, neglected or exploited any minor; or

(11) Failed to pay the annual licensing fee.

NEW SECTION

**WAC 388-76-10960 Remedies—Department may impose remedies.** The department may impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950 has:

(1) Been convicted of a crime:

(a) As defined under RCW 43.43.830 or 43.43.842;

(b) Relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842;

(c) Or a felony against a person if the conviction reasonably relates to the competency of the person to own or operate an adult family home;

(d) Involving a firearm used in the commission of a felony or in any act of violence against a person;

(e) Or engaged in illegally selling or distributing drugs, illegal use of drugs or excessive use of alcohol within the past five years without the evidence of rehabilitation.

(2) Been found by a court in a protection proceeding under chapter 74.34 RCW to have abandoned, abused, neglected, or financially exploited a vulnerable adult;

(3) Been found in a final decision issued by a disciplinary board to have sexually or physically abused, neglected or exploited any minor person or a person with a developmental disability or to have abused or financially exploited any vulnerable adult;

(4) Been found in any dependency action under RCW 13.34.030(5) to have sexually abused, neglected or exploited any minor or to have physically abused any minor;

(5) Been found in a court domestic relations proceeding under Title 26 RCW to have:

(a) Sexually abused, neglected or exploited any minor or to have physically abused any minor;

(b) Committed an act of domestic violence toward a family or household member.

(6) Had a sanction, corrective, or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(7) Obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(8) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application or in any matter under investigation by the department;

(9) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;

(10) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation or monitoring visit made by the department;

(11) Failed or refused to comply with:

(a) A condition imposed on a license or a stop placement order;

(b) The applicable requirements of chapters 70.128, 70.129, 74.34 RCW or this chapter.

(12) Misappropriated property of a resident;

(13) Been denied a license or license renewal to operate a facility that was licensed to care for children or vulnerable adults;

(14) Exceeded licensed capacity in the operation of an adult family home;

(15) Operated a facility for the care of children or adults without a license or revoked license;

(16) Relinquished or returned a license in connection with the operation of any facility for the care of children or adults, or did not seek license renewal following written notification of the licensing agency's intention of denial, suspension, cancellation or revocation of a license;

(17) Had resident trust funds or assets of an entity providing care to children or vulnerable adults seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(18) Failed to meet financial obligations as the obligations fell due in the normal course of business, thereby impeding the ability to provide care and services to residents;

(19) Refused to permit authorized department representatives to interview residents or to have access to resident records or home;

(20) Interfered with a long-term care ombudsman or department staff in the performance of his or her duties; or

(21) Found to be in non-compliance with the requirements established in chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations.

#### NEW SECTION

**WAC 388-76-10965 Remedies—Specific—Denial of application for license.** The department decision to deny an application for a license is specified in:

(1) WAC 388-76-10115;

(2) WAC 388-76-10120;

(3) WAC 388-76-10125; and

(4) WAC 388-76-10940.

#### NEW SECTION

**WAC 388-76-10970 Remedies—Specific—Condition(s) on license.** (1) The department may impose reasonable conditions on the license.

(2) Conditions the department may impose on a license include, but are not limited to the following:

(a) Correction within a specified time;

(b) Training related to the deficiencies;

(c) Limits on the type of residents the provider or entity representative may admit or serve;

(d) Discharge of any resident when the department finds discharge is needed to meet that resident's needs or for the protection of other residents;

(e) Change in license capacity;

(f) Removal of the adult family home's designation as a specialized home;

(g) Prohibition of access to residents by a specified person; and

(h) Demonstration of ability to meet financial obligations necessary to continue operation.

#### NEW SECTION

**WAC 388-76-10975 Remedies—Specific—Civil penalties.** (1) The department may impose civil penalties of not more than one hundred dollars per day per violation except that:

(a) Fines up to one thousand dollars can be issued for willful interference with a representative of the long-term care ombudsman per RCW 70.129.150; and

(b) Fines up to three thousand dollars can be issued for retaliation against a resident, employee, or any other person making a complaint, providing information to, or cooperating with, the ombudsman, the department, the attorney's general office, or a law enforcement agency per RCW 74.34.060(7).

(2) When the provider or entity provider fails to pay a fine when due under this chapter, the department may, in addition to other remedies, withhold an amount equal to the fine plus interest, if any, from any contract payment due to the provider or entity provider from the department.

(3) Civil monetary penalties are due twenty-eight days after the provider, entity representative or the owner or operator of an unlicensed adult family home is served with notice of the penalty unless the provider or entity representative requests a hearing in compliance with chapter 34.05 RCW and RCW 43.20A.215. If the hearing is requested, the penalty becomes due ten days after a final decision in the department's favor is issued. Interest accrues beginning thirty days after the department serves the provider or entity provider with notice of the penalty at a rate of one percent per month as per RCW 43.20B.695.

#### NEW SECTION

**WAC 388-76-10980 Remedies—Specific—Stop placement—Admissions prohibited.** (1) The department may order stop placement and prohibit the admission of residents if the home does not meet the requirements of chapters 70.128, 70.129, 74.32 RCW or this chapter.

(2) Once imposed, the adult family home must not admit any person until the stop placement order is terminated.

(3) If the home requests, the department may approve readmission of a resident to the home from a hospital or nursing home during the stop placement.

(4) The department must end the stop placement when the department finds the:

(a) Deficiencies necessitating the stop placement have been corrected; and

(b) Home can show it has the capacity to maintain adequate care and service.

NEW SECTION

**WAC 388-76-10985 Remedies—May extend to multiple homes.** (1) When the department finds that a licensed provider or entity representative also operates an unlicensed adult family home, the department may impose a remedy or remedies listed in WAC 388-76-10940 on the provider or entity representative and the provider's or entity representative's licensed adult family home or homes.

(2) When the department finds that violations existing in an adult family home are of such nature as to present a serious risk or harm to residents of other homes operated by the same provider or entity representative, and after the department investigates other homes licensed by the same provider or entity representative the department may impose remedies on those other homes.

**INFORMAL DISPUTE RESOLUTION, NOTICE AND APPEALS**

NEW SECTION

**WAC 388-76-10990 Informal dispute resolution (IDR).** (1) When a provider or entity representative disagrees with the department's finding of a violation under this chapter, the provider or entity representative shall have the right to have the violation reviewed by the department under the department's dispute resolution process.

(2) The purpose of the review is to give the provider or entity representative an opportunity to present information which might warrant modification or deletion of a finding of a violation.

(3) The provider or entity representative may submit a written statement for review.

(4) In addition to a written statement, the provider or entity representative may ask to present the information in person to a department designee.

(5) Requests for review must be made in writing to the department at the address provided in the department's certified letter within ten working days of receipt of the written finding of a violation.

(6) When requested by the provider or entity representative, the department must expedite the dispute resolution process to review violations upon which a department order imposing license suspension, revocation, stop placement, or condition on a license is based.

(7) Orders of the department imposing license suspension, stop placement, or conditions on a license are effective

immediately upon notice and shall continue pending dispute resolution.

NEW SECTION

**WAC 388-76-10995 Notice, hearing rights, and effective dates relating to imposition of remedies.** (1) Chapter 34.05 RCW applies to department actions under this chapter and chapter 70.128 RCW, except that orders of the department imposing license suspension, stop placement, or conditions on license are effective immediately upon notice and must continue pending a final administrative decision.

(2) A provider contesting any decision by the department to impose a remedy must within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the board of appeals at the mailing address contained in WAC 388-02-0030; and

(b) Include in or with the application:

(i) The reasons for contesting the department decision; and

(ii) A copy of the contested department decision.

(3) Administrative proceedings are governed by chapter 34.05 RCW, RCW 43.20A.215, where applicable, this section, and chapter 388-02 WAC. If any provision in this section conflicts with chapter 388-02 WAC, the provision in this section governs.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-535	Authority.
WAC 388-76-540	Definitions.
WAC 388-76-545	License required.
WAC 388-76-550	License application.
WAC 388-76-555	License fees.
WAC 388-76-560	License eligibility.
WAC 388-76-565	Resident manager and live-in requirements.
WAC 388-76-570	Additional license requirements—Multiple facility providers.
WAC 388-76-575	Licensing of state employees.
WAC 388-76-580	License capacity.
WAC 388-76-585	Change of provider or provider address.
WAC 388-76-590	Specialty adult family homes.
WAC 388-76-59000	What authority does the department have to adopt rules related to specialty homes?



WAC 388-76-59010	What types of specialty adult family home designations are there?	WAC 388-76-60070	What are some of the other resident rights that must be considered?
WAC 388-76-59050	What is required in order to obtain the specialty designation?	WAC 388-76-605	Restraints.
WAC 388-76-59060	Are adult family home providers required to obtain more than one specialty designation if an individual resident has more than one specialty need?	WAC 388-76-610	Resident assessment.
WAC 388-76-59070	Are adult family home providers required to obtain more than one specialty designation if they serve two or more residents with different specialty needs?	WAC 388-76-61000	Is an assessment needed before a person can be admitted to an adult family home?
WAC 388-76-59080	When will providers be required to become specialty adult family homes in order to serve persons with mental illness or dementia?	WAC 388-76-61010	Under what circumstances can a provider admit or continue services for a person?
WAC 388-76-59090	When will providers be required to become specialty adult family homes in order to serve persons with developmental disabilities?	WAC 388-76-61020	What must be included in the resident assessment?
WAC 388-76-595	Inspections and ombudsman visits.	WAC 388-76-61030	How does the preliminary service plan fit within the resident assessment?
WAC 388-76-600	General resident rights.	WAC 388-76-61040	Is the use of an approved form required for the assessment?
WAC 388-76-60000	What are resident rights?	WAC 388-76-61050	Who can do the assessment?
WAC 388-76-60010	Why do providers need to know resident rights?	WAC 388-76-61060	In emergency situations, can a provider admit a resident without an assessment?
WAC 388-76-60020	Is the provider required to supply information to potential residents and current residents, or the resident's representative?	WAC 388-76-61070	Does the assessment have to be updated?
WAC 388-76-60030	When must this information be supplied?	WAC 388-76-61080	Who is qualified to update the assessment?
WAC 388-76-60040	Must the information be updated and supplied again in advance of changes?	WAC 388-76-615	Negotiated care plan.
WAC 388-76-60050	What information is the provider required to supply to potential residents and current residents?	WAC 388-76-61500	What is a negotiated care plan?
WAC 388-76-60060	Do residents have rights that are not listed here?	WAC 388-76-61510	When must the negotiated care plan be developed?
		WAC 388-76-61520	How does the negotiated care plan fit in with the assessment and preliminary service plan?
		WAC 388-76-61530	Who must be involved in the development of the negotiated care plan?
		WAC 388-76-61540	Who must sign the negotiated care plan?
		WAC 388-76-61550	How often must the negotiated care plan be reviewed and revised?
		WAC 388-76-61560	When does the department's case manager get a copy of the negotiated care plan?
		WAC 388-76-61570	How are payment rate changes authorized for residents receiving services paid

	for fully or partially by the department?	WAC 388-76-655	General management and administration.
WAC 388-76-620	Provision of services and care.	WAC 388-76-660	Training.
WAC 388-76-625	Nurse delegation—Training and registration.	WAC 388-76-665	Resident records.
WAC 388-76-630	Performance of delegated nursing care tasks.	WAC 388-76-670	Disaster and emergency preparedness.
WAC 388-76-635	Nurse delegation—Penalties.	WAC 388-76-675	Reporting requirements.
WAC 388-76-64010	What are the rules the provider must follow in all situations involving resident medications?	WAC 388-76-680	Infection control and communicable disease.
WAC 388-76-64015	What defines the type of help a resident may need when taking their medication?	WAC 388-76-685	Criminal history disclosure and background inquiries.
WAC 388-76-64020	What must the provider include in the negotiated care plan for residents who are independent with self-administration?	WAC 388-76-690	Advance directives, guardianship, and decision making.
WAC 388-76-64025	How do a resident and provider initiate self-administration with assistance?	WAC 388-76-695	Protection of resident funds—Liquidation or transfer.
WAC 388-76-64030	What must the provider monitor when implementing self-administration with assistance?	WAC 388-76-700	Resident relocation due to closure.
WAC 388-76-64035	What other situations must the provider monitor when self-administration with assistance occurs for a resident?	WAC 388-76-705	Remedies.
WAC 388-76-64040	What must the provider do when there is a need to alter medications during self-administration with assistance?	WAC 388-76-710	Notice, hearing rights, and effective dates relating to imposition of remedies.
WAC 388-76-64045	What other types of assistance can a nonpractitioner provide?	WAC 388-76-715	Dispute resolution.
WAC 388-76-64050	Who can fill medication organizers and what is required?	WAC 388-76-720	Common use areas.
WAC 388-76-64055	What documentation is the provider required to include in the resident's daily medication log?	WAC 388-76-725	Bedrooms.
WAC 388-76-645	Resident activities.	WAC 388-76-730	Toilets and bathing facilities.
WAC 388-76-650	Food services.	WAC 388-76-735	Kitchen facilities.
		WAC 388-76-740	Telephones.
		WAC 388-76-745	Storage.
		WAC 388-76-750	Laundry.
		WAC 388-76-755	Local ordinances.
		WAC 388-76-760	Site.
		WAC 388-76-76505	What physical structure requirements must the provider ensure that the home meets?
		WAC 388-76-76510	What are the resident emergency evacuation requirements that providers must address?
		WAC 388-76-76515	What fire safety and emergency requirements must the provider have in the home?
		WAC 388-76-76520	What is required of the provider for emergency evacuation drills?

WAC 388-76-770	Safety and maintenance.
WAC 388-76-775	Pets.
WAC 388-76-780	Lighting.
WAC 388-76-785	Temperature and ventilation.
WAC 388-76-790	Water supply.
WAC 388-76-795	Sewage and liquid wastes.

**WSR 07-22-055****PERMANENT RULES****EMPLOYMENT SECURITY DEPARTMENT**

[Filed November 1, 2007, 11:21 a.m., effective December 2, 2007]

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

Purpose: This filing is part of the department's ongoing efforts to review and revise its rules when necessary as required by Executive Order 97-02. The rules are rewritten in clear language to improve their understandability and accessibility. Rules are also updated to correct statutory references, to reflect current procedures, and to eliminate references to statutes or programs that have been repealed.

Citation of Existing Rules Affected by this Order: Repealing WAC 192-110-210, 192-150-065, 192-240-0101 and 192-240-035; and amending WAC 192-110-005, 192-110-010, 192-110-020, 192-110-050, 192-130-080, 192-140-100, 192-150-110, 192-150-150, 192-150-200, 192-150-215, 192-150-220, 192-180-005, 192-180-010, 192-180-015, 192-180-025, 192-210-005, 192-240-020, 192-240-025, 192-240-030, 192-240-040, 192-310-020, 192-310-055, 192-310-060, and 192-310-070.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Adopted under notice filed as WSR 07-14-157 on July 5, 2007.

Changes Other than Editing from Proposed to Adopted Version: The proposed amendment of WAC 192-310-010 is withdrawn.

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 24, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 24, Repealed 0.

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

Date Adopted: September 20, 2007.

Karen T. Lee  
Commissioner

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

**WAC 192-110-005 Applying for unemployment benefits—General. (1) How do I apply for benefits?**

(a) ~~((File your application))~~ You may apply for benefits by:

~~(i) ((placing a telephone e))~~ Calling ~~((to))~~ the unemployment claims telecenter listed in your local telephone directory; or

~~(ii) Using the department's internet website. However, you must apply by telephone if you worked in any state other than Washington during the previous two years, or you were off work for 13 or more consecutive weeks because of injury or illness.~~

~~(b) ((In situations involving individuals with))~~ If you have a physical or sensory disability~~((ies)), or are in unusual circumstances~~ that makes filing by telephone or internet difficult, ~~((or in other unusual circumstances,))~~ the commissioner ~~((can))~~ may authorize other methods ~~((for filing an application))~~ of applying for benefits.

**(2) When can I apply?**

~~(a)~~ You may apply by telephone at any time between the hours of 8:00 a.m. and 5:00 p.m. (Pacific Time) Monday through Friday (excluding state holidays), even if you are working. To control workload, the department may assign certain days of the week on which you may file your claim by telephone.

~~(b)~~ You may apply on the internet at any time.

**(3) When is my claim effective?** Your claim is effective on the Sunday of the week in which you file ~~((your claim))~~ it.

~~((3))~~ **(4) What information am I required to provide?** The minimum information needed to process your application is your:

(a) ~~((Your))~~ Legal name; and

(b) ~~((Your s))~~ Social security account number.

You should also be prepared to provide the names, addresses, dates worked, and reasons for job separation for all of your employers during the past two years. Other information may be requested in individual circumstances.

~~((3))~~ **(5) Will I receive benefits immediately?** The first week you are eligible for benefits is your waiting week. You will not be paid for this week. However, you must file a claim for this week before we can pay you any benefits for future weeks ~~((can be paid to you))~~.

AMENDATORY SECTION (Amending WSR 99-15-069, filed 7/19/99, effective 8/19/99)

**WAC 192-110-010 Applications for benefits by interstate claimants. (1) What is an "interstate claimant"?** An "interstate claimant" is a person who files a claim for one state's unemployment benefits from another state. The state that pays your claim is called the "liable state." For example:

(a) You are an interstate claimant if you live in Oregon and file a claim from Oregon for benefits that will be paid by Washington.

(b) You are an interstate claimant if you live in Washington and file a claim in Washington for benefits that will be paid by Oregon.

(c) You are NOT an interstate claimant if you live in Oregon but file your claim for Washington benefits in Washington; this is because your claim was filed in the same state that will be paying your benefits.

(2) **Where can I apply for benefits?** You can ~~((file your application))~~ apply for benefits from any state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or Canada. However, if you served in the military or earned wages in more than one state during the past two years, you must physically be in the state of Washington to apply for benefits against Washington.

(3) **How do I apply for benefits?**

(a) ~~((Place a telephone e))~~ Call ~~((to))~~ the unemployment claims telecenter in Washington. ~~((You will be asked whether))~~ If you worked in any state other than Washington within the last two years ~~((This will))~~, an agent will help you decide which state will ~~((be))~~ pay ~~((ing))~~ your claim.

~~((a))~~ (i) If Washington will ~~((be))~~ pay ~~((ing))~~ your claim, we will take your application for benefits ~~((will be taken))~~ over the telephone;

~~((b))~~ (ii) If another state will ~~((be))~~ pay ~~((ing))~~ your claim, an agent will tell you ~~((will be told))~~ how to file your claim with that state.

(b) If you worked only in Washington during the previous two years, you may apply for benefits on the internet.

(4) **Who decides if I am eligible for benefits?** Every state has its own laws which control eligibility for benefits. If you file a claim for Washington benefits, your eligibility for benefits will be decided by Washington state law even if you file from another state. If you file for benefits against another state, your eligibility for benefits will be decided under that state's laws.

(5) **When can I apply for benefits?** You can apply for benefits at any time, even if you are working. However, if you already have a valid claim in one state, you must continue with that claim as long as benefits are available before you can establish a new claim against another state ~~((can be established))~~. A "valid" claim is one that has not been denied, terminated, or the benefits exhausted (paid out).

(6) **How do I file an appeal?** If you wish to file an appeal about your claim, ~~((do so by filing))~~ you must file it directly with the state that is paying your claim (liable state):

(a) If Washington is paying your claim, use one of the filing methods listed in WAC 192-04-060. If mailed, your appeal will be considered filed on the postmarked date.

(b) If another state is paying your claim, mail your appeal directly to that state.

All appeal hearings will be conducted by the liable state ~~((by telephone))~~. The liable state will notify you of the date, time, and telephone number or location of the hearing.

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

**WAC 192-110-020 How will the department verify my identity?** When you ~~((file your application))~~ apply for benefits, we will ask you questions based on information in our records, such as your work history.

(1) If we ~~((are able to))~~ can verify your identity with these questions, we will file your application for benefits ~~((will be filed))~~.

(2) If we ~~((are))~~ cannot ~~((able to))~~ verify your identity through questioning, we will send you a verification ~~((request))~~ form:

(a) If you complete and return the verification form ~~((is completed, returned))~~ to the department, and it provides satisfactory evidence of your identity, your claim will be effective based on the date of your first telephone call;

(b) If you do not complete or return the verification form ~~((is not completed and returned))~~, or it does not satisfy the department of your identity, we will deny your benefits ~~((will be denied))~~.

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

**WAC 192-110-050 How do I reopen my claim?** (1) If you do not file a claim for one or more weeks, you must reopen your claim.

(a) If it has been fewer than four weeks since you last claimed, you must reopen your claim by ~~((placing a telephone))~~ calling ~~((to))~~ the unemployment claims telecenter and asking an agent to ~~((have))~~ reopen your claim ~~((reopened))~~.

(b) If you have not claimed benefits for four or more weeks, you may reopen your claim on the internet. However, you must do so before the last working day of the week (which is usually Friday). Otherwise you must call the unemployment claims telecenter and speak to an agent to reopen your claim.

(2) Your claim will be reopened effective on Sunday of the week in which you contact the department. ~~((B))~~ You cannot receive benefits ~~((will be denied))~~ for any prior weeks ~~((preceding the week in which you reopened your claim,))~~ unless you can show good cause for not reopening your claim earlier.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-130-080 Procedure—Separation issues.**

(1) ~~((N))~~ The department will not make a decision on a separation issue (RCW 50.20.050 ~~((, 50.20.060,))~~ or 50.20.066) ~~((will be issued))~~ until both ~~((parties to the separation))~~ the employer and the claimant have had an opportunity to present information and rebuttal, if necessary and appropriate, ~~((on the matters at issue))~~ about the separation.

(2) If an employer does not respond ~~((within ten days))~~ to the notice within ten days as required by WAC 192-130-060, the department may make a decision at that time based on available information.

(3) If the employer mails separation information to the unemployment claims telecenter identified on the notice ~~((department receives information from the employer))~~ after the end of the ten day response period, but before the decision has been made, ~~((the))~~ the department will consider that information ~~((provided by the employer will be considered))~~ before making ~~((the))~~ a decision ~~((if the information was~~

mailed to the unemployment claims telecenter identified on the notice).

(4) If the ~~((department receives))~~ Employer submits separation information ~~((from the employer after the end of the ten-day period and))~~ to the department within thirty days ~~((following the mailing of))~~ after a decision has been mailed, the department will consider that information for the purposes of a redetermination under RCW 50.20.160 or as an appeal of the decision.

(5) Any information received within thirty days of the mailing of the notice required by WAC 192-130-060 will be considered a request for relief of benefit charges under RCW ~~((50.29.020 or))~~ 50.29.021.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-140-100 What happens if I do not respond to a request for information ~~((regarding))~~ about a discharge from work?** (1) If you do not respond to a request for information ~~((regarding))~~ about a discharge from work and have not ~~((provided sufficient))~~ given the department enough information to identify or contact the employer, the department will presume ~~((you were))~~ the employer discharged you for misconduct connected with the work. ~~((For claims with an effective date prior to January 4, 2004, benefits will be denied under RCW 50.20.060. For claims with an effective date of January 4, 2004, and later, b))~~ Benefits will be denied under RCW 50.20.066. If you have ~~((provided))~~ given the department ~~((with sufficient))~~ enough information to contact the employer, benefits will not be denied unless the employer ~~((establishes))~~ shows by a preponderance of evidence that you were discharged for misconduct connected with your work.

(2) This denial is for an indefinite period of time and will continue until you meet the requalification provisions of RCW ~~((50.20.060 or))~~ 50.20.066 ~~((, as applicable))~~.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-150-110 Mandatory military transfers—RCW 50.20.050 (2)(b)(iii).** (1) Any military transfer ~~((will be))~~ is considered mandatory if your spouse receives orders from the military to relocate to a new duty station, regardless of whether the transfer is temporary or permanent.

(2) You may ~~((establish))~~ show good cause to quit work if you relocate for your spouse's employment that was due to a mandatory military transfer if:

(a) Your spouse's new duty station is outside your existing labor market. ~~((and))~~ For claims with an effective date prior to July 2, 2006, the new duty station must be in Washington or another state (including the District of Columbia, Puerto Rico, and the U.S. Virgin Islands) that allows benefits to individuals who quit work to accompany their military spouse; and

(b) You continued ~~((in))~~ to work for your previous employer ~~((ment))~~ for as long as was reasonable prior to the move.

(3) For purposes of this section, the term "military" includes the following: U.S. Navy, U.S. Army, U.S. Air

Force, U.S. Marine Corps, U.S. Coast Guard, activated reserve members of any of these service branches, activated members of the National Guard, commissioned officers of the National Oceanographic and Atmospheric Administration, and commissioned officers of the regular or reserve corps of the U.S. Public Health Service.

~~((4))~~ ~~((The department will maintain a list of states that allow unemployment benefits to an individual who quits to accompany a military spouse. This list will be updated at least annually.~~

~~((5))~~ Good cause for quitting work is not established under this section if:

(a) You quit work to return to your home of record or to another location rather than accompanying your spouse to a new duty location; or

(b) Your spouse leaves military service and you elect to relocate to your home of record or elsewhere.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-150-150 When is a separation considered a refusal of new work?** (1) Section 3304 (a)(5) of the Federal Unemployment Tax Act and RCW 50.20.110 ~~((prohibit the denial of))~~ state that you cannot be denied benefits ~~((to individuals who))~~ if you refuse to accept new work when the wages, hours, or other working conditions ~~((of work))~~ are substantially less favorable ~~((to the individual))~~ than those prevailing for similar work in ~~((the locality))~~ your local labor market.

(2) For purposes of this chapter, "new work" includes an offer by your present employer of:

(a) Different duties than those you agreed to perform in your current employment contract or agreement; or

(b) Different terms or conditions of employment from those in the existing contract or agreement.

(3) When your employer changes your pay, hours, or conditions of work in a manner that does not constitute good cause under RCW 50.20.050(2), the department will ~~((determine whether))~~ decide if the change ~~((constitutes))~~ is an offer of new work. If it ~~((does))~~ is, the department will also ~~((determine))~~ decide if the new work is substantially less favorable than similar work in your local labor market ~~((area))~~.

(a) If the department ~~((determines))~~ decides the change constitutes an offer of new work, and the new work is substantially less favorable, the department will treat the separation ~~((will be treated))~~ as a layoff due to lack of work and adjudicate the issue of the refusal of new work ~~((adjudicated))~~ under RCW 50.20.080.

(i) The department will adjudicate the refusal of new work ~~((will be adjudicated))~~ even if you have not claimed benefits for the week in which ~~((the refusal occurred))~~ you refused the new work; and

(ii) The employer offering the new work is an interested party to the work refusal decision.

(b) If the department ~~((determines))~~ decides the change ~~((does))~~ is not ~~((constitute))~~ an offer of new work, or the new work is not substantially less favorable, it will adjudicate the separation from work ~~((will be adjudicated))~~ as a voluntary

quit under RCW 50.20.050(2) or a discharge under RCW 50.04.294, as appropriate.

(4) If the ~~((reduction in))~~ employer reduces your pay or hours ~~((is))~~ by ten percent or less, the department will presume that it is not substantially less favorable and adjudicate the separation under RCW 50.20.050(2) or a discharge under RCW 50.04.294, as appropriate. You can overcome this presumption by providing additional information to the department ~~((to support a finding))~~ that shows the job was not suitable as provided in RCW 50.20.110.

(5) If you continue working for your employer after being notified of the change(s) in working conditions, the department will consider that you have agreed to the new terms and conditions of employment and have accepted the offer of new work. If you ~~((subsequently))~~ later quit work because of these changes, the department will consider that you have voluntarily left work for personal reasons. This provision does not apply when you give notice of your intent to quit work upon being notified of the change(s) in working conditions and simply continue to work during an agreed upon notice period. In addition, you may continue working during an employer-provided grievance or arbitration period in response to the change in working conditions without the department considering that you have accepted the new work.

(6) For purposes of this section, the following definitions apply:

(a) "Conditions of work" includes fringe benefits such as life and health insurance; paid sick, vacation, and annual leave; provisions for leaves of absence and holiday leave; pensions, annuities and retirement provisions; and severance pay. It also includes job security and reemployment rights; training and promotion policies; wage guarantees; unionization; grievance procedures; work rules, including health and safety rules; medical and welfare programs; physical conditions such as heat, light and ventilation; shifts of employment; and permanency of work.

(b) "Prevailing" means the most typical or customary in a particular occupation for a given area. ~~((Whether))~~ The department will decide if a wage rate is prevailing for your labor market area ~~((will be determined))~~ based on information provided by ~~((the department's))~~ its labor market and economic analysis branch.

(c) "Similar work" means similarity of the operations performed, the skill, ability and knowledge required, and the responsibilities involved.

(d) "Substantially less favorable" means the work is materially reduced below the standard under which the majority of individuals in your occupation and labor market area customarily work, or the work would have a significantly unfavorable impact on you.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-150-200 General provisions—Misconduct and gross misconduct—RCW 50.04.294 and 50.20.066.**

(1) The action or behavior that resulted in your discharge or suspension from employment must be connected with your work to constitute misconduct or gross misconduct.

(2) ~~((Must))~~ For purposes of this section, the action or behavior ~~((is))~~ is connected with your work if it results in harm or creates the potential for harm to your employer's interests. This harm may be tangible, such as damage to equipment or property, or intangible, such as damage to your employer's reputation or a negative impact on staff morale.

(3) RCW 50.04.294, subsections (1)(c) and (3)(b), will be distinguished as follows:

(a) Subsection (1)(c) "Carelessness or negligence that causes or would likely cause serious bodily harm to your employer or fellow employee" means that your action results in serious bodily injury or a reasonably prudent person would know it is likely to result in serious bodily injury.

(b) Subsection (3)(b) "Inadvertence or ordinary negligence in isolated instances" means that your action is an accident or mistake and is not likely to result in serious bodily injury.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-150-215 Discharges for ~~((felony or gross misdemeanor or for))~~ gross misconduct—Responsibility for providing information.** In any job separation where there is a potential disqualification under RCW ~~((50.20.065 or))~~ 50.20.066(3), the employer is responsible for notifying the department in a timely manner ~~((of any resolution of issues))~~ when the issue is resolved.

If an employer notifies the department of a potential disqualification under RCW ~~((50.20.065 or))~~ 50.20.066(3) within ten days of receiving the notice required by WAC 192-130-060, the department will review the claimant's eligibility for benefits.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-150-220 Discharges for gross misconduct—Definitions—Canceling wage credits ~~((or for felony or gross misdemeanor))~~.** (1) ~~((Effective dates. The provisions of RCW 50.20.065 will apply to claims with an effective date prior to January 4, 2004. The provisions of RCW 50.20.066 will apply to claims with an effective date of January 4, 2004, and thereafter.~~

~~((2))~~ **Definitions.**

(a) "Criminal act" means every action defined as a crime by the applicable state or federal statutes, including felonies and gross misdemeanors.

(b) "Felony" means every crime that is defined as such by the applicable state or federal statutes.

(c) "Gross misdemeanor" means every crime which is defined as such by the applicable state or federal statutes.

(d) A "competent authority" is:

(i) A court (including magistrate or court commissioner), prosecuting attorney, or law enforcement agency; or

(ii) An administrative law judge; or

(iii) A regulatory agency or professional association charged by law with maintaining professional standards or codes of conduct; or

(iv) Any other person or body, other than your employer, with authority to administer disciplinary action against you.

(e) An admission to your employer or to an employee of the department that you have committed a criminal act is not considered an admission to a competent authority for the purposes of RCW ((50.20.065 and) 50.20.066.

~~((3))~~ **(2) Canceling wage credits.**

(a) ~~((For claims with an effective date prior to January 4, 2004: If you have been discharged because of a felony or gross misdemeanor connected with your work of which you have been convicted or have admitted committing, all your hourly wage credits based on that employment since the beginning of your base period will be canceled.~~

~~(b) For claims with an effective date of January 4, 2004, and later:))~~ If you have been discharged for gross misconduct connected with your work:

(i) The department will cancel all your hourly wage credits based on that employment since the beginning of your base period ~~((will be canceled))~~;

(ii) If your wage credits with this employer are fewer than 680 hours, the balance of wage credits up to 680 hours will be canceled proportionately among your base period employers according to each employer's share of your base period wages. Wages from each employer will be removed from the most recent quarter in which wages were reported.

~~((e))~~ (b) Wage credits may only be canceled based upon an admission of a criminal act if:

(i) You admit to each and every element of a criminal act which caused you to be discharged; and

(ii) The admission is made to a competent authority.

**AMENDATORY SECTION** (Amending WSR 99-13-002, filed 6/3/99, effective 7/4/99)

**WAC 192-180-005 Registration for work—RCW 50.20.010(1) and 50.20.230.** (1) **Am I required to register for work?** You must register for work unless you are:

(a) Attached to an employer, meaning you are:

~~(i) ((p))~~ (i) Partially unemployed as defined in WAC 192-180-013(1); ~~((or o))~~

(ii) On standby as defined by WAC 192-110-015((z));

(iii) Unemployed because you are on strike or locked out from the worksite as provided in RCW 50.20.090(2); or

~~((Title))~~ (iv) ((p)) Participating in the shared work program under Chapter 50.60 RCW;

(b) A member of a ~~((full-referral))~~ referral union that participates in the referral union program (see WAC 192-210-110);

(c) Participating in a training program approved by the commissioner; or

(d) The subject of an antiharassment order. This includes any court-issued order providing for your protection, such as restraining orders, no contact orders, domestic violence protective orders, and similar documents.

**(2) How soon do I have to register?**

(a) If you live within the state of Washington, the department will register you automatically based on information contained in your application for benefits. In unusual circumstances where you are not automatically registered, you must register within one week of the date on which you are notified by the department of the requirement to register for work.

(b) If you live in another state, you must register for work within one week of the date your first payment is issued on your new or reopened claim.

**(3) Where do I register for work?** You will be registered for work with your local ~~((employment center))~~ WorkSource office. However, if you live in another state, you must register for work with the equivalent public employment agency in that state.

**(4) What is the penalty if I do not register for work?** You will not be eligible for benefits for any week in which you are not registered for work as required by this section.

**AMENDATORY SECTION** (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-180-010 Job search requirements—Directives—RCW 50.20.010 (1)(c) and 50.20.240.** (1) **Do I have to look for work?** You must be actively seeking work unless you are:

(a) Attached to an employer; or

(b) Participating in a training program approved by the commissioner~~((z or~~

~~((e) Unemployed due to strike or lockout as provided in RCW 50.20.090(2)))~~.

**(2) When should I start my job search?** You must look for work every week that you file a claim for benefits, unless you are exempt under subsection (1).

**(3) What are my weekly job search requirements?**

(a) At a minimum, you must:

(i) Make job search contacts with at least three employers each week; or

~~((ii) ((If your claim is effective prior to January 4, 2004, participate in an approved in-person job search activity at the WorkSource office or local employment center; or~~

~~((iii) If your claim is effective January 4, 2004 or later, p))~~ Participate in three approved in-person job search activities at the WorkSource office or local employment center, or any combination of employer contacts or in-person job search activities for a total of three.

(b) Based on your individual circumstances, such as your occupation, experience, or labor market area, the department may issue you a directive requiring more than three employer contacts or job search activities each week.

(c) If you are a member of a ~~((full))~~ referral union you must be ~~((in good standing))~~ registered with your union, eligible for and actively seeking dispatch, and comply with your union's dispatch or referral requirements ~~((see WAC 192-210-120))~~. Your benefits may be denied for any weeks in which you fail to meet these requirements and you may be directed to seek work outside of your union.

**(4) What is a "job search contact"?** A job search contact is a contact with an employer to inquire about or apply for a job. You may use job search methods that are customary for your occupation and labor market area, including in-person, telephone, internet, or telefax contacts. The work applied for must be suitable (see RCW 50.20.100) unless you choose to look for work in a lower skill area. A contact does not count if it is made with an employer whom you know is not hiring, or if the department ~~((determines))~~ decides the contact

is designed in whole or in part to avoid meeting the job search requirements.

(5) **What is an "in-person job search activity"?** This is an activity provided through the WorkSource office or local employment center that will assist you in your reemployment efforts. It includes, but is not limited to, job search workshops, training classes, or other facilitated services provided by WorkSource staff and approved by the local WorkSource administrator. For claimants residing in Washington State, an in-person job search activity must be documented in the department's services, knowledge and information exchange system (SKIES) to qualify. For interstate claimants, the activity must be documented in the one-stop system in the state in which you reside.

(6) **What is a directive?** A directive is a written notice from the department telling you that specific methods of job search are required in order to meet the job search requirements. A written directive need not have been issued to deny benefits for failure to meet the job search requirements in subsection (3).

(7) **When is a directive issued?** The department can issue a directive to clarify or to increase the job search requirements you must meet. Examples include, but are not limited to, cases in which you need to:

- (a) Increase the number of employer contacts each week;
- (b) Change your method of ~~((seeking))~~ looking for work (such as from resumes to in-person contacts);
- (c) Expand the geographic area in which you ~~((job search is conducted))~~ look for work; or
- (d) ~~((Seek))~~ Look for work in a secondary occupation.

(8) **When is the directive effective?** The directive is effective when it is given in writing by the department. It stays in effect until a new written directive is given, or it is rescinded in writing.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-180-015 Tracking job search activities—RCW 50.20.240.** (1) **Do I need to keep track of my job search activities?** You must keep a record or log of your job search contacts and the in-person job search activities you receive through the WorkSource office or local employment center unless you are:

- (a) A member of a full referral union;
- (b) Allowed benefits because you left work to protect yourself or a member of your immediate family from domestic violence or stalking as provided in RCW 50.20.050 ~~((1)(b)(iv) or))~~ (2)(b)(iv); or
- (c) Exempt from job search requirements under WAC 192-180-010(1).

(2) **What information do I need to keep in the log?** Your job search log must contain at least the following information:

- (a) For job search contacts, record the date contact was made; the employer's name, address and telephone number; the type of contact (in-person, telephone, etc.); the name of the person you contacted; and the type of work you applied for ~~((and the results of your contact))~~;

(b) For in-person job search activities at the WorkSource office or local reemployment center, record the date contact was made; and a description of the services you received or the activities in which you participated ~~((and the results of your contact))~~.

(3) **Is there a specific form I must use?** The department will supply you with a form (EMS 10313) to use in tracking your job search activities. You may use your own form or tracking method as long as you record all information required by this ~~((sub))~~ section ~~((is recorded))~~.

(4) **How long should I keep my log?** Keep your log for at least sixty days after the end of your benefit year or thirty days after receiving your final payment on any extension of benefits, whichever is later.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-180-025 Job search review interviews.** (1) **What is a job search review (JSR) interview?** The JSR is an interview between you and a representative of the WorkSource office or local employment center. Its purpose is to review your job search documentation, identify any barriers to your reemployment, develop a plan for resolving barriers that may be identified, and provide advice on how to improve your job search efforts. For interstate claimants, this interview may be conducted by telephone or by the local employment center in a contracted state.

(2) **Will my job search activities be reviewed?** Yes, you must bring your job search log to the interview. The interviewer will review your log with you and discuss areas in which your job search can be improved. The employer contacts and job search activities included in your log will be verified at random. The interviewer may further verify any reported contacts at his or her discretion.

(3) **How many weeks will be reviewed?**

(a) The interviewer will review at least one week of your job search documentation. If the job search documentation is unsatisfactory, or you fail to appear for the JSR interview without being excused, you will be scheduled for a second interview in which all weeks claimed will be reviewed.

(b) If you are excused from attending the initial JSR interview, you will be rescheduled for a review of one week of your job search documentation.

~~((e))~~ (4) **When may I be excused from attending the initial JSR?** You may be excused from attending the initial JSR interview ~~((as scheduled))~~ only for the following reasons:

- ~~((f))~~ (a) Jury duty;
- ~~((g))~~ (b) National Guard duty;
- ~~((h))~~ (c) Natural disaster or acts of nature; or
- ~~((i))~~ (d) Verifiable employment or a job interview.

~~((j))~~ (5) **What does "all weeks" mean?** For purposes of this section, "all weeks" means the latest of the following:

- ~~((k))~~ (i) Weeks claimed since January 4, 2004;
- ~~((l))~~ (a) Weeks claimed since you filed your application for benefits; or
- ~~((m))~~ (b) Weeks claimed since your last JSR interview, if applicable.



~~((4))~~ **(6) Do I need to bring anything else to the JSR interview?** You must be prepared to present proof of your identity during the JSR interview. This includes:

- (a) State or government issued photo identification; or
- (b) Two of the following government-issued documents:
  - (i) Voter's registration card;
  - (ii) U.S. military identification card or draft record;
  - (iii) Military dependent's identification card;
  - (iv) U.S. Coast Guard merchant mariner card;
  - (v) Native American tribal document;
  - (vi) U.S. social security card;
  - (vii) Certification of birth abroad issued by the U.S. Department of State;
  - (viii) Original or certified copy of a birth certificate;
  - (ix) U.S. citizen ID card;
  - (x) ID card for use of resident citizen in the United States; or
  - (xi) Unexpired employment authorization document issued by the United States citizenship and immigration services (~~((formerly the Immigration and Naturalization Service)))~~ (USCIS).

**AMENDATORY SECTION** (Amending WSR 02-19-009, filed 9/5/02, effective 10/6/02)

**WAC 192-210-005 Definitions—Educational employees.** (1) **Contract.** An agreement that is binding on an educational institution to provide work and on an individual to perform services.

(2) **Faculty.** A teacher, counselor, librarian, or other position with similar training, experience and level of responsibility.

(3) **Full-time employment.** Employment designated as full time for or at the educational institution under a collective bargaining agreement, individual hiring contract, or other agreement (including institutional policies), as provided in RCW 50.04.310(2). For faculty at public institutions, the hiring contract, agreement or institutional policy must be consistent with the provisions of RCW 28A.~~((450-220))~~ **405.210** (kindergarten through twelfth grade), RCW 28B.50.851 (community and technical colleges), RCW 28B.35.120 (regional universities), or RCW 28B.20.130 (other colleges and universities).

(4) **Under the same terms and conditions of employment.** This includes economic conditions of employment such as wages, duration of contract, hours of work, and general nature of the work. It does not include other conditions and details such as the specific work location, duties, or assignment. The position need not be identical to the previous position to meet this test. A position would be considered to be under the same terms and conditions of employment if it is of similar type or classification, with similar pay, fringe benefits, hours of work, general type of work, and duration of employment.

**AMENDATORY SECTION** (Amending WSR 03-06-038, filed 2/26/03, effective 3/29/03)

**WAC 192-240-020 Suitable work provisions—(~~Reg-ular shareable and e~~)Extended benefits—RCW 50.22.020 (3) and (4).** (1) An individual receiving benefits

must be available for suitable work. Except as provided in subsection (2), any job is considered suitable (~~((for an individual))~~) **if you are** receiving (~~((regular shareable or))~~) extended benefits unless:

- (a) It is not within your capabilities;
- (b) The position is vacant because of a labor dispute, working conditions are substantially less favorable than similar work in the area, or you would be required to join or resign from a union or labor organization (see RCW 50.20-110);
- (c) The gross weekly pay is less than your weekly benefit amount, plus any supplemental unemployment benefits you receive from your former employer; or
- (d) The job pays less than the higher of the federal or state minimum wage.

(2) If you can (~~((demonstrate))~~) **show** that you have good prospects of returning to work in your customary occupation within a reasonably short period of time, suitable work is considered to be work in keeping with your prior work experience, education, or training. "Good prospects for work" means you have:

- (a) A definite recall or hire date within four weeks; or
- (b) A probable recall or hire date within four weeks, based on an extremely favorable position on a union out-of-work list, seasonal factors, or historical experience.

**AMENDATORY SECTION** (Amending WSR 03-06-038, filed 2/26/03, effective 3/29/03)

**WAC 192-240-025 Failure to apply for or accept suitable work—RCW 50.22.020 (4)(b)—(~~Reg-ular shareable and e~~)Extended benefits.** (1) You will be denied (~~((regular shareable or))~~) extended benefits if you fail:

- (a) To accept any offer of suitable work as defined in WAC 192-240-020; or
  - (b) To accept a referral, or to apply for suitable work, when referred by your local employment center, if the job was:
    - (i) Offered to you in writing, or
    - (ii) Listed with the department.
- (2) The denial is for the week in which the refusal occurs and until you work in four weeks and earn four times your weekly benefit amount.

**AMENDATORY SECTION** (Amending WSR 03-06-038, filed 2/26/03, effective 3/29/03)

**WAC 192-240-030 Job search requirements to receive (~~regular shareable or~~) extended benefits—RCW 50.22.020(5).** (1) To be eligible for (~~((regular shareable or))~~) extended benefits, you must show evidence of a systematic and sustained effort to find work. Your efforts must be of a quality and frequency that clearly indicate you are making sincere efforts to immediately return to gainful employment.

(a) At a minimum, your efforts must include at least four job search contacts with employers during each week you claim benefits.

(b) If you are a **registered** member (~~((in good standing))~~) of a referral union, you must make three job search contacts each week in addition to contacting your union and complying with the union's requirements.

(i) Registration with another union local can constitute one job search contact if you are willing to travel or relocate to accept work in their jurisdiction.

(ii) You do not have to look for work that would jeopardize your union membership, but must look for other work you are capable of doing.

(iii) If you have been identified by the department as having good prospects of returning to work within four weeks because you have an extremely favorable position on the union out-of-work list, contact with your union each week (~~fulfills~~) meets the job search requirements of this section.

(2) Every week you file a claim for (~~regular shareable or~~) extended benefits, you must report your job search contacts to the department. For each job search contact you must report the date of the contact, the employer or union involved and its place of business, the method of contact, and the type of work sought (~~and the results of the contact~~).

(3) You must keep a record or log of your job search contacts which contains the information required by WAC 192-180-015.

(4) The department may review your job search activities at any time. You must provide the department with a copy of your job search log upon request. Employer contacts will be verified by the department as needed.

(5) The department will consider you to have met the job search requirements of this section and of RCW 50.22.020(5) for any week in which you participate in a training program that is approved by the commissioner.

(6) The job search requirements under this section and RCW 50.20.020(5) are waived for any week in which you are unable to conduct a job search because you are serving on jury duty. See RCW 50.20.117.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-240-040 Penalties.** (1) If you claim (~~regular shareable or~~) extended benefits during a week in which you failed to accept any offer of work, or failed to accept a referral or apply for any work as directed by the department:

(a) Benefits will be denied under RCW 50.20.080 if the work was suitable as defined by RCW 50.20.100 and 50.20.110, and you did not have good cause for failing to apply for or accept work;

(b) If benefits are denied as provided in subsection (1)(a), you will also be denied benefits as provided in RCW 50.22.020;

(c) Benefits will be denied under only RCW 50.22.020 if the work was suitable as provided in that statute and WAC 192-240-020, but did not meet the provisions of RCW 50.20.100 and 50.20.080.

(2) If you claim (~~regular shareable or~~) extended benefits during a week in which you failed to meet the job search requirements of WAC 192-240-030, benefits will be denied under RCW 50.22.020, except as provided in subsection (4).

(3) A denial of benefits under RCW 50.22.020 starts the week in which the failure occurs, and continues indefinitely until you show that:

(a) You have worked in at least four weeks; and

(b) You have earned at least four times your weekly benefit amount. The employment does not need to be covered by Title 50 RCW.

(4) If you fail to meet the job search requirements of WAC 192-240-030 because you are hospitalized for treatment of an emergency or life-threatening condition, benefits will be denied under RCW 50.20.010 (1)(c). The denial period is only for the week or weeks in which the hospitalization occurred.

AMENDATORY SECTION (Amending WSR 98-14-068, filed 6/30/98, effective 7/31/98)

**WAC 192-310-020 Tax payments by employers—RCW 50.24.010.** (1) Taxes (~~are payable quarterly~~) must be paid each quarter. Each quarterly payment must include the taxes (~~due~~) owed on all wages paid during that calendar quarter. Payments are due to the department by the last day of the month following the end of the calendar quarter for which (~~such~~) taxes (~~have accrued~~) are due. Payments made by mail are considered paid on the postmarked date. If the last day of the month falls on a Sunday or a legal holiday, the tax payment must be received or postmarked on the next (~~working~~) business day.

(2) Tax payments are due immediately when an employer (~~ceases~~) goes out of business or the account is closed by the department. Taxes not paid immediately are delinquent (~~but~~). However, interest will not (~~accrue~~) be added until the first day of the second month following the end of the calendar quarter for which (~~such~~) the taxes (~~have accrued~~) are owed.

AMENDATORY SECTION (Amending WSR 00-01-166, filed 12/21/99, effective 1/21/00)

**WAC 192-310-055 Employer records—Farm operator or farm labor contractor—RCW 50.12.070.** (~~The commissioner requires e~~) Every employer is required to keep true and accurate employment records (~~under chapter 50.12 RCW~~).

(1) Farm operators (~~or~~) and farm labor contractors must (~~comply with the rules set forth in~~) keep the records required under WAC 192-310-050.

(2) Farm operators who contract (~~ing~~) with a crew leader or a farm labor contractor must (~~make~~) keep (~~and preserve~~) original records containing the following information:

(a) The (~~inclusive~~) beginning and ending dates of the contract;

(b) The types of services performed;

(c) The number of persons performing such services;

(d) The name of the contractor or crew leader; and

(e) Evidence (~~of~~) the farm labor contractor (~~'s~~) is licensed as required (~~under~~) by chapter 19.30 RCW.

AMENDATORY SECTION (Amending WSR 99-20-129, filed 10/6/99, effective 11/6/99)

**WAC 192-310-060 Tips as wages.** (~~For the department to make timely and accurate employer liability determinations and unemployment insurance payments, t~~) "Tips as

wages" are those tips that an employee is required to report to the employer by federal law.

(1) The employer must report tips each quarter on an "as paid" basis. Tips are considered paid when the employee reports them to the employer for federal income tax purposes; or when they are distributed by the employer to the employee.

(2) ~~Tips (are not considered wages for benefit calculation purposes when)~~ will not be treated as wages when an individual's benefits are calculated if the individual did not report their value (has not been reported) to the employer.

AMENDATORY SECTION (Amending WSR 99-20-130, filed 10/6/99, effective 11/6/99)

**WAC 192-310-070 Value of meals, lodging and in-kind compensation—~~Payment by means other than cash—RCW 50.04.320.~~** ~~((Relates to compensation paid for personal services including commissions and bonuses and the cash value of all remuneration paid in any form other than cash.))~~

(1) ~~The employer should not report the value of meals (and) or lodging provided to an employee for the convenience of the employer ((i.e. provided by the employer, on the employer's premises, or as a condition of employment) is not considered reportable compensation,)~~ unless ~~((it comprises))~~ the value equals twenty-five percent(%) or more(%) of the employee's total pay (per) during a pay period. Meals or lodging provided on the employer's premises or as a condition of employment will be considered as provided for the convenience of the employer.

(2) Compensation for personal services paid in ~~(-)~~ kind ~~(-or)~~ ~~(in any (medium) form other than cash)~~ will be given its current prevailing market value. This value will be ((considered)) treated as wages in computing the unemployment insurance taxes that are due ((under unemployment insurance laws)). If ((any)) the value of an item is set by a hiring contract ((fixes the value of such items)), the ((value)) department will ((be considered)) treat the value set by the contract as the actual value.

**REPEALER**

The following sections of the Washington Administrative Code are hereby repealed:

- WAC 192-110-210 Claim cancellation.
- WAC 192-150-065 What constitutes an employer-initiated mandatory transfer under RCW 50.20.050 (1)(b)(iii)?
- WAC 192-240-010 Regular shareable benefits defined.
- WAC 192-240-035 How to qualify for regular shareable or extended benefits after leaving work for marital or domestic reasons—RCW 50.22.020(7).

**WSR 07-23-001  
PERMANENT RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 07-278—Filed November 7, 2007, 3:49 p.m., effective December 8, 2007]

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

Purpose: Currently, the Washington department of fish and wildlife is not getting a full accounting of commercial baitfish harvests. The department needs a full accounting in order to best manage the commercial baitfish resource.

Citation of Existing Rules Affected by this Order: Amending WAC 220-69-215 (Amending Order 04-210, filed 8/17/04, effective 9/17/04), 220-69-240 (Amending WSR 07-04-030, filed 1/29/07, effective 3/1/07), and 220-69-241 (Amending Order 04-210, filed 8/17/04, effective 9/17/04).

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 07-18-086 on September 5, 2007.

Changes Other than Editing from Proposed to Adopted Version: In WAC 220-69-240 (12)(a)(iii), (b)(iii), (c)(iii), and (d)(iii), deleted the venue sentence and replaced it with, "Submission of a report is not complete until the report arrives at the designated department location." In WAC 220-69-241 (5)(a), changed "for any financial benefit" to "for monetary consideration."

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: November 3, 2007.

Susan Yeager  
for Jerry Gutzwiller, Chair  
Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 07-04-030, filed 1/29/07, effective 3/1/07)

**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 appropriate state of Washington fish receiving ticket ~~((regarding))~~ for each and every purchase or receipt of such commodities.

Each delivery must be recorded on a separate fish receiving ticket. Failure to be licensed under this subsection is punishable under RCW 77.15.620.

(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))~~ for each and every purchase or receipt of such commodities. Failure to prepare a fish receiving ticket under this subsection is punishable under RCW 77.15.630.

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

~~((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.)~~

(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 as declared on the license application, shall be authorized to initiate and sign fish receiving tickets on behalf of his employer. The business ~~((or))~~ firm, and/or licensed wholesale fish dealer who the buyers are operating under shall be responsible for the accuracy and legibility of all such documents initiated in its name.

(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))~~ must 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.

(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))~~ must 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))~~ fishmeal, 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.

(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.

(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.

(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))~~ phone at 360-466-4345, extension 245, or ~~((facsimile))~~ by fax at 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))~~ phone at 1-360-796-4601, ((extension 800)) option 1, or ~~((facsimile))~~ by fax at 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))~~ plus the total number of pounds caught by gear type, the Marine Fish-Shellfish Management and Catch Reporting Area (Catch Area), and the 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.

(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))~~ phone at 360-466-4345, extension 245, or ((faesim-ile)) by fax at 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))~~ phone at 1-360-796-4601, ((extension 600)) option 1, or ((faesim-ile)) by fax at 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, the Marine Fish-Shellfish Management and Catch Reporting Area, and the species listed on each ticket. Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(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))~~ Point Whitney Shellfish Laboratory by ((faesimile 360-466-0515)) fax at 360-586-8408 or by ((telephone number)) phone at 1-866-859-8439 ((extension 500)), option 5, 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.

(12) Salmon and sturgeon:

(a) During any Puget Sound fishery opening that is designated ((by rule)) as "quick reporting required," per WAC 220-47-001:

(i) 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 (DRE) holder to fail to report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include dealer or DRE holder name and purchasing location, date of purchase, each fish ticket number, including alpha, used on the purchasing date, and the following catch data for each ((species purchased)) fish ticket used: Total number of days fished, gear, catch area, species, number, and total weight ((of fish)) for each species pur-

chased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, ((it is unlawful to fail to comply with the following reporting requirements:

(a)) Puget Sound reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be submitted via fax at 360-902-2949; via e-mail at [psfishtickets@dfw.wa.gov](mailto:psfishtickets@dfw.wa.gov); or via phone at 1-866-791-1279. In fisheries under Fraser Panel Control within Fraser Panel Area Waters (area defined under Art. XV, Annex II, Pacific Salmon Treaty 1985), other reporting requirements not listed in this subsection may be necessary under Subpart F of the International Fisheries Regulations, 50 CFR Ch. III §300.93.

(b) During any coastal troll fishery opening that is designated by rule as "quick reporting required":

(i) 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 (DRE) holder to fail to report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include dealer or DRE holder name and purchasing location, date of purchase, each fish ticket number, including alpha, used on the purchasing date, and the following catch data for each fish ticket used: Total number of days fished, gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, coastal troll reports must be ((reported)) submitted by 10:00 a.m. on the day after the purchase date ((by either:

(i)) Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax ((transmission to)) at 360-902-2949 ((ii)); via e-mail ((to [psfishtickets@dfw.wa.gov](mailto:psfishtickets@dfw.wa.gov))) at [troll-fishtickets@dfw.wa.gov](mailto:troll-fishtickets@dfw.wa.gov); or ((iii) Telephone to)) via phone at 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](mailto:trollfishtickets@dfw.wa.gov) or

(iii) Telephone to 1-866-791-1279))

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

(i) Fax transmission to)) fishery opening that is designated by rule as "quick reporting required":

(i) 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 (DRE) holder to fail to report all salmon offered for retail sale on the previous calendar day.

(ii) The report must include dealer or DRE holder name and purchasing location, date of purchase, each fish ticket number, including alpha, used on the purchasing date, and the following catch data for each fish ticket used: Gear, catch area, species, number, and total weight for each species pur-

chased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, Grays Harbor and Willapa Bay reports must be submitted by 10:00 a.m. on the day after the purchase date. Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-664-0689 ~~((+))~~; e-mail ~~((+))~~ at harborfishtickets@dfw.wa.gov; or ~~((+))~~ Telephone ~~((+))~~ phone at 1-866-791-1280.

(d) During any Columbia River ~~(reports must be reported by 10:00 a.m. on the day after the purchase date by either:~~

~~(i) Fax transmission to~~ fishery opening that is designated by rule as "quick reporting required":

(i) 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, or for a direct retail endorsement (DRE) holder to fail to report all salmon offered, for retail sale.

(ii) The report must include dealer or DRE holder name and purchasing location, date of purchase, each fish ticket number, including alpha, used on the purchasing date, and the following catch data for each fish ticket used: Gear, catch area, species, number, and total weight for each species purchased and all take home fish not purchased (wholesale dealer) or sold (DRE).

(iii) When quick reporting is required, Columbia River reports must be submitted within 5, 8, 12, or 24 hours of closure of the designated fishery. The time frame for submitting reports will be established by the department at the time of adoption of the quick reporting fishery. Adoption and communication of the quick reporting regulations for a given fishery will occur in conjunction with the adoption of said fishery through the Columbia River Compact. Submission of a report is not complete until the report arrives at the designated department location. Reports can be made via fax at 360-906-6776 or 360-906-6777 ~~((+))~~; via e-mail ~~((+))~~ at crfishtickets@dfw.wa.gov; or ~~((+))~~ Telephone ~~((+))~~ via phone at 1-866-791-1281.

(e) Faxing a copy of each fish receiving ticket used ~~((on the previous day))~~, within the previously indicated time frames specified per area, satisfies the reporting requirement.

(f) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(13)(a) 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 ~~((+))~~ at 360-902-2943, or by toll-free telephone ~~((+))~~ at 866-207-8223. ~~((Additionally:))~~

(b) 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:))~~

(c) 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."

(d) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

(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 220-69-215 When state of Washington fish receiving tickets are required.** (1) State of Washington fish receiving tickets are required for:

~~((+))~~ (a) Fresh fish and shellfish delivered in the state of Washington, including deliveries not purchased by a dealer, which shall be recorded as weigh-back or take-home fish or shellfish.

~~((+))~~ (b) Fresh fish and shellfish previously delivered in another state, territory or country, and transported into the state of Washington to an original receiver.

~~((+))~~ (c) Frozen fish or shellfish not previously delivered in another state, territory, or country, and transported into the state of Washington to an original receiver. Food fish and shellfish in this category are typically an at-sea processed product.

~~((+))~~ (d) Purchase of fish or shellfish from a fisher who is also a dealer, if the fisher/dealer has not previously completed a fish receiving ticket.

~~((+))~~ (e) Forage fish transferred at sea to another vessel.

(f) Forage fish caught for use as bait by the catching vessel and not transferred to another vessel or an original receiver.

(2) It is unlawful to fail to complete a fish receiving ticket when one is required.

Violation of this section is punishable under RCW 77.15.630.

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

**WAC 220-69-241 Duties of commercial fishers.** (1)(a) Every fisher selling food fish or shellfish to ~~((the))~~ a consumer, restaurant, boathouse, or other retail outlet, or donating fish or shellfish that have not been previously delivered to an original receiver to a nonprofit or other organization, and every fisher who places, or attempts to place, into inter-state commerce any food fish or shellfish previously landed in this state, or caught ~~((-))~~ or harvested from the territorial waters of

this state, is required to possess a valid wholesale dealer's license or a direct retail endorsement.

~~(b)~~ It is unlawful for such fishers to fail to immediately, completely, accurately, and legibly prepare the appropriate state of Washington fish receiving ticket in their own name for each delivery of fish. The fish receiving ticket must show the total of all fish and shellfish aboard the harvesting vessel upon delivery.

~~(c)~~ It is unlawful for a fisher selling at retail to fail to complete a fish receiving ticket before offering fish or shellfish for retail sale, except that the fisher may complete a fish receiving ticket with an estimated number or weight if food fish or shellfish are being offered for sale directly off the catcher vessel (~~(the fisher may complete the ticket with an estimated number or weight)~~). At the completion of the retail activity, the fisher who has completed a ticket with an estimated number or weight is required to complete a corrected fish receiving ticket with the actual number and weight of fish or shellfish that were sold at retail.

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

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

(2)~~(a)~~ It is unlawful for a fisher offering food fish or shellfish for retail sale to fail to maintain a sequentially numbered receipt book, which receipt book shall contain~~((s))~~ a receipt duplicate copy~~((s))~~ and ~~((must))~~ shall give each purchaser of salmon or crab a receipt showing the number, weight, and value of food fish or shellfish sold to that purchaser.

~~(b)~~ It is unlawful for the retail seller to fail to retain the duplicate receipts for one year.

~~(c)~~ Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(3)~~(a)~~ In the commercial geoduck fishery, it is unlawful for a vessel operator so designated by the geoduck tract holder to fail to be present at all times on each vessel commercially harvesting geoducks or having commercially harvested geoducks aboard.

~~(b)~~ For each day's harvest of geoducks from each tract, it is unlawful for the designated operator to fail to legibly and accurately enter the following information on a fish receiving ticket before leaving the department of natural resources geoduck harvest tract:

~~((a))~~ ~~(i)~~ Enter in the "dealer's use" column the number of cages of geoducks harvested.

~~((b))~~ ~~(ii)~~ Write across the top of the fish receiving ticket, directly below the tear strip, the harvest vessel name, its Washington department of fish and wildlife identification number, and the date.

~~((c))~~ ~~(iii)~~ Sign the fish receiving ticket as the fisher.

~~((d))~~ ~~(c)~~ Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.640.

(4)~~(a)~~ It shall be unlawful for operators of commercial fishing vessels catching their own forage fish for the purposes of using them as bait, to fail to accurately report such harvests on a state of Washington fish receiving ticket along with the target food fish or shellfish when such food fish or shellfish are delivered to an original receiver.

~~(b)~~ Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.560.

~~(5)~~~~(a)~~ It shall be unlawful for operators of commercial fishing vessels to allow, for monetary consideration, the distribution or transfer of forage fish from their nets or other holding devices under their control to anyone other than a licensed wholesale fish dealer, unless the operators of the commercial fishing vessels hold a wholesale fish dealers license. Fishermen who are also licensed wholesale fish dealers and who distribute or transfer forage fish to others for use as bait in other commercial fisheries will be responsible for completing a fish receiving ticket for such transfers.

~~(b)~~ Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.630.

### WSR 07-23-002

#### PERMANENT RULES

#### DEPARTMENT OF FISH AND WILDLIFE

[Order 07-279—Filed November 7, 2007, 4:26 p.m., effective December 8, 2007]

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

Purpose: The proposed changes will enable Washington's rules to match federal regulations. The changes also will facilitate marketplace tracking and quota accounting.

Citation of Existing Rules Affected by this Order: Amending WAC 220-69-230 (Amending WSR 07-04-030, filed 1/29/07, effective 3/1/07), 220-69-250 (Amending WSR 07-04-030, filed 1/29/07, effective 3/1/07), 220-44-020 (Amending Order 01-36, filed 3/13/01, effective 4/13/01), 220-44-030 (Amending Order 00-266, filed 12/29/00, effective 1/29/01), 220-44-035 (Amending Order 05-165, filed 8/3/05, effective 9/3/05), 220-44-040 (Amending Order 84-24, filed 3/27/84), 220-44-050 (Amending Order 03-31, filed 2/18/03, effective 3/21/03), 220-44-080 (Amending Order 00-124, filed 7/24/00, effective 8/24/00), and 220-44-090 (Amending Order 94-23, filed 5/19/94, effective 6/19/94).

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 07-18-077 on September 4, 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 1, Amended 0, Repealed 9.

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: November 3, 2007.

Susan Yeager  
for Jerry Gutzwiler, Chair  
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 01-36, filed 3/13/01, effective 4/13/01)

**WAC 220-44-020 Coastal baitfish gear.** It is unlawful to fish for or possess smelt, anchovies, candlefish, herring, or pilchard taken for commercial purposes from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, ~~((59A))~~ 59A-1, 59A-2, 59B, 60A-1, or ((60A)) 60A-2, except as provided for in this section.

(1)(a) It is unlawful to fish for or possess smelt taken for commercial purposes except by hand net gear not exceeding 72 inches maximum frame width. It is unlawful to take smelt for commercial purposes during weekly closed periods from 8:00 a.m. Friday to 8:00 a.m. Sunday.

(b) Licensing: A smelt dip bag net fishery license is the license required to operate the gear provided for in this section.

(c) Incidental catch: It is lawful to retain only anchovies and candlefish taken incidental to a lawful smelt fishery.

(2)(a) It is unlawful to fish for or possess candlefish or anchovies taken for commercial purposes with any gear except purse seine or lampara not exceeding 1,400 feet in length nor having mesh size less than 1/2 inch, or dip bag net not exceeding 72 inches maximum frame width.

(b) Licensing:

(i) A baitfish lampara fishery license is the license required to operate the lampara gear provided for in this section.

(ii) A baitfish purse seine fishery license is the license required to operate the purse seine gear provided for in this section.

(iii) A smelt dip bag net fishery license is the license required to operate the hand dip net gear provided for in this section.

(c) Incidental catch: It is lawful to retain only shad and pilchard taken incidental to a lawful anchovy or candlefish fishery. Pilchard may not exceed twenty-five percent of the weight of the landing. Any sturgeon must be released unharmed.

(3)(a) It is unlawful to fish for or possess herring or pilchard taken for commercial purposes except as authorized by permit issued by the director, except pilchard taken incidental to candlefish and anchovy.

(b) Licensing:

(i) An emerging commercial fishery license is the license required for a permittee to fish for or retain pilchard.

(ii) Herring dip bag net, herring drag seine, herring gill net, herring lampara, or herring purse seine are the licenses required for a permittee to fish for or to retain herring.

(4)(a) Violation of licensing requirements under this section is punishable pursuant to RCW 77.15.500.

(b) Violation of gear requirements under this section is punishable pursuant to RCW 77.15.520.

(c) Violation of catch requirements under this section is punishable pursuant to RCW 77.15.550.

AMENDATORY SECTION (Amending Order 00-266, filed 12/29/00, effective 1/29/01)

**WAC 220-44-030 Coastal bottomfish gear.** ~~(1)(a) It is unlawful to take, fish for, possess, transport through the waters of the state, or land in any Washington state ports, bottomfish taken for commercial purposes in ((Marine Fish-Shellfish Management and Catch Reporting Areas 59A, 59B, 60A-1 and 60A-2 and that portion of Area 58 within the United States 200-mile Fishery Conservation Zone with any gear except as provided in this section:~~

~~(4)) violation of gear requirements published in the Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G. This subpart provides requirements for commercial groundfish fishing in the Pacific Ocean. Additional regulations may be listed in the Federal Register, and these override the CFR if there are any inconsistencies. Prior to using coastal bottomfish gear, a person must consult both the Federal Register and the CFR. This chapter, chapter 220-44 WAC, adopts the federal regulations imposed by the CFR and the Federal Register, and it incorporates those regulations by reference. Where rules refer to the fishery management area, that area is extended to include Washington state waters coterminous with the Exclusive Economic Zone. A copy of the federal rules may be obtained by contacting Lori Preuss at 360-902-2930, or going on the internet at www.pcouncil.org. State regulations may apply that are more restrictive than federal regulations.~~

~~(b) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.520.~~

~~(2) Otter trawl and beam trawl.~~

~~(a) It is unlawful to use, operate, or carry aboard any fishing vessel otter trawl gear having meshes measuring less than 3 inches anywhere in the net.~~

~~(b) It is unlawful to use or operate any bottom roller or bobbin trawl having meshes less than 4.5 inches anywhere in the net. Rollers, bobbins, or discs used in roller or bobbin trawls must be a minimum of 14 inches in diameter.~~

~~(c) It is unlawful to use or operate a pelagic trawl with meshes less than 3.0 inches anywhere in the net. Footropes of pelagic trawls must be less than 1.75 inches in diameter, including twine necessary for seizing material. ((Sweep lines)) Sweep lines, including the bottom leg of the bridle, must be bare.~~

~~(d) ((For at least 20 feet immediately behind the footrope or headrope, bare rope or mesh of 16-inch minimum mesh size must)) It is unlawful to use or operate a pelagic trawl net unless bare rope or webbing with an individual mesh size no smaller than 16 inches completely encircles the net immediately behind the footrope or headrope for at least 20 feet. A band of mesh may encircle the net under transfer cables, or lifting or splitting straps (chokers), but the band must be: Over riblines and restraining straps; of the same mesh size, and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.~~

~~(e) It is unlawful to use or operate a trawl net that has chafing gear ((may encircle no)) encircling more than 50 percent of the circumference of any bottom, roller, bobbin, or pelagic trawl, except as specified in (d) of this subsection. No section of chafing gear may be longer than 50 meshes of the body of the net to which it is attached. Except at the corners,~~



the terminal end of each section of chafing gear must not be connected to the net. Chafing gear must be attached outside any ~~((riblines))~~ rib lines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

(f) It is unlawful to use double-wall ~~((codends))~~ cod ends in any trawl gear.

(g) Licensing: ~~((A food fish trawl—non-Puget Sound fishery license is the license required to operate the gear provided for in this section.))~~ A food fish trawl, non-Puget Sound fishery license is the license required to operate the gear provided for in this section. Additionally, a federal limited entry permit is required in Areas ~~((59A))~~ 59A-1, 59A-2, 59B, 60A-1, and 60A-2, and that portion of Area ~~((58))~~ 58B within the Exclusive Economic Zone.

(h) ~~((Area restriction: It is unlawful to use otter trawl or beam trawl gear in state territorial waters (0-3 miles) within Areas 58A, 58B, 59A, 59B, 60A-1 or 60A-2.~~

~~((2))~~ Violation of licensing requirements under this subsection is punishable pursuant to RCW 77.15.500.

~~((1))~~ Violation of gear requirements under this subsection is punishable pursuant to RCW 77.15.520.

~~((3))~~ Set lines.

(a) It is unlawful for the operator of set lines to leave such gear unattended, unless ~~((marked as provided in WAC 220-20-010(5)).~~ Set lines must be attended at least once every seven days. Set lines must be marked at the surface at each terminal end with a pole, flag, light, radar reflector, and a buoy displaying clear identification of the owner or operator ~~((the following requirements are met:~~

~~((i))~~ Gear must be marked with a buoy. The buoy must have affixed to it in a visible and legible manner a department-approved and registered buoy brand issued to the licensee. Set lines must also be marked at the surface at each terminal end with a pole and flag, light, and radar reflector.

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

~~((iii))~~ Set lines must be attended to no less than every seven days.

(b) Licensing: A food fish set line fishery license is the license required to operate the gear provided for in this section.

~~((c))~~ Violation of licensing requirements under this subsection is punishable pursuant to RCW 77.15.500.

~~((e))~~ Area restriction: It is unlawful to use set line gear in state territorial waters (0-3 miles) within Areas 59A, 59B, 60A-1 and 60A-2 and that portion of Area 58 within the Exclusive Economic Zone.

~~((3))~~ Bottomfish pots.

(a) It is unlawful for the operator of bottomfish pots to leave such gear unattended, unless ~~((marked as provided in WAC 220-20-010(5)).~~ Bottomfish pots must be attended at least once every seven days. Bottomfish pots set individually must be marked at the surface with a pole and a flag, light, or radar reflector, and a buoy displaying clear identification of the owner. Bottomfish pots laid on a groundline must be marked at the surface at each terminal end of the groundline with a pole and a flag, light, and radar reflector, and a buoy displaying clear identification of the owner or operator ~~((the following requirements are met:~~

~~((i))~~ Gear must be marked with a buoy. The buoy must have affixed to it, in a visible and legible manner, a department-approved and registered buoy brand issued to the licensee.

~~((ii))~~ Bottomfish pots laid on a ground line must be marked at the surface with a pole and a flag, light, and radar reflector at each terminal end.

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

~~((iv))~~ Bottomfish pots must be attended to no less than every seven days.

(b) Licensing: A bottomfish pot fishery license is the license required to operate the gear provided for in this section.

~~((c))~~ Violation of licensing requirements under this subsection is punishable pursuant to RCW 77.15.500.

~~((e))~~ Area restriction: It is unlawful to use bottomfish pots in state territorial waters (0-3 miles) within the catch areas provided for in this section.

~~((4))~~ Commercial jig gear.

(a) Licensing: A bottomfish jig fishery license is the license required to operate the gear provided for in this section.

~~((b))~~ Area restriction: It is unlawful to use commercial jig gear in state territorial waters (0-3 miles) within the catch areas provided for in this section.

~~((5))~~ Violation of licensing requirements under this subsection is punishable pursuant to RCW 77.15.500.

~~((6))~~ Troll lines.

(a) Licensing: A bottomfish troll fishery license is the license required to operate the gear provided for in this section.

~~((b))~~ Area restriction: It is unlawful to use bottomfish troll gear in state territorial waters (0-3 miles) within the catch areas provided for in this section.

~~((6))~~ Incidental catch.

~~((a))~~ It is lawful to retain bottomfish taken incidental to any lawful salmon fishery, up to a daily limit of 100 pounds or 30% of all fish on board, whichever is greater. No more than one trip per day provided the bottomfish could be lawfully taken.

~~((b))~~ It is unlawful to take salmon incidental to any lawful bottomfish fishery.

~~((c))~~ It is lawful to retain sturgeon taken incidental to any lawful bottomfish fishery, provided the sturgeon could be lawfully taken.

~~((d))~~ It is unlawful to retain any species of shellfish taken incidental to any lawful bottomfish fishery, except that it is lawful to retain octopus and squid. Violation of licensing requirements under this subsection is punishable pursuant to RCW 77.15.500.

AMENDATORY SECTION (Amending Order 05-165, filed 8/3/05, effective 9/3/05)

**WAC 220-44-035 Highly migratory species fisheries—Possession and landing requirements—Gear restriction.** (1) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, highly

migratory species taken (~~(from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 60A-1, 60A-2, 61, 62, or 63 in violation of any permit or data collection requirements, established by the Pacific Fishery Management Council and published in the *Federal Register*, Volume 70, No. 27, published February 10, 2005. Therefore, persons must consult the federal regulations, which are incorporated by reference and made a part of chapter 220-44 WAC. Where rules refer to the fishery management area, that area is extended to include Washington state waters coterminous with the Exclusive Economic Zone. A copy of the federal rules may be obtained by contacting Evan Jacoby at 360-902-2930. Except as authorized under the federal rules referenced in this section, it is unlawful to use drift gill net gear in state and offshore waters west of the Bonilla-Tatoosh line, north of the Washington-Oregon boundary, and south of the United States-Canada boundary))~~ in violation of any permit or data collection requirements as published in the Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G. These federal regulations provide the requirements for highly migratory species fisheries in the Pacific Ocean. There may be additional regulations listed in the Federal Register, and these override the regulations in the CFR if there are any inconsistencies between the two. Chapter 220-44 WAC incorporates the CFR by reference and is based, in part, on the CFR. Where rules refer to the fishery management area, that area is extended to include Washington state waters coterminous with the Exclusive Economic Zone. A copy of the federal rules may be obtained by contacting Lori Preuss at 360-902-2930, or the internet at [www.pcouncil.org](http://www.pcouncil.org). State regulations may apply that are more restrictive than federal regulations.

(2) Except as authorized under the federal rules referenced in this subsection, it is unlawful to use drift gill net gear in state and offshore waters west of the Bonilla-Tatoosh line, north of the Washington-Oregon boundary, and south of the United States-Canada boundary.

(3) Violation of reporting requirements under this section is punishable pursuant to RCW 77.15.280.

(4) Violation of gear requirements under this section is punishable pursuant to RCW 77.15.520.

AMENDATORY SECTION (Amending Order 84-24, filed 3/27/84)

**WAC 220-44-040 Coastal bottomfishing areas and seasons.** ~~((It is lawful to take, fish for, and possess for commercial purposes bottomfish in coastal waters taken with gear described in WAC 220-44-030 all year in Coastal Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A, 59B, and 60A, unless otherwise provided.))~~ (1)(a) It is unlawful to possess, transport through the waters of the state, or land in any Washington state port bottomfish in violation of any area or time closure or requirement as published in the Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G. These federal regulations provide the requirements for commercial groundfish fishing in the Pacific Ocean. There may be additional regulations listed in the Federal Register, and these override the regulations in the CFR if there are any inconsistencies between the two. Chapter 220-

44 WAC incorporates the CFR by reference and is based, in part, on the CFR. Where rules refer to the fishery management area, that area is extended to include Washington state waters coterminous with the Exclusive Economic Zone. A copy of the federal rules may be obtained by contacting Lori Preuss at 360-902-2930, or the internet at [www.pcouncil.org](http://www.pcouncil.org). State regulations may apply that are more restrictive than federal regulations.

(b) Violation of catch requirements under this subsection is punishable pursuant to RCW 77.15.550.

(2)(a) It is unlawful to use otter trawl or beam trawl gear in state territorial waters (0-3 miles) within Areas 58B, 59A-1, 59A-2, 59B, 60A-1 or 60A-2.

(b) Violation of gear requirements under this subsection is punishable pursuant to RCW 77.15.520.

(3)(a) It is unlawful for vessels using trawl gear to take and retain or possess groundfish within the trawl Rockfish Conservation Area (RCA) or Essential Fish Habitat (EFH) zones, except that:

(i) Trawl gear vessels may transit though the trawl RCA or EFH zones with groundfish onboard, as long as the vessel does not fish for any species within the RCA or EFH zone on the same trip; and

(ii) The activity is otherwise authorized under federal regulations.

(b) For purposes of this section, "trawl RCA and EFH zones" means those areas and boundaries defined as "trawl RCA" or "EFH zone" in the Code of Federal Regulations (CFR), Title 50, Part 600, Subpart G. The CFR lists the requirements for commercial groundfish fishing in the Pacific Ocean. Additional regulations may be enacted and listed in the Federal Register, and these regulations override those in the CFR if there are any inconsistencies between the two.

(c) Violation of catch requirements under this subsection is punishable pursuant to RCW 77.15.550.

(4)(a) It is unlawful for vessels using nontrawl gear to take and retain or possess groundfish within the nontrawl Rockfish Conservation Area (RCA), or to land such fish, except that:

(i) Nontrawl gear vessels may travel through the non-trawl RCA with groundfish onboard as long as the vessel does not fish for any species within the RCA on the same trip; and

(ii) The activity is otherwise authorized under federal regulations.

(b) For purposes of this section, "nontrawl RCA" means those areas and boundaries defined as "nontrawl RCA" in the Code of Federal Regulations (CFR), Title 50, Part 600, Subpart G. The CFR lists the requirements for commercial groundfish fishing in the Pacific Ocean. Additional regulations may be enacted and listed in the Federal Register, and these supersede the federal regulations in the CFR if there are any inconsistencies between the two.

(c) Violation of catch requirements under this subsection is punishable pursuant to RCW 77.15.550.

(5)(a) It is unlawful to use set line gear in state territorial waters (0-3 miles) within Areas 58B, 59A-1, 59A-2, 59B, 60A-1 and 60A-2, and in that portion of Area 58B within the Exclusive Economic Zone.

(b) Violation of catch requirements under this subsection is punishable pursuant to RCW 77.15.550.

(6)(a) It is unlawful to use bottomfish pots in state territorial waters (0-3 miles) within Areas 58B, 59A-1, 59A-2, 59B, 60A-1 and 60A-2, and in that portion of Area 58B within the Exclusive Economic Zone.

(b) Violation of catch requirements under this subsection is punishable pursuant to RCW 77.15.550.

(7)(a) It is unlawful to use commercial jig gear in state territorial waters (0-3 miles) within Areas 58B, 59A-1, 59A-2, 59B, 60A-1 and 60A-2, and in that portion of Area 58B within the Exclusive Economic Zone.

(b) Violation of catch requirements under this subsection is punishable pursuant to RCW 77.15.550.

(8)(a) It is unlawful to use bottomfish troll gear in state territorial waters (0-3 miles) within Areas 58B, 59A-1, 59A-2, 59B, 60A-1 and 60A-2, and in that portion of Area 58B within the Exclusive Economic Zone.

(b) Violation of catch requirements under this subsection is punishable pursuant to RCW 77.15.550.

AMENDATORY SECTION (Amending Order 03-31, filed 2/18/03, effective 3/21/03)

**WAC 220-44-050 Coastal bottomfish catch limits.**

(1)(a) It is unlawful to possess, transport through the waters of the state, or land in any Washington state port, bottomfish taken ((from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A, 59B, 60A, 61, 62, or 63)) in excess of the amounts or less than the minimum or maximum sizes, or in violation of any ((gear handling or)) of the possession, landing, or sorting requirements((, established by the Pacific Fisheries Management Council and published in the *Federal Register*, Volume 66, No. 8, published January 11, 2001, except thresher shark are further restricted as provided for in this section)) published in the Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G. These federal regulations provide the requirements for commercial groundfish fishing in the Pacific Ocean. Additional regulations may be enacted and listed in the Federal Register, and these regulations override those in the CFR if there are any inconsistencies between the two. Therefore, persons must consult ((the)) these federal regulations, which ((incorporated)) chapter 220-44 WAC incorporates by reference and ((made a part of chapter 220-44 WAC)) is based on, in part. Where rules refer to the fishery management area, that area is extended to include Washington state waters coterminous with the Exclusive Economic Zone. A copy of the federal rules may be obtained by contacting ((Evan Jacoby)) Lori Preuss at 360-902-2930, or the internet at [www.pcouncil.org](http://www.pcouncil.org). State regulations may apply that are more restrictive than federal regulations.

(b) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(2)(a) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, walleye pollock taken with trawl gear from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 59B, 60A-1, 60A-2, 61, 62, or 63, except by trawl vessels participating in the directed Pacific whiting fishery and the directed coastal groundfish fishery.

(b) Violation of this section is a gross misdemeanor, punishable under RCW 77.15.550.

(3)(a) It is unlawful for trawl vessels participating in the directed Pacific whiting and/or the directed coastal groundfish fishery to land incidental catches of walleye pollock greater than forty percent of their total landing by weight, not to exceed ten thousand pounds.

((2) At the time of landing of coastal bottomfish into Washington port, the fish buyer receiving the fish is required to clearly mark on the fish receiving ticket in the space reserved for dealer's use all legally defined trawl gear aboard the vessel at the time of delivery. The three trawl gear types are: Midwater trawl, roller trawl and small foot rope trawl (foot rope less than eight inches in diameter). The notation of the gear type(s) aboard the vessel is required prior to the signing of the fish receiving ticket by the vessel representative.

(3) Vessels engaged in chartered research for National Marine Fisheries Service (NMFS) may land and sell bottomfish caught during that research without the catch being counted toward any trip or cumulative limit for the participating vessel. Vessels that have been compensated for research work by NMFS with an exempted fishing permit (EFP) to land fish as payment for such research may land and sell fish authorized under the EFP without the catch being counted toward any trip or cumulative limit for the participating vessel. Any bottomfish landed during authorized NMFS research or under the authority of a compensating EFP for past chartered research work must be reported on a separate fish receiving ticket and not included on any fish receiving ticket reporting bottomfish landed as part of any trip or cumulative limit. Bottomfish landed under the authority of NMFS research work or an EFP compensating research with fish must be clearly marked "NMFS Compensation Trip" on the fish receiving ticket in the space reserved for dealer's use. The NMFS scientist in charge must sign the fish receiving ticket in the area reserved for dealer's use if any bottomfish are landed during authorized NMFS research. If the fish are landed under the authority of an EFP as payment for research work, the EFP number must be listed in the dealer's use space.) (b) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(4)(a) It is unlawful for an original receiver to receive whiting and whiting by-catch under the authority of an exempted fishing permit (EFP) issued by ((the National Marine Fisheries Service)) NMFS through the department, unless the original receiver has entered into a signed agreement with the department specifying the responsibilities of the original receiver in conjunction with the whiting EFP fishery. Failure to comply with the terms of the agreement shall be cause to remove the original receiver from the list of original receivers allowed to receive unsorted whiting catches from EFP vessels.

(b) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(5)(a) It is unlawful to land thresher shark taken by any means from state and offshore waters of the Pacific Ocean north of the Washington-Oregon boundary and south of the United States-Canada boundary((- and)). It is unlawful to land thresher shark taken south of the Washington-Oregon

boundary unless each thresher shark landed is accompanied by a minimum of two swordfish.

(b) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(6)(a) It is unlawful to take salmon incidental to any lawful bottomfish fishery.

(b) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(7)(a) It is unlawful to retain sturgeon species, other than white sturgeon, taken incidental to any lawful bottomfish fishery. White sturgeon may be taken as long as the fisher complies with minimum and maximum size restrictions for commercial fisheries.

(b) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(8)(a) It is unlawful to retain any species of shellfish taken incidental to any lawful bottomfish fishery, except that it is lawful to retain octopus and squid.

(b) Violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

AMENDATORY SECTION (Amending Order 00-124, filed 7/24/00, effective 8/24/00)

**WAC 220-44-080 Otter trawl logbook required.** (~~It shall be unlawful for any operator of otter trawl gear to fail to possess and maintain a "Washington-Oregon-California Trawl Logbook" while fishing in Coastal Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 59B, 60A-1, 60A-2, 61, 62 and 63. The logbook must be kept aboard the vessel while it is fishing in the above areas, or while having fish aboard that were caught in the above areas. The vessel operator must submit the completed logbook for inspection immediately upon request by authorized department representatives. For each vessel trip, the operator shall record the vessel name and registration number, crew size, departure and return date and time, and buyers of fish landed. For each trawl tow conducted the vessel operator shall record the month and day, time gear was set and retrieved, latitude and longitude fished, depth fished, net type, target species, and estimated weight of species of fish retained. Species or species groups with trip or cumulative limits must be identified separately and cannot be recorded in combination with other species. The department's copies of completed log sheets must be submitted to the department for each month in which fishing activity occurs. The department's copies must be received within ten days following any calendar month in which fishing activity occurred, or within ten days following the termination of commercial fishing activity, whichever occurs first.~~) (1) It is unlawful for any vessel operator engaged in commercial otter trawl fishing in Coastal Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 59B, 60A-1, 60A-2, 61, 62, and 63, or possessing groundfish taken with such gear from those areas, to fail to obtain and accurately maintain the appropriate logbook.

(2) It is unlawful for the operator of the harvest vessel to fail to keep the logbook aboard the vessel while the vessel is engaged in groundfish fishing or has groundfish onboard.

(3) It is unlawful for the vessel operator to fail to submit harvest logs for inspection upon request by fish and wildlife officers and/or authorized department employees.

(4) It is unlawful for any vessel operator engaged in groundfish fishing to fail to comply with the following methods and time frames of logbook submittal:

(a) Vessel operators responsible for submitting logs to the department must maintain a copy of all submitted logs for up to three years after the fishing activity ended. The copies must verify that logs sent by mail were received by the department, except that operators submitting logs directly to authorized department employees must record the name and date of the contact on the fisherman's copy of the log. The operators must maintain these copies for up to three years after the fishing activity ended.

(b) The department's copies of completed log sheets must be submitted to the department for each month in which fishing activity occurs. The department's copies must be received within ten days following any calendar month in which fishing activity occurred, or within ten days following the termination of the commercial fishing activity, whichever occurs first.

(5) It is unlawful for vessel operators engaged in commercial groundfish fishing or possessing groundfish to fail to permanently and legibly record in ink the following information within the following time constraints:

(a) For each vessel trip, the operator shall record the vessel name and registration number, crew size, departure and return date and time, and buyers of fish landed.

(b) For each trawl tow conducted, the vessel operator shall record the month and day, time gear was set and retrieved, latitude and longitude fished, depth at which most fish were caught, net type, target species, and estimated weight of fish species retained. Species or species groups with trip or cumulative limits must be identified separately and cannot be recorded in combination with other species.

(6) Violation of this section is a misdemeanor, punishable under RCW 77.15.280.

AMENDATORY SECTION (Amending Order 94-23, filed 5/19/94, effective 6/19/94)

**WAC 220-44-090 Far offshore fishery.** (1)(a) It is unlawful for any fisher to transport through the waters of the state, or to land in any Washington state port, bottomfish taken (~~without~~) outside the Exclusive Economic Zone (more than 200 miles offshore), except (~~as provided for in this section:~~

(1)) that any fisher may transport bottomfish through the waters of the state or land bottomfish taken without the Exclusive Economic Zone, provided:

((1)) (i) The fisher has, at least 48 hours prior to participating in the far offshore fishery, notified the department ((by)) either by writing to the ((Marine Fish-Shellfish Division, Washington State Fisheries)) Washington Department of Fish and Wildlife, 48A Devonshire Road, Montesano, WA 98563; or telephoning the department during regular business hours, Monday through Friday ((~~to (360) 586-6129~~)), at 360-586-6129. The fisher must provide the following informa-

tion: Vessel name and official number; anticipated fishing dates; anticipated port of landing; ~~(and~~

~~(b))~~ (ii) The fisher ~~((has made))~~ makes the vessel available for a hold inspection, if required to do so by the department, prior to departure ~~((to participate in))~~ for the far offshore fishery; and

~~((c))~~ (iii) The fisher ~~((has notified))~~ notifies the department at least 24 hours prior to landing bottomfish at any Washington state port. The fisher must provide the following information: Port of landing; estimated date and time of landing; estimated species composition, and weight of fish aboard.

(b) Violation of this subsection is a misdemeanor, punishable under RCW 77.15.280.

(2)(a) It is unlawful for any fisher to fish within, or to land fish taken from within, the Exclusive Economic Zone during any trip for which a declaration to participate in the far offshore fishery has been made.

(b) Violation of this subsection is a misdemeanor, punishable under RCW 77.15.280.

(3)(a) Fishers participating in the far offshore fishery are required to be properly licensed in order to land bottomfish into a Washington state port.

(b) Violation of catch restrictions is punishable pursuant to RCW 77.15.550.

(4) This section does not apply to bottomfish ~~((which))~~ that have been previously landed in another state, territory, or country~~((:))~~, does not apply to delivery by vessels other than the catcher vessel, and does not apply to bottomfish taken in Canadian territorial waters.

#### NEW SECTION

**WAC 220-44-100 Bottomfish caught during research.** (1) Vessels engaged in chartered research for the National Marine Fisheries Service (NMFS) or the International Pacific Halibut Commission (IPHC) may land and sell bottomfish caught during that research without the catch being counted toward any trip or cumulative limit for the participating vessel.

(2) Vessels that have been compensated for research work by NMFS or IPHC with an exempted fishing permit (EFP) to land fish as payment for such research may land and sell fish authorized under the EFP without the catch being counted toward any trip or cumulative limit for the participating vessel.

(3) Any bottomfish landed during authorized NMFS or IPHC research or under the authority of a compensating EFP for past-chartered research work must be reported on a separate fish receiving ticket and not included on any fish receiving ticket reporting bottomfish landed as part of any trip or cumulative limit.

(4) Bottomfish landed under the authority of NMFS or IPHC research work or an EFP-compensating research with fish must be clearly marked "NMFS Compensation Trip" or "IPHC Compensation Trip" on the fish receiving ticket in the space reserved for dealer's use.

(5) The NMFS or IPHC scientist in charge must sign the fish receiving ticket in the area reserved for dealer's use if any bottomfish are landed during authorized NMFS or IPHC

research. If the fish are landed under the authority of an EFP as payment for research work, the EFP number must be listed in the dealer's use space.

AMENDATORY SECTION (Amending WSR 07-04-030, filed 1/29/07, effective 3/1/07)

**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 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, with the following exceptions:
  - (i) Federal sablefish endorsed limited entry permit numbers must be recorded in this area for each delivery of sablefish landed under the authority of this permit. Separate fish tickets are required for each permit number being used.
  - (ii) At the time of landing of coastal bottomfish into a Washington port, the fish buyer receiving the fish is required to clearly mark on the fish receiving ticket in the space reserved for dealer's use all legally defined trawl gear aboard

the vessel at the time of delivery. The three trawl gear types are: Midwater trawl, roller trawl and small foot rope trawl (foot rope less than eight inches in diameter). The notation of the gear type(s) aboard the vessel is required prior to the signing of the fish receiving ticket by the vessel representative.

- (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 WSR 07-04-030, filed 1/29/07, effective 3/1/07)

**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 referenced in WAC 220-69-230 (1)(a) through (m), (p), (q), (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.

**WSR 07-23-004**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Children's Administration)

[Filed November 8, 2007, 9:11 a.m., effective December 9, 2007]

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

Purpose: Children's administration is amending the wording in existing WAC 388-25-1000, 388-25-1010, 388-25-1020, 388-25-1030, and 388-25-1050 that discusses the children's administration state supplementary payment (SSP) program. These amendments clarify the program, eligibility, and appeal rights. This is done to comply with legislative directives, to respond to concerns from the federal Social Security Administration, and to make the SSP payment process more efficient and accurate.

Citation of Existing Rules Affected by this Order: Amending WAC 388-25-1000, 388-25-1010, 388-25-1020, 388-25-1030, and 388-25-1050.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.600, 74.04.620, 74.13.031.

Other Authority: 2001-03 Supplemental Budget - ESSB 6387 (chapter 371, Laws of 2002).

Adopted under notice filed as WSR 07-19-104 on September 19, 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 5, 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 5, Repealed 0.

Date Adopted: November 5, 2007.

Stephanie E. Schiller  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-11-016, filed 5/9/05, effective 6/9/05)

**WAC 388-25-1000 What is the state supplementary payment (SSP) that is administered by the children's administration (CA)?** The children's administration state supplementary payment (CA/SSP) is a state-paid cash assistance program for specific eligible foster children with the children's administration. The CA/SSP program may be discontinued at any time and for any reason, and is limited to the funds available to children's administration for such payments. Receipt of a CA/SSP payment in any month does not guarantee payment for subsequent months even if all eligibility criteria remain met.

AMENDATORY SECTION (Amending WSR 05-11-016, filed 5/9/05, effective 6/9/05)

**WAC 388-25-1010 What are the eligibility requirements for the CA/SSP program?** To be eligible to receive CA/SSP, you must ~~((be a child who has entered foster care (Title 45 CFR 1355.20) and is eligible for and receiving Supplemental Security Income (SSI), receiving behavior rehabilitation services (BRS) for out-of-home placement services for all or part of a month, and not be eligible for foster care reimbursement under Title IV-E of the Social Security Act (42 U.S.C. 670)))~~ meet all of the following eligibility requirements:

(1) Be a child who has entered foster care (Title 45 CFR 1355.20);

(2) Already receive Supplemental Security Income (SSI) benefits or have recently received notice of an award for such benefits; and

(3) Receive behavior rehabilitation services (BRS) for out-of-home placement services for all or part of a month; and

(4) Not receive foster care maintenance payments under Title IV-E of the Social Security Act (42 U.S.C. 670).

AMENDATORY SECTION (Amending WSR 05-11-016, filed 5/9/05, effective 6/9/05)

**WAC 388-25-1020 When will my eligibility for CA/SSP be determined?** The SSP eligibility verification and payment process is usually ~~((done))~~ completed two months following the month of your potential eligibility for an SSP payment. You will receive an SSP payment when all of the eligibility criteria (WAC 388-25-1010) have been verified. Children who have recently received notice of an award for SSI will receive a CA/SSP payment beginning the month the Social Security Administration places them into pay status, if all other eligibility criteria are met for that month.

AMENDATORY SECTION (Amending WSR 05-11-016, filed 5/9/05, effective 6/9/05)

**WAC 388-25-1030 How will I know if I am eligible to receive a CA/SSP payment?** Once you have been identified as eligible for a CA/SSP payment, CA will send out written

notification to the current SSI representative payee((s, legal guardians, and children age eighteen and above)).

AMENDATORY SECTION (Amending WSR 05-11-016, filed 5/9/05, effective 6/9/05)

**WAC 388-25-1050 What are my appeal rights if CA determines that I am not eligible for CA/SSP?** In the event that your eligibility for CA/SSP payments is denied or terminated, or the amount of such payments is reduced, you have the right to ((appeal children's administration's denial, termination, or reduction of eligibility for the CA/SSP under RCW 74.13.045 and chapter 34.05 RCW and chapter 388-02 WAC)) file an informal complaint pursuant to RCW 74.13.-045 and chapter 388-39A WAC and to request a hearing under chapter 34.05 RCW and chapter 388-02 WAC, except that there is no right to a hearing if the reason for the change is lack of funding.

## WSR 07-23-007

### PERMANENT RULES

### DEPARTMENT OF PERSONNEL

[Filed November 8, 2007, 10:47 a.m., effective December 11, 2007]

Effective Date of Rule: December 11, 2007.

Purpose: The change in WAC 357-07-065 amends the locations, titles, and duties of the department of personnel's various divisions.

Citation of Existing Rules Affected by this Order: Amending WAC 357-07-065.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 07-20-093 on October 2, 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 1, Repealed 0.

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

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

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

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

Date Adopted: November 8, 2007.

Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 06-19-064, filed 9/19/06, effective 10/20/06)

**WAC 357-07-065 How is the department of personnel organized?** The staff is organized in six general areas:

(1) Personnel services: Provides consultation and services related to recruitment, assessment, affirmative action, human resources, salary surveys, compensation plan administration, and classification to state agencies, institutions of higher education, and related higher education boards.

(2) Organization and employee development services (located at 600 South Franklin Street, Olympia, Washington): ~~((Provides consultation on human resource development activities to agencies, training which is interagency in scope, and guidelines for agency planning and evaluation of human resource development.))~~ Provides organizational, management, and employee development services to all state agencies.

(3) Administrative services: Provides support services for facilities and supplies, financial services including payroll and travel, duplicating and mailroom services, combined fund drive, forms and records management, administration of agency and statewide master contracts, and administers the statewide employee survey. Within the administrative division, the employee ~~((advisory service (EAS)))~~ assistance program (EAP) helps with personal or work related problems affecting work performance. EAP offices are at the following locations: ~~((3400 Capitol Boulevard,))~~ 1222 State Ave NE, Suite 201, Olympia, Washington; ~~((613 19th Avenue E., Suite 101,))~~ 701 Dexter Ave. N. #108, Seattle, Washington; and at Suite 604, Northtown Office Building, Spokane, Washington.

(4) Legal affairs: Provides affirmative action consultation, rule interpretation, labor/employment discrimination guidance, legislative services and responds to requests for public records. Provides director's review and appeal services (located at 2828 Capitol Blvd., Olympia, Washington), processes and adjudicates requests for director's reviews and provides administrative support for personnel resources board appeals.

(5) Director's office: Provides agency leadership, internal human resources, planning and performance, communication services, and operational support.

(6) ~~((Human resources i))~~ Information services (located at Building #1, Rowsix, 4224 6th Avenue, Lacey, Washington): ~~((Administers the central personnel/payroll and insurance eligibility computer systems.))~~ Administers all central statewide technology systems supporting human resources activities.

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

**WSR 07-23-008**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed November 8, 2007, 11:45 a.m., effective December 9, 2007]

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

Purpose: To change the following WAC references in WAC 392-121-107 and 392-121-108 from a state board (WAC 180-50-\*\*\*) to the appropriate OSPI WAC (392-410-

\*\*\*) and from a state board (WAC 180-40-\*\*\*) to the appropriate OSPI WAC (392-400-\*\*\*).

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-107 and 392-121-108.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 07-15-045 on July 13, 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 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: November 7, 2007.

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending Order 99-01, filed 3/25/99, effective 4/25/99)

**WAC 392-121-107 Definition—Course of study.** As used in this chapter, "course of study" means those activities for which students enrolled pursuant to chapters 180-16, ~~((180-50,))~~ 180-51, 392-169 ~~((and)),~~ 392-134, and 392-410 WAC may be counted as enrolled students for the purpose of full-time equivalent student enrollment counts.

(1) Course of study includes:

(a) Instruction - teaching/learning experiences conducted by school district staff as directed by the administration and the board of directors of the school district, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences that are planned and scheduled by the district for the purpose of discussing students' educational needs or progress, and exclusive of time for meals.

(b) Alternative learning experience - alternative learning experience provided by the school district in conformance with WAC 392-121-182.

(c) Instruction provided by a contractor - instruction provided by a contractor in conformance with WAC 392-121-188.

(d) National guard - participation in a national guard high school career training program for which credit is being given toward either required or elective high school credits pursuant to RCW 28A.305.170 and WAC ~~((180-50-320))~~ 392-410-320. Such participation may be counted as a course of study only by the school district which the individual last attended.

(e) Ancillary service - any cocurricular service or activity, any health care service or activity, and any other services



or activities, for or in which enrolled students are served by appropriate school district staff. The term shall include, but not be limited to, counseling, psychological services, testing, remedial instruction, speech and hearing therapy, health care services, and if such service is provided by the district, certificated contact time pursuant to RCW 28A.225.010 (4)(a) with students who are in a home-based instruction program. The term shall exclude all extracurricular activities and all other courses of study defined in this section. In conformance with WAC 392-134-025, school districts report the actual number of student contact hours of ancillary service for part-time, private school, and home-based students to the superintendent of public instruction.

(f) Work based learning - training provided pursuant to WAC ~~((180-50-315))~~ 392-410-315 and reported as provided in WAC 392-121-124.

(g) Running start - attendance at an institution of higher education pursuant to RCW 28A.600.300 through 28A.600.-400, chapter 392-169 WAC.

(h) Transition school - participation in the University of Washington's transition school and early entrance program pursuant to RCW 28A.185.040, and chapter 392-120 WAC. Such participation shall be reported by the University of Washington and shall not be reported by a school district.

(i) Technical college direct funding - enrollment at a technical college pursuant to RCW 28A.150.275 and WAC 392-121-187. Such participation shall be reported by the technical college and shall not be reported by a school district unless the technical college and the school district agree to have the school district report such enrollment.

(2) Course of study does not include:

(a) Home-based instruction pursuant to RCW 28A.225.-010(4): Education programs provided by a parent which do not meet the requirements of WAC 392-121-182 cannot be claimed for state funding;

(b) Private school instruction pursuant to chapter 28A.195 RCW;

(c) Adult education as defined in RCW 28B.50.030(12);

(d) Instruction provided to students who do not reside in Washington state (RCW 28A.225.260);

(e) Enrollment in state institutions, i.e., state operated group homes, county juvenile detention centers, state institutions for juvenile delinquents, and state residential habilitation centers;

(f) Instruction preparing a student for the general education development (GED) test if such instruction generates state or federal moneys for adult education;

(g) Enrollment in education centers except as provided under contract with a school district pursuant to RCW 28A.150.305 and WAC 392-121-188;

(h) Enrollment in the Washington state school for the deaf and the Washington state school for the blind;

(i) Extracurricular activities including but not limited to before and after school activities such as classes, sports and other activities offered outside the regular curriculum or for which credit is not earned; or

(j) Attendance at universities, colleges, community colleges, or technical colleges of students not earning high school credit.

AMENDATORY SECTION (Amending WSR 05-19-140, filed 9/21/05, effective 10/22/05)

**WAC 392-121-108 Definition—Enrollment exclusions.** A person who qualifies for any of the exclusions set forth in this section shall not be counted as an enrolled student pursuant to WAC 392-121-106.

(1) Absences - except as provided in (a) and (b) of this subsection, a student whose consecutive days of absence from school exceed twenty school days shall not be counted as an enrolled student until attendance is resumed.

(a) If there is a written agreement between the appropriate school official and a student's parent or guardian pursuant to RCW 28A.225.010 that the student's temporary absence is not deemed to cause a serious adverse effect upon the student's educational progress, the absent student may be counted as an enrolled student for up to two monthly enrollment count dates as specified in WAC 392-121-122.

(b) A student receiving home and/or hospital service pursuant to WAC 392-172-218 shall be counted as an enrolled student as provided in WAC 392-122-145.

(2) Dropouts - a student for whom the school district has received notification of dropping out of school by the student or the student's parent or guardian shall not be counted as an enrolled student until attendance is resumed.

(3) Transfers - a student who has transferred to another public or private school and for whom the school district has received notification of transfer from the school to which the student has transferred, from the student, or from the student's parent or guardian shall not be counted as an enrolled student unless the student reenrolls in the school district.

(4) Suspensions - a student who has been suspended from school pursuant to WAC ~~((180-40-260))~~ 392-400-260, when the conditions of the suspension will cause the student to lose academic grades or credit, shall not be counted as an enrolled student until attendance is resumed.

(5) Expulsions - a student who has been expelled from all school subjects or classes by the school district pursuant to WAC ~~((180-40-275 or 180-40-290))~~ 392-400-275 or 392-400-290 shall not be counted as an enrolled student; a student who has been partially expelled, such as from a single school subject or class, by the school district pursuant to WAC ~~((180-40-275 or 180-40-290))~~ 392-400-275 or 392-400-290 may be considered a part-time enrolled student.

(6) Graduates - a student who has met the high school graduation requirements of chapter 180-51 WAC by the beginning of the school year.

## WSR 07-23-009

### PERMANENT RULES

### DEPARTMENT OF PERSONNEL

[Filed November 8, 2007, 10:48 a.m., effective December 11, 2007]

Effective Date of Rule: December 11, 2007.

Purpose: This change will clarify the language in WAC 357-16-025. The current language gives the impression that job seekers do not have to apply for specific positions. To be an applicant a job seeker must express interest in the job. The proposed modification repeals the language that causes this

confusion and provides individual employers the ability to determine how recruitments will be announced.

Citation of Existing Rules Affected by this Order: Amending WAC 357-16-025.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 07-20-091 on October 2, 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 1, Repealed 0.

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

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

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

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

Date Adopted: November 8, 2007.

Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 06-19-065, filed 9/19/06, effective 10/20/06)

**WAC 357-16-025 How must employers and the department inform prospective applicants of recruitments?** (~~Employers and the department may recruit without notice by searching for job seekers who have registered in the talent pool maintained by the department. If the department or employer does not recruit job seekers from the central talent pool, notice of recruitment must be issued publicly. The notice must specify the period of recruitment.~~) Employers shall determine the appropriate method to solicit job seekers, which may include but not be limited to, public announcements: searching the state central talent pool; or, using an employer maintained talent pool. Recruitment announcements shall inform prospective job seekers how to apply for, or express interest in, positions which may come open for recruitment.

#### WSR 07-23-010

#### PERMANENT RULES

#### DEPARTMENT OF PERSONNEL

[Filed November 8, 2007, 10:49 a.m., effective December 11, 2007]

Effective Date of Rule: December 11, 2007.

Purpose: SB 5118 passed during the 2007 legislative session which requires department of personnel to adopt rules establishing guidelines for policies, procedures, and mandatory training programs on sexual harassment for state employees and establishes reporting requirements for agencies on compliance of rules.

Citation of Existing Rules Affected by this Order: Amending WAC 357-25-025.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 07-20-090 on October 2, 2007.

Changes Other than Editing from Proposed to Adopted Version: In WAC 357-34-105 added to the question: Awareness and prevention.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 7, Amended 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 7, Amended 1, Repealed 0.

Date Adopted: November 8, 2007.

Eva N. Santos  
Director

#### NEW SECTION

**WAC 357-34-100 How often are general government employees required to complete sexual harassment awareness and prevention training?** Employees of agencies defined in RCW 41.06.020 are required to complete sexual harassment awareness and prevention training at least every five years. For new employees sexual harassment awareness and prevention training should be completed within the first six months of employment, or earlier if required by the employer's sexual harassment policy.

#### NEW SECTION

**WAC 357-34-105 How often are general government managers and supervisors required to complete additional sexual harassment awareness and prevention training?** Effective July 1, 2008, in addition to the training described in WAC 357-34-100, all managers and supervisors of agencies defined in RCW 41.06.020 are required to complete training on managers' roles and responsibilities regarding sexual harassment every three years. For new supervisors and managers, training on roles and responsibilities should be completed within the first six months of becoming a manager or supervisor.

#### NEW SECTION

**WAC 357-34-110 Under what circumstances may the general government employer waive the required sexual harassment awareness and prevention training for a new employee?** Agencies as defined in RCW 41.06.020 may waive the sexual harassment awareness and prevention train-

ing or the managers' roles and responsibilities training required for a new employee if the employee can show proof of attending training given by another state agency, within the time frame that satisfies the requirements of this chapter.

If the sexual harassment awareness and prevention training is waived for a new employee the agency must review their sexual harassment policy with the new employee. The employee must take the next training within five years of completion of the sexual harassment awareness and prevention training or within three years of completion of the managers' roles and responsibilities training with their former state agency.

#### NEW SECTION

**WAC 357-34-115 What must be included in the required sexual harassment awareness and prevention training?** The requirements of the sexual harassment awareness and prevention training will be published by the department. All training must satisfy the requirements by July 1, 2008.

#### NEW SECTION

**WAC 357-34-120 Who provides the required sexual harassment awareness and prevention training?** Either the department or the agency may provide the sexual harassment awareness and prevention training.

#### NEW SECTION

**WAC 357-34-125 How do agencies report their compliance with WAC 357-34-100 to the department?** Agencies as defined in RCW 41.06.020 must report to the department at least every two years regarding their compliance with WAC 357-34-100 and 357-34-105. These agencies must submit a statement signed by the agency head indicating the percentage of employees who are current in the required sexual harassment awareness and prevention training and the percentage of managers and supervisors who are current in the required roles and responsibilities training. Agencies will submit their statements as follows:

(1) Agencies with 50 or more full time equivalent employees must submit their statement to the department with the employer's affirmative action plan and affirmative action plan update.

(2) Agencies with 25 to 49 full time equivalent employees must submit their statement to the department with their small agency workforce profile.

(3) Agencies with fewer than 25 full time equivalent employees must submit their statement to the department with the agency's sexual harassment policy.

AMENDATORY SECTION (Amending WSR 05-01-197, filed 12/21/04, effective 7/1/05)

**WAC 357-25-025 What are the policy statement requirements that employers must comply with for the purpose of chapter 357-25 WAC?** (1) All employers must maintain:

(a) An affirmative action and equal employment opportunity policy statement; and

(b) Policy statements on sexual harassment and reasonable accommodation.

(2) The employer's affirmative action and equal employment opportunity policy statement must be reviewed and approved by the head of the agency, institution, or related higher education board each year. The policy statements on sexual harassment and reasonable accommodation must be updated as needed.

(3) Agencies as defined in RCW 41.06.020 must submit their sexual harassment policy as follows:

(a) Agencies with 50 or more full time equivalent employees must submit their policy to the department with the employer's affirmative action plan and affirmative action plan update.

(b) Agencies with 25 to 49 full time equivalent employees must submit their policy to the department with their small agency workforce profile.

(c) Agencies with fewer than 25 full time equivalent employees must submit their policy to the department at least every two years.

#### NEW SECTION

**WAC 357-25-027 What must be included in the agency's sexual harassment policy?** Agencies as defined in RCW 41.06.020 must at a minimum include the following in their policy on sexual harassment:

(1) Indicate who is covered by the policy;

(2) Provide that the employer is committed to providing a working environment free from sexual harassment of any kind;

(3) State that sexual harassment is an unlawful employment practice prohibited by Title VII of the Civil Rights Act of 1964 and RCW 49.60;

(4) The definition of sexual harassment as defined by the Equal Employment Opportunity Commission;

(5) Notify the employee or individual of their right to file a complaint with the Washington State Human Rights Commission under RCW 49.60.230 or the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964;

(6) Identify how and to whom employees or individuals may raise concerns or file complaints. The policy should allow multiple avenues for an employee or individual to raise complaints or concerns and should clearly identify the positions or entities charged with receiving these complaints;

(7) Advise all individuals covered by the policy that the employer is under a legal obligation to respond to allegations concerning a violation of the policy;

(8) Identify the manner by which the employer will respond to alleged violations of the policy, including a formal investigation if necessary;

(9) State that the complainant shall be informed of the status and the outcome of an investigation;

(10) Identify the agency's investigation or response procedure;

(11) Define the roles and responsibilities of employees, managers, supervisors, and others covered by the policy with respect to the following:

- (a) Preventing or not engaging in sexual harassment;
  - (b) Responding to concerns or allegations of violations of the policy;
  - (c) Participation in an investigation under the policy; and
  - (d) The prohibition against retaliation.
- (12) State that confidentiality cannot be guaranteed;
- (13) Advise that retaliation against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation is prohibited;
- (14) Advise that any employee found to have violated the policy will be subject to corrective and/or disciplinary action, up to and including dismissal; and
- (15) Advise that any employee found to have retaliated against individuals covered by the policy who report allegations of sexual harassment or who participate in an investigation will be subject to corrective and/or disciplinary action, up to and including dismissal.

### WSR 07-23-011

#### PERMANENT RULES

#### DEPARTMENT OF PERSONNEL

[Filed November 8, 2007, 10:50 a.m., effective December 11, 2007]

Effective Date of Rule: December 11, 2007.

Purpose: These changes will eliminate the confusion in how seniority preference is defined in Washington general service (WGS) rules and Washington management service (WMS) rules. The current WGS rule says "surviving spouse" and the current WMS rule says "unmarried widow/widower." This change will correct the discrepancy.

Citation of Existing Rules Affected by this Order: Amending WAC 357-58-475.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 07-20-092 on October 2, 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 1, Repealed 0.

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

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

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

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

Date Adopted: November 8, 2007.

Eva N. Santos  
Director

AMENDATORY SECTION (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

**WAC 357-58-475 Does a veteran receive any preference in layoff?** (1) An eligible veteran receives a preference by having his/her seniority increased. This is done by adding the eligible veteran's total active military service, not to exceed five years, to his/her unbroken service date.

(2) An eligible veteran is defined as any permanent employee who:

(a) Has one or more years in active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or is discharged at the convenience of the government; and

(b) Has received, upon termination of such service:

(i) An honorable discharge;

(ii) A discharge for physical reasons with an honorable record; or

(iii) A release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge is given.

(3) "An eligible veteran" does not include any person who as a veteran voluntarily retired with twenty or more years' active military service and has military retirement pay in excess of five hundred dollars per month.

(4) The ~~((unmarried widow/widower))~~ surviving spouse of an eligible veteran is entitled to veteran's seniority preference for up to five years as outlined in subsection (1) and (2) of this section regardless of whether the veteran had at least one year of active military service.

### WSR 07-23-018

#### PERMANENT RULES

#### DEPARTMENT OF HEALTH

(Board of Pharmacy)

[Filed November 9, 2007, 8:50 a.m., effective December 10, 2007]

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

Purpose: This rule is for the implementation of ESHB [ESSB] 6478 (2004) that mandated the board of pharmacy to adopt criteria to determine if a transaction was suspicious. It sets criteria for reporting suspicious transactions involving the sale, transfer or furnishing of products containing ephedrine, pseudoephedrine or phenylpropanolamine by manufacturers and wholesalers. It is intended to deter the use of these products in manufacturing methamphetamine.

Citation of Existing Rules Affected by this Order: Amending WAC 246-889-050.

Statutory Authority for Adoption: RCW 18.64.005 and 69.43.035.

Adopted under notice filed as WSR 07-10-123 on May 2, 2007.

A final cost-benefit analysis is available by contacting Lisa Salmi, Department of Health, Board of Pharmacy, P.O. Box 47863, Olympia, WA 98504, phone (360) 236-2927, fax (360) 586-4359, e-mail lisa.salmi@doh.wa.gov.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

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

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

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

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

Date Adopted: July 26, 2007.

Steven Saxe  
Executive Director  
for Rebecca Hille  
Board Chair

AMENDATORY SECTION (Amending WSR 03-13-027, filed 6/10/03, effective 7/11/03)

**WAC 246-889-050 Suspicious transactions and reporting requirements.** ~~((Any))~~ (1) A manufacturer or wholesaler who sells, transfers, or furnishes (any substance specified in RCW 69.43.010(1) or WAC 246-889-020) a regulated product to any ((person)) licensee shall report any suspicious transaction in writing to the state board of pharmacy.

(2) For the purpose of this rule, a regulated product is defined as a product specified in RCW 69.43.010(1) or WAC 246-889-020.

(3) For the purposes of this rule, a "suspicious transaction" is defined as any sale or transfer that meets any of the following criteria:

~~((H))~~ (a) Any sale or transfer that would lead a reasonable person to believe that the substance is likely to be used for the purpose of unlawfully manufacturing a controlled substance under chapter 69.50 RCW, based on such factors as:

~~((A))~~ (i) The amount of the substance involved;

~~((B))~~ (ii) The method of payment;

~~((C))~~ (iii) The method of delivery; or

~~((D))~~ (iv) Any past dealings with any participant in the transaction.

~~((2) The transaction involves)~~ (b) Any sale or transfer involving payment for ((any substance specified in RCW 69.43.010(1) or WAC 246-889-020)) a regulated product in cash or money orders in a total amount of more than two hundred dollars.

~~((3))~~ (c) Any sale or transfer of ((any substance specified in RCW 69.43.010(1) or WAC 246-889-020)) a regulated product that meets the criteria identifying suspicious orders in ((Appendix A of)) the U.S. Department of Justice, Drug Enforcement Administration, Diversion Control Program Report of the Suspicious Orders Task Force. Copies of the publication are available upon request from the ((state)) board of pharmacy.

~~((4) In addition to the above suspicious transaction criteria, the following requirements shall apply to over-the-counter wholesalers and full-line wholesalers:~~

~~(a) An over-the-counter wholesaler shall also use the following formula to identify a suspicious transaction:~~

~~(i) Any wholesaler whose individual sale or transfer of any product specified in RCW 69.43.010(1) or WAC 246-889-020 exceeds ten percent of the seller's distribution, during the same calendar month, shall be considered a suspicious transaction (e.g., if a wholesaler sells one thousand dollars' worth of pseudoephedrine tablets during a month in which less than ten thousand dollars of other goods are sold to its customers). In this case, the sales to each of the customers must be reported to the board.~~

~~(ii) Any time the value of a sale to a single customer of any product listed in RCW 69.43.010(1) or WAC 246-889-020 exceeds ten percent of the value of the full order shipped to the customer (e.g., if a wholesaler sells an order to a customer which contains one hundred dollars' worth of the pseudoephedrine tablets either alone or along with twenty-five dollars' worth of aspirin tablets).~~

~~(b) A full-line wholesaler shall also use the formula listed in Appendix E-3 of the U.S. Department of Justice, Drug Enforcement Administration, Diversion Control Program Report of the Suspicious Orders Task Force to identify a suspicious transaction.)~~ (d) Any individual sale or transfer of a regulated product that exceeds ten percent of the nonprescription drugs contained in the order. (Example: If a wholesaler sells three thousand dollars worth of products to a shopkeeper and that order contains one thousand dollars worth of nonprescription drugs, the wholesaler must submit a suspicious transaction report if the order contains over one hundred dollars worth of regulated products.)

(e) Any order which contains regulated products and has no additional nonprescription drugs is considered a suspicious transaction.

(4) For the purposes of this rule, nonprescription drugs are defined as those drugs which may be sold at retail without a prescription for the diagnosis, treatment, cure or prevention of any disease that has been approved by the FDA and bears an appropriate label. An over-the-counter (OTC) drug is the same as a nonprescription drug.

The following are examples of products sold at retail which are not defined as OTC drugs:

(a) Cosmetics;

(b) Food, dietary, and vitamin supplements;

(c) Herbs;

(d) Products that carry the statements "this product is not intended to diagnose, treat, cure or prevent any disease" or "not evaluated by FDA."

(5) The written report of a suspicious transaction shall contain, at a minimum, the following information:

(a) Name, address and phone number of the manufacturer and/or wholesaler making the report;

(b) Washington state license number of the wholesaler;

(c) Washington state Unified Business Identifier (UBI) number of the recipient of the suspicious transaction;

(d) Trade/brand name of regulated product;

(e) Generic name of regulated product's active ingredients;

- (f) Name ~~((and))~~, address and phone number of the ~~((person or firm receiving))~~ recipient of the suspicious transaction;  
 ((e)) (g) Quantity of substance purchased, transferred, or furnished, by number of units and doses per unit;  
 ((d)) (h) Date of purchase~~(s)~~ or transfer~~(s or furnish; and)~~;  
 ((e)) (i) Method of payment of the substance;  
 (j) Lot number if available; and  
 (k) National Drug Code Number if available.

**WSR 07-23-022**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed November 9, 2007, 10:50 a.m., effective December 10, 2007]

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

Purpose: To correct a spelling error, the word counseling was spelled with two l's and to correct the reference to WAC 180-50-315 by changing it to WAC 392-410-315.

Citation of Existing Rules Affected by this Order: Amending WAC 392-122-212.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 07-15-047 on July 13, 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 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: November 9, 2007.

Dr. Terry Bergeson  
 Superintendent of  
 Public Instruction

AMENDATORY SECTION (Amending WSR 05-19-139, filed 9/21/05, effective 10/22/05)

**WAC 392-122-212 Definition—State institutional education program—Educational activity.** As used in WAC 392-122-200 through 392-122-275, "educational activity" means the following teaching/learning experiences provided by a school district or other education provider:

(1) Instruction, testing, ~~((counseling))~~ counseling, supervision, advising, and other services provided directly by certificated staff or by classified staff who are supervised by certificated staff.

(2) Up to one hour per day of scheduled study time if the study is in conjunction with other educational activity and if the study is monitored by educational staff who are present during the study.

(3) Up to two hours per day of individual study conducted by a student when educational staff are not present if all of the following conditions are met:

(a) The study is in pursuit of high school graduation credit; or the study is in a department of corrections facility and is in pursuit of a certificate of educational competence pursuant to RCW 28B.50.536 and chapter 131-48 WAC;

(b) The study is part of a program of instruction defined by a certificated employee who evaluates the student's progress in that program;

(c) The student is making progress in the program;

(d) The study is not counted as work training experience pursuant to subsection (4) of this section; and

(e) Combined individual study time and scheduled study time pursuant to subsection (2) of this section claimed in determining the student's full-time equivalent pursuant to WAC 392-122-225 do not exceed two hours per day.

(4) Work based learning meeting the requirements of WAC ~~((180-50-315))~~ 392-410-315: Provided, That for work based learning provided pursuant to WAC ~~((180-50-315))~~ 392-410-315, a student's full-time equivalent shall be determined pursuant to WAC 392-121-124.

**WSR 07-23-023**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed November 9, 2007, 10:51 a.m., effective December 10, 2007]

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

Purpose: To revise current rules to allow the opportunity for institutional funding monies to be paid to a school district where the services for the staffed residential rehabilitation home residents occurs in a school operated facility rather than at the rehabilitation home.

Citation of Existing Rules Affected by this Order: Amending WAC 392-122-205.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 07-18-074 on September 4, 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 1, Repealed 0.

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

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

Date Adopted: November 9, 2007.

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending WSR 05-15-127, filed 7/18/05, effective 8/18/05)

**WAC 392-122-205 State institutional education program—Eligible programs.** Programs supported as state institutional education programs include those provided in:

(1) State operated group homes—i.e., facilities maintained by the division of juvenile rehabilitation of the department of social and health services to house adjudicated youth twenty-four hours a day;

(2) Juvenile detention centers—i.e., facilities meeting the definition of a "detention facility" in RCW 13.40.020.

(3) Institutions for juvenile delinquents—i.e., facilities maintained by the division of juvenile rehabilitation of the department of social and health services for the diagnosis, confinement and rehabilitation of juveniles committed by the courts.

(4) Residential habilitation centers—i.e., facilities maintained by the division of developmental disabilities of the department of social and health services for care and treatment of persons with exceptional needs by reason of mental and/or physical deficiency.

Programs providing educational services to youth in a residential rehabilitation center may include services provided at facilities controlled and operated by the school district providing those services.

(5) Adult correctional facilities housing juveniles—i.e., facilities maintained by the state department of corrections for juvenile inmates under eighteen years of age.

## WSR 07-23-024

### PERMANENT RULES

### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 9, 2007, 10:53 a.m., effective December 10, 2007]

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

Purpose: Community and technical colleges are currently providing programs to at-risk/drop-out students under contract with the local school districts. The current rules created a bifurcation in colleges' program FTE reporting that is operationally confusing. This rule revision will create a uniform methodology of reporting student FTE for college programs.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-188.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 07-18-073 on September 4, 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 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: November 9, 2007.

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending Order 99-01, filed 3/25/99, effective 4/25/99)

**WAC 392-121-188 Instruction provided under contract.** School districts have general authority to contract for the services of individuals to provide instruction, subject to applicable state and federal laws and local collective bargaining agreements. School districts also have authority to enter into interdistrict cooperative agreements for instructional services with other school districts under RCW 28A.225.250. However, when a school district contracts with an entity other than a school district and that entity employs staff to provide basic education instruction claimed by the school district for state basic education funding, the requirements of this section also apply. Instruction provided by such an entity (hereafter called the contractor) may be counted as a course of study and claimed by the school district for state funding if the following requirements are met:

(1) The school district board of directors in accordance with RCW 28A.320.015 adopts a resolution that concludes it is in the best interest of the students to expand the options available by providing an appropriate basic education program pursuant to the contract and sets forth the rationale in support of the conclusion;

(2) The school district retains full responsibility for compliance with all state and federal laws;

(3) The contractor complies with all relevant state and federal laws that are applicable to the school district;

(4) The contractor provides instruction free of sectarian or religious influence or control.

(5) The contractor serves the students at no cost to the student for tuition and fees and enrollment is voluntary and no student or person is unlawfully excluded from participation on the grounds of race, creed, color, national origin, sex, marital status, or presence of any sensory, mental, or physical handicap;

(6) Each student is enrolled in the school district reporting the enrollment and each high school student is working toward course credits which satisfy high school graduation requirements;

(7) If the contractor is a state higher education institution, a state funded education center, or any other state funded entity, the contractor is not claiming enrollment of the student or receiving direct state support for the contracted instruction reported pursuant to this section.

(8) The curriculum is approved by the district;

(9) The contractor provides enrollment reports to the school district that comply with this chapter;

(10) The contractor maintains and has available for audit or review by the school district, state, or federal authorities documentation of enrollment, hours of instructional activity participated in by the students, personnel data, and financial data including all revenues and expenditures pertaining to the contract with the school district;

(11) If a contractor other than an institution of higher education at any time during the school year serves more than twenty-five students which equals more than one quarter of one percent (.0025) of the district's annual average full-time equivalent enrollment claimed for basic education funding the school district reports the certificated instructional employees of the contractor funded with any state moneys or federal moneys that flow through the school district as required by the SPI annual personnel reporting system for calculation of state funding, staff ratios and statistics;

(12) If the contract is with an entity other than an institution of higher education, for the students served pursuant to the contract, the contractor maintains a ratio of full-time equivalent certificated instructional staff serving the annual average full-time equivalent students reported for basic education funding pursuant to this section which is at least equal to the district's basic education funding ratio for the grade level of the students being reported for basic education funding pursuant to this section;

(13) The school district and contractor execute a written contract which is consistent with this section, and which sets forth the duties of the contractor in detail sufficient to hold the contractor accountable to the school district;

(14) The school district and contractor establish a process for periodic on-site monitoring by the school district for compliance with this section and other terms of the contract between the school district and contractor;

(15) Contracts for services for students with disabilities shall comply with WAC 392-172-220 and 392-172-222;

(16) Full-time equivalent enrollment reported for students served under a contract with a higher education institution shall be based on the number of hours of instruction meeting the criteria in WAC 392-121-107 (1)(a) provided by staff of the higher education institution under the contract. This section does not apply to running start enrollment, which is governed by chapter 392-169 WAC or at-risk programs meeting the standards of subsection (18) of this section; and

(17) When a school district contracts for an alternative learning experience program and the contractor exercises primary responsibility for the student's written learning plan, the program shall be for academically at-risk students and shall comply with RCW 28A.150.305. Enrollment in these programs shall be reported pursuant to WAC 392-121-182.

(18) Full-time equivalent enrollment reported for students served under contract with a community or technical

college as defined in RCW 28B.50.030 shall be based on the credits generated by the student consistent with WAC 392-169-025 if the program meets the following standards:

(a) The student is earning credits applicable to a high school diploma.

(b) The program is focused on serving credit deficient students.

(c) The student population served is considered at-risk and meet the following criteria:

(i) The students have already dropped out of high school; or

(ii) The students have not demonstrated success in the traditional high school environment.

### WSR 07-23-025

#### PERMANENT RULES

#### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 9, 2007, 10:55 a.m., effective December 10, 2007]

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

Purpose: To change the following WAC references in WAC 392-121-10601 and 392-121-10602 from a state board (chapter 180-39 WAC) to the appropriate OSPI WAC (chapter 392-335 WAC).

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-10601 and 392-121-10602.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 07-18-048 on August 30, 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 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: November 9, 2007.

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 95-01-013, filed 12/8/94, effective 1/8/95)

**WAC 392-121-10601 Definition—Kindergarten.** As used in this chapter, "kindergarten" means an instructional program conducted pursuant to RCW 28A.150.220 for stu-



dents who meet the entry age requirements pursuant to chapter ((480-39)) 392-335 WAC.

**AMENDATORY SECTION** (Amending WSR 95-01-013, filed 12/8/94, effective 1/8/95)

**WAC 392-121-10602 Definition—First grade.** As used in this chapter, "first grade" means an instructional program conducted pursuant to RCW 28A.150.220 for students who meet the entry age requirements pursuant to chapter ((480-39)) 392-335 WAC.

**WSR 07-23-026**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed November 9, 2007, 10:57 a.m., effective December 10, 2007]

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

Purpose: To change the following WAC reference in WAC 392-121-124: From a state board (WAC 180-50-315) to the appropriate OSPI WAC (392-410-315).

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-124.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 07-15-046 on July 13, 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 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: November 9, 2007.

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending WSR 04-14-068, filed 7/2/04, effective 9/1/04)

**WAC 392-121-124 Full-time equivalent enrollment for work based learning.** For work based learning provided pursuant to WAC ((480-50-315)) 392-410-315, a student's full-time equivalent shall be determined as follows:

(1) For cooperative work based learning experience, in accordance with WAC ((480-50-315)) 392-410-315 (1)(g), divide the student's hours of work experience for the month by two hundred; for example: Forty hours of cooperative

work experience equals two tenths of a full-time equivalent ( $40 \div 200 = 0.20$ ). For instructional work based learning experience, in accordance with WAC ((480-50-315)) 392-410-315 (1)(f) and WAC 296-125-043(4), divide the student's enrolled hours of work experience for the month by one hundred; for example: Twenty hours of instructional work experience equals two tenths of a full-time equivalent ( $20 \div 100 = 0.20$ ). Enrollment exclusions in WAC 392-121-108 apply to instructional work based learning enrolled hours.

(2) Estimated or scheduled hours of cooperative work based learning experience may be used in determining a student's full-time equivalent on an enrollment count date: Provided, That the combined monthly hours reported for the school year shall not exceed the student's actual hours of cooperative work based learning experience documented on the student's work records and maintained by the school district for audit purposes. Instructional and cooperative work based learning experience during June of the regular school year shall be included in the May enrollment count.

(3) Work based learning provided as part of a state-approved vocational education program qualifies for enhanced vocational funding and may be included in determining a student's vocational full-time equivalent enrollment.

(4) No more than three hundred sixty hours of cooperative work based learning may be claimed for funding for each credit a student pursues as reported on the student's transcript. No more than one hundred eighty hours of instructional work based learning may be claimed for funding for each credit a student pursues as reported on the student's transcript.

(5) Funding may be claimed only for work based learning hours that occur after the work based learning plan, work based agreement, program orientation and new employee orientation, as defined in WAC ((480-50-315)) 392-410-315, are completed.

**WSR 07-23-030**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**

[Filed November 9, 2007, 12:56 p.m., effective February 11, 2008]

Effective Date of Rule: February 11, 2008.

Purpose:

- Provide free online searching of UCC data.
- Reduce fees for search results mailed from the UCC office.
- Reduce fees for online filing of UCC financing statements and liens.
- Increase fees for paper filing of UCC financing statements and liens.

Citation of Existing Rules Affected by this Order: Amending WAC 308-390-105.

Statutory Authority for Adoption: RCW 62A.9A-526.

Other Authority: Chapters 60.11, 60.13, 60.68 RCW, RCW 43.24.086.

Adopted under notice filed as WSR 07-20-117 on October 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 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: November 9, 2007.

Nancy Skewis  
Administrator

AMENDATORY SECTION (Amending WSR 04-15-100, filed 7/19/04, effective 8/19/04)

**WAC 308-390-105 Fees.** (1) The fee for filing and indexing a UCC (~~((document))~~) record of one or two pages communicated on paper (~~((or in a paper-based format is \$13.28))~~) is \$15.00. If there are additional pages, the fee is \$1.00 for each additional page. (~~((But))~~) The fee for filing and indexing a UCC (~~((document))~~) record communicated by a medium authorized by these rules which is other than on paper (~~((or in a paper-based format shall be \$10.00))~~) is \$8.00.

(2) (~~((For an initial financing statement that indicates that it is filed in connection with a public-finance transaction or in connection with a manufactured-home transaction will be filed at the fee provided in subsection (1) of this section.~~

(~~((3))~~) UCC search fee. The fee for processing a UCC search request communicated on paper (~~((or in a paper-based format is \$18.80))~~) is \$10.00. The fee for (~~((filing and indexing))~~) processing a UCC search request communicated by a medium authorized by these rules which is other than on paper (~~((or in a paper-based format shall be \$15.00))~~) is \$0.00.

(~~((4))~~) (3) UCC search(~~((—))~~) with copies. The fee for a UCC search and copies of all relevant (~~((documents))~~) records is (~~((26.57))~~) \$15.00.

### WSR 07-23-031

#### PERMANENT RULES

#### DEPARTMENT OF LICENSING

[Filed November 9, 2007, 12:58 p.m., effective December 10, 2007]

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

Purpose: To correct subsection (3) concerning the calculation of lapse date on records for public finance transactions and manufactured home transactions.

Citation of Existing Rules Affected by this Order: Amending WAC 308-390-306.

Statutory Authority for Adoption: RCW 62A.9A-526.

Adopted under notice filed as WSR 07-20-118 on October 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 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: November 9, 2007.

Nancy Skewis  
Administrator

AMENDATORY SECTION (Amending WSR 01-10-056, filed 4/27/01, effective 7/1/01)

**WAC 308-390-306 Initial financing statement.** Upon the filing of an initial financing statement, the status of the parties and the status of the financing statement shall be as follows:

(1) Status of secured party. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC record names an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record.

(2) Status of debtor. The status of a debtor named on the record shall be active and shall continue as active until one year after the financing statement lapses.

(3) Status of financing statement. The status of the financing statement shall be active. A lapse date shall be calculated, five years from the file date, unless (~~((the initial financing statement indicates that it is filed with respect to a public-finance transaction or a manufactured-home transaction, in which case the lapse date shall be thirty years from the file date, or if))~~) the initial financing statement indicates that it is filed against a transmitting utility, in which case there shall be no lapse date. A financing statement remains active until one year after it lapses, or if it is indicated to be filed against a transmitting utility, until one year after it is terminated with respect to all secured parties of record.

### WSR 07-23-041

#### PERMANENT RULES

#### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 14, 2007, 11:39 a.m., effective December 15, 2007]

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

Purpose: These rule revisions clarify guidance on when to start counting education and experience for nondegreed

vocational/career and technical education (CTE) instructors, and what may, and may not, count as nondegree credits.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-259 and 392-121-264.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

Adopted under notice filed as WSR 07-17-016 on August 6, 2007.

Changes Other than Editing from Proposed to Adopted Version: Addition of the phrase "and regardless of type of vocational/career and technical education certificate held" to three areas, (WAC 392-121-259 (3)(a)(i), (b), and 392-121-264 (1)(e)), per request of the state auditor's office.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: November 14, 2007.

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending WSR 06-19-045, filed 9/15/06, effective 10/16/06)

**WAC 392-121-259 Definition—Nondegree credits.** As used in this chapter, "nondegree credits" means credits recognized for nondegree certificated instructional employees as follows:

(1) Zero credits shall be recognized for persons holding a valid certificate other than a certificate included in subsection (2) or (3) of this section.

(2) Thirty credits shall be recognized for persons holding a valid continuing or standard school nurse certificate.

(3) Persons holding valid vocational/career and technical education certificates as provided for in chapter 181-77 WAC shall accumulate recognized credits as follows:

(a) One credit for each one hundred clock hours of occupational experience as defined in WAC 181-77-003(7) (~~such that each calendar year is limited to a maximum of twenty credits~~), subject to the following conditions and limitations:

(i) Clock hours of occupational experience used in determining nondegree credits must be earned after meeting the minimum vocational/career and technical education certification requirements of three years (six thousand hours) as established in WAC 181-77-041 (1)(a)(i), regardless of when the initial certificate is issued and regardless of type of vocational/career and technical education certificate held.

(ii) Nondegree credits based on occupational experience shall be limited to a maximum of twenty credits per calendar year.

(iii) Nondegree credits based on occupational experience shall exclude experience determined pursuant to WAC 392-121-264 (1)(a) through (d).

(b) One credit for each ten clock hours of vocational/career and technical education educator training meeting the requirements of WAC 181-77-003 (2), (9), or (12). Clock hours of vocational/career and technical education educator training used in determining nondegree credits must be earned after meeting the minimum vocational/career and technical education certification requirements as established in WAC 181-77-041 (1)(b) and (c), regardless of when the initial certificate is issued and regardless of type of vocational/career and technical education certificate held.

(4) Credits earned after September 1, 1995, must satisfy the additional requirements of WAC 392-121-262.

(5) Accumulate credits rounded to one decimal place.

**AMENDATORY SECTION** (Amending WSR 06-19-045, filed 9/15/06, effective 10/16/06)

**WAC 392-121-264 Definition—Certificated years of experience.** Regardless of the experience factors used by a school district for the purposes of its salary schedule(s), as used in this chapter, the term "certificated years of experience" means the number of years of accumulated full-time and part-time professional education employment prior to the current reporting school year in the state of Washington, out-of-state, and a foreign country. School districts shall report all certificated years of experience including those beyond the experience limit of the school district's salary schedule.

(1) Professional education employment shall be limited to the following:

(a) Employment in public or private preschools or elementary and secondary schools in positions which require certification where:

(i) Schools include the Centrum education program, the Pacific Science Center education program, and educational centers authorized under chapter 28A.205 RCW;

(ii) Certification means the concurrent public professional education licensing requirements established in the state, province, country, or other governmental unit in which employment occurred and which, for the state of Washington, refers to the certificates authorized by WAC 181-79A-140 and temporary permits authorized by WAC 181-79A-128;

(b) Employment in public or private vocational-technical schools, technical colleges, community/junior colleges, colleges, and universities in positions comparable to those which require certification in Washington school districts;

(c) Employment in a governmental educational agency with regional administrative responsibilities for preschool, elementary, and/or secondary education including but not limited to an educational service district, office of the superintendent of public instruction, or United States department of education in any professional position including but not limited to C.P.A., architect, business manager, or physician;

(d) Experience in the following areas:

(i) Military, Peace Corps, or Vista service which interrupted professional education employment included in (a), (b), or (c) of this subsection; and

(ii) Sabbatical leave.

(e) For nondegreed vocational/career and technical education instructors, up to a maximum of six years of management experience as defined in WAC 181-77-003 acquired after the instructor meets the minimum vocational/career and technical education certification requirements of three years (six thousand hours) established in WAC 181-77-041 (1)(a) (i), regardless of when the initial certificate is issued and regardless of type of vocational/career and technical education certificate held. If a degree is obtained while employed in the state of Washington as a nondegreed vocational/career and technical education instructor, the eligible years of management experience pursuant to this subsection reported on Report S-275 prior to the awarding of the degree shall continue to be reported but shall not increase.

(2) Years of full-time and part-time professional education employment prior to the current reporting school year are accumulated as follows:

(a) For each professional education employment which is not employment as a casual substitute pursuant to subsection (1)(a) of this section;

(i) Determine the total number of hours per year for an employee working full-time with each employer;

(ii) Determine the number of hours per year with each employer excluding unpaid leave;

(iii) Calculate the quotient of the hours determined in (a)(ii) of this subsection divided by the hours in (a)(i) of this subsection rounded to two decimal places for each year.

(b) For professional education employment as a casual substitute pursuant to subsection (1)(a) of this section:

(i) Determine the total number of full-time equivalent substitute days per year;

(ii) Calculate the quotient of full-time equivalent days determined in (b)(i) of this subsection divided by 180 rounded to two decimal places for each year.

(c) No more than 1.0 year may be accumulated in any traditional nine-month academic year or any twelve-month period.

(i) Accumulate, for each year, professional education employment calculated in (a)(iii) and (b)(ii) of this subsection.

(ii) Determine the smaller of the result in (c)(i) of this subsection or 1.00 for each year.

(d) Determine certificated years of experience as the accumulation of all years of professional education employment calculated in (c)(ii) of this subsection and report such years rounded to one decimal place.

**WSR 07-23-046**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed November 14, 2007, 2:54 p.m., effective December 15, 2007]

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

Purpose: The professional educator standards board adopted a new evidence-based Standard V for teacher preparation programs. The proposed WAC language replaces the old Standard V with the newly adopted Standard V.

Citation of Existing Rules Affected by this Order: Amending WAC 181-78A-270.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 07-20-104 on October 2, 2007.

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.

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: November 7, 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-270 Approval standard—Knowledge and skills.** Building on the mission to prepare educators who demonstrate a positive impact on student learning based on the Improvement of Student Achievement Act of 1993 (1209), 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(5):

(1) **TEACHER.** (~~Teacher candidates will complete a well planned sequence of courses and/or experiences in which they acquire and apply knowledge about:~~

**Foundational knowledge**

(a) ~~The state learning goals and essential academic learning requirements.~~

(b) ~~The subject matter content for the area(s) they teach, including relevant methods course work and the knowledge and skills for each endorsement area for which the candidate is applying (chapter 181-82 WAC).~~

(c) The social, historical, and philosophical foundations of education, including an understanding of the moral, social, and political dimensions of classrooms, teaching, and schools.

(d) The impact of technological and societal changes on schools.

(e) Theories of human development and learning.

(f) Inquiry and research.

(g) School law and educational policy, including laws pertaining to school health and safety.

(h) Professional ethics.

(i) The responsibilities, structure, and activities of the profession.

(j) Issues related to abuse including the identification of physical, emotional, sexual, and substance abuse, information on the impact of abuse on the behavior and learning abilities of students, discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are the victims of abuse, and methods for teaching students about abuse of all types and their prevention.

(k) The standards, criteria and other requirements for obtaining the professional certificate, including a draft professional growth plan.

#### **Effective teaching**

(l) Research and experience-based principles of effective practice for encouraging the intellectual, social, and personal development of students.

(m) Different student approaches to learning for creating instructional opportunities adapted to learners of both sexes and from diverse cultural or linguistic backgrounds.

(n) Areas of exceptionality and learning—including, but not limited to, learning disabilities, visual and perceptual difficulties, and special physical or mental challenges.

(o) Effective instructional strategies for students at all levels of academic abilities and talents with an awareness of the influence of culture and gender on student learning.

(p) Instructional strategies for developing reading, writing, critical thinking, and problem-solving skills.

(q) The prevention and diagnosis of reading difficulties and research-based intervention strategies.

(r) Classroom management and discipline, including:

(i) Individual and group motivation for encouraging positive social interaction, active engagement in learning, and self-motivation.

(ii) Effective verbal, nonverbal, and media communication for fostering active inquiry, collaboration, and supportive interactions in the classroom.

(s) Planning and management of instruction based on knowledge of the content area, the community, and curriculum goals.

(t) Formal and informal assessment strategies for evaluating and ensuring the continuous intellectual, social, and physical development of the learner.

(u) Collaboration with school colleagues, parents, and agencies in the larger community for supporting students' learning and well-being.

(v) Effective interactions with parents to support students' learning and well-being.

#### **Professional development**

(w) The opportunity for candidates to reflect on their teaching and its effects on student growth and learning.

(x) Educational technology including the use of computer and other technologies in instruction, assessment and professional productivity.

(y) Strategies for effective participation in group decision-making.)

#### **Knowledge of subject matter and curriculum goals**

(a) Teacher candidates positively impact student learning that is:

(i) **Content driven.** All students develop understanding and problem-solving expertise in the content area(s) using reading, written and oral communication, and technology.

(ii) **Aligned with curriculum standards and outcomes.** All students know the learning targets and their progress toward meeting them.

(iii) **Integrated across content areas.** All students learn subject matter content that integrates mathematical, scientific, and aesthetic reasoning.

#### **Knowledge of teaching**

(b) Teacher candidates positively impact student learning that is:

(i) **Informed by standards-based assessment.** All students benefit from learning that is systematically analyzed using multiple formative, summative, and self-assessment strategies.

(ii) **Intentionally planned.** All students benefit from standards-based planning that is personalized.

(iii) **Influenced by multiple instructional strategies.** All students benefit from personalized instruction that addresses their ability levels and cultural and linguistic backgrounds.

(iv) **Informed by technology.** All students benefit from instruction that utilizes effective technologies and is designed to create technologically proficient learners.

#### **Knowledge of learners and their development in social contexts**

(c) Evidence of teacher candidate practice reflects planning, instruction and communication that is:

(i) **Learner centered.** All students engage in a variety of culturally responsive, developmentally, and age appropriate strategies.

(ii) **Classroom/school centered.** Student learning is connected to communities within the classroom and the school, including knowledge and skills for working with others.

(iii) **Family/neighborhood centered.** Student learning is informed by collaboration with families and neighborhoods.

(iv) **Contextual community centered.** All students are prepared to be responsible citizens for an environmentally sustainable, globally interconnected, and diverse society.

#### **Understanding teaching as a profession**

(d) Teacher candidates positively impact student learning that is:

(i) **Informed by professional responsibilities and policies.** All students benefit from a collegial and professional school setting.

(ii) Enhanced by a reflective, collaborative, professional growth-centered practice. All students benefit from the professional growth of their teachers.

(iii) Informed by legal and ethical responsibilities. All students benefit from a safe and respectful learning environment.

(2) **PRINCIPAL AND PROGRAM ADMINISTRATOR.**

(a) Effective August 31, 1997, through August 31, 2004, principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in an approved preparation program which shall include:

(i) Specific performance domains. An approved preparation program shall require the candidate to demonstrate in course work and the internship the following:

(A) **Leadership:** Formulating goals with individuals or groups; initiating and maintaining direction with groups and guiding them to the accomplishment of tasks; setting priorities for one's school in the context of community and district priorities and student and staff needs; integrating own and others' ideas for task accomplishment; initiating and planning organizational change.

(B) **Information collection:** Gathering data, facts, and impressions from a variety of sources about students, parents, staff members, administrators, and community members; seeking knowledge about policies, rules, laws, precedents, or practices; managing the data flow; classifying and organizing information for use in decision making and monitoring.

(C) **Problem analysis:** Identifying the important elements of a problem situation by analyzing relevant information; framing problems; identifying possible causes; identifying additional needed information; framing and reframing possible solutions; exhibiting conceptual flexibility; assisting others to form reasoned opinions about problems and issues.

(D) **Judgment:** Reaching logical conclusions and making high quality, timely decisions given the best available information.

(E) **Organizational oversight:** Planning and scheduling one's own and others' work so that resources are used appropriately, and short-term and long-term priorities and goals are met; monitoring projects to meet deadlines.

(F) **Implementation:** Making things happen; putting programs and plans into action; applying management technologies; applying methods of organizational change including collaborative processes; facilitating tasks; establishing progress checkpoints; considering alternative approaches; providing "mid-course" corrections when actual outcomes start to diverge from intended outcomes; adapting to new conditions.

(G) **Delegation:** Assigning projects or tasks together with clear authority to accomplish them and responsibility for their timely and acceptable completion.

(H) **Instructional program:** Envisioning and enabling instructional and auxiliary programs for the improvement of teaching and learning; recognizing the developmental needs of students; insuring appropriate instructional methods that address students' gender and cultural differences; designing positive learning experiences; accommodating differences in cognition and achievement; mobilizing the participation of

appropriate people or groups to develop these programs and to establish a positive learning environment.

(I) **Curriculum design:** Interpreting school district curricula; planning and implementing with staff a framework for instruction that shall include the implementation of the state learning goals and essential academic learning requirements; initiating needs analyses and monitoring social and technological developments as they affect curriculum; responding to international content levels; adjusting content as needs and conditions change.

(J) **Student guidance and development:** Providing for student guidance, counseling, and auxiliary services; utilizing community organizations; responding to family needs; enlisting the participation of appropriate people and groups to design and conduct these programs and to connect schooling with plans for adult life; planning for a comprehensive program of student activities.

(K) **Staff development:** Identifying with participants the professional needs of individuals and groups; planning and organizing programs to improve staff effectiveness; supervising individuals and groups; engaging staff and others to plan and participate in recruitment and development; initiating self-development.

(L) **Measurement and evaluation:** Determining what diagnostic information is needed about students, staff, and the school environment; examining the extent to which outcomes meet or exceed previously defined standards, goals, or priorities for individuals or groups; drawing inferences for program revisions; interpreting measurements or evaluations for others; relating programs to desired outcomes; developing equivalent measures of competence.

(M) **Resource allocation:** Planning and developing the budget with appropriate staff; seeking, allocating, and adjusting fiscal, human, and material resources; utilizing the physical plant; monitoring resource use and reporting results.

(N) **Motivating others:** Building commitment to a course of action; creating and channeling the energy of self and others; planning and encouraging participation; supporting innovation; recognizing and rewarding effective performance; providing coaching, guidance, or correction for performance that needs improvement; serving as a role model.

(O) **Sensitivity:** Perceiving the needs and concerns of others; dealing with others tactfully; working with others in emotionally stressful situations or in conflict; managing conflict; obtaining feedback; recognizing multicultural sensitivities.

(P) **Oral expression:** Making oral presentations that are clear and easy to understand; clarifying and restating questions; responding, reviewing, and summarizing for groups; utilizing appropriate communicative aids; adapting for audiences.

(Q) **Written expression:** Expressing ideas clearly in writing; writing appropriately for different audiences such as students, teachers, and parents; preparing brief memoranda.

(R) **Philosophical and cultural values:** Acting with a reasoned understanding of the role of education in a democratic society and in accord with accepted ethical standards; recognizing philosophical and historical influences in education; reflecting an understanding of American culture, includ-

ing current social and economic issues related to education; recognizing global influences on students and society.

(S) **Legal and regulatory applications:** Acting in accordance with relevant federal and Washington state laws, rules, and policies; recognizing governmental influences on education; working within local rules, procedures, and directives; administering contracts.

(T) **Policy and political influences:** Identifying relationships between public policy and education; recognizing policy issues; examining and affecting policies individually and through professional and public groups; relating policy initiatives to the welfare of students; addressing ethical issues.

(U) **Public and media relationships:** Developing common perceptions about school issues; interacting with parental and community opinion leaders; understanding and responding skillfully to the electronic and printed news media; initiating and reporting news through appropriate channels; enlisting public participation; recognizing and providing for market segments.

(ii) Performance assessment. An approved preparation program for principals shall require that prior to the internship each candidate shall engage in a performance assessment through a process determined by each preparation program. The results of this assessment shall be utilized by the college/university supervisor, the cooperating principal, and the principal candidate to cooperatively design the internship plan.

(b) Effective September 1, 2004, principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(i) Successful demonstration of standards. A school administrator is an educational leader who promotes the success of all students by:

(A) Facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community;

(B) Advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth;

(C) Ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

(D) Collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(E) Acting with integrity, fairness, and in an ethical manner; and

(F) Understanding, responding to, and influencing the larger political, social, economic, legal and cultural context.

(ii) Performance assessment. An approved preparation program for principals shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval.

All candidates shall exit the residency certificate program with a draft professional growth plan.

(3) **SUPERINTENDENT.** Superintendent candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in an approved preparation program for superintendents which shall include specific performance domains for superintendents. An approved preparation program for superintendents shall require the candidate to demonstrate in course work and the internship the following:

(a) **Strategic leadership:** The knowledge, skills and attributes to identify contexts, develop with others vision and purpose, utilize information, frame problems, exercise leadership processes to achieve common goals, and act ethically for educational communities. This includes:

(i) Professional and ethical leadership.

(ii) Information management and evaluation.

(b) **Instructional leadership:** The knowledge, skills and attributes to design with others appropriate curricula and instructional programs which implement the state learning goals and essential academic learning requirements, to develop learner centered school cultures, to assess outcomes, to provide student personnel services, and to plan with faculty professional development activities aimed at improving instruction. This includes:

(i) Curriculum, instruction, supervision, and learning environment.

(ii) Professional development and human resources.

(iii) Student personnel services.

(c) **Organizational leadership:** The knowledge, skills and attributes to understand and improve the organization, implement operational plans, manage financial resources, and apply decentralized management processes and procedures. This includes:

(i) Organizational management.

(ii) Interpersonal relationships.

(iii) Financial management and resource allocation.

(iv) Technology and information system.

(d) **Political and community leadership:** The knowledge, skills and attributes to act in accordance with legal provisions and statutory requirements, to apply regulatory standards, to develop and apply appropriate policies, to be conscious of ethical implications of policy initiatives and political actions, to relate public policy initiatives to student welfare, to understand schools as political systems, to involve citizens and service agencies, and to develop effective staff communications and public relations programs. This includes:

(i) Community and media relations.

(ii) Federal and Washington state educational law, public policy and political systems.

(4) **SCHOOL COUNSELOR.** Effective August 31, 1997 through August 31, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Human growth and development (studies that provide an understanding of the nature and needs of individuals at all developmental levels).

(b) Social and cultural foundations (studies that provide an understanding of issues and trends in a multicultural and diverse society).

(c) Helping relationships (studies that provide an understanding of counseling and consultation processes).

(d) Group work (studies that provide an understanding of group development, dynamics, counseling theories, group counseling methods and skills, and other group work approaches).

(e) Career and lifestyle development (studies that provide an understanding of career development and related life factors).

(f) Appraisal (studies that provide an understanding of individual and group approaches to assessment and evaluation), including assessment of the state learning goals and essential academic learning requirements.

(g) Research and program evaluation (studies that provide an understanding of types of research methods, basic statistics, and ethical and legal considerations in research).

(h) Professional orientation (studies that provide an understanding of all aspects of professional functioning including history, roles, organizational structures, ethics, standards, and credentialing).

(i) Foundations of school counseling including:

(i) History, philosophy, and trends in school counseling;

(ii) Role and function of the school counselor in conjunction with the roles of the professional and support personnel in the school;

(iii) Knowledge of the school setting and curriculum including the state learning goals and essential academic learning requirements;

(iv) Ethical standards and guidelines of the American School Counselor Association (ASCA);

(v) State and federal policies, laws, and legislation relevant to school counseling; and

(vi) Implications of sociocultural, demographic, and lifestyle diversity relevant to school counseling.

(j) Studies that provide an understanding of the coordination of counseling program components as they relate to the total school community including:

(i) Referral of children and adolescents for specialized help;

(ii) Coordination efforts with resource persons, specialists, businesses, and agencies outside the school to promote program objectives;

(iii) Methods of integration of guidance curriculum in the total school curriculum;

(iv) Promotion of the use of counseling and guidance activities and programs by the total school community to enhance a positive school climate; and

(v) Methods of planning and presenting guidance-related educational programs for school personnel and parents.

(k) Theory, knowledge and skills for the practice of school counseling including:

(i) Program development, implementation and evaluation. Studies in this area include:

(A) Use of surveys, interviews, and needs assessments;

(B) Design, implementation and evaluation of a comprehensive, developmental school program;

(C) Implementation and evaluation of specific strategies designed to meet program goals and objectives;

(D) Preparation of a counseling schedule reflecting appropriate time commitments and priorities in a developmental school counseling program; and

(E) Use of appropriate technology and information systems.

(ii) Counseling and guidance. Studies in this area include:

(A) Individual and group counseling and guidance approaches appropriate for the developmental stage and needs of children and adolescents;

(B) Group guidance approaches that are systematically designed to assist children and adolescents with developmental tasks;

(C) Approaches to peer helper programs;

(D) Issues which may affect the development and function of children and adolescents (e.g., abuse, eating disorders, attention deficit hyperactivity disorder, exceptionalities, substance abuse, violence, suicide, dropout);

(E) Developmental approaches to assist students and parents at points of educational transition (e.g., postsecondary education, career and technical education, and career options);

(F) Crisis intervention and referral; and

(G) System dynamics, including family, school, community, etc.

(iii) Consultation. Studies in this area shall include:

(A) Methods of enhancing teamwork within the school community; and

(B) Methods of involving parents, teachers, administrators, support staff and community agency personnel.

(5) **SCHOOL COUNSELOR.** Effective September 1, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Foundations of the school counseling profession:** Certified school counselors design, deliver, and evaluate student-centered, data-driven school counseling programs that advance the mission of the school in light of recognized theory, research, exemplary models, community context, and professional standards.

(ii) **School counseling and student competencies:** Certified school counselors integrate academic, career, and personal/social student competencies, including Washington state learning goals and essential academic learning requirements, into the school counseling program; teach counseling and guidance related material by using effective curriculum, instructional strategies, and instructional management; support teachers and parents in helping students develop knowledge and skill for learning, living, and working; and provide information about best practices to a school community.

(iii) **Human growth and development:** Certified school counselors apply comprehensive, in-depth knowledge of human growth and development to improve student learn-



ing, well-being, and to enhance resiliency; provide guidance to parents and teachers about developmentally appropriate practices that support students throughout their schooling experience.

(iv) **Counseling theories and technique:** Certified school counselors demonstrate an understanding of established and emerging counseling theories through effective use of individual and group techniques for working with a diverse population.

(v) **Equity, fairness, and diversity:** Certified school counselors value and show respect for all members of the community; demonstrate fairness, equity, and sensitivity to every student, and advocate for equitable access to instructional programs and activities; use data for designing and implementing plans that remove barriers to learning; and help to close achievement gaps among subgroups of students.

(vi) **School climate:** Certified school counselors establish and foster a safe, inclusive, and nurturing learning environment for students, staff, and families and use strategies designed to prevent or resolve problems that could limit or diminish the capacity of students to learn and achieve at their highest levels.

(vii) **Collaboration with school staff, family, and community:** Certified school counselors work collaboratively with school staff, families and community members to achieve common goals for the education of students, improvement of schools, and advancement of the larger community; know appropriate behavior management strategies and can team with staff and families to improve student achievement; and use their knowledge of community resources to make appropriate referrals based on the needs of students.

(viii) **Information resources and technology:** Certified school counselors select and use informational resources and technology to facilitate delivery of a comprehensive school counseling program that meets student needs; and skillfully use technology to enhance communication.

(ix) **Student assessment and program evaluation:** Certified school counselors understand the basic principles and purposes of assessment; collection and use of data; regularly monitor student progress and are able to communicate the purposes, design, and results of assessments to various audiences; know basic principles of research design, action research, and program evaluation for purposes of program improvement and accountability.

(x) **Leadership and advocacy:** Certified school counselors support practices and policies that promote academic rigor-skills for learning, living, and working; provide leadership that enhances student academic, career, and personal/social development and advocate for guidance as an integral part of a school's educational system; model practices that help students, parents, teachers, and policy makers understand how curriculum, instruction and assessment can help students see the relationship between effort, performance, and success beyond high school. Certified school counselors help promote understanding of graduation requirements, WASL scores, and development of the high school and beyond plan.

(xi) **Professionalism, ethics, and legal mandates:** Certified school counselors develop a professional identity con-

gruent with knowledge of all aspects of professional functions, professional development, and state and national school counselor organizations. They adhere strictly to the profession's codes of ethics, especially those that have been established by the American Counseling Association (ACA), the American School Counselor Association (ASCA), the National Board for Certified Counselors (NBCC), and other relevant codes of ethics. They are familiar with state and federal policies, laws, and legislation relevant to school counseling.

(xii) **Reflective practice:** Certified school counselors integrate knowledge, skills, and life experiences to respond effectively to new or unexpected critical events and situations; serve as change agents by using their understanding of schools as social, cultural and political systems within a larger organizational context; monitor practice with continuous, in-depth reflection; and make adjustments as needed.

(b) **Performance assessment.** An approved preparation program for school counselors shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(6) **SCHOOL PSYCHOLOGIST.** Effective August 31, 1997, through August 31, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Knowledge of the field. The candidate has knowledge and skill in relevant fields of study, including:

- (i) Learning theory.
- (ii) Personality theory and development.
- (iii) Individual and group testing and assessment.
- (iv) Individual and group counseling and interviewing theory and techniques.
- (v) Basic statistics.
- (vi) Child development.
- (vii) Exceptional children.
- (viii) Social and cultural factors.
- (ix) Deviant personality.
- (x) Curriculum, including the state learning goals and essential academic learning requirements.
- (xi) Research design.
- (xii) Physiological and biological factors.

(b) Assessment and diagnosis. The candidate has knowledge and skill necessary to select, administer, score, and interpret instruments and techniques in the following areas:

- (i) Intellectual and cognitive assessment.
- (ii) Individual and group academic skills: Standardized norm-referenced and criteria-referenced measurements and curriculum-based measurements.
- (iii) Personality assessment.
- (iv) Assessment of perceptual skills.
- (v) Assessment of adaptive behavior; assessment of language skills.

(c) Behavioral observation and analysis. The candidate has knowledge and skill in behavior observation, including:

(i) Data taking.

(ii) Frequency measures.

(iii) Qualitative and quantitative analysis of classroom behavior.

(iv) Developmental and personality analysis, including perceptual, cognitive, social, and affective and language development in children.

(d) Counseling and interviewing. The candidate has the knowledge and skill necessary to:

(i) Provide individual and group counseling to students and parents.

(ii) Conduct interviews essential to information collecting from parents, teachers, and other professionals.

(e) Program development. The candidate has the knowledge and skill to make educational prescriptions, including specification of remedial environmental changes, both curricular and behavioral, for a particular student.

(f) Consultation. The candidate has the knowledge and skill to:

(i) Function on multidisciplinary teams in evaluating and placing students.

(ii) Confer with and make recommendations to parents, specialists, teachers, referral personnel, and others relative to student's characteristics and needs in the educational and home environments.

(g) Program evaluation and recordkeeping. The candidate has the knowledge and skill necessary to develop and implement program evaluation and maintain required records.

(h) Professionalism. The candidate has knowledge of professional standards regarding ethical and legal practices relevant to the practice of school psychology. The candidate demonstrates knowledge and skill in written and oral reporting of assessment and remedial recommendations which will meet ethical and legal standards.

(i) Research. The candidate has knowledge and skill to:

(i) Evaluate and perform research.

(ii) Apply school-oriented research.

(iii) Construct criterion-referenced instruments with reference to such educational decisions as:

(A) Retention in grade.

(B) Acceleration and early entrance.

(C) Early entrance.

(7) **School psychologist.** Effective September 1, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Data-based decision making and accountability:** Certified school psychologists have knowledge of varied models and methods of assessment that yield information useful in identifying strengths and needs, in understanding problems, and in measuring progress and accomplishments; use such models and methods as part of a systematic process to collect data and other information, translate assessment results into empirically based decisions about service deliv-

ery, evaluate the outcomes of services; and data-based decision making permeates every aspect of professional practice.

(ii) **Consultation and collaboration:** Certified school psychologists have knowledge of behavioral, mental health, collaborative, and/or other consultation models and methods and of their application to particular situations; collaborate effectively with others in planning and decision-making processes at the individual, group, and system levels.

(iii) **Effective instruction and development of cognitive/academic skills:** Certified school psychologists have knowledge of human learning processes, techniques to assess these processes, and direct and indirect services applicable to the development of cognitive and academic skills; collaborate with others, develop appropriate cognitive and academic goals for students with different abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, instructional interventions and consultation.

(iv) **Socialization and development of life skills:** Certified school psychologists have knowledge of human developmental processes, techniques to assess these processes, and direct and indirect services applicable to the development of behavioral, affective, adaptive, and social skills; collaborate with others, develop appropriate behavioral, affective, adaptive, and social goals for students of varying abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, consultation, behavioral assessment/intervention, and counseling.

(v) **Student diversity in development and learning:** Certified school psychologists have knowledge of individual differences, abilities, and disabilities and of the potential influence of biological, social, cultural, ethnic, experiential, socioeconomic, gender-related, and linguistic factors in development and learning; demonstrate the sensitivity and skills needed to work with individuals of diverse characteristics and to implement strategies selected and/or adapted based on individual characteristics, strengths, and needs.

(vi) **School and systems organization, policy development, and climate:** Certified school psychologists have knowledge of general education, special education, and other educational and related services; understanding of schools and other settings as systems; work with individuals and groups to facilitate policies and practices that create and maintain safe, supportive, and effective learning environments for children and others.

(vii) **Prevention, crisis intervention, and mental health:** Certified school psychologists have knowledge of human development and psychopathology and of associated biological, cultural, and social influences on human behavior; provide or contribute to prevention and intervention programs that promote the mental health and physical well-being of students.

(viii) **Home/school/community collaboration:** Certified school psychologists have knowledge of family systems, including family strengths and influences on student development, learning, and behavior, and of methods to involve families in education and service delivery; work effectively with

families, educators, and others in the community to promote and provide comprehensive services to children and families.

(ix) **Research and program evaluation:** Certified school psychologists have knowledge of research, statistics, and evaluation methods; evaluate research, translate research into practice, and understand research design and statistics in sufficient depth to plan and conduct investigations and program evaluations for improvement of services.

(x) **School psychology practice and development:** Certified school psychologists have knowledge of the history and foundations of their profession; of various service models and methods; of public policy development applicable to services to children and families; and of ethical, professional, and legal standards, including the Washington Administrative Code; practice in ways that are consistent with applicable standards, are involved in their profession, and have the knowledge and skills needed to acquire career-long professional development.

(xi) **Information technology:** Certified school psychologists have knowledge of information sources and technology relevant to their work; access, evaluate, and utilize information sources and technology in ways that safeguard or enhance the quality of services.

(b) **Performance assessment.** An approved preparation program for school psychologists shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

(8) **SCHOOL SOCIAL WORKER.** Effective August 31, 1997, through August 31, 2005, school social worker candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Knowledge for social work practice. The candidate has knowledge and skills in relevant fields of study including:

(i) Values.

(A) Knowledge of profession including values, skills, and ethics; and

(B) National Association of Social Workers (NASW) Code of Ethics and school social work guidelines for practice.

(ii) Human behavior and the social environment.

(A) Community theory and community change (e.g., community organization and development, social planning, networking, and case management);

(B) Systems and organizational theory (e.g., school as a bureaucracy);

(C) Social disorganization (e.g., poverty, family and community violence, unemployment, addictions, multiple losses), and context of family in a changing society;

(D) Family dynamics and theories of family therapy;

(E) Human/child growth and development;

(F) Diverse populations of: Race, culture, social class, life style, age, gender and the disabled;

(G) Theories of personality; and

(H) Use of computer technology for social work practice.

(b) Service delivery and program development. The candidate will have knowledge and skills in the following activities:

(i) Direct practice.

(A) Referring, developing, and coordinating resources and services in the local education agency and community;

(B) Knowledge and skills related to families;

(C) Case management;

(D) Working with vulnerable and "hard to reach" individuals and families, including those from diverse populations;

(E) Crisis intervention, conflict resolution, stress management and decision-making skills;

(F) Individual and group counseling to improve students' self-knowledge and interactional skills for personal empowerment;

(G) Interviewing and counseling students in relation to social-personal problems adjudged to be impairing student's ability to learn;

(H) Family interventions including parent education; referral to resources; family counseling;

(I) Teaching children communication and interpersonal relationship skills through individual/group/classroom interventions;

(J) Collaborating and consulting with parents and community to assure readiness to learn for all students;

(K) Multidimensional assessment of student's social-emotional adjustment, adaptive behaviors, individual strengths, and environmental assets;

(L) Intervention case planning processes; and

(M) Career and academic guidance to students in their school to work transitions.

(ii) Indirect practice.

(A) Liaison and facilitator between and among home, school and community;

(B) Collaborate and consult with other educational staff to assure student progress;

(C) Use computer technology for practice and efficiency;

(D) Develop strategies for increased parental and community involvement with the school;

(E) Develop programs of remediation for students and their families;

(F) Design, coordinate and facilitate programs such as suicide prevention, truancy and drop-out prevention, and prevention of teenage pregnancy;

(G) Provide staff development programs;

(H) Work collaboratively with educational staff to develop programs to address school-community identified needs; and

(I) Function as change agents.

(c) Research and evaluation. The candidate will have necessary skills and knowledge to:

(i) Collect and interpret data in order to evaluate student, school, and community needs;

- (ii) Evaluate own practice;
- (iii) Become consumer of research findings;
- (iv) Understand use of program evaluation methods; and
- (v) Utilize computer technology for research and evaluation.

(d) Context for educational system. The candidate will have necessary knowledge and skills to apply the following:

- (i) State learning goals and essential academic learning requirements;
- (ii) Theories of learning;
- (iii) School law and professional ethics;
- (iv) Computer technology in the workplace; and
- (v) Understanding of policies, laws, and procedures.

(9) **School social workers.** Effective September 1, 2005, school social worker candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Core concepts and professional practice foundations:** The certified school social worker understands and applies the core concepts, tools of inquiry, theories, and skills and values of the general field of social work to the educational system; relates these core concepts to the Washington state learning goals, essential academic learning requirement (EALRS), Revised Code of Washington (RCW), Washington Administrative Code (WAC) and the Individuals With Disabilities Education Act (IDEA); and utilizes these constructs to facilitate the educational, social and emotional development of students by working towards reducing the impact of nonacademic barriers to academic success.

(ii) **Planning, ecological assessment and evaluation:** The certified school social worker understands and knows how to apply various formal and informal assessment tools to identify student, family, school and community needs using a strengths and systems perspective; engage students (individually or in groups), families, school staff and/or the larger community in designing interventions and developing programs, which bolsters the strengths and meets the needs identified; uses best practices in evaluation criteria to monitor the success of the intervention; revisions to the intervention plan are based on systematic data collection; and to utilize the principles of research design and program evaluation to improve student learning outcomes.

(iii) **Prevention/intervention services:** The certified school social worker has knowledge of and ability to provide prevention education and skill building in such areas as violence, mediation, bullying, substance misuse and abuse, conflict resolution/management, and stress management; provide direct intervention services to students through crisis management, case management, counseling, skill building, behavior management, teaching of psycho-educational curriculums, personal development skills and classroom presentations; and provide both prevention and intervention services to students individually, in small group or classroom settings as well as with students' families.

(iv) **Home, school and community consultation and collaboration:** The certified school social worker understands and has the ability to develop consultative and collab-

orative relationships both individually and on a systemic level with students, colleagues, families and the community to support students' learning and social/emotional development; assist students and their families in networking with various social support systems in order to benefit student learning; and use their extensive knowledge of community resources to appropriately refer students and families to various community services.

(v) **Advocacy and facilitation:** The certified school social worker understands and has the ability to advocate and facilitate changes that empower students, families, educators and others to gain access to and effectively use school and community resources.

(vi) **Diversity and school climate:** The certified school social worker understands how a student's learning is influenced and impacted by culture, family dynamics, community values, individual learning styles, talents, gender, sexual orientation, language, prior learning, economics and disabilities; utilize this knowledge to design, implement and evaluate programs that enhance student learning and social interaction in school, family and community settings; and how to create and support a safe, nurturing and secure learning environment by designing and using strategies to prevent or resolve ecological barriers that could limit or diminish the capacity of students to learn and achieve at their highest levels.

(vii) **Professional development:** The certified school social worker understands and values the need for professional development and is able to use supervision, consultation, collaboration, continuing education and professional research to evaluate and enhance their practice.

(viii) **Information resources and technology:** The certified school social worker uses informational resources and technology to communicate, monitor student progress and evaluate programs; and access, appraise and utilize information sources and technology in ways that safeguard and enhance their quality of services.

(ix) **Professional code of conduct and ethics:** The certified school social worker understands, maintains and applies the professional codes of conduct and ethical practice guidelines embodied in the National Association of Social Work (NASW) code of ethics and School Social Work standards developed for the field of education; and are familiar with district, state and federal laws and policies relevant to the educational setting.

(b) **Performance assessment.** An approved preparation program for school social workers shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

**WSR 07-23-050**  
**PERMANENT RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed November 15, 2007, 12:02 p.m., effective December 16, 2007]

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

Purpose: Establishes a specific process for seeking approval from the professional educator standards board for offering a specialty endorsement.

Citation of Existing Rules Affected by this Order: Amending WAC 181-82A-207.

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 07-20-106 on October 2, 2007.

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.

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: November 8, 2007.

Nasue Nishida  
 Policy and Research Analyst

AMENDATORY SECTION (Amending WSR 06-20-063, filed 9/29/06, effective 10/30/06)

**WAC 181-82A-207 Specialty endorsement (~~program requirements~~) criteria. (1) Specialty endorsements prepare a teacher (~~candidate~~) to work with a specific student population/~~demographic and/or subject matter area~~, and are created to help (~~candidates~~) teachers specialize beyond the required certificate endorsements as stated in WAC 181-82A-202. Specialty endorsements have unique endorsement competencies not found in any of the existing endorsements.**

~~((1) Candidates completing specialty endorsements shall complete the following:~~

~~(a) Complete a college/university teacher specialty endorsement program approved by the professional educator standards board pursuant to chapter 181-78A WAC, which includes methodology (see WAC 181-78A-264(5)) and field experience/internship (see WAC 181-78A-264(6)) and pursuant to endorsement program approval requirements in this chapter; and~~

~~(b) Pass the subject knowledge test for the specialty endorsement approved by the professional educator standards board.~~

~~(2) Out-of-state candidates shall comply with WAC 181-79A-257.~~

~~(3) Course work used to meet specialty endorsement requirements must be completed through a regionally accredited college/university.~~

~~(4) Only course work in which an individual received a grade of C (2.0) or higher or a grade of pass on a pass-fail system of grading shall be counted toward the course work required for the approved specialty endorsement program.)~~

(2) Each college or university and/or Washington-based organization/association requesting the creation of a specialty endorsement shall seek a two phase approval by the professional educator standards board.

(a) Phase one: Proposers shall submit a preapproval proposal to the professional educator standards board that includes the following information:

(i) Documentation of nationally recognized teaching standards unique to the proposed specialty endorsement;

(ii) Letter of support from a professional educator standards board-approved college or university interested in offering the proposed specialty endorsement program.

(b) Phase two: If proposers receive preapproval from the professional educator standards board, they shall submit a phase two application available by the board. The phase two application, not to exceed ten pages, will address the following information:

(i) A description of the needs, student population and/or subject matter addressed by the proposed specialty endorsement;

(ii) A description of the unique knowledge and skills the proposed specialty endorsement provides to educators;

(iii) An explanation of the expected value and benefit of the proposed specialty endorsement for the K-12 system.

(c) Upon completion of both phases and board approval of a specialty endorsement, the process in WAC 181-82A-206 shall apply.

**WSR 07-23-062**

**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed November 16, 2007, 12:24 p.m., effective December 17, 2007]

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

Purpose: The department is amending and repealing references to companion home and alternative living residential services in chapter 388-825 WAC. These references were permanently adopted in chapters 388-829A and 388-829C WAC effective September 1, 2007.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-825-316 and 388-825-381; and amending WAC 388-825-305, 388-825-320, 388-825-325, 388-825-340, 388-825-355, 388-825-370, 388-825-375, 388-825-385, 388-825-390, 388-825-395, and 388-825-396.

Statutory Authority for Adoption: RCW 71A.12.30 [71A.12.030].

Other Authority: Title 71A RCW.

Adopted under notice filed as WSR 07-16-091 on July 30, 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 11, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 11, Repealed 2.

Date Adopted: November 16, 2007.

Stephanie E. Schiller  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-305 What service providers are governed by the qualifications in these rules?** These rules govern individuals and agencies contracted with to provide:

- (1) Respite care services;
- (2) ~~((Companion home services;~~
- ~~(3)))~~ Personal care services through the Medicaid personal care program or DDD HCBS Basic, Basic Plus, or CORE waivers; or
- ~~((4) Alternative living services; or~~
- ~~(5)))~~ (3) Attendant care services.

**AMENDATORY SECTION** (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-320 How does a person become an individual provider~~((, companion home provider or an alternative living provider))~~?** In order to become an individual provider, ~~((companion home provider or an alternative living provider,))~~ a person must:

- (1) Be eighteen years of age or older.
- (2) Provide the social worker/case manager/designee with:
  - (a) Picture identification; and
  - (b) A Social Security card.
- (3) Complete and submit to the social worker/case manager/designee the department's criminal conviction background inquiry application, unless the provider is also the parent of the adult DDD client and exempted, per chapter 74.15 RCW.

(a) Preliminary results may require a thumbprint for identification purposes.

(b) An FBI fingerprint-based background check is required if the person has lived in the state of Washington less than three years.

(4) Provide references as requested.

(5) Complete orientation, if contracting as an individual provider.

(6) Sign a service provider contract to provide services to a DDD client.

(7) Meet additional requirements in WAC 388-825-355.

**AMENDATORY SECTION** (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-325 What are required skills and abilities for individuals and agencies contracted to provide respite care, ~~((companion home services,))~~ personal care services through the Medicaid personal care program or the DDD HCBS Basic, Basic Plus or CORE waivers, ~~((alternative living services))~~ or attendant care services?**

(1) As a provider of respite care, ~~((companion home services,))~~ personal care services through the Medicaid personal care program or the DDD HCBS Basic, Basic Plus, or CORE waivers, ~~((alternative living services))~~ or attendant care services, you must be able to:

(a) Adequately maintain records of services performed and payments received;

(b) Read and understand the person's service plan. Translation services may be used if needed;

(c) Be kind and caring to the DSHS client for whom services are authorized;

(d) Identify problem situations and take the necessary action;

(e) Respond to emergencies without direct supervision;

(f) Understand the way your employer wants you to do things and carry out instructions;

(g) Work independently;

(h) Be dependable and responsible;

(i) Know when and how to contact the client's representative and the client's case resource manager;

(j) Participate in any quality assurance reviews required by DSHS;

(2) If you are working with an adult client of DSHS as a provider of ~~((alternative living,))~~ attendant care ~~((or companion home services,))~~, you must also:

(a) Be knowledgeable about the person's preferences regarding the care provided;

(b) Know the resources in the community the person prefers to use and enable the person to use them;

(c) Know who the person's friends are and enable the person to see those friends; and

(d) Enable the person to keep in touch with his/her family as preferred by the person.

**AMENDATORY SECTION** (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-340 What is required for a provider to provide respite or residential service in their home?** Unless you are related to the client, ~~((or the client lives in a companion home,))~~ respite or residential services must take

place in a home licensed by DSHS. Services are limited to those age-specific services contained in your license.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-355 Are there any educational requirements for individuals providing respite care, attendant care, or personal care services(~~(-companion home services, or alternative living services))~~?)** (1) If you are an individual providing personal care services for adults, you must meet the training requirements in WAC 388-71-05665 through 388-71-05909.

(2) ~~((If you are an individual contracted to provide companion home services or alternative living services, you must:~~

- ~~(a) Have a high school diploma or GED;~~
- ~~(b) Successfully complete DDD specialty training within the first six months of beginning service; and~~
- ~~(c) Complete ten hours of continuing education related to the job responsibilities each subsequent calendar year.~~

~~(3))~~ If you provide personal care for children, or provide respite care, there is no required training but DDD retains the authority to require training of any provider.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-370 What are the responsibilities of an individual or home care agency when employed to provide respite care, attendant care, or personal care(~~(-companion home services or alternative living))~~ services to a client?** An individual or home care agency employed to provide respite care, attendant care, or personal care(~~(-companion home services, or alternative living))~~ services must:

(1) Understand the client's individual service plan or plan of care that is signed by the client or legal representative and social worker/case manager, and translated or interpreted, as necessary, for the client and the provider;

(2) Provide the services as outlined on the client's service plan, within the scope of practice in WAC 388-71-0215 and 388-71-0230;

(3) Accommodate client's individual preferences and differences in providing care, within the scope of the service plan;

(4) Contact the client's representative and case manager when there are changes which affect the personal care and other tasks listed on the service plan;

(5) Observe the client for change(s) in health, take appropriate action, and respond to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately if the client dies;

(8) Notify the department immediately when unable to staff/serve the client; and

(9) Notify the department when the individual or home care agency will no longer provide services. Notification to the client/legal guardian must:

- (a) Give at least two weeks' notice, and
- (b) Be in writing.

(10) Complete and keep accurate time sheets that are accessible to the social worker/case manager; and

(11) Comply with all applicable laws, regulations and contract requirements.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-375 When will the department deny payment for services of an individual or home care agency providing respite care, attendant care, or personal care(~~(-companion home services or alternative living))~~ services?** (1) The department will deny payment for the services of an individual or home care agency providing respite care, attendant care, or personal care(~~(-companion home services or alternative living services))~~ who:

(a) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0030;

(b) Is providing services under this chapter to their natural/step/adoptive minor client aged seventeen or younger;

(c) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

(d) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(e) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

(f) Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05909; or

(g) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

~~(2) ((The department will deny payment for the services of an individual or a home care agency providing companion home services or alternative living services to their natural/step/adoptive adult child.~~

~~(3) The department will deny payment for services of a legal representative appointed by the courts providing companion home services to the client for whom they are the legal representative.~~

~~(4))~~ In addition, the department may deny payment to or terminate the contract of an individual provider as provided under WAC 388-825-380, 388-825-381, 388-825-385 and 388-825-390.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-385 When can the department terminate or summarily suspend an individual respite care, attendant care, or personal care(~~(-companion home services or alternative living services))~~ provider's contract?** The department may take action to terminate an individual respite care, attendant care, or personal care(~~(-companion~~

home services or alternative living services)) provider's contract if the provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being. The department may summarily or immediately suspend the contract pending a hearing based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy. Examples of circumstances indicating jeopardy to the client could include, without limitation:

- (1) Domestic violence or abuse, neglect, abandonment, or exploitation of a minor or vulnerable adult;
- (2) Using or being under the influence of alcohol or illegal drugs during working hours;
- (3) Other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm;
- (4) A report from the client's health care provider that the client's health is negatively affected by inadequate care;
- (5) A complaint from the client or client's representative that the client is not receiving adequate care;
- (6) The absence of essential interventions identified in the service plan, such as medications or medical supplies; and/or
- (7) Failure to respond appropriately to emergencies.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-390** When can the department otherwise terminate an individual's contract to provide respite care, attendant care, or personal care(~~(, companion home services or alternative living services)~~)? The department may otherwise terminate the individual's contract to provide respite care, attendant care, or personal care(~~(, companion home services or alternative living services)~~) for default or convenience in accordance with the terms of the contract and to the extent that those terms are not inconsistent with these rules.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-395** What are the client's rights if the department denies, terminates, or summarily suspends an individual's contract to provide respite care, attendant care, or personal care(~~(, companion home services or alternative living services)~~)? If the department denies, terminates, or summarily (immediately) suspends the individual's contract to provide respite care, attendant care, or personal care, (~~(companion home services or alternative living services)~~) the client has the right to:

- (1) A fair hearing to appeal the decision, per chapter 388-02 WAC and WAC 388-825-120; and
- (2) Receive services from another currently contracted individual or home care agency, or other options the client is eligible for, if a contract is summarily suspended.
- (3) The hearing rights afforded under this section are those of the client, not the individual provider.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-396** Does the provider of respite care, attendant care, or personal care(~~(, companion home services or alternative living services)~~) have a right to a fair hearing? (1) The hearing rights afforded under WAC 388-825-395(1) are those of the client.

(2) The provider of respite care, attendant care, or personal care(~~(, companion home services or alternative living)~~) services does not have a right to a fair hearing.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-825-316	How do I choose a companion home or alternative living provider?
WAC 388-825-381	When can the department reject the client's choice of a companion home services or alternative living services provider?

### **WSR 07-23-068**

#### **PERMANENT RULES**

#### **UNIVERSITY OF WASHINGTON**

[Filed November 19, 2007, 10:15 a.m., effective December 20, 2007]

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

Purpose: To amend the University of Washington's student conduct code to include addressing student violations that occur beyond campus boundaries, and extend the administration of the conduct code to all three of the University of Washington campuses. Other housekeeping amendments bring the chapter up-to-date with its first substantive revisions since 1996.

Citation of Existing Rules Affected by this Order: Amending WAC 478-120-010, 478-120-020, 478-120-030, 478-120-050, 478-120-065, 478-120-075, 478-120-085, 478-120-095, 478-120-100, 478-120-140, and 478-120-145.

Statutory Authority for Adoption: RCW 28B.20.130 and 28B.10.900 through 28B.10.903.

Adopted under notice filed as WSR 07-19-075 on September 17, 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 1, Amended 11, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 11, 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: November 15, 2007.

Rebecca Goodwin Deardorff  
Director of Rules Coordination

**AMENDATORY SECTION** (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

**WAC 478-120-010 Student conduct code—Authority.** Pursuant to chapter 34.05 RCW and the authority granted by RCW 28B.20.130, the board of regents of the University of Washington has established the following regulations on student conduct and student discipline (~~on the university campus~~).

**AMENDATORY SECTION** (Amending WSR 07-03-069, filed 1/17/07, effective 2/17/07)

**WAC 478-120-020 Standards of conduct.** (1) The university is a public institution having special responsibility for providing instruction in higher education, for advancing knowledge through scholarship and research, and for providing related services to the community. As a center of learning, the university also has the obligation to maintain conditions conducive to freedom of inquiry and expression to the maximum degree compatible with the orderly conduct of its functions. For these purposes, the university is governed by the rules, regulations, procedures, policies, and standards of conduct that safeguard its functions and protect the rights and freedoms of all members of the academic community.

(2) Admission to the university carries with it the presumption that students will conduct themselves as responsible members of the academic community. As a condition of enrollment, all students assume responsibility to observe standards of conduct that will contribute to the pursuit of academic goals and to the welfare of the academic community. That responsibility includes, but is not limited to:

(a) Practicing high standards of academic and professional honesty and integrity;

(b) Respecting the rights, privileges, and property of other members of the academic community and visitors to the campus, and refraining from any conduct that would interfere with university functions or endanger the health, welfare, or safety of other persons;

(c) Complying with the rules, regulations, procedures, policies, standards of conduct, and orders of the university and its schools, colleges, and departments.

(3) Specific instances of misconduct include, but are not limited to:

(a) Conduct that intentionally and substantially obstructs or disrupts teaching or freedom of movement or other lawful activities on ~~the~~ university ~~campus~~ premises or in connection with any university-sponsored event or activity and is not constitutionally and/or legally protected;

(b) Physical abuse of any person, or conduct intended to threaten imminent bodily harm or to endanger the health or

safety of any person on ~~the~~ university ~~campus~~ premises;

(c) Conduct on ~~the~~ university ~~campus~~ premises constituting a sexual offense, whether forcible or nonforcible, such as rape, sexual assault, or sexual harassment;

(d) Malicious damage to or malicious misuse of university property, or the property of any person where such property is located on ~~the~~ university ~~campus~~ premises;

(e) Refusal to comply with any lawful order to leave ~~the~~ university ~~campus~~ premises or any portion thereof;

(f) Possession or use of firearms, explosives, dangerous chemicals or other dangerous weapons or instrumentalities on ~~the~~ university ~~campus~~ premises, except for authorized university purposes, unless prior written approval has been obtained from the university chief of police, or any other person designated by the president of the university (see WAC 478-124-020 (2)(e)) (legal defense sprays are not covered by this section);

(g) Unlawful possession, use, distribution, or manufacturer of alcohol or controlled substances (as defined in chapter 69.50 RCW) on ~~the~~ university ~~campus~~ premises or during university-sponsored activities;

(h) Intentionally inciting others to engage immediately in any unlawful activity, which incitement leads directly to such conduct on ~~the~~ university ~~campus~~ premises;

(i) Hazing, or conspiracy to engage in hazing, which includes:

(i) Any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending the university; and

(ii) Conduct associated with initiation into a student organization or living group, or any pastime or amusement engaged in with respect to an organization or living group not amounting to a violation of (i)(i) of this subsection, but including such conduct as humiliation by ritual act and sleep deprivation. Consent is no defense to hazing. Hazing does not include customary athletic events or other similar contests or competitions;

(j) Falsely reporting a violation of the student conduct code.

(4) Disciplinary action may be taken in accord with this chapter regardless of whether that conduct also involves an alleged or proven violation of law.

(5) An instructor has the authority to exclude a student from any class session in which the student is disorderly or disruptive. If the student persists in the disorderly or disruptive conduct, the instructor should report the matter to the dean of the school or college, or, at the University of Washington Bothell and Tacoma campuses, to the director of the program in which the student is enrolled. (See WAC 478-120-030(3).)

(6) Nothing herein shall be construed to deny students their legally and/or constitutionally protected rights.

NEW SECTION

**WAC 478-120-025 Off-campus conduct.** The university shall have the authority to hold students accountable under the student conduct code for certain off-campus behavior (i.e., behavior that does not occur on university premises or in the context of a university-sponsored event or activity) that directly affects a university interest, in accordance with the provisions of the section.

(1) A student may be subject to disciplinary proceedings under the student conduct code if:

(a) The university is made aware that a court of competent jurisdiction has determined that such student has engaged in intentional unlawful conduct off-campus that involves the physical harm or abuse, or a direct threat of the physical harm or abuse, of any person, including but not limited to homicide, assault, kidnapping, armed robbery, arson, rape or sexual assault, criminal harassment, criminal stalking or the unlawful possession, use, storage or manufacture of weapons or destructive devices; and

(b) The university determines that a significant university interest is affected.

(2) A student may also be subject to disciplinary proceedings under the student conduct code if the university is made aware that the student has engaged in off-campus conduct that involves the physical harm or abuse, or the direct threat of physical harm or abuse, of another university student, or a university faculty or staff member. Disciplinary proceedings may be initiated under this section regardless of whether or not the incident is subject to criminal or civil proceedings.

(3) In furtherance of the university's interest in maintaining a positive relationship with its surrounding community, the university shall also have the authority to hold students accountable under the student conduct code for conduct within the "North of 45th" residential community immediately adjacent to the Seattle campus (bounded by NE 45th Street on the south, 15th Ave NE on the west, 22nd Ave NE and north of 54th Street, Ravenna Ave NE on the east and Ravenna Park on the north and including all residences located on either side of each of the aforementioned streets) as follows:

(a) A student may be subject to disciplinary proceedings under the code if the university is made aware that the student has been cited by the Seattle police or the university police for, and is determined to have committed, a violation of any state statute or city of Seattle municipal ordinance prohibiting misconduct that has a direct and significant quality-of-life impact on community residents, including but not limited to, creating a public nuisance due to noise, theft, intentional destruction of property, urinating in public, or criminal trespass.

(b) A first violation under (a) of this subsection will not subject the student to disciplinary sanctions under WAC 478-120-040 if the student voluntarily meets with a representative of the office of the vice-provost for student life to receive information and counseling regarding his or her responsibilities as a university community member and as a resident in the area. A second violation will not be subject to disciplinary sanctions if the student involved agrees to participate, in good faith, in a mediation with the person or persons affected

by the misconduct under a mediation protocol established by the office of the vice-provost for student life.

(4) Nothing herein shall be construed as being intended to protect any person or class of persons from injury or harm, or construed to deny students their legally and/or constitutionally protected rights.

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

**WAC 478-120-030 General procedures for disciplinary sanctions.** (1) This section describes the general process under the student conduct code for enforcing the university's rules, regulations, procedures, policies, standards of conduct, and orders. The specific procedures to be used at each step of the process are described in the following sections of this chapter. In all situations, whether handled formally or informally, basic standards of fairness will be observed in the determination of:

(a) The truth or falsity of the charges against the student;  
 (b) Whether the alleged misconduct violates this code; and if so,

(c) The sanctions to be imposed, if any.

The criteria for judging student misconduct shall include, but not be limited to, the standards of conduct as stated in WAC 478-120-020 and 478-120-025. Informal hearings shall use the procedures in chapter 34.05 RCW governing brief adjudicative proceedings. Formal hearings conducted by the faculty appeal board shall follow the procedures required by chapter 34.05 RCW for formal adjudicative proceedings. Informal settlements may be conducted under the authority of RCW 34.05.060.

(2) Persons who believe that a violation of the student conduct code has been committed should contact the (~~vice-president for student affairs~~) vice-provost for student life at the University of Washington Seattle campus, or the chancellor of the University of Washington Bothell or Tacoma campuses, whichever is appropriate.

(3) Only the vice-provost for student life, the dean of the school or college at the University of Washington Seattle or, at the University of Washington Bothell and Tacoma campuses, the director of the program in which a student is enrolled or the (~~vice-president for student affairs~~) chancellors of the University of Washington Bothell and Tacoma campuses, may initiate disciplinary proceedings against a student under this code of conduct. (See WAC 478-120-050.) The deans (~~and the vice-president for student affairs~~), the vice-provost for student life, or the chancellors of the University of Washington Bothell and Tacoma campuses may delegate the authority to initiate disciplinary proceedings consistent with this chapter to members of their staffs and to students. They may also establish student or student-faculty hearing bodies to advise or to act for them in disciplinary matters. The person initiating a disciplinary proceeding shall be referred to as the initiating officer.

(4) The initiating officer will begin a disciplinary proceeding by holding, or directing a member of his or her staff to hold, an informal hearing with the student charged with misconduct. Based on this informal disciplinary hearing, the initiating officer may choose to exonerate the student, dis-

miss the action, impose an appropriate sanction, and/or refer the matter to the appropriate university disciplinary committee. (See WAC 478-120-065.) If the initiating officer identifies a potential or existing exceptional circumstance, as defined in WAC 478-120-100 (3)(b)(i),

"Exceptional circumstances exist when:

(A) The sanction of dismissal has been recommended; or  
 (B) The student has been charged with hazing; or  
 (C) The sanction of restitution (in excess of three hundred dollars) has been recommended; or

(D) Suspension has been recommended," the matter shall be referred directly to the faculty appeal board. (See WAC 478-120-100.)

(5) Students have the right to appeal any sanction imposed at an informal hearing to the appropriate university disciplinary committee, except that when such sanction identifies an existing or potential exceptional circumstance as defined in WAC 478-120-100 (3)(b)(i), the matter shall be referred directly to the faculty appeal board.

(6) Any decisions of the university disciplinary committees may be appealed to the faculty appeal board. All decisions of the university disciplinary committees identifying existing or potential exceptional circumstances as defined in WAC 478-120-100 (3)(b)(i) shall be referred directly to the faculty appeal board. In addition, the university disciplinary committees may, at any time, ~~((in its))~~ at their discretion, refer a matter directly to the faculty appeal board. The faculty appeal board performs distinct functions. In most cases, the faculty appeal board conducts an administrative review. In certain cases (defined in WAC 478-120-100(3)), the faculty appeal board conducts a formal hearing.

(7) Any decision based on a formal hearing conducted by the faculty appeal board may be appealed to the president of the university or the president's delegate for a final review. All orders of dismissal shall be reviewed by the president or the president's delegate. Orders entered by the president or the president's delegate are final. (See WAC 478-120-125.)

(8) The president or ~~((his or her))~~ delegate, or chancellors or their delegates, may take emergency disciplinary action when a student's conduct threatens the health, welfare, or safety of the university community or members thereof. (See WAC 478-120-140.)

(9) When questions of mental or physical health are raised in conduct cases, the dean, the ~~((vice-president for student affairs,))~~ vice-provost for student life, the chancellors of the University of Washington Bothell and Tacoma campuses or their delegates, the university disciplinary committees, or the faculty appeal board may request the student to appear for examination before two physician-consultants designated by the dean of the school of medicine. ~~((If the student agrees,))~~ The physician-consultants may call upon the student health center for any other professional assistance they deem necessary. After examining the student and/or consulting with the student's personal physician, the physician-consultants shall make a recommendation to the dean, the ((vice-president for student affairs,)) vice-provost for student life, the chancellor of the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates, the appropriate university disciplinary committee, or the faculty appeal board as to whether the case should be handled as a disciplin-

ary matter or as a case for medical or other treatment. Any decision made based upon the recommendation of the physician-consultants may be appealed in accordance with the provisions of this chapter.

(10) The following persons conducting proceedings under this chapter shall have the authority to issue protective orders and subpoenas: Deans, ~~((the vice-president for student affairs,))~~ or at the University of Washington Bothell and Tacoma campuses, the director of the program in which the student is enrolled, the vice-provost for student life, the chancellors of the University of Washington Bothell and Tacoma campuses, or the chairs of ((the)) their respective university disciplinary committees, the chair of the faculty appeal board, and the president or his or her delegate.

(11) In a case involving an alleged sexual offense, the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary hearing and they shall both be informed of the outcome of such disciplinary proceeding.

(12) Any final order resulting from a disciplinary proceeding shall become a part of the student's disciplinary record, unless the student is exonerated. (See WAC 478-120-145.)

(13) In accord with the Family Educational Rights and Privacy Act and pursuant to RCW 34.05.250, all hearings conducted under this chapter generally will be held in closed session out of respect for the privacy of all the students involved. However, the students involved may waive in writing this requirement and request a hearing in open session, and the initiating or presiding officer shall conduct the hearing in a room that will accommodate a reasonable number of observers. The initiating or presiding officer may exclude from the hearing room any persons who are disruptive of the proceedings and may limit the number who may attend the hearing in order to afford safety and comfort to the participants and orderliness to the proceedings.

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

**WAC 478-120-050 Jurisdiction.** (1) The ~~((vice-president for student affairs, or his or her delegate))~~ vice-provost for student life, the chancellors of the University of Washington Bothell and Tacoma campuses, or their delegates, may initiate any disciplinary action related to violations of any of the university's rules, regulations, procedures, policies, standards of conduct, or orders. Jurisdiction in such cases may be transferred to the dean of the school or college, or at the University of Washington Bothell and Tacoma campuses, to the director of the program in which the student is enrolled if the alleged misconduct bears upon the student's fitness to continue in the school or college.

(2) Additionally, the dean of each college or school, including the graduate school, or the dean's delegate, or the directors of programs in which the student is enrolled on the University of Washington Bothell or Tacoma campuses may initiate any disciplinary action:

(a) Related to violations of university rules, regulations, procedures, policies, standards of conduct, and orders which pertain to that particular campus, college or school, or at the

University of Washington Bothell and Tacoma campuses, the program in which the student is enrolled; and

(b) Related to violations of rules, procedures, policies, and standards of conduct of that particular campus, college or school, or at the University of Washington Bothell and Tacoma campuses, the program in which the student is enrolled. The student academic grievance procedure is a separate procedure and is set forth in the *University Handbook* (graduate school students should also refer to Graduate School Memorandum No. 33). Violations involving academic misconduct should be reported to the dean of the appropriate school or college, or program director at the University of Washington Bothell or Tacoma campuses.

(3) Other departments of the university have proceedings separate and distinct from the student conduct code. For example:

(a) Campus traffic regulations are under the general jurisdiction of the police department ~~((of))~~ at the University of Washington Seattle campus and under the jurisdiction of public safety officers at the University of Washington Bothell and Tacoma campuses. ~~((The citation hearing office has jurisdiction to hear and decide all cases involving alleged violations of traffic regulations.))~~ (See chapters 478-116, 478-117 and 478-118 WAC.)

(b) The library fines appeals committee has the authority to consider appeals of library charges. (See chapter 478-168 WAC.)

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

**WAC 478-120-065 Informal disciplinary hearings.**

(1) A dean ~~((or the vice president for student affairs or his or her delegate)), the vice-provost for student life, or, at the University of Washington Bothell and Tacoma campuses, the chancellors or the director of the program in which the student is enrolled, or their delegates,~~ may initiate a disciplinary proceeding by conducting, or directing a member of his or her staff to conduct, an informal hearing with the student accused of misconduct. This informal disciplinary hearing may be nothing more than a face-to-face meeting between the initiating officer or staff person and the student, and no special notice of the meeting is required. The purpose of this informal disciplinary hearing is to provide an opportunity for the student to respond to allegations of misconduct before disciplinary action is taken, and the student waives any rights to an informal hearing by his or her failure to attend.

(2) During an informal disciplinary hearing, the student must be provided with the following information:

(a) The alleged misconduct and the reasons for the university's belief that the student engaged in the misconduct;

(b) The specific section(s) of the student conduct code allegedly violated; and

(c) The possible sanctions that may be imposed.

(3) Based on the findings of an informal hearing, the initiating officer shall enter in writing one of the following orders:

(a) An order exonerating the student or dismissing the disciplinary proceeding if it appears that there has been no misconduct;

(b) An initial order imposing a disciplinary sanction;

(c) An order referring the matter to the appropriate university disciplinary committee; or

(d) An order referring the matter directly to the faculty appeal board because exceptional circumstances as defined in WAC 478-120-100 (3)(b)(i) may exist.

(4)(a) If the order imposes a sanction and exceptional circumstances as defined in WAC 478-120-100 (3)(b)(i) exist, the matter shall be referred directly to the faculty appeal board and the student shall be informed that he or she has the right to request a formal hearing according to the procedures set forth in WAC 478-120-075(3).

(b) If the order imposes a sanction but exceptional circumstances do not exist, then the student must be informed that he or she has twenty-one calendar days from the date of the mailing of the initial order (or twenty-five calendar days from the date of the mailing of the initial order) to request a hearing before the appropriate university disciplinary committee. If the student chooses not to appeal, the order becomes the final order.

(5) Within ten days of the conclusion of the hearing and any associated investigations, the student shall be provided with a written order which shall include a statement of the decision, the reasons for the decision, and information about appealing the decision. No unfavorable action may be taken against the student until the student has been given such notice and information. In a case involving an alleged sexual offense, both the accuser and the accused shall be informed of the outcome of that hearing. In a case where the student is a minor, the disciplinary sanctions imposed may be reported to the student's parents or legal guardian at the discretion of the initiating officer.

(6) A student may request a hearing by the appropriate university disciplinary committee at any time during these informal proceedings. If such a request is made, the matter shall be referred to the appropriate university disciplinary committee.

(7) The official record of this informal hearing shall consist of all documents prepared or considered by the dean ~~((or the vice president for student affairs)), the vice-provost for student life, or, at the University of Washington Bothell and Tacoma campuses, the chancellors, or the director of the program in which the student is enrolled, or their delegates,~~ with regard to the dispute at hand.

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

**WAC 478-120-075 Appeals.** Any initial order may be appealed by timely submission of a written petition to the appropriate body. An order only referring a matter from one hearing body to another, not determining the matter on its merits, is not an initial order.

(1) If a student does not appeal to the appropriate body within twenty-one days of the initial order (or within twenty-five calendar days of the date when the university mailed the initial order to the student), the right to appeal is waived and the order becomes final.

(a) All initial orders shall be hand delivered or delivered by mail.

(b) Any student involved in a disciplinary hearing is required to provide his or her current and accurate address to the office of the ~~((vice-president for student affairs))~~ vice-provost for student life or the office of the chancellor for the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates.

(2) All petitions for appeal must be made in writing to the appropriate authority (the appropriate chair of one of the university disciplinary committees (Seattle, Bothell or Tacoma), the chair of the faculty appeal board, or the president). The petition must state the reasons for the appeal and indicate points of disagreement with the initial order.

(3) If a student wishes to request a formal hearing before the faculty appeal board, the student's written petition for appeal must also state that a formal hearing is being requested and must identify the specific exceptional circumstances (as defined in WAC 478-120-100 (3)(b)(i)) warranting such a hearing. When conducting administrative reviews of informal hearings, the faculty appeal board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal disciplinary hearing.

(4) After conducting the appropriate review, the appeal body or the president may sustain, reduce, or vacate the sanction imposed by the initial order, except if that review is in the form of a formal hearing before the faculty appeal board, that board may increase any sanction.

(5) Only the president or the president's delegate may issue a final order of dismissal.

(6) Sanctions, if any, will be imposed only after an order becomes final, except for actions taken under WAC 478-120-140.

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

**WAC 478-120-085 The university disciplinary committees.** Each University of Washington campus shall have its own university disciplinary committee. The university disciplinary committees shall consist of a nonvoting chair, three voting faculty members, and three voting student members. The committees shall be maintained for the purpose of providing hearings for disciplinary actions that have been initiated by the deans or ~~((the vice-president for student affairs))~~, at the University of Washington Bothell and Tacoma campuses, the director of the program in which a student is enrolled, the vice-provost for student life at the University of Washington Seattle campus, the chancellors of the University of Washington Bothell and Tacoma campuses, or their delegates.

(1) The president of the University of Washington Seattle campus and the chancellors of the University of Washington Bothell and Tacoma campuses shall designate a member of the faculty or administration to serve as chair of ~~((the))~~ each respective university disciplinary committee for a term of one year. ~~((The))~~ All chairs may be reappointed for consecutive terms.

(a) The chairs shall ensure that all procedural safeguards and guidelines are followed. Accordingly, the chairs shall decide all procedural questions that arise in relation to hearings, including rulings on evidence (as defined in WAC 478-

120-095(3)) and challenges to the impartiality of committee members. The chairs shall have the discretion to regulate all aspects of the proceedings.

(b) The chairs shall take whatever steps are necessary to ensure that hearings are conducted in a safe and orderly manner.

(2) The three voting faculty members of ~~((the))~~ each university disciplinary committee shall be selected at random from the faculty senate at the University of Washington Seattle, or at the University of Washington Bothell and Tacoma campuses, their respective faculty assembly or organization to serve one-year terms. Voting faculty members may not be reappointed to consecutive terms.

(a) Panels of eligible faculty members shall be randomly selected to serve on the committees in the order in which they were selected, except that at the University of Washington Seattle each faculty member of the committees must represent a different faculty senate group.

(b) Faculty members must have been members of the faculty for at least one year and hold the position of assistant professor or higher in order to be eligible to serve as voting members of the university disciplinary committees.

(3) The three voting student members of the university disciplinary committees shall be selected at random from ~~((the))~~ each student body to serve one-year terms. Student members of the committees may not be reappointed.

(a) Panels of eligible students shall be selected randomly from the entire full-time student body to serve as committee members or alternates in the order in which they were selected, except that at the University of Washington Seattle one member must be a professional or graduate student and the other two members must represent different undergraduate classes.

(b) To be eligible to serve on the university disciplinary committees, students must be full-time and in good standing with the university.

(4) In addition to the chairs, a quorum shall be two faculty members and two student members. The chairs shall select alternates from the panels of eligible faculty or students as needed to produce a quorum.

(5) ~~((A))~~ Committee members may be disqualified from a particular hearing for bias, prejudice, conflict of interest, or any other reason which may prevent him or her from serving as an impartial judge of the matter before the committees.

(a) ~~((A))~~ Committee members may excuse ~~((himself or herself))~~ themselves for any of the causes set forth in this section by submitting a written statement to the appropriate committee chair stating facts and reasons for the disqualification.

(b) A student before any of the university disciplinary committees may challenge the impartiality of a committee member by written petition. The appropriate chair shall determine whether to grant the petition and excuse the committee member from the case, and shall state the facts and reasons for that determination in writing.

(c) Any person who has been delegated the authority to initiate disciplinary proceedings is disqualified from serving as a member of the university disciplinary committees.

(6) The appropriate chair may relieve a member of ~~((the))~~ his or her university disciplinary committee from serv-

ing on that committee for a particular case, for a specific period of time, or for the rest of the year after the member submits a written request to the chair.

(7) Members of the university disciplinary committees shall begin their terms on the first day of classes of winter quarter. Those terms shall expire on the first day of classes of the next winter quarter, except that cases in process shall be continued until a decision is reached. The new panels of committee members shall be identified by the outgoing chairs, or by the person designated by the appropriate chair, through random procedures established by the chair.

**AMENDATORY SECTION** (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

**WAC 478-120-095 Hearings before the university disciplinary committees.** The purpose of a hearing before ~~((the))~~ a university disciplinary committee is to provide all parties with an opportunity to present evidence and argument before disciplinary sanctions are imposed on a student. Based on the evidence presented at this hearing, the committee shall determine whether the student has engaged in the alleged misconduct. If there is a finding of misconduct, the committee shall then determine the appropriate sanction to be imposed.

(1) When a hearing is scheduled before ~~((the))~~ a university disciplinary committee, the chair of the appropriate committee shall provide the student with written notice of the following information:

- (a) The time and place of the hearing;
- (b) The allegations of misconduct against the student;
- (c) A list of all witnesses who may be called to testify;
- (d) A description of all documentary and real evidence to be presented at the hearing, including a copy of his or her disciplinary file; and

(e) The sanctions that may be imposed at the hearing if the allegations of misconduct are found to be true.

(2) The chair of ~~((the))~~ each committee shall adhere to the following procedures at all disciplinary hearings:

(a) The student shall be provided with a reasonable opportunity (at least seven days) to gather evidence, contact witnesses, and prepare a defense for the hearing.

(b) The student may be accompanied by an advisor of the student's choice.

(c) The student is entitled to hear all testimony and examine all evidence that is presented at the hearing. In response, the student may present evidence and witnesses on his or her own behalf and may ask questions of any other witnesses.

(d) No student shall be compelled to give self-incriminating evidence.

(3) Evidence shall be admissible at the hearing if it is the type of evidence that reasonably prudent members of the university community would rely upon in the conduct of their affairs.

(4) The initiating officer (the appropriate dean, ~~((the vice president for student affairs, or his or her delegate))~~ or at the University of Washington Bothell and Tacoma campuses, director of the program in which the student is enrolled, the vice-provost for student life, the chancellors of the University

of Washington Bothell and Tacoma campuses, or their delegates) must prove by a preponderance of the evidence presented at the hearing that the student has engaged in the alleged misconduct. The committee shall base its factual determination solely on the evidence presented at the hearing.

(a) Decisions of the university disciplinary committee will be made based on a simple majority vote of the committees.

(b) If ~~((the))~~ a university disciplinary committee cannot reach a decision by simple majority vote, an order shall be entered referring the matter to the faculty appeal board. Where exceptional circumstances exist, the student shall be notified of the right to request a formal hearing. Otherwise, the faculty appeal board shall conduct an administrative review as provided under WAC 478-120-100 (1) and (2).

(5) If at any time after a matter has been referred to ~~((the))~~ a university disciplinary committee the appropriate chair determines that the matter should properly be before the faculty appeal board, the chair may refer the matter to the faculty appeal board and shall provide the student with written notice of the referral and of the opportunity to request a formal hearing if exceptional circumstances exist. (See WAC 478-120-100 (3)(b)(i).)

(6) If the committee determines that the student has violated the university's rules, regulations, procedures, policies, standards of conduct, or orders, it shall then determine the appropriate sanction to be imposed. When determining the appropriate sanction, the committee shall review the evidence presented at the hearing and the student's past record of conduct at the university.

(7) The chair of the appropriate university disciplinary committee shall provide the student with a written statement of the committee's decision within ten days of the conclusion of the hearing. This written statement shall include the committee's factual findings, the conclusions that have been drawn from those findings, the reasons for those conclusions, and the sanctions, if any, to be imposed. If sanctions are imposed, the student must also be informed of the appropriate procedures for appealing the committee's decision to the faculty appeal board. In a case involving an alleged sexual offense, both the accuser and the accused shall be informed of the outcome of the hearing. In a case where the student is a minor, the written statement of the committee's decision may be reported to the student's parents or legal guardian at the discretion of the chair of the appropriate university disciplinary committee.

(8) This written statement of the committee's decision shall be the committee's initial order. If the student chooses not to appeal, the initial order of the appropriate university disciplinary committee becomes the final order at the end of the appeal period set forth in WAC 478-120-075(1), except that orders of dismissal shall be referred to the president.

(9) The student may choose to present evidence to the chair of the appropriate university disciplinary committee rather than at a hearing before the full committee. The student's waiver of the right to a hearing before ~~((the))~~ a university disciplinary committee must be submitted in writing to the chair of the appropriate committee. The chair will submit the student's evidence and arguments to the full committee

and the committee will make its decision based on the chair's report.

(10) All proceedings of the committees will be conducted with reasonable dispatch and be terminated as soon as possible, consistent with fairness to all parties involved. The chair shall have the discretion to continue the hearing.

(11) An adequate summary of the proceedings will be kept. Such a summary shall include all documents that were considered by the appropriate committee and may include a tape recording of the testimony and any other documents related to the hearing.

(12) A report of ~~((the))~~ a university disciplinary committee shall, upon written request and release by the student or students involved, and subject to the requirements of the Family Educational Rights and Privacy Act, be made available to members of the university community through the ~~((vice president for student affairs))~~ vice-provost for student life, or the office of the chancellor at the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates.

AMENDATORY SECTION (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

**WAC 478-120-100 Faculty appeal board.** There shall be a single faculty appeal board which will serve all University of Washington campuses. The faculty appeal board shall be composed of seven members of the faculty to be appointed by the chair of the faculty senate after consultation with the faculty council on student affairs, to include one faculty member from each of the University of Washington Bothell and Tacoma campuses. The chair of the faculty senate shall appoint one of the members to be the chair of the faculty appeal board. The faculty appeal board shall conduct either administrative reviews or formal hearings and the procedures to be used shall depend on the nature of the appeal before the board. Cases may be heard by the entire board or by panels of no fewer than three board members.

(1) The faculty appeal board may conduct an administrative review when exceptional circumstances do not exist or the student has not requested a formal hearing in writing.

(2) The procedures for conducting such administrative review are set forth in WAC 478-120-105. The chair shall maintain a record of all administrative reviews conducted by the faculty appeal board. At a minimum, such a record shall include all documents that were considered by the board and may include a tape recording of all testimony and all other documents related to the review.

(3) The faculty appeal board shall conduct a formal hearing when:

(a) The student requests a formal hearing before the faculty appeal board in writing setting forth the exceptional circumstances that exist (see below); and

(b) The chair reviews the student's written request and determines that exceptional circumstances do exist. Additionally, the faculty appeal board may conduct a formal hearing in other circumstances as the board deems appropriate. If the faculty appeal board does not conduct a formal hearing, it shall conduct an administrative review of the prior decision.

(i) Exceptional circumstances exist when:

- (A) The sanction of dismissal has been recommended; or
- (B) The student has been charged with hazing; or
- (C) The sanction of restitution (in excess of three hundred dollars) has been recommended; or
- (D) Suspension has been recommended.

(ii) If the faculty appeal board decides not to grant a student's written request for a formal hearing, the chair shall provide the student with a written copy of the board's decision and a brief statement of the reasons for denying the petition within ninety days as specified in WAC 478-120-115(2).

(4) If a matter is referred directly to the faculty appeal board and there is no initial order, then the faculty appeal board shall determine whether exceptional circumstances exist or could exist. If exceptional circumstances exist or could exist, then the board shall notify the student in writing that he or she has twenty-one days from the date of the notice or twenty-five days from the date of mailing the notice to request a formal hearing. If the student fails to make such a request, any right to a formal hearing is waived.

(5) Formal hearings conducted by the faculty appeal board shall be according to the procedural guidelines set forth in WAC 478-120-115 and chapter 34.05 RCW.

(a) At the conclusion of the formal hearing, the faculty appeal board shall enter an initial order based on the findings of that hearing. That initial order shall include a written statement of the board's decision and the basis for that decision, including procedures for appealing the decision to the president or president's delegate. The initial order shall be provided to the student within ninety days of the conclusion of the hearing. In a case involving an alleged sexual offense, both the accuser and the accused shall be informed of the board's decision. In a case where the student is a minor, the board's decision may be reported to the student's parents or legal guardian at the discretion of the initiating officer.

(b) An initial order from a formal hearing may be appealed to the president of the university or the president's delegate for a final administrative review.

(c) If the student chooses not to appeal, the initial order of the faculty appeal board shall become the final order, except that orders of dismissal entered by the faculty appeal board shall be reviewed by the president or the president's delegate.

(6) The record in cases in which the faculty appeal board conducts a formal hearing shall be as specified in WAC 478-120-115(15).

(7) Board members may be disqualified from a particular formal hearing for bias, prejudice, conflict of interest, or any other reason which may prevent them from serving as impartial judges of the matter before the board.

(a) A committee member may excuse himself or herself for any of the causes set forth in this section by submitting a written statement to the board chair stating facts and reasons for the disqualification.

(b) A student before the faculty appeal board may challenge the impartiality of a board member by written petition. The chair shall determine whether to grant the petition and excuse the board member, stating the facts and reasons for the determination in writing.

(c) Faculty who have been delegated the authority to initiate disciplinary proceedings are disqualified from serving as members of the faculty appeal board.

(8) At the discretion of the chair, board members may be excused from a particular hearing on the basis of compelling personal need after submitting a written request to the chair explaining the basis of the request.

**AMENDATORY SECTION** (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

**WAC 478-120-140 Emergency authority of the president and chancellors of the university.** If a student's conduct represents a threat to the health, safety, or welfare of the university or any member of the university community, the president or the president's delegate, or the chancellors of the University of Washington Bothell and Tacoma campuses or their delegates, may suspend that student from participation in any or all university functions or privileges.

(1) In such an emergency situation, the president or ~~((a delegate))~~ chancellors, or their delegates, shall issue a written order to be served upon the student describing the terms of the emergency suspension and the reasons for imposing the suspension. The order shall be effective immediately.

(2) The president or delegate, or chancellors or their delegates, shall then refer the matter to the ~~((vice-president for student affairs or his or her delegate))~~ vice-provost for student life at the University of Washington Seattle campus or the appropriate campus official at the University of Washington Bothell or Tacoma campuses, whichever is appropriate, who shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

**AMENDATORY SECTION** (Amending WSR 96-10-051, filed 4/29/96, effective 5/30/96)

**WAC 478-120-145 Recording and maintenance of records.** (1) The ~~((vice-president for student affairs))~~ vice-provost for student life at the University of Washington Seattle campus or the chancellors of the University of Washington Bothell and Tacoma campuses, or their delegates, shall keep records of all disciplinary actions reported to ~~((his or her office))~~ their respective offices. Disciplinary records shall be kept separate from academic records, and transcripts of a student's academic record shall contain no notation of any disciplinary action.

(2) The dean of a college or school at the University of Washington Seattle, or the director of the program in which the student is enrolled at the University of Washington Bothell and Tacoma campuses initiating disciplinary action shall report in writing to the office of the ~~((vice-president for student affairs))~~ vice-provost for student life, or the office of the chancellor for the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates, all cases in which disciplinary action is taken. The dean at the University of Washington Seattle shall also inform the registrar of any action affecting a student's official standing in the university. The office of the ~~((vice-president for student affairs))~~ vice-provost for student life, or the office of the chancellor for the University of Washington Bothell or

Tacoma campuses, shall notify the dean of the college or school or director of the program in which the student is enrolled of any disciplinary action it takes and also shall notify the registrar or campus officer of student affairs of any action affecting a student's official standing in the university.

(3) Disciplinary records of students not exonerated shall be maintained by the ~~((vice-president for student affairs))~~ vice-provost for student life, or the chancellor at the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates, and the registrar for seven years after disciplinary action has been taken and/or after the administrative purpose has been served.

(4) Disciplinary records of exonerated students shall not be maintained.

(5) Notwithstanding any other provision of this section, the ~~((vice-president for student affairs))~~ vice-provost for student life, or the chancellor at the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates, at ~~((his or her))~~ their discretion, upon written request by the student, may expunge the student's disciplinary record.

(6) Records and information regarding student disciplinary proceedings are subject to the provisions of the Family Educational Rights and Privacy Act and supporting regulations (20 U.S.C. 1232g), and to chapter 478-140 WAC.

## WSR 07-23-070

### PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 19, 2007, 11:42 a.m., effective December 20, 2007]

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

Purpose: These rule revisions update documentation requirements on recognizing, for state funding purposes, up to two years' experience for educational staff associates (ESAs) for service in nonschool positions. ESAs are certificated instructional staff that are occupational therapists, physical therapists, speech-language pathologists, audiologists, nurses, social workers, counselors, and psychologists. These revisions implement E2SHB 1432 and SHB 1128, section 502(9).

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-280.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

Adopted under notice filed as WSR 07-19-041 on September 13, 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 1, Repealed 0.



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

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

Date Adopted: November 19, 2007.

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending WSR 06-19-045, filed 9/15/06, effective 10/16/06)

**WAC 392-121-280 Placement on LEAP salary allocation documents—Documentation required.** School districts shall have documentation on file and available for review which substantiates each certificated instructional employee's placement on LEAP salary allocation documents. The minimum requirements are as follows:

(1) Districts shall document the date of awarding or conferring of the highest degree including the date upon which the degree was awarded or conferred as recorded on the diploma or transcript from the registrar of the regionally accredited institution of higher education.

(a) If the highest degree is a master's degree, the district shall also document the date of awarding or conferring of the first bachelor's degree.

(b) If the degree was awarded by an institution which does not confer degrees after each term, and all degree requirements were completed at a time other than the date recorded on the diploma or transcript, a written statement from the registrar of the institution verifying a prior completion date shall be adequate documentation.

(c) If the degree program was completed in a country other than the United States documentation must include a written statement of degree equivalency for the appropriate degree from a foreign credentials' evaluation agency approved by the office of superintendent of public instruction.

(2) Districts shall document academic credits by having on file a transcript from the registrar of the regionally accredited institution of higher education granting the credits. For purposes of this subsection:

(a) An academic credit is deemed "earned" at the end of the term for which it appears on the transcript: Provided, That a written statement from the registrar of the institution verifying a prior earned date may establish the date a credit was earned;

(b) Washington state community college credits numbered one hundred and above are deemed transferable for purposes of WAC 392-121-255(4) subject to the limitations of that same subsection;

(c) Credits are not deemed "earned" at an institution of higher education which transfers-in credits. Such credits must be documented using a transcript from the initial granting institution and are subject to all the limitations of WAC 392-121-255;

(d) If the credits were completed in a country other than the United States, documentation must include a written statement of credit equivalency for the appropriate credits from a foreign credentials' evaluation agency approved by the office of superintendent of public instruction; and

(e) For credits earned after September 1, 1995, districts shall document that the course content meets one or more of the criteria of WAC 392-121-262(1). At a minimum, such documentation must include a dated signature of the immediate principal, supervisor, or other authorized school district representative and must be available to the employee's future employers.

(3) Districts shall document in-service credits;

(a) By having on file a document meeting standards established in WAC 181-85-107; and

(b) For credits earned after September 1, 1995, districts shall document that the course content meets one or more of the criteria of WAC 392-121-262(1). At a minimum, such documentation must include a dated signature of the immediate principal, supervisor, or other authorized school district representative and must be available to the employee's future employers.

(4) Districts shall document nondegree credits.

(a) For vocational/career and technical education educator training credits pursuant to WAC 392-121-259(3) districts shall have on file a document meeting standards established in WAC 181-85-107 and evidence that the training was authorized pursuant to WAC 181-77-003 (2), (9), or (12).

(b) For credits calculated from converted occupational experience pursuant to WAC 392-121-259(3) districts shall have on file documents which provide:

(i) Evidence that the occupational experience meets the requirements of WAC 181-77-003(7);

(ii) Evidence of the individual's actual number of hours of employment for each year including dates of employment; and

(iii) The district calculation of converted credits pursuant to WAC 392-121-259(3).

(c) For credits earned after September 1, 1995, districts shall document that the course content meets one or more of the criteria of WAC 392-121-262(1). At a minimum, such documentation must include a dated signature of the immediate principal, supervisor, or other authorized school district representative and must be available to the employee's future employers.

(5) Districts shall document certificated years of experience as follows:

(a) For certificated years of experience obtained and reported on Report S-275 prior to the 1994-95 school year districts shall have on file documents that provide evidence of employment including dates of employment.

(b) For certificated years of experience reported on Report S-275 for the first time after the 1993-94 school year districts shall have on file:

(i) The total number of hours, or other unit of measure, per year for an employee working full-time with each employer;

(ii) The number of hours, or other unit of measure (worked by the employee), per year and dates of employment with each employer, including paid leave and excluding

unpaid leave: Provided, That documentation of hours in excess of one full-time certificated year of experience in any twelve-month period is not required;

(iii) The quotient of the hours, or other unit of measure, determined in (b)(ii) of this subsection divided by the hours, or other unit of measure, in (b)(i) of this subsection rounded to two decimal places for each year;

(iv) The name and address of the employer;

(v) For those counting out-of-district experience pursuant to WAC 392-121-264 (1)(a), evidence whether or not the position required professional education certification pursuant to WAC 392-121-264 (1)(a)(ii);

(vi) For those counting experience pursuant to WAC 392-121-264 (1)(b), a brief description of the previous employment which documents the school district's decision that the position was comparable to one requiring certification in the Washington school districts;

(vii) For those counting management experience pursuant to WAC 392-121-264 (1)(e), evidence that the experience meets the requirements of WAC 181-77-003(6);

(viii) For those counting experience (for educational staff associates) pursuant to WAC 392-121-264 (1)(f), evidence that the previous employment meets the requirements in the applicable subsections of WAC 392-121-264 (1)(f).

(6) Any documentation required by this section may be original or copies of the original: Provided, That each copy is subject to school district acceptance or rejection.

(7) The falsification or deliberate misrepresentation, including omission of a material fact concerning degrees, credits, or experience by an education practitioner as defined in WAC 181-87-035 shall be deemed an act of unprofessional conduct pursuant to WAC 181-87-050. In such an event the provisions of chapters 181-86 and 181-87 WAC shall apply.

#### WSR 07-23-072

#### PERMANENT RULES

#### DEPARTMENT OF

#### LABOR AND INDUSTRIES

[Filed November 19, 2007, 11:49 a.m., effective January 2, 2008]

Effective Date of Rule: January 2, 2008.

Purpose: On February 20, 2007, the department adopted changes to chapter 296-62 WAC, Part L - Atmospheres and Ventilation. Two sections were accidentally repealed in the rule making. This rule making corrected the error by putting the language back into the rule, which kept it as effective as the federal equivalent.

WAC 296-62-100 Oxygen deficient atmospheres and 296-62-110 Ventilation was added back into chapter 296-62 WAC as WAC 296-62-135 and 296-62-136.

These changes will not result in additional compliance costs.

#### WAC 296-62-135 Oxygen deficient atmospheres.

- Created this new section - wording is exactly the same as the wording that had been repealed from WAC 296-62-100 Oxygen deficient atmospheres.

#### WAC 296-62-136 Ventilation, 296-62-13605 Definition, 296-62-13610 Ventilation guide, 296-62-13615 Adequate system, 296-62-13620 Exhaust, 296-62-13625 Make-up air quantity, 296-62-13630 Design and operation and 296-62-13635 Compatibility of systems.

- Created these new sections - wording is exactly the same as the wording that had been repealed from WAC 296-62-110 Ventilation.

Citation of Existing Rules Affected by this Order: New sections WAC 296-62-135 Oxygen deficient atmospheres, 296-62-13610 Ventilation guide, 296-62-13615 Adequate system, 296-62-13620 Exhaust, 296-62-13625 Make-up air quantity, 296-62-13630 Design and operation, and 296-62-13635 Compatibility of systems.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 07-17-155 on August 21, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 9, 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 9, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, 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 9, Amended 0, Repealed 0.

Date Adopted: November 19, 2007.

Judy Schurke  
Director

#### NEW SECTION

**WAC 296-62-135 Oxygen deficient atmospheres. (1) Definition.** A lack of sufficient oxygen is deemed to exist if the atmosphere at sea level has less than 19.5% oxygen by volume or has a partial pressure of oxygen of 148 millimeters of mercury (mm Hg) or less. This may deviate when working at higher elevations and should be determined for an individual location. Factors such as acclimatization, physical conditions of the persons involved, etc., must be considered for such circumstances and conditions.

(2) **Entering areas with possible oxygen deficient atmospheres.** Workers entering any area where a lack of sufficient oxygen is probable shall be supplied with and shall use approved equipment (for specific requirements see applicable provisions of chapters 296-62, 296-307 (Part-U3), 296-809 and 296-841 WAC) capable of providing safe respirable air, or prior to entry and at all times when workers are in such areas a sufficient supply of safe, respirable air shall be provided. All workers so exposed shall be under constant observation. If the oxygen content is unknown or may change dur-

ing occupation, tests shall be required prior to and during occupation of questionable areas.

NEW SECTION

**WAC 296-62-136 Ventilation.**

NEW SECTION

**WAC 296-62-13605 Definition.** Ventilation shall mean the provision, circulation or exhausting of air into or from an area or space.

(1) **"Local exhaust ventilation"** shall mean the mechanical removal of contaminated air from the point where the contaminant is being generated or liberated.

(2) **"Dilution ventilation"** means inducing and mixing uncontaminated air with contaminated air in such quantities that the resultant mixture in the breathing zone will not exceed the permissible exposure limit (PEL) specified for any contaminant.

(3) **"Exhaust ventilation"** means the general movement of air out of the area or permit-required confined space by mechanical or natural means.

(4) **"Tempered make-up air"** means air which has been conditioned by changing its heat content to obtain a specific desired temperature.

NEW SECTION

**WAC 296-62-13610 Ventilation guide.** In addition to those mandatory controls as set forth in WAC 296-62-11019, chapter 296-818 WAC, Abrasive blasting, chapter 296-835 WAC, Dipping and coating operations (dip tanks), the *Industrial Ventilation Manual of Recommended Practices* as compiled and approved by the American Conference of Governmental Industrial Hygienists, applicable ANSI Standard or other National Consensus Standards recommended by the federal government, should be used as a guide for ventilation requirements.

NEW SECTION

**WAC 296-62-13615 Adequate system.** Adequate ventilation systems shall be installed as needed to control concentrations of airborne contaminants below applicable threshold limit values.

NEW SECTION

**WAC 296-62-13620 Exhaust.** Exhaust from ventilation systems shall discharge in such a manner that the contaminated air being exhausted will not present a health hazard to any workman or reenter buildings in harmful amounts.

NEW SECTION

**WAC 296-62-13625 Make-up air quantity.** Make-up air shall be of ample quantity to replace the exhausted air and shall be tempered when necessary.

NEW SECTION

**WAC 296-62-13630 Design and operation.** Ventilation systems shall be designed and operated in such a manner that employees will not be subjected to excessive air velocities.

NEW SECTION

**WAC 296-62-13635 Compatibility of systems.** Make-up air systems shall be designed and operated in such a manner that they will not interfere with the effectiveness of the exhaust air system.

**WSR 07-23-079**

**PERMANENT RULES**

**DEPARTMENT OF LICENSING**

[Filed November 19, 2007, 3:29 p.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: To incorporate interpretations of the appraiser qualifications board limiting the number of allowed continuing education credits for participation other than as a student in educational process and programs; to limit the number of allowed continuing education credits for attendance at the real estate appraiser commission meetings; to allow deferment for completion of continuing education for licensees or certificate holders returning from military service active duty and to eliminate redundancy.

Citation of Existing Rules Affected by this Order: Amending WAC 308-125-090.

Statutory Authority for Adoption: RCW 18.140.030 (1), (7), (8), and (15).

Adopted under notice filed as WSR 07-18-019 on August 24, 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 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: October 9, 2007.

Ralph Osgood  
Assistant Director

AMENDATORY SECTION (Amending WSR 06-06-069, filed 2/28/06, effective 4/1/06)

**WAC 308-125-090 Continuing education required.**

(1) As a prerequisite to renewal of certification or licensure, the holder of a certificate or license shall present evidence satisfactory to the director of successful completion of the continuing education requirements of this section.

(2) The continuing education requirements for renewal of certification or licensure shall be the completion by the applicant of twenty-eight hours of instruction in courses or seminars which have received the approval of the director. Courses must be completed within the term of certification or licensure immediately preceding renewal. An applicant shall not receive credit in consecutive renewals for courses that have the same or very similar content and are deemed comparable by the department. The holder of a certificate or license will present evidence of successful completion of the seven-hour National USPAP update course or its equivalent.

(3) In order for courses or seminars to be accepted under subsection (2) of this section, the course or seminar must be a minimum of two hours in length and be directly related to real estate appraising. However, a maximum of one-half of the continuing education hours required for renewal can be in two-hour seminars or courses.

(4) An examination is not required for courses or seminars taken for continuing education classroom hours.

(5) Up to one-half of the requirement under subsection (2) of this section may be met by participation other than as a student in educational process and programs approved by the director including teaching, program development, and authorship of textbooks and other written instructional materials. Credit for instructing any given course or seminar can only be awarded once, with the exception of the Uniform Standards of Professional Appraisal Practice, USPAP, 7-hour update.

(6) Courses or seminars taken to satisfy the continuing education requirement for ~~((general))~~ real estate appraisers, should include coverage of real estate appraisal related topics, such as:

- (a) Ad valorem taxation.
- (b) Arbitrations, dispute resolution.
- (c) Business courses related to practice of real estate appraisal and consulting.
- (d) Construction estimating.
- (e) Ethics and standards of professional practice, USPAP.

- (f) Land use planning, zoning, and taxation.
  - (g) Management, leasing, brokerage, timesharing.
  - (h) Property development, partial interests.
  - (i) Real estate appraisal (valuations/evaluations).
  - (j) Real estate financing and investment.
  - (k) Real estate law, easements and legal interests.
  - (l) Real estate litigation, damages and condemnation.
  - (m) Real estate related computer applications.
  - (n) Real estate securities and syndication.
  - (o) Real property exchange.
  - (p) Appraisal and consulting report writing.
  - (q) Such other presentations approved by the director.
- (7) ~~((Courses or seminars taken to satisfy the continuing education requirement for residential real estate appraisers~~

~~should include coverage of real estate appraisal related topics, such as:~~

- ~~(a) Ad valorem taxation.~~
  - ~~(b) Business courses related to practice of real estate appraisal.~~
  - ~~(c) Construction estimation.~~
  - ~~(d) Ethics and standards of professional practice.~~
  - ~~(e) Land use planning, zoning, taxation.~~
  - ~~(f) Property development.~~
  - ~~(g) Real estate financing and investment.~~
  - ~~(h) Real estate law.~~
  - ~~(i) Real estate related computer applications.~~
  - ~~(j) Real estate securities and syndication.~~
  - ~~(k) Real property exchange.~~
  - ~~(l) Real estate feasibility and marketability studies.~~
  - ~~(m) Such other presentations approved by the director.~~
- ~~(8) Courses or seminars taken to satisfy the continuing education requirement for licensed real estate appraisers should include coverage of real estate appraisal related topics, such as:~~

- ~~(a) Ad valorem taxation.~~
  - ~~(b) Arbitration.~~
  - ~~(c) Business courses related to practice of real estate appraisal.~~
  - ~~(d) Construction estimating.~~
  - ~~(e) Ethics and standards of professional practice.~~
  - ~~(f) Land use planning, zoning, and taxation.~~
  - ~~(g) Management, leasing brokerage, timesharing.~~
  - ~~(h) Property development.~~
  - ~~(i) Real estate appraisal (valuations/evaluations).~~
  - ~~(j) Real estate law.~~
  - ~~(k) Real estate litigation.~~
  - ~~(l) Real estate financing and investment.~~
  - ~~(m) Real estate appraisal related computer applications.~~
  - ~~(n) Real estate securities and syndication.~~
  - ~~(o) Real property exchange.~~
  - ~~(p) Such other presentations approved by the director.~~
- ~~(9)) The director may approve continuing education credit for attendance at ~~((the))~~ one real estate appraiser commission meeting of no more than ~~((two))~~ seven hours.~~

(8) The director may defer completion of continuing education for licensees or certificate holders returning from military service active duty and place the license or certificate in an active status for a period of one hundred eighty days pending completion of education. If the licensee or certificate holder fails to comply with the continuing education requirement within said one hundred eighty days, the license or certificate will revert to an expired status.

**WSR 07-23-080**

**PERMANENT RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed November 19, 2007, 3:40 p.m., effective December 20, 2007]

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

Purpose: The department is adopting these rules to codify the department's reimbursement policy for medical services paid on behalf of an injured client by the department when the injured client receives settlement or judgment from a liable third party's insurer, or the injured client's own insurance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-501-0100.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.185.

Adopted under notice filed as WSR 07-13-087 on June 19, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-501-0100 (6)(a), removed "department will presume" and added "department's rebuttable presumption is": "In the absence of evidence to the contrary as discussed below in subsection (6)(c), the department will presume department's rebuttable presumption is that..."

A final cost-benefit analysis is available by contacting Roy Vervair, P.O. Box 45561, Olympia, WA 98504-5561, phone (360) 725-1060, fax (360) 753-3077, e-mail [vervarf@dshs.wa.gov](mailto:vervarf@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 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: November 19, 2007.

Robin Arnold-Williams  
Secretary

AMENDATORY SECTION (Amending WSR 00-01-088, filed 12/14/99, effective 1/14/00)

**WAC 388-501-0100 Subrogation.** (1) For the purpose of this section, "**liable third party**" means:

(a) ~~((The tort-feasor))~~ A person who commits or is guilty of a private or civil wrong doing or the insurer of ((the tort-feasor)) that person, or both; and

(b) Any ~~((person who is liable to provide coverage))~~ individual, entity or program that is or may be liable to pay for all or part of the expenditures for ((the illness or injuries for which the)) medical assistance ((administration (MAA) is providing assistance or residential care)) furnished under the State plan. That liability must be based on any contract or

insurance purchased by the client or any other person on behalf of the client.

(2) As a condition of medical care eligibility, a client must assign to the state any right the client may have to receive payment from any ~~((other))~~ liable third party for medical expenses and/or assistance or residential care. ~~((An eligible client who receives health care items or services from the state under medical care programs under chapter 74.09 RCW and who has a right to payment from any other third party for those items or services, subrogates that right of payment to the state. This applies except as provided in subsection (3) of this section.))~~

(3) To the extent authorized by a contract executed under RCW 74.09.522, a managed health care plan has the rights and remedies of the department as provided in RCW 43.20B.060 and 70.09.180.

(4) ~~((MAA))~~ The department is not responsible to pay for medical care for a client whose personal injuries are caused by the negligence or wrongdoing of another. However, ~~((MAA))~~ the department may provide the medical care required as a result of an injury or illness to the client if both of the following apply:

(a) The client is otherwise eligible for medical care; and

(b) No other liable third party has been identified at the time the claim is filed.

(5) The department may pursue its right to recover the value of medical care provided to an eligible client from any liable third party or third party settlement or judgement as a subrogee, assignee, or by enforcement of its public assistance lien as provided under RCW 43.20B.040 through 43.20B.070 and RCW 74.09.180 and 74.09.185.

(6) When a client obtains a settlement or judgement from a liable third party that includes compensation for medical or residential care, the department must be reimbursed for the payments made for the benefit of the client as a result of the injury or illness suffered by the client.

(a) In the absence of evidence to the contrary as discussed below in subsection (6)(c), the department's rebuttable presumption is that the entire settlement or judgement, up to the amount of the medical damages suffered by the client, is intended to compensate the client for past medical expenses and will enforce its claim accordingly. The department is entitled to be reimbursed up to the full amount of medical assistance paid on behalf of the client for the medical damages related to the injury or illness suffered by the client less the department's proportionate share of attorney's fees and costs incurred in obtaining the settlement or judgement, as required by law.

(b) The department determines its net recovery by deducting its proportionate share of attorney's fees and costs from the gross medical damages amount according to the following formula, in the absence of a court-approved allocation of the medical damages or an agreement with the department establishing the allocation of medical damages:

(i) Gross settlement/judgement amount	\$ _____
(ii) Total amount of medical assistance paid	\$ _____
(iii) Department's percentage of attorney's fees and costs ((ii) divided by (i))	_____ %

(iv) Attorney's fees \$ _____ + Legal costs \$ _____ =	Total \$ _____
(v) Medicaid's pro rata share of fees and costs ((iv) multiplied by (iii))	\$ _____
(vi) Medicaid's reimbursement ((ii) minus (v))	\$ _____

(c) If the client disagrees with the allocation as set forth in subsections (a) and (b) of this section:

(i) Prior to accepting or disbursing the settlement or judgement funds, the client or the client's legal representative must provide the department with documentation that a different allocation of medical damages was negotiated, proven at trial, or is being considered with the third party and/or their insurer or the client's insurance carrier in obtaining the settlement or judgement; and

(ii) If the client and the department are not able to come to an agreement as to the proper payment to be made to the department to satisfy the department's claim for reimbursement of the medical assistance paid on behalf of the client, the matter should be set before a court for an allocation hearing prior to the distribution of the settlement or judgement.

(d) If the injured client does not have legal representation in the personal injury action and does not incur attorney's fees or costs in obtaining the settlement or judgement, the department ensures that the client will receive not less than one third of the total settlement or judgement amount, or the balance of the settlement or judgement after the full amount of medical assistance is paid, whichever is greater, as satisfaction of all other damages suffered by the client;

(e) When the settlement or judgement obtained by the client exceeds the amount of the assistance paid, the department is entitled to recover up to the full amount of the medical assistance paid less the department's proportionate share of any attorney's fees and costs incurred in obtaining the settlement or judgement;

(f) When the amount of a settlement or judgement is less than or equal to the amount of the department's medical assistance payments;

(i) The department and the client and/or the client's legal representative must determine the appropriate allocation for medical damages; or

(ii) If the department and the client and/or the client's legal representative are unable to agree upon an allocation for medical damages, then a court must decide the amount the client must reimburse the department for medical assistance payments made on his or her behalf.

(g) Under no circumstances will the total amount that the department receives be less than one-third of the gross amount of the settlement or judgement, unless the department agrees in writing to a lesser amount.

(7) Recovery ((pursuant)) according to the subrogation rights, assignment, or enforcement of the lien granted to the department is not reduced, prorated, or applied to only a portion of a judgment, award, or settlement. The secretary of the department or the secretary's designee must consent in writing to any discharge or compromise of any settlement or judgment of a lien created under RCW 42.20B.060. The department considers the compromise or discharge of a medical care lien only as authorized by federal regulation at 42 CFR 433.139.

((7)) (8) The doctrine of equitable subrogation does not apply to defeat, reduce, or prorate any recovery made by the

department that is based on its assignment, lien, or subrogation rights.

**WSR 07-23-081  
PERMANENT RULES  
GAMBLING COMMISSION**

[Order 620—Filed November 20, 2007, 8:09 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: This new rule requires house-banked card room licensees to maintain a minimum amount of cash in their cage before opening for the business day. The new rule requires house-banked card room licensees to have the following amount of cash in their cage before opening the card room:

- a. \$1,000 for each table licensed to operate; plus
- b. The amount of the largest prize available, but not more than \$20,000.

For example: A house-banked card room licensee that is licensed for fifteen tables and its largest single prize is \$23,000 is required to have at least \$35,000 in their cage before opening for the business day (15 x \$1,000 = \$15,000 + \$20,000 = \$35,000).

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-19-072 on September 17, 2007, and published October 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 1, Amended 0, Repealed 0.

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

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

Date Adopted: November 20, 2007.

Susan Arland  
Rules Coordinator

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

**WAC 230-15-050 Minimum cash on hand requirements.** (1) Card game licensees must have sufficient cash on hand to redeem all chips issued for play and pay out all prizes.

(2) Before opening for the business day, house-banked card game licensees must have at least the following minimum amount of cash in their cage:

(a) One thousand dollars for each house-banked table on the gambling floor; plus

(b) The amount of the largest single prize available or not more than twenty thousand dollars.

For example: If a house-banked card room has fifteen house-banked tables and a largest single prize of twenty-three thousand dollars, before opening, the cage must have at least thirty-five thousand dollars on hand: 15 tables x \$1,000 = \$15,000 + largest single prize or \$20,000 = \$35,000.

(3) Except for the restrictions on player-supported jackpot pay outs in WAC 230-15-405 and progressive jackpot pay outs in WAC 230-15-690, licensees may pay prizes by check if sufficient funds are available on deposit.

((3)) (4) Failure to keep funds to cash in chips, pay prizes, or redeem gambling related checks is prima facie evidence of fraud. Meeting the minimum cage cash amount does not relieve the licensee from the requirement to have sufficient funds available to redeem all chips and pay out all prizes.

Date Adopted: November 20, 2007.

Susan Arland  
Rules Coordinator

AMENDATORY SECTION (Amending Order 606, filed 1/18/07, effective 1/1/08)

**WAC 230-05-020 Charitable or nonprofit organization fees.** Bona fide charitable and nonprofit organizations must pay the following fees to us when applying for gambling licenses, permits, miscellaneous changes, or inspection services:

**1. Amusement games**

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	\$((55)) <u>58</u>
Class B	Up to \$10,000	\$((55)) <u>58</u>
Class C	Up to \$25,000	\$((303)) <u>319</u>
Class D	Up to \$50,000	\$((487)) <u>513</u>
Class E	Over \$50,000	\$((848)) <u>894</u>

**2. Bingo**

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$25,000	\$((55)) <u>58</u>	\$1,000
Class B	Up to \$75,000	\$((176)) <u>185</u>	\$1,000
Class C	Up to \$150,000	\$((361)) <u>380</u>	\$2,000
Class D	Up to \$350,000	\$((974)) <u>1,026</u>	\$4,000
Class E	Up to \$650,000	\$((1,642)) <u>1,732</u>	\$8,000
Class F	Up to \$1,500,000	\$((3,304)) <u>3,486</u>	\$15,000
Class G	Up to \$2,000,000	\$((4,766)) <u>5,028</u>	\$23,000
Class H	Up to \$3,000,000	\$((6,370)) <u>6,722</u>	\$30,000
Class I	Up to \$4,000,000	\$((7,960)) <u>8,400</u>	\$38,000
Class J	Up to \$5,000,000	\$((9,550)) <u>10,078</u>	\$45,000
Class K	Up to \$6,000,000	\$((10,714)) <u>11,306</u>	\$53,000
Class L	Up to \$7,000,000	\$((12,246)) <u>12,922</u>	\$60,000
Class M	Up to \$8,000,000	\$((13,780)) <u>14,542</u>	\$65,000
Class N	Up to \$9,000,000	\$((14,990)) <u>15,818</u>	\$70,000
Class O	Up to \$10,000,000	\$((16,540)) <u>17,454</u>	\$75,000
Class P	Up to \$11,000,000	\$((18,090)) <u>19,090</u>	\$80,000
Class Q	Up to \$12,000,000	\$((21,708)) <u>22,908</u>	\$85,000
Class R	Up to \$13,000,000	\$((24,810)) <u>26,180</u>	\$90,000

**WSR 07-23-083  
PERMANENT RULES  
GAMBLING COMMISSION**

[Order 621—Filed November 20, 2007, 8:12 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The commission is a nonappropriated agency. RCW 9.46.070(5) requires the commission to set fees to generate funds necessary to cover all costs of licensing and enforcement. The change increases license fees by approximately 5% beginning January 1, 2008. This increase is consistent with the limitations set forth in Initiative 601.

Citation of Existing Rules Affected by this Order: Amending 4 [WAC 230-05-020, 230-05-025, 230-05-030, and 230-05-035].

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-19-071 on September 17, 2007, and published October 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 4, Repealed 0.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 4, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class S	Up to \$14,000,000	\$((27,912)) <u>29,454</u>	\$95,000

\*See chapter 230-06 WAC, Exceeding license class.

3. Card games

License	Description	Fee
Class A	Nonhouse-banked - fee to play	\$((608)) <u>641</u>
Class B	Limited card games - hearts, rummy, pitch, pinochle, and cribbage - fee to play	\$((176)) <u>185</u>
Class C	Tournament only - no more than thirty consecutive days per tournament	\$((55)) <u>58</u>
Class D	Nonhouse-banked - no fee to play	\$((55)) <u>58</u>

4. Fund-raising event

License	Description	Fee
Class A	One event - not more than 24 consecutive hours	
	First time applicant	\$((364)) <u>380</u>
	Previously licensed applicant	\$((212)) <u>223</u>
Class B	One event - not more than 72 consecutive hours	
	First time applicant	\$((608)) <u>641</u>
	Previously licensed applicant	\$((373)) <u>393</u>
Class C	Additional participant in joint event - not lead organization	\$((176)) <u>185</u>
Class D	Limited fund-raising event - one event - not more than six consecutive hours	
	First time applicant	\$((159)) <u>167</u>
	Previously licensed applicant	\$((106)) <u>111</u>
Class E	Fund-raising event equipment distributor - rents or leases equipment no more than ten times per year	\$((240)) <u>253</u>
Class F	Fund-raising event equipment distributor - rents or leases equipment more than ten times per year	\$((608)) <u>641</u>

5. Punch boards/pull-tabs

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$50,000	\$((579)) <u>611</u>	\$5,000
Class B	Up to \$100,000	\$((1,034)) <u>1,090</u>	\$5,000
Class C	Up to \$200,000	\$((1,954)) <u>2,062</u>	\$10,000
Class D	Up to \$300,000	\$((2,842)) <u>2,998</u>	\$10,000
Class E	Up to \$400,000	\$((3,672)) <u>3,874</u>	\$10,000
Class F	Up to \$500,000	\$((4,432)) <u>4,676</u>	\$10,000
Class G	Up to \$600,000	\$((5,136)) <u>5,420</u>	\$10,000

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class H	Up to \$700,000	\$((5,782)) <u>6,100</u>	\$10,000
Class I	Up to \$800,000	\$((6,370)) <u>6,722</u>	\$10,000
Class J	Up to \$1,000,000	\$((7,222)) <u>7,620</u>	\$20,000
Class K	Up to \$1,250,000	\$((8,018)) <u>8,460</u>	\$25,000
Class L	Up to \$1,500,000	\$((8,756)) <u>9,240</u>	\$25,000
Class M	Up to \$1,750,000	\$((9,364)) <u>9,880</u>	\$25,000
Class N	Up to \$2,000,000	\$((9,918)) <u>10,466</u>	\$25,000
Class O	Up to \$2,500,000	\$((10,898)) <u>11,500</u>	\$30,000
Class P	Up to \$3,000,000	\$((11,578)) <u>12,218</u>	\$35,000
Class Q	Up to \$4,000,000	\$((13,646)) <u>14,400</u>	\$40,000
Class R	Up to \$5,000,000	\$((15,506)) <u>16,362</u>	\$50,000
Class S	Up to \$6,000,000	\$((17,574)) <u>18,544</u>	\$60,000
Class T	Up to \$7,000,000	\$((19,642)) <u>20,728</u>	\$70,000
Class U	Up to \$8,000,000	\$((21,708)) <u>22,908</u>	\$80,000
Class V	Over \$8,000,000	\$((23,776)) <u>25,090</u>	\$80,000

\*See chapter 230-06 WAC, Exceeding license class.

6. Raffles

License	Annual Gross Gambling Receipts	Fee
Class A	Up to \$5,000	\$((55)) <u>58</u>
Class B	Up to \$10,000	\$((176)) <u>185</u>
Class C	Up to \$25,000	\$((364)) <u>380</u>
Class D	Up to \$50,000	\$((608)) <u>641</u>
Class E	Up to \$75,000	\$((974)) <u>1,026</u>
Class F	Over \$75,000	\$((1,460)) <u>1,540</u>

7. Combination license

License	Description	Fee
Class A	Allows gross gambling receipts of up to \$25,000 from bingo, \$7,500 from raffles, and \$7,500 from amusement games, not to exceed \$30,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$((109)) <u>115</u>



License	Description	Fee
Class B	Allows gross gambling receipts of up to \$60,000 from bingo, \$15,000 from raffles, and \$15,000 from amusement games, not to exceed \$75,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$((285)) <u>300</u>
Class C	Allows gross gambling receipts of up to \$125,000 from bingo, \$30,000 from raffles, and \$30,000 from amusement games, not to exceed \$150,000 combined gross gambling receipts from all such activities. Allows Class D card games.	\$((660)) <u>696</u>

**8. Special property bingo**

Once annually	\$((26)) <u>27</u>
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**9. Permits**

Recreational gaming activity	\$((55)) <u>58</u>
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**10. Changes**

Type	Fee
Name	\$((26)) <u>27</u>
Location	\$((26)) <u>27</u>
Fund-raising event date or time	\$((26)) <u>27</u>
License class	\$((26)) <u>27</u>
Duplicate license	\$((26)) <u>27</u>

**11. Other fees**

Type	Fee
Replacement identification stamps	\$((26)) <u>27</u>
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$26
Review, inspection and/or evaluation of equipment, paraphernalia, services, or schemes	Deposit and fees as required

**12. Two part payment plan participation**

Annual participation	\$((26)) <u>27</u>
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**AMENDATORY SECTION** (Amending Order 606, filed 1/18/07, effective 1/1/08)

**WAC 230-05-025 Commercial stimulant fees.** All commercial stimulant license applicants must pay the following fees to us when applying for gambling licenses:

**1. Card games - Nonhouse-banked**

License	Description	Fee
<b>Class B</b>	Up to five tables of limited card games - hearts, rummy, pitch, pinochle, and/or cribbage - fee to play	\$((180)) <u>189</u>
<b>Class C</b>	Tournament only, no more than thirty consecutive days per tournament	
C-5	Up to five tables	\$((180)) <u>189</u>
C-10	Up to ten tables	\$((328)) <u>346</u>
C-15	Up to fifteen tables	\$((546)) <u>576</u>
<b>Class D</b>	Up to five tables - no fee to play	\$((56)) <u>59</u>
<b>Class E</b>	Fee to play	
E-1	One table only	\$((436)) <u>460</u>
E-2	Up to two tables	\$((751)) <u>792</u>
E-3	Up to three tables	\$((1,250)) <u>1,318</u>
E-4	Up to four tables	\$((2,506)) <u>2,644</u>
E-5	Up to five tables	\$((3,772)) <u>3,980</u>
Additional tables	Per table - up to a maximum of fifteen tables	\$((1,092)) <u>1,152</u>
<b>Class F</b>	Endorsement/upgrade of Class E includes permission to use alternative fee collections and use of player-supported jackpots	\$((1,642)) <u>1,732</u>

**2. Card games - House-banked**

All tables within a card room operating any house-banked card game must be licensed under this license class.

License	Fee
Annual	\$((6,582)) <u>6,944</u>
Additional fee per table - up to fifteen tables	\$((1,642)) <u>1,732</u>

**3. Punch boards and pull-tabs**

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class A	Up to \$50,000	\$((596)) <u>628</u>	\$5,000
Class B	Up to \$100,000	\$((1,064)) <u>1,122</u>	\$5,000
Class C	Up to \$200,000	\$((2,006)) <u>2,116</u>	\$10,000
Class D	Up to \$300,000	\$((2,920)) <u>3,080</u>	\$10,000
Class E	Up to \$400,000	\$((3,772)) <u>3,980</u>	\$10,000
Class F	Up to \$500,000	\$((4,556)) <u>4,806</u>	\$10,000
Class G	Up to \$600,000	\$((5,280)) <u>5,570</u>	\$10,000
Class H	Up to \$700,000	\$((5,942)) <u>6,270</u>	\$10,000

License	Annual Gross Gambling Receipts	Fee	One Time Variance*
Class I	Up to \$800,000	\$((6,546)) <u>6,906</u>	\$10,000
Class J	Up to \$1,000,000	\$((7,422)) <u>7,832</u>	\$20,000
Class K	Up to \$1,250,000	\$((8,238)) <u>8,692</u>	\$25,000
Class L	Up to \$1,500,000	\$((8,998)) <u>9,494</u>	\$25,000
Class M	Up to \$1,750,000	\$((9,624)) <u>10,156</u>	\$25,000
Class N	Up to \$2,000,000	\$((10,194)) <u>10,756</u>	\$25,000
Class O	Up to \$2,500,000	\$((11,202)) <u>11,820</u>	\$30,000
Class P	Up to \$3,000,000	\$((11,578)) <u>12,218</u>	\$35,000
Class Q	Up to \$4,000,000	\$((13,646)) <u>14,400</u>	\$40,000
Class R	Up to \$5,000,000	\$((15,506)) <u>16,362</u>	\$50,000
Class S	Up to \$6,000,000	\$((17,574)) <u>18,544</u>	\$60,000
Class T	Up to \$7,000,000	\$((19,642)) <u>20,728</u>	\$70,000
Class U	Up to \$8,000,000	\$((21,708)) <u>22,908</u>	\$80,000
Class V	Over \$8,000,000	\$((23,776)) <u>25,090</u>	\$80,000

\*See chapter 230-06 WAC, Exceeding license class.

**AMENDATORY SECTION** (Amending Order 606, filed 1/18/07, effective 1/1/08)

**WAC 230-05-030 Fees for other businesses.** All other business license applicants must pay the following fees to us when applying for gambling licenses, miscellaneous changes, or inspection services:

**1. Commercial amusement games**

License	Annual Gross Gambling Receipts	Fee
Class A	Premises only	*\$((310/\$143)) <u>327/\$150</u>
Class B	Up to \$50,000	\$((436)) <u>460</u>
Class C	Up to \$100,000	\$((1,122)) <u>1,184</u>
Class D	Up to \$250,000	\$((2,506)) <u>2,644</u>
Class E	Up to \$500,000	\$((4,398)) <u>4,640</u>
Class F	Up to \$1,000,000	\$((7,552)) <u>7,968</u>
Class G	Over \$1,000,000	\$((9,448)) <u>9,970</u>

\*We reduce the license fee by \$((164)) 177 when you apply for additional licenses at the same business premises, apply for multiple licenses at the same business premises, or a licensee is renewing an annual license.

**2. Distributor**

License	Annual Gross Sales	Fee
Class A	Nonpunch board/pull-tab only	\$((625)) <u>659</u>
Class B	Up to \$250,000	\$((1,250)) <u>1,318</u>
Class C	Up to \$500,000	\$((1,878)) <u>1,980</u>
Class D	Up to \$1,000,000	\$((2,506)) <u>2,644</u>
Class E	Up to \$2,500,000	\$((3,266)) <u>3,446</u>
Class F	Over \$2,500,000	\$((4,020)) <u>4,242</u>

**3. Fund-raising event equipment distributor**

License	Description	Fee
Class A	Rents or leases equipment for fund-raising event or recreational gaming activity up to 10 times per year.	\$((247)) <u>260</u>
Class B	Rents or leases equipment for fund-raising event or recreational gaming activity more than 10 times per year.	\$((625)) <u>659</u>

**4. Gambling service supplier**

License	Fee
Annual	\$((651)) <u>687</u>
Financing, consulting, and management contract review	\$((136)) <u>143</u>

**5. Linked bingo prize provider**

License	Fee
Annual	\$((4,184)) <u>4,414</u>

**6. Manufacturer**

License	Annual Gross Sales	Fee
Class A	Pull-tab dispensing devices only	\$((625)) <u>659</u>
Class B	Up to \$250,000	\$((1,250)) <u>1,318</u>
Class C	Up to \$500,000	\$((1,878)) <u>1,980</u>
Class D	Up to \$1,000,000	\$((2,506)) <u>2,644</u>
Class E	Up to \$2,500,000	\$((3,266)) <u>3,446</u>
Class F	Over \$2,500,000	\$((4,020)) <u>4,242</u>

**7. Permits**

Type	Description	Fee
Agricultural fair	One location and event only	\$((26)) <u>27</u>
Agricultural fair annual permit	Annual permit for specified different events and locations	\$((180)) <u>189</u>
Recreational gaming activity		\$((56)) <u>59</u>
Manufacturer's special sales permit		\$211

Type	Description	Fee
Punch board and pull-tab service business permit	Initial application fee	\$((217)) <u>236</u>
Punch board and pull-tab service business permit	Renewal	\$((53)) <u>56</u>

**8. Changes**

Application	Description	Fee
Name		\$((26)) <u>27</u>
Location		\$((26)) <u>27</u>
Business classification	Same owners	\$((56)) <u>59</u>
Exceeding license class	New class fee, less previous fee paid, plus	\$((26)) <u>27</u>
Duplicate license		\$((26)) <u>27</u>
Corporate stock/limited liability company shares/units		\$((56)) <u>59</u>
License transfers		\$((56)) <u>59</u>

**9. Other fees**

Type	Fee
Defective punch board/pull-tab cost recovery fees	Up to \$100
Failing to apply for license class upgrade	Up to fifty percent of the difference between our fees for the licensee's present license class and the new license class or one thousand dollars, whichever is less, plus \$((26)) <u>27</u>
Review of gambling equipment, supplies, services, or games	Cost reimbursement

**10. Identification stamps**

Type	Fee
<b>(a) Punch boards and pull-tabs</b>	
(i) Standard	Wagers fifty cents and below \$((.27)) <u>.28</u>
	Wagers over fifty cents \$((1.05)) <u>1.11</u>
(ii) Progressive jackpot pull-tab series	Per series \$((10.60)) <u>11.19</u>
(iii) Pull-tab series with carry-over jackpots	Per series \$((1.05)) <u>1.11</u>
<b>(b) Pull-tab dispensing devices</b>	
(i) Mechanical and electro-mechanical	\$((.27)) <u>.28</u>
(ii) Electronic	Dispensing devices that require initial and ongoing evaluation of electronic components or functions, such as reading encoded data on pull-tabs, accounting for income or prizes \$((106.17)) <u>112.04</u> annually
Replacement of identification stamps	\$26

Type	Fee
<b>(c) Disposable bingo cards</b>	
(i) Single game sets of individual cards or sheets of cards	\$((.27)) <u>.28</u>
(ii) Multigame card packets	\$((1.16)) <u>1.22</u>
(iii) Cards used to play for linked bingo prizes	Fee per 250 cards \$((.42)) <u>.44</u>
(iv) Cards used to play for linked bingo prizes	Fee per 5,000 cards \$((8.49)) <u>8.96</u>
<b>(d) Coin or token-activated amusement games</b>	
Annually - operated at any Class A amusement game license location	\$((26.53)) <u>28.00</u>
<b>(e) Electronic bingo card daubers</b>	
Annual	\$((10.60)) <u>11.19</u>
<b>(f) Electronic card facsimile table</b>	
Annual	\$((361.51)) <u>381.50</u>

**11. Two-part payment plan participation**

Annual participation	\$((26)) <u>27</u>
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**AMENDATORY SECTION** (Amending Order 606, filed 1/18/07, effective 1/1/08)

**WAC 230-05-035 Individuals license fees.** Individuals must pay the following fees to us when they apply for gambling licenses, permits, miscellaneous changes:

**1. Charitable or nonprofit gambling manager**

License	Fee
Original	\$((176)) <u>185</u>
Renewal	\$((84)) <u>88</u>
Change of employer	\$((84)) <u>88</u>

**2. Linked bingo prize provider representative**

License	Fee
Original	\$((247)) <u>260</u>
Renewal	\$((150)) <u>158</u>

**3. Commercial gambling manager**

License	Fee
Original	\$((180)) <u>189</u>
Renewal	\$((86)) <u>90</u>
Change of employer	\$((86)) <u>90</u>

**4. Distributor's or gambling services supplier's representative**

License	Fee
Original	\$(( <del>247</del> )) <u>260</u>
Renewal	\$(( <del>150</del> )) <u>158</u>

**5. Manufacturer's representative**

License	Fee
Original	\$(( <del>247</del> )) <u>260</u>
Renewal	\$(( <del>150</del> )) <u>158</u>

**6. Public card room employee**

License	Fee
<b>Class A - Performs card room employee duties in a Class E card room</b>	
Original	\$(( <del>180</del> )) <u>189</u>
Renewal	\$(( <del>86</del> )) <u>90</u>
<b>Class B - Performs card room employee duties in enhanced and house-banked card rooms</b>	
Original, in-state	\$(( <del>245</del> )) <u>258</u>
Original, out-of-state	\$(( <del>304</del> )) <u>320</u>
Renewal	\$(( <del>150</del> )) <u>158</u>
Transfer/additional employee/conversion/emergency waiver request	\$(( <del>58</del> )) <u>61</u>

**7. Other fees**

Change of name	\$(( <del>26</del> )) <u>27</u>
Duplicate license	\$(( <del>26</del> )) <u>27</u>

**8. Military personnel returning from service**

If a license expires while an individual is on active military service, the individual may apply to have their license reissued at the renewal fee. The application must be received within six months after completing their active military service. The applicant must provide evidence of the completion date of active military service.

**WSR 07-23-084  
PERMANENT RULES  
GAMBLING COMMISSION**

[Order 618—Filed November 20, 2007, 8:18 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The gambling commission is rewriting its rules manual using plain English techniques. We anticipate the project will be completed by January 1, 2008. The rules manual is being broken into sections and rewritten a section at a time. This filing repeals a rule regarding tribal casinos.

Citation of Existing Rules Affected by this Order: Repealing 1 [WAC 230-48-010].

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-19-073 on September 17, 2007, and published October 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 1.

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

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

Date Adopted: November 20, 2007.

Susan Arland  
Rules Coordinator

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 230-48-010 Tribal-state compacts—  
Phase II commission review.

**WSR 07-23-087  
PERMANENT RULES  
GAMBLING COMMISSION**

[Order 619—Filed November 20, 2007, 10:12 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The gambling commission is rewriting its rules manual using plain English techniques. We anticipate the project will be completed by January 1, 2008. The rules manual is being broken into sections and rewritten a section at a time. This filing repeals our current rules manual to make way for the new plain talk rules manual.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 07-19-076 on September 17, 2007, and published October 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 429.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 429.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 429; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 20, 2007.

Susan Arland  
Rules Coordinator

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 230-02-010	Washington state gambling commission—Purpose and organization.
WAC 230-02-020	Time and place of meetings.
WAC 230-02-022	Cost defined.
WAC 230-02-030	Normal commission operations—Administrative office address and business hours.
WAC 230-02-035	Field offices and operations.
WAC 230-02-040	Commission activities exempt from Environmental Protection Act.
WAC 230-02-100	Definitions.
WAC 230-02-102	Bingo occasion defined.
WAC 230-02-104	Bingo session defined.
WAC 230-02-105	Annual measurement period—Defined.
WAC 230-02-108	Gambling proceeds defined.
WAC 230-02-109	Net win defined.
WAC 230-02-110	Gross gambling receipts defined.
WAC 230-02-120	Net gambling receipts defined.
WAC 230-02-123	Charitable or nonprofit organizations—Net return defined.

WAC 230-02-130	Net gambling income defined.
WAC 230-02-135	Gross sales defined.
WAC 230-02-137	Excessive reserves defined.
WAC 230-02-140	Person defined.
WAC 230-02-155	Bona fide charitable organization defined.
WAC 230-02-160	Charitable defined.
WAC 230-02-161	Bona fide nonprofit organization defined.
WAC 230-02-162	Functional expenses defined.
WAC 230-02-163	Educational defined.
WAC 230-02-166	Civic defined.
WAC 230-02-169	Patriotic defined.
WAC 230-02-173	Political defined.
WAC 230-02-176	Religious defined.
WAC 230-02-179	Social defined.
WAC 230-02-182	Fraternal defined.
WAC 230-02-183	Active member defined.
WAC 230-02-185	Athletic defined.
WAC 230-02-188	Agricultural defined.
WAC 230-02-191	Agricultural fair defined.
WAC 230-02-200	Operator defined.
WAC 230-02-203	Lending agent, loan servicer, and placement agent defined.
WAC 230-02-204	Regulated lending institution defined.
WAC 230-02-205	Gambling service supplier defined.
WAC 230-02-206	Gambling service supplier representative defined.
WAC 230-02-207	Linked bingo prize provider defined.
WAC 230-02-208	Punch board and pull-tab service business defined.
WAC 230-02-210	Distributor defined.
WAC 230-02-218	Linked bingo prize provider representative defined.
WAC 230-02-220	Distributor's representative defined.
WAC 230-02-225	Manufacturer's representative defined.
WAC 230-02-230	Manufacturer defined.

WAC 230-02-240	Commercial gambling manager defined.	WAC 230-02-511	Attended amusement game defined.
WAC 230-02-250	Bingo equipment.	WAC 230-02-512	Commercial amusement game operator defined.
WAC 230-02-255	Linked bingo prize defined.	WAC 230-02-514	Coin or token activated amusement games defined.
WAC 230-02-260	Pull-tab defined.	WAC 230-02-515	School hours defined.
WAC 230-02-270	Punch board defined.	WAC 230-02-520	School-aged minors defined.
WAC 230-02-278	Program service expenses defined.		
WAC 230-02-279	Supporting service expenses defined.		
WAC 230-02-280	Identification and inspection services stamps.		
WAC 230-02-290	Records entry labels.		
WAC 230-02-300	Substantial interest holder defined.		
WAC 230-02-310	Bona fide newspaper or magazine defined.		
WAC 230-02-350	Commercial stimulant defined.		
WAC 230-02-360	Licensed premises defined.		
WAC 230-02-370	Food and/or drink business defined.		
WAC 230-02-380	Established business defined.		
WAC 230-02-405	Specific authorized card games.		
WAC 230-02-410	Public card room.		
WAC 230-02-412	Gambling equipment defined.		
WAC 230-02-415	Card room employee defined.		
WAC 230-02-418	Charitable or nonprofit gambling manager defined.		
WAC 230-02-420	Social card room.		
WAC 230-02-430	Guest.		
WAC 230-02-440	Calendar day defined.		
WAC 230-02-450	Three consecutive days defined.		
WAC 230-02-455	Social pastime defined.		
WAC 230-02-500	Drawing defined.		
WAC 230-02-503	Fund-raising defined.		
WAC 230-02-504	Fund-raising event defined.		
WAC 230-02-505	Recreational gaming activity—Defined.		
WAC 230-02-510	Amusement device defined.		

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 230-04-005	Gambling license certification program.
WAC 230-04-010	Certification procedure—Application forms.
WAC 230-04-020	Certification procedure—General requirements—Mandatory training required.
WAC 230-04-022	Certification procedure—Information required from all applicants.
WAC 230-04-024	Bona fide charitable or nonprofit organizations—Minimum qualifications—Restrictions—Definitions.
WAC 230-04-026	Ownership of a commercial gambling establishment by charitable and nonprofit organizations.
WAC 230-04-030	Commission may post public notice of license application on premises.
WAC 230-04-035	Certification procedure—Charitable and nonprofit organizations—Classification of purpose.
WAC 230-04-040	Certification procedure—Charitable and nonprofit organizations—Additional information required.
WAC 230-04-064	Certification of new licenses—Formal commission approval.
WAC 230-04-065	Certification procedure—Bona fide charitable and nonprofit organizations—Lower volume—Simplified application.

WAC 230-04-070	Activities not to be conducted without a license or permit.	WAC 230-04-147	Notification to the commission upon beginning, terminating, or changing responsibilities of charitable or non-profit gambling managers.
WAC 230-04-075	No license required for certain bingo, raffles, and amusement games.	WAC 230-04-151	Supplemental information.
WAC 230-04-080	Certain activities to be operated as a commercial stimulant only—Licensing of food and/or drink businesses.	WAC 230-04-170	Applicants—Qualifications.
WAC 230-04-110	Licensing of manufacturers.	WAC 230-04-175	License does not grant vested right.
WAC 230-04-115	Licensing of manufacturers—Exception—Special sales permit.	WAC 230-04-180	Background checks—Fingerprinting.
WAC 230-04-119	Licensing of gambling service suppliers.	WAC 230-04-187	Recreational gaming activity—Permit or license required.
WAC 230-04-120	Licensing of distributors.	WAC 230-04-190	Issuance of license—Expiration—Restrictions.
WAC 230-04-124	Licensing of manufacturer, distributor, gambling service supplier, and linked bingo prize provider representatives—Exceptions.	WAC 230-04-191	Permits required for persons conducting bingo at agricultural fairs.
WAC 230-04-125	Distributor or gambling services supplier representative license—Restrictions and procedures for changing employment.	WAC 230-04-193	Persons may obtain an annual permit to conduct bingo at agricultural fairs only.
WAC 230-04-126	Licensing of linked bingo prize providers.	WAC 230-04-194	Denial or revocation of annual operator permit for special locations—Grounds and effect.
WAC 230-04-133	Punch board and pull-tab service business—Registration required—Procedures—Restrictions.	WAC 230-04-202	Fees—Bona fide charitable/nonprofit organizations.
WAC 230-04-135	Commercial amusement games—License required.	WAC 230-04-203	Fees—Commercial stimulant and other business organizations.
WAC 230-04-138	Commercial amusement games—Authorized locations.	WAC 230-04-204	Fees—Individuals.
WAC 230-04-140	Licensing of public card room employees—Procedures—Exceptions.	WAC 230-04-207	House-banked card games—Additional requirements.
WAC 230-04-142	Notification to the commission upon beginning, terminating, or changing employment—Public card room employees.	WAC 230-04-210	Withdrawal of application.
WAC 230-04-143	Licensing of commercial gambling managers.	WAC 230-04-220	Prorating and refunding of fees.
WAC 230-04-145	Licensing of charitable or nonprofit gambling managers—Application procedures.	WAC 230-04-230	Intentionally understating anticipated revenue—Prohibited.
		WAC 230-04-240	Special investigation fee.
		WAC 230-04-255	Director may issue temporary licenses—Procedures—Restrictions.
		WAC 230-04-260	Effect of exceeding license class income limit—Procedures—Penalties.
		WAC 230-04-270	Bad checks submitted as payment of fees.

WAC 230-04-280	Notification to law enforcement.	WAC 230-08-040	Sales invoices—Minimum information to be recorded for transfer of gambling equipment and merchandise—Retention—Penalties.
WAC 230-04-290	Loss or destruction of licenses or permits.		
WAC 230-04-300	One annual change of premises allowed for bingo.	WAC 230-08-060	Commercial amusement game records.
WAC 230-04-310	Change of name.	WAC 230-08-070	Raffle records.
WAC 230-04-320	Change of location.	WAC 230-08-080	Daily records—Bingo.
WAC 230-04-325	Cancellation, change of time, date, or location of fund raising event.	WAC 230-08-095	Minimum standards for monthly and annual accounting records—Charitable or nonprofit organizations.
WAC 230-04-330	Change of management.		
WAC 230-04-340	Transfer of licenses—Conditions.	WAC 230-08-105	Disposable bingo cards—Inventory control record.
WAC 230-04-350	Death or incapacity of licensee.	WAC 230-08-110	Prize inventory control procedures—Records required—Charitable or nonprofit organizations.
WAC 230-04-400	Denial, suspension or revocation of licenses.		
WAC 230-04-405	Commission will seek reimbursement for costs incurred in pursuing license revocation for failure to pay gambling taxes.	WAC 230-08-120	Quarterly activity report by operators of bingo games (license Class D and above).
		WAC 230-08-122	Annual progress and financial report—All nonprofit and charitable organizations.
WAC 230-04-410	Return of license suspended or revoked.	WAC 230-08-125	Annual activity reports—Certain activities operated by charitable or nonprofit organizations.
WAC 230-04-450	Display of licenses.		
WAC 230-04-455	Employees to wear identification tags.	WAC 230-08-130	Activity reports by operators of punch boards and pull-tabs.
WAC 230-04-500	Local gambling prohibitions.		

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 230-08-010	Monthly records.	WAC 230-08-140	Activity reports by distributors.
WAC 230-08-015	Certain lower volume licensees may meet reduced recordkeeping requirements.	WAC 230-08-150	Activity reports by manufacturers.
WAC 230-08-017	Control of gambling equipment—Use of identification and inspection services stamps.	WAC 230-08-160	Activity reports by operators of social and public card rooms.
WAC 230-08-025	Accounting records to be maintained by distributors and manufacturers.	WAC 230-08-165	Activity reports by linked bingo prize providers.
WAC 230-08-026	Accounting records to be maintained by gambling service suppliers.	WAC 230-08-180	Annual activity reports by commercial amusement game operators.
WAC 230-08-035	Records to be maintained by linked bingo prize providers.	WAC 230-08-200	All records subject to commission audit.
		WAC 230-08-250	Annual activity reports by agricultural fairs and other bona fide charitable or nonprofit organizations with special location licenses to con-



	duct bingo, raffles, and amusement games.		dent management control structure required.
WAC 230-08-255	Bona fide charitable or non-profit organizations—Qualification review—Significant progress required—Exception.	WAC 230-12-079	Duties and responsibilities of a charitable or nonprofit gambling manager.
WAC 230-08-260	Fund-raising events—Activity report required.	WAC 230-12-080	Licensee to maintain copy of commission's rules on premises.
WAC 230-08-270	Transfer of any gambling devices requiring identification and inspection services stamps to be affixed.	WAC 230-12-090	Problem gambling and caution disclosure—Advertisements and posting signs.
		WAC 230-12-210	Prices charged by manufacturers, distributors and operators for goods and services not to be fixed by agreement.
<b><u>REPEALER</u></b>			
The following chapter of the Washington Administrative Code is repealed:			
WAC 230-12-005	Effective dates for commission rule making orders.	WAC 230-12-223	Prohibited practices—Leases and compensation.
WAC 230-12-010	Inspection of premises, records and devices.	WAC 230-12-225	Repair or service not to be conditioned upon exclusive supply arrangement.
WAC 230-12-020	Gambling receipts deposit required by all bona fide charitable and nonprofit organizations—Exemptions.	WAC 230-12-230	Agreements restricting freedom to buy and sell—Prohibited.
WAC 230-12-027	Age limit to participate in gambling activities—Bingo advertisements directed to minors.	WAC 230-12-250	No division of territories allowed.
WAC 230-12-030	No beer, wine or spirits as prizes.	WAC 230-12-280	Suspension of licenses, certificates, and permits for various purposes for premises upon which violations occur.
WAC 230-12-040	No firearms as prizes—Exceptions.	WAC 230-12-300	Resident agent to be appointed by out-of-state licensees.
WAC 230-12-045	Gambling promotions.	WAC 230-12-305	Licensee required to submit updated documents or information.
WAC 230-12-050	Extension of credit, loans, or gifts prohibited—Limited exception.	WAC 230-12-310	Licensees to report to the commission civil, criminal and administrative actions filed against them.
WAC 230-12-053	Acceptance of checks—Requirements.	WAC 230-12-315	Request for review services—Fees.
WAC 230-12-070	Conduct of gambling activity.	WAC 230-12-316	Electronic or mechanical equipment review.
WAC 230-12-074	Sales on licensed premises only—Exceptions.	WAC 230-12-335	Control of gambling equipment—Sales and purchases by and to licensees only—Authorized transfers of gambling equipment.
WAC 230-12-076	Regulation of charitable and nonprofit organizations—Assignment to regulatory groups.	WAC 230-12-337	Manufacturers and distributors transporting and displaying gambling devices—
WAC 230-12-078	Bona fide charitable or non-profit organizations—Responsibilities—Indepen-		

	Trade shows and conventions.	WAC 230-20-108	Combination receipting method of receipting bingo income—Procedures.
WAC 230-12-900	Deputy director.	WAC 230-20-115	Gift certificates.
<b><u>REPEALER</u></b>			
The following chapter of the Washington Administrative Code is repealed:			
WAC 230-20-002	Shared facilities for bingo licensees—Separate management.	WAC 230-20-130	Operation of bingo upon retail business—Conditions.
WAC 230-20-005	Shared management and facilities for bingo licensees—Shared allocation of revenues and expenses.	WAC 230-20-170	Hours for bingo games.
WAC 230-20-010	Disclosure of prizes and rules.	WAC 230-20-192	Standards for disposable bingo cards—Requirements and definitions.
WAC 230-20-015	Prize limits for raffles.	WAC 230-20-220	Bingo operators shall not play in bingo games.
WAC 230-20-050	Use of proceeds.	WAC 230-20-240	Bingo equipment to be used.
WAC 230-20-055	Use of proceeds from authorized activities by charitable or nonprofit organizations.	WAC 230-20-241	Player selection games.
WAC 230-20-059	Minimum cash flow requirements for bingo games—Contributions to stated purpose—Sanctions.	WAC 230-20-242	Activities conducted as a part of bingo games—Authorization—Restrictions.
WAC 230-20-065	Licensed bingo manager required on premises.	WAC 230-20-243	Hidden face bingo games.
WAC 230-20-070	Regulation of managers, operators, and other employees—Charitable or nonprofit organizations.	WAC 230-20-244	Electronic bingo card daubers—Definition—Operating restrictions—Standards.
WAC 230-20-090	Limits on compensation paid to members or employees.	WAC 230-20-246	Manner of conducting bingo.
WAC 230-20-101	Income from bingo games—Receipting required.	WAC 230-20-247	Keno bingo—Definitions and requirements.
WAC 230-20-102	Bingo prizes—Record of winners.	WAC 230-20-248	Loteria authorized—Class A licensees only.
WAC 230-20-103	Bingo cards to be sold upon the premises—Exceptions.	WAC 230-20-249	Three number speed bingo—Operational procedures—Restrictions.
WAC 230-20-104	Cash register method of receipting bingo income.	WAC 230-20-255	Linked bingo prizes—Approval—Manner of conducting.
WAC 230-20-105	Ticket method of receipting bingo income.	WAC 230-20-300	Control of raffle prizes.
WAC 230-20-106	Electronically generated bingo card method of receipting bingo income.	WAC 230-20-325	Manner of conducting a raffle.
WAC 230-20-107	Disposable (throwaway) bingo card method for receipting bingo income.	WAC 230-20-335	Members-only raffles—Procedures—Restrictions.
		WAC 230-20-350	Licensees may join together to conduct a raffle.
		WAC 230-20-360	Licensee for the conduct of bingo games at agricultural fairs shall not allow another to do so without a permit.
		WAC 230-20-370	Licensees may rent equipment to conduct amusement games.
		WAC 230-20-400	Certain lower volume licensees exempted from certain rules.

WAC 230-20-508	Authorized amusement games—Types, standards and classifications.	<u>REPEALER</u>	
			The following chapter of the Washington Administrative Code is repealed:
WAC 230-20-509	Amusement games—Classification to be assigned by operator.	WAC 230-25-020	Fund-raising event—Licensee to give notice to local police jurisdiction prior to conducting—Inspection of equipment by police.
WAC 230-20-510	Attended amusement games—Operational restrictions.	WAC 230-25-030	Fund-raising event—Ten thousand dollars annual net receipts maximum.
WAC 230-20-600	Amusement games—Licensee to give notice to local police jurisdiction prior to conducting—Inspection of equipment by police.	WAC 230-25-033	Fund-raising events on New Year's Eve extending past midnight.
WAC 230-20-610	Amusement games—Factors affecting skill to be readily visible to players.	WAC 230-25-040	Fund-raising event—House rules to be developed and posted—Limitations on wagers.
WAC 230-20-615	Amusement games—Material degree of skill required—Standards.	WAC 230-25-045	Poker tournaments at fund-raising events and limited fund-raising events.
WAC 230-20-620	Amusement games—Objects to be thrown to be uniform—Similar games not to use different objects unless designated.	WAC 230-25-050	Wagering among participants not permitted.
		WAC 230-25-055	Use of chips, scrip or similar items at fund-raising event.
WAC 230-20-630	Amusement games—Fees, rules, prizes and variations in objects to be posted—Fees to be paid in cash or scrip—Prizes not to differ from those posted.	WAC 230-25-060	Coin-operated gaming devices prohibited.
		WAC 230-25-065	Licensees may join together to conduct a fund-raising event.
WAC 230-20-640	Amusement games—Sample of prizes to be displayed.	WAC 230-25-070	Fund-raising events—Central accounting system required.
WAC 230-20-650	Amusement games—Coin toss games.	WAC 230-25-100	Fund-raising event—Leasing of commercial business premises—Conditions.
WAC 230-20-660	Amusement games—Target shoot—Target to be brought to contestant on demand.	WAC 230-25-110	Fund-raising event—Equipment use, lease or rental from licensee only.
WAC 230-20-670	Commercial amusement games—Operating restrictions.	WAC 230-25-120	Expenditure limits for fund-raising events.
WAC 230-20-680	Commercial amusement games—Operation restrictions.	WAC 230-25-150	Pull-tabs at fund-raising events—Authorized.
		WAC 230-25-160	Pull-tabs at fund-raising events—Operational requirements—Limitations.
WAC 230-20-685	Commercial amusement games—Wager and prize limitations.	WAC 230-25-200	Bingo at fund-raising events.
WAC 230-20-700	Coin or token activated amusement games—Standards.	WAC 230-25-220	Raffles or similar drawings conducted at fund-raising events.

WAC 230-25-230	Raffles or similar lotteries at fund-raising events—Tickets to be sold and income to be accounted for separately.	WAC 230-30-033	Event pull-tab series—Definitions—Restrictions.
WAC 230-25-235	Fund-raising event—Rules for blackjack.	WAC 230-30-034	Seal card pull-tab series—Definitions—Restrictions.
WAC 230-25-240	Prizes to be awarded only to persons who were present, and purchased tickets or made wagers, at fund-raising event.	WAC 230-30-040	Bonus pull-tab series—Definitions—Restrictions.
WAC 230-25-250	Operation of punch boards at a fund-raising event prohibited.	WAC 230-30-045	Carry-over jackpot pull-tab series—Definitions—Requirements.
WAC 230-25-260	Bona fide member of organization conducting fund-raising event.	WAC 230-30-050	Punch board and pull-tab operating restrictions and dispensing limitations.
WAC 230-25-265	Fund-raising event—Regular salary for licensee's employee not "payment" for work on fund-raising event under certain conditions—Food and beverage exception.	WAC 230-30-052	Punch boards and pull-tabs operated by charitable or nonprofit organizations—Net income required.
WAC 230-25-270	Certain incidental functions at fund-raising event not part of management and operation of event.	WAC 230-30-055	Standards for construction of punch boards.
WAC 230-25-310	Fund-raising event—List of workers to be available on premises.	WAC 230-30-070	Control of prizes—Restrictions—Bonus prizes—Displaying—Procedures for awarding.
WAC 230-25-315	Workers to wear identification tags.	WAC 230-30-072	Inventory control for punch boards and pull-tabs—Retention requirements—Audit adjustments.
WAC 230-25-320	Limits for operation and participation in fund-raising events.	WAC 230-30-080	Punch board and pull-tab series restrictions—Prizes, size of game, and location of winners.
WAC 230-25-325	Limited fund-raising event—Procedures and restrictions.	WAC 230-30-090	All devices must comply with rules.
WAC 230-25-330	Recreational gaming activity—Rules for play.	WAC 230-30-097	Standards—Approved pull-tab dispensing devices.
		WAC 230-30-102	Pull-tab series assembly and packaging.
		WAC 230-30-103	Standards for construction of pull-tabs.
		WAC 230-30-104	Possession or sale of pull-tab series in which winners or location of winners may be determined in advance—Prohibited.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 230-30-025	Progressive jackpot pull-tab series—Definitions—Restrictions—Operating procedures.	WAC 230-30-106	Punch board and pull-tab flares restrictions—Standards—Substitute flares.
WAC 230-30-030	Punch board and pull-tab quality control program—Special inspections, defective devices, reimbursements, and fees.	WAC 230-30-210	Sales restrictions.
		WAC 230-30-220	Interest in separate business involving punch boards and pull-tabs at a different marketing level prohibited.

WAC 230-30-225	Exception to prohibition of holding an interest in separate punch board or pull-tab businesses at different marketing levels.	WAC 230-40-225	House dealer allowed in certain games.
WAC 230-30-300	Recall of defective punch boards, pull-tabs or pull-tab dispensing devices.	WAC 230-40-230	No person shall have someone play for him or assist another participant.
WAC 230-30-500	Rules applicable to operators of punch boards and pull-tabs applicable as well to operators of either activity.	WAC 230-40-250	Licensee to prevent cheating in card games.
		WAC 230-40-315	No food or drink sales on time basis in card room.
		WAC 230-40-320	Minors or intoxicated persons shall not play cards or provide services to the game.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

WAC 230-40-010	Social card games—Rules of play—Types of card games authorized.	WAC 230-40-331	Bona fide nonprofit or charitable organizations—Members only to play social card and dice games—Exception.
WAC 230-40-020	Portion of premises used for card playing limited.	WAC 230-40-400	Hours for card games—Procedures for changing hours.
WAC 230-40-030	Number of tables and players limited.	WAC 230-40-450	Pictures to be posted with employee licenses.
WAC 230-40-040	Fees for house-banked card games—Prohibited—Exception.	WAC 230-40-500	Unlicensed charitable and nonprofit card games—Authority—House rules to be developed and posted.
WAC 230-40-050	Fees for nonhouse-banked card games—Assessment and collection—Maximum fees.	WAC 230-40-505	Rules of play for social card games—Display—Availability for review.
WAC 230-40-052	Daily records—Card games.	WAC 230-40-550	Incompatible functions defined.
WAC 230-40-055	Card tournaments for fee and prizes—Reporting requirements.	WAC 230-40-552	Cash equivalent defined.
WAC 230-40-063	Charge for cutting cards.	WAC 230-40-554	Chief executive officer or chief operations officer defined.
WAC 230-40-070	Licensee to furnish all cards, chips and other services.	WAC 230-40-556	Gaming operations department manager defined.
WAC 230-40-080	Person not to bring their own cards or chips.	WAC 230-40-558	Shift manager defined.
WAC 230-40-090	Devices, mechanisms, giving advantage—Prohibited.	WAC 230-40-560	Floor supervisor defined.
WAC 230-40-120	Limits on wagers in card games.	WAC 230-40-562	Dealer defined.
WAC 230-40-130	Wagers to be made with chips only.	WAC 230-40-600	Authorization procedures for player-supported jackpots.
WAC 230-40-140	Change in method of wagering prohibited.	WAC 230-40-608	Deposit requirements—Player-supported jackpot funds.
WAC 230-40-200	Players to compete on equal terms—Deal to rotate among players.	WAC 230-40-610	Player-supported jackpots—Restrictions—Manner of conducting—Approval.
		WAC 230-40-615	Nonhouse-banked card games—Administrative and accounting control structure—Organization.

WAC 230-40-625	Closed circuit television system—Class F card rooms.	WAC 230-40-865	Distributing chips and coins to tables—Requests and fills—House-banking.
WAC 230-40-630	Count procedures—Class F card rooms.	WAC 230-40-870	Removing chips and coins from tables—Requests and credits—House-banking.
WAC 230-40-800	Operating rules for house-banked card games.	WAC 230-40-875	Closing gaming tables—House-banking.
WAC 230-40-801	Interruption of card games—Preoperational review and evaluation required—Procedures—House-banking.	WAC 230-40-880	Count room requirements.
WAC 230-40-805	Progressive jackpot prizes—Procedures—Restrictions—House-banking.	WAC 230-40-885	Count procedures—House-banking.
WAC 230-40-808	Deposit requirements for prizes—House-banking.	WAC 230-40-890	Signatures—Requirements.
WAC 230-40-810	House-banked card games—Odds based wagers—Prizes—Restrictions—Procedures.	WAC 230-40-895	Key control—House-banking.
WAC 230-40-815	Administrative and accounting control structure—Organization—House-banking.	<b><u>REPEALER</u></b>	
WAC 230-40-821	Accounting system—House-banked card rooms.	The following chapter of the Washington Administrative Code is repealed:	
WAC 230-40-823	Financial statements required—House-banked card rooms.	WAC 230-46-010	Purpose.
WAC 230-40-825	Closed circuit television system—House-banking.	WAC 230-46-025	Telephone charges—Valuable consideration.
WAC 230-40-830	Cashier's cage—Requirements—House-banking.	WAC 230-46-045	Promotional contests of chance similar to bingo—"No fee bingo."
WAC 230-40-833	Cashier's bank and minimum bankroll—House-banking.	WAC 230-46-070	Punch boards/pull-tabs and pull-tab dispensing devices not to be used in promotional contests—Exception.
WAC 230-40-835	Accounting controls for cashier's cage.	WAC 230-46-100	Bona fide charitable/non-profit organizations—Limited social card games without obtaining a license—Conditions.
WAC 230-40-840	Drop boxes—House-banking—Drop box collection method.	<b><u>REPEALER</u></b>	
WAC 230-40-845	Procedures for exchange of checks submitted by gaming patrons at cashier's cage.	The following sections of the Washington Administrative Code are repealed:	
WAC 230-40-850	Procedures for purchasing gaming chips.	WAC 230-50-005	Seizures—Hearings.
WAC 230-40-855	Acceptance of tips from patrons for house-banked activities.	WAC 230-50-010	Adjudicative proceedings—Hearings.
WAC 230-40-860	Table inventories and procedures for opening tables for house-banked card games.	WAC 230-50-012	Summary suspensions.
		WAC 230-50-015	Stay of summary suspension.
		WAC 230-50-018	Review of orders on stay.
		WAC 230-50-020	Adjudicated proceedings—Appointment of administrative law judge.
		WAC 230-50-030	Adjudicated proceedings—Hearings—Interpreter—Timing.

WAC 230-50-060	Adjudicated proceedings— Appearance and practice before the commission— Who may appear.	WAC 230-50-560	Petition for review of an ini- tial order—Replies to a peti- tion for review, and cross appeals—When an initial order becomes a final order—Time limits and con- tent requirements.
WAC 230-50-090	Standards of ethical conduct.		
WAC 230-50-110	Computation of time.		
WAC 230-50-150	Adjudicated proceedings— Notice of hearing—Require- ments.	WAC 230-50-562	Final orders—When and how to file a petition for reconsid- eration of a final order.
WAC 230-50-190	Adjudicated proceedings— Service of process—Method of service.	WAC 230-50-570	Adjudicated proceeding— Stay.
WAC 230-50-200	Adjudicated proceedings— Service of process—When service complete.	WAC 230-50-610	Adjudicated proceedings set- tlement conferences and pre- hearing conferences.
WAC 230-50-210	Adjudicated proceedings— Service of process—Filing with agency.	WAC 230-50-630	Submission of documentary evidence in advance.
WAC 230-50-225	Adjudicated proceedings— Discovery.	WAC 230-50-640	Excerpts from documentary evidence.
WAC 230-50-230	Adjudicated proceedings— Subpoenas, issuance, service, fees, quashing and enforce- ment.	WAC 230-50-650	Expert or opinion testimony and testimony based on eco- nomic and statistical data— Number and qualifications of witnesses.
WAC 230-50-235	Brief adjudicative proceed- ings—Discovery limitations.	WAC 230-50-660	Expert or opinion testimony and testimony based on eco- nomic and statistical data— Written sworn statements.
WAC 230-50-300	Adjudicated proceedings— Depositions and interrogato- ries—Right to take.	WAC 230-50-670	Expert or opinion testimony and testimony based on eco- nomic and statistical data— Supporting data.
WAC 230-50-310	Depositions and interrogato- ries in contested cases— Scope.		
WAC 230-50-320	Depositions and interrogato- ries in contested cases— Officer before whom taken.	WAC 230-50-680	Expert or opinion testimony and testimony based on eco- nomic and statistical data— Effect of noncompliance with WAC 230-50-650 or 230-50-660.
WAC 230-50-330	Adjudicated proceedings— Depositions and interrogato- ries—Notice.	WAC 230-50-700	Continuances.
WAC 230-50-340	Depositions and interrogato- ries in contested cases—Pro- tection of parties and depo- nents.	WAC 230-50-750	Rules of evidence—Admissi- bility criteria.
WAC 230-50-500	Official notice—Matters of law.	WAC 230-50-760	Rules of evidence—Tenta- tive admission—Exclu- sion—Discontinuance— Objections.
WAC 230-50-510	Official notice—Material facts.	WAC 230-50-815	Deadlines for submitting items to be included in the commission meeting agenda—Exceptions.
WAC 230-50-530	Stipulations and admissions of record.		
WAC 230-50-550	Adjudicated proceedings— Initial or final order.	WAC 230-50-850	Declaratory order.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 230-60-005 Purpose.
- WAC 230-60-010 Definitions.
- WAC 230-60-025 Public records available—Location—Time available.
- WAC 230-60-030 Public records officers.
- WAC 230-60-035 Office hours.
- WAC 230-60-040 Requests for public records.
- WAC 230-60-045 Copying.
- WAC 230-60-050 Exemptions.
- WAC 230-60-055 Review of denials of public records requests.
- WAC 230-60-060 Protection of public records.
- WAC 230-60-065 Records index.
- WAC 230-60-100 Interpretive and policy statements.

**WSR 07-23-088**

**PERMANENT RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed November 20, 2007, 10:22 a.m., effective December 21, 2007]

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

Purpose: The department amended chapter 16-461 WAC, Inspection requirements for fruits and vegetables. The change will remove WAC 16-461-010 (2)(b), which is the exemption for issuing a certificate of compliance between horticulture facilities other than those which sell at wholesale or retail. Minor changes were also made to WAC 16-461-010 to update the WAC references and increase its clarity.

Citation of Existing Rules Affected by this Order: Amending WAC 16-461-010.

Statutory Authority for Adoption: Chapter 15.17 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 07-19-087 on September 18, 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 1 [0], Amended [1], Repealed 0.

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

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

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

New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 20, 2007.

Valoria Loveland  
Director

AMENDATORY SECTION (Amending WSR 06-12-116, filed 6/7/06, effective 7/8/06)

**WAC 16-461-010 Inspection certificate and/or permit required.** (1) No person shall ship, transport, accept for shipment, or accept delivery of, any commercial lot of the following agricultural products without an inspection and the issuance of a certificate and/or a permit by the (~~plant services~~) commodity inspection division of the department of agriculture allowing such shipment, movement or delivery:

(a) Apricots(~~(—)~~) in closed or open containers for fresh market.

(b) Italian prunes(~~(—)~~) in closed or open containers for fresh market.

(c) Peaches(~~(—)~~) in closed or open containers for fresh market.

(d) Cherries(~~(—)~~) in closed or open containers for fresh market(~~(— Provided, That no)~~). No permit (~~(shall)~~) will be issued on cherries infested with live cherry fruit fly larvae.

(e) Apples(~~(—)~~) in closed or open containers for fresh market(~~(— Provided, That)~~).

(i) Apples may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of apples having the approval of the director to issue the certificates of compliance.

(ii) Apples of the Red Delicious and Delicious varieties must be certified as to quality and condition and must meet all the requirements of chapter 16-403 WAC, Standards for apples marketed within the state of Washington. Apples of the Red Delicious and Delicious varieties not allowed to enter channels of commerce within twenty-one days following the original date of inspection as indicated by a state lot stamp, will require recertification for meeting the minimum firmness requirement as stated in WAC 16-403-142.

(f) Pears(~~(—)~~) in closed or open containers for fresh market(~~(— Provided, That)~~). Pears may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of pears having the approval of the director to issue the certificates of compliance.

(g) Asparagus(~~(—)~~) in closed or open containers for fresh market(~~(— Provided, That)~~). Asparagus may be shipped or transported if accompanied by a certificate(~~(s)~~) of compliance issued by the shipper or packer of the asparagus(~~(—)~~) having the approval of the director to issue the certificates of compliance.

(h) Apples in containers or bulk, for processing(~~(— Provided, That)~~).

(i) Apples for processing may be shipped or transported if accompanied by a certificate of compliance issued by the shipper of apples having the approval of the director to issue the certificates of compliance(~~(— Provided further, That)~~).

(ii) Apples for processing entering (~~(intrastate)~~) in-state commerce (~~(shall)~~) do not require a permit.



(i) Pears in containers or bulk, for processing(~~(=Provided, That)~~).

(i) Pears for processing may be shipped or transported if accompanied by a certificate of compliance issued by the shipper of pears having the approval of the director to issue the certificates of compliance(~~(=Provided further, That)~~).

(ii) Pears for processing entering (~~(intrastate)~~) in-state commerce (~~(shall)~~) do not require a permit.

(2) (~~(Exemptions —)~~) Fruits and vegetables listed in WAC 16-461-010 (~~(shall be)~~) are exempted from requirements for inspection and issuance of a certificate or permit:

(a) When the product is being transported from the premises where grown or produced to a horticultural facility other than wholesale or retail for the purpose of storing, grading, packing, packaging, (~~(labelling)~~) labeling, or processing(~~(=)~~) prior to entering commercial channels for resale(~~(=)~~).

(b) (~~(When transportation is between horticultural facilities other than those facilities which sell at wholesale or retail level, for the purposes set forth in (a) of this subsection;~~

(e)) When sold or transported to a fruit/produce stand within the zone of production, not to exceed daily quantities of two thousand pounds net weight of a single commodity nor six thousand pounds net weight of any combination of commodities other than cherries, listed in subsection (1) of this section, when on a single conveyance(~~(=provided that such)~~), Exempt sales by the producer within a farmer's market shall not be restricted to the zone of production(~~(=)~~).

(~~(=)~~) (c) When daily quantities do not exceed one hundred pounds net weight of dark or light sweet varieties of sweet cherries (~~(which are)~~) sold for home use and not for resale, and the containers are marked "not for resale" in letters at least one-half inch in height.

(3)(a) Any shipper or packer of apples, apricots, cherries, pears, peaches, prunes, or asparagus may petition the director for authority to issue certificates of compliance for each season. The director may issue certificate of compliance agreements, granting (~~(such)~~) authority, on (~~(such)~~) terms and conditions (~~(as he may)~~) that the director deems appropriate. The authority shall be limited to the issuance of certificates of compliance for apples, apricots, cherries, pears, peaches, prunes, and asparagus under the applicant's direct control or being handled at the shipper's or packer's facilities.

(b) The certificate of compliance shall be issued at time of shipment by the shipper or packer authorized to do so(~~(=Provided, That the)~~).

(i) Apples, pears, cherries, and asparagus about to be shipped or transported (~~(are)~~) must be in full compliance with the requirements of chapter 15.17 RCW, (~~(regulations adopted thereunder)~~) Standards of grades and packs, rules adopted under chapter 15.17 RCW, and administrative directives of the director(~~(=Provided further, That)~~).

(ii) Apricots, cherries, peaches, prunes, or pears about to be shipped or transported (~~(are)~~) must be in full compliance with an existing federal marketing order requiring quality and condition certification and Washington state lot identification or federal-state lot identification(~~(=)~~).

(iii) Cherries of the dark sweet varieties (~~(shall)~~) must be certified as to quality, condition, and size and shall meet all of the requirements of chapter 16-414 WAC, Washington standards for cherries. Cherries of the Rainier variety or other

varieties of "light colored sweet cherries" (~~(shall)~~) must meet only the requirements of WAC 16-414-005 "mature" and WAC 16-414-011(3) size requirement.

(c) The director's approval to issue certificates of compliance may be suspended, revoked, or denied for cause, subject to RCW 34.05.422(3) (~~(and that)~~). Cause shall be the shipper's or packer's failure to comply with the requirements of subsection (3)(b) of this section, or for the shipper's or packer's actions which impede the department's abilities to ascertain full compliance with requirements of chapter 15.17 RCW, Standards of grades and packs, or rules adopted (~~(thereunder)~~) under chapter 15.17 RCW, or for violation of the terms of the certificate of compliance agreement. The period of any suspension (~~(shall)~~) will be determined by the director and (~~(shall)~~) will be commensurate with the seriousness of the violation.

(d) Any shipper or packer whose authority to issue certificates of compliance has been suspended, revoked, or denied by the director (~~(shall)~~) will be subject to those provisions of chapter 15.17 RCW and the regulations requiring the issuance of a shipping permit by the director before apples, apricots, cherries, pears, peaches, prunes, and asparagus may be shipped or transported.

(e) Certificates of compliance (~~(shall)~~) must be on forms approved and issued by the director of agriculture.

(f) Any shipper or packer authorized to issue certificates of compliance shall deposit with the director of agriculture (~~(=)~~) the regular base fee equivalent to that charged by the director for a shipping permit(~~(=)~~) for each certificate of compliance issued by the authorized shipper or packer. The base fees shall be deposited with the director of agriculture in the same manner as fees for shipping permits.

## WSR 07-23-090

### PERMANENT RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 07-285—Filed November 20, 2007, 10:31 a.m., effective December 21, 2007]

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

Purpose: Amend commercial crab fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-52-040, [new section] 220-52-041, and 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 07-13-047 on June 14, 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 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: October 13, 2007.

Jerry Gutzwiler, Chair  
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 05-246, filed 10/14/05, effective 11/14/05)

**WAC 220-52-040 Commercial crab fishery—Lawful and unlawful gear, methods, and other unlawful acts.** (1) **Net fishing boats shall not have crab aboard.** It is unlawful for any vessel geared or equipped with commercial net fishing gear to have aboard any quantity of crab while it is fishing with the net gear or when it has other food fish or shellfish aboard for commercial purposes.

(2) **Area must be open to commercial crabbing.** Unless otherwise provided, it is unlawful to set, maintain, or operate any baited or unbaited shellfish pots or ring nets for taking crabs for commercial purposes in any area or at any time when the location is not opened for taking crabs for commercial purposes by permanent rule or emergency rule of the department: Provided, That following the close of a commercial crab season, permission may be granted by the director or his or her designee on a case-by-case basis for crab fishers to recover shellfish pots that were irretrievable due to extreme weather conditions at the end of the lawful opening. Crab fishers must notify and apply to department enforcement for such permission within twenty-four hours prior to the close of season.

(3) **Crabs must be male and 6-1/4 inches.** It is unlawful for any person acting for commercial purposes to take, possess, deliver, or otherwise control:

(a) Any female Dungeness crabs; or

(b) Any male Dungeness crabs measuring less than 6-1/4 inches, caliper measurement, across the back immediately in front of the tips.

(4) **Each person and each Puget Sound license limited to 100 pots.** It is unlawful for any person to take or fish for crab for commercial purposes in the Puget Sound licensing district using, operating, or controlling any more than an aggregate total of 100 shellfish pots or ring nets. This limit shall apply to each license. However, this shall not preclude a person holding two Puget Sound crab licenses from designating and using the licenses from one vessel as authorized by RCW 77.65.130.

(5) **Additional area gear limits.** The following Marine Fish-Shellfish Management and Catch Reporting Areas are restricted in the number of pots fished, operated, or used by a person or vessel and it is unlawful for any person to use, maintain, operate, or control pots in excess of the following limits:

(a) 10 pots in Marine Fish-Shellfish Management and Catch Reporting Area 25E.

(b) 10 pots in all waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A south of a line projected true west from Travis Spit on Miller Peninsula.

(c) 20 pots in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line projected from the new Dungeness Light to the mouth of Cooper Creek and east of a line projected from the new Dungeness Light to the outermost end of the abandoned dock at the Three Crabs Restaurant on the southern shore of Dungeness Bay.

(d) 10 pots in that portion of Marine Fish-Shellfish Management and Catch Reporting Area 23D west of a line from the eastern tip of Ediz Hook to the I77 Rayonier Dock.

(6) **Groundline gear is unlawful.** No crab pot or ring net may be attached or connected to other crab pot or ring net by a common groundline or any other means that connects crab pots together.

(7) **Crab buoys and pots tagging requirements.**

(a) It is unlawful to place in the water, pull from the water, possess on the water, or transport on the water any crab buoy or crab pot without attached buoy and pot tags that meets the requirements of this subsection.

(b) Coastal crab pot tags: Each shellfish pot used in the coastal Dungeness crab fishery must bear a tag that identifies either the name of the vessel being used to operate the pot or the Dungeness crab fishery license number of the owner of the pot, and the telephone number of a contact person.

(c) Puget Sound crab pot tags: In Puget Sound, all crab pots must have a durable, nonbiodegradable tag securely attached to the pot and permanently and legibly marked with the license owner's name or license number, and telephone number. If the tag information is illegible, or if the tag is lost for any reason, the pot is not in compliance with law.

(d) Crab buoy tags: The department will issue crab pot buoy tags to the owner of each commercial crab fishery license upon payment of an annual buoy tag fee of seventy cents per crab pot buoy tag. Prior to setting gear, each Puget Sound crab license holder must purchase 100 tags, and each coastal crab fisher must purchase 300 or 500 tags, depending on the crab pot limit assigned to the license. Only department-issued crab buoy tags may be used, and each crab pot is required to have a buoy tag.

(e) Puget Sound replacement crab buoy tags: Additional tags to replace lost tags will only be issued to owners of Puget Sound commercial crab fishery licenses who obtain, complete, and sign a declaration under penalty of perjury in the presence of an authorized department employee. The declaration shall state the number of buoy tags lost, the location and date where lost gear or tags were last observed, and the presumed cause of the loss.

(f) Coastal replacement crab buoy tags: Coastal crab license holders with a 300 pot limit will be able to replace up to fifteen lost tags by January 15th, up to a total of thirty lost tags by February 15th, and up to a total of forty-five lost tags after March 15th of each season. Coastal crab license holders with a 500 pot limit will be able to replace up to twenty-five lost tags by January 15th, up to a total of fifty lost tags by February 15th, and up to a total of seventy-five lost tags after March 15th of each season. In the case of extraordinary loss of crab pot gear, the department may, on a case-by-case basis,

issue replacement tags in excess of the amount set out in this subsection. Replacement buoy tags for the coastal crab fishery will only be issued after a signed affidavit is received by the department.

(8) **No person can possess or use gear with other person's crab pot tag or crab buoy tag.** No person may possess, use, control, or operate any crab pot not bearing a tag identifying the pot as that person's, or any buoy not bearing tags issued by the department to that person, except that an alternate operator designated on a primary license may possess and operate crab buoys and crab pots bearing the tags of the license holder.

(9) **Cannot tamper with pot tags.** No person shall remove, damage, or otherwise tamper with crab buoy or pot tags except when lawfully applying or removing tags on the person's own buoys and pots.

(10) **Thirty-day period when it is unlawful to buy or land crab from ocean without crab vessel inspection.** It is unlawful for any fisher or wholesale dealer or buyer to land or purchase Dungeness crab taken from Grays Harbor, Willapa Bay, Columbia River, Washington coastal or adjacent waters of the Pacific Ocean during the first thirty days following the opening of a coastal crab season from any vessel which has not been issued a Washington crab vessel inspection certificate. The certificate will be issued to vessels made available for inspection in a Washington coastal port and properly licensed for commercial crab fishing if no Dungeness crabs are aboard. Inspections will be performed by authorized department personnel not earlier than twelve hours prior to the opening of the coastal crab season and during the following thirty-day period.

(11) **Grays Harbor pot limit of 200.** It is unlawful for any person to take or fish for crab for commercial purposes in Grays Harbor (catch area 60B) with more than 200 shellfish pots in the aggregate. It shall be unlawful for any group of persons using the same vessel to take or fish for crab for commercial purposes in Grays Harbor with more than 200 shellfish pots.

(12) **Coastal crab pot limit.**

(a) It is unlawful for a person to take or fish for Dungeness crab for commercial purposes in Grays Harbor, Willapa Bay, the Columbia River, or waters of the Pacific Ocean adjacent to the state of Washington unless a shellfish pot limit has been assigned to the Dungeness crab-coastal fishery license held by the person, or to the equivalent Oregon or California Dungeness crab fishery license held by the person.

(b) It is unlawful for a person to deploy or fish more shellfish pots than the number of shellfish pots assigned to the license held by that person, and it is unlawful to use any vessel other than the vessel designated on a license to operate or possess shellfish pots assigned to that license.

(c) It is unlawful for a person to take or fish for Dungeness crab or to deploy shellfish pots unless the person is in possession of valid documentation issued by the department that specifies the shellfish pot limit assigned to the license.

(13) **Determination of coastal crab pot limits.**

(a) The number of shellfish pots assigned to a Washington Dungeness crab-coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license will be based on documented landings of Dungeness crab taken

from waters of the Pacific Ocean south of the United States/Canada border and west of the Bonilla-Tatoosh line, and from coastal estuaries in the states of Washington, Oregon and California. Documented landings may be evidenced only by valid Washington state shellfish receiving tickets, or equivalent valid documents from the states of Oregon and California, that show Dungeness crab were taken between December 1, 1996, and September 16, 1999. Such documents must have been received by the respective states no later than October 15, 1999.

(b) The following criteria shall be used to determine and assign a shellfish pot limit to a Dungeness crab-coastal fishery license, or to an equivalent Oregon or California Dungeness crab fishery license:

(i) The three "qualifying coastal Dungeness crab seasons" are from December 1, 1996, through September 15, 1997, from December 1, 1997, through September 15, 1998, and from December 1, 1998, through September 15, 1999. Of the three qualifying seasons, the one with the most poundage of Dungeness crab landed on a license shall determine the crab pot limit for that license. A crab pot limit of 300 shall be assigned to a license with landings that total from zero to 35,999 pounds and a crab pot limit of 500 shall be assigned to a license with landings that total 36,000 pounds or more.

(ii) Landings of Dungeness crab made in the states of Oregon or California on valid Dungeness crab fisheries licenses during a qualifying season may be used for purposes of assigning a shellfish pot limit to a Dungeness crab fishery license, provided that documentation of the landings is provided to the department by the Oregon Department of Fish and Wildlife and/or the California Department of Fish and Game. Landings of Dungeness crab made in Washington, Oregon, and California on valid Dungeness crab fishery licenses during a qualifying season may be combined for purposes of assigning a shellfish pot limit, provided that the same vessel was named on the licenses, and the same person held the licenses. A shellfish pot limit assigned as a result of combined landings is invalidated by any subsequent split in ownership of the licenses. No vessel named on a Dungeness crab fishery license shall be assigned more than one shellfish pot limit.

(14) **Appeals of coastal crab pot limits.** An appeal of a shellfish pot limit by a coastal commercial license holder shall be filed with the department on or before October 18, 2001. The shellfish pot limit assigned to a license by the department shall remain in effect until such time as the appeal process is concluded.

(15) **Coastal - Barging of crab pots by undesignated vessels.** It is lawful for a vessel not designated on a Dungeness crab-coastal fishery license to be used to deploy shellfish pot gear provided that:

(a) Such a vessel may not carry aboard more than ~~((150))~~ 250 shellfish pots at any one time.

(b) Such a vessel may deploy shellfish pot gear only during the 64-hour period immediately preceding the season opening date and during the 48-hour period immediately following the season opening date.

(c) The lawful owner of the shellfish pot gear must be aboard the vessel when the gear is being deployed.

**(16) Coastal crab buoys - Registration and use of buoy brands and colors.**

(a) It is unlawful for any coastal Dungeness crab fishery license holder to fish for crab unless the license holder has registered the buoy brand and buoy color(s) to be used with the license. A license holder shall be allowed to register with the department only one, unique buoy brand and one buoy color scheme per license. Persons holding more than one license state shall register buoy color(s) for each license that are distinctly different. The buoy color(s) shall be shown in a color photograph.

(b) It is unlawful for a coastal Dungeness crab fishery license holder to fish for crab using any other buoy brand or color(s) than those registered with and assigned to the license by the department.

**NEW SECTION**

**WAC 220-52-041 Coastal Dungeness crab logbook requirements.** (1) It is unlawful for any vessel operator engaged in fishing for Dungeness crab in the coastal commercial fishery to fail to complete a department-issued logbook for all fishing activity occurring in Grays Harbor, Willapa Bay, the Columbia River, or the Pacific Ocean waters adjacent to the state of Washington.

(2) It is unlawful for any vessel operator engaged in fishing to fail to comply with the following method and time frame related to harvest logbook submittal and record keeping:

(a) The department must receive a copy of the completed logbook sheets within ten days following any calendar month in which fishing occurred. Completed Dungeness crab harvest logs must be sent to the following address: Washington Department of Fish and Wildlife, Attention: Coastal Dungeness Crab Manager, 48 Devonshire Rd., Montesano, WA 98563.

(b) Vessel operators engaged in fishing for Dungeness crab in the coastal commercial fishery must complete a logbook entry for each day fished prior to offloading. Vessel operators responsible for submitting logs to the department must maintain a copy of all submitted logs for no less than three years after the fishing activity ended.

(c) Vessel operators can obtain logbooks by contacting the department's coastal Dungeness crab manager at 360-249-4628.

(3) Violation of this section is a misdemeanor, punishable under RCW 77.15.280.

**AMENDATORY SECTION** (Amending Order 06-58, filed 3/31/06, effective 5/1/06)

**WAC 220-52-046 Crab fishery—Seasons and areas.** "Commercial crab fishing" means any taking, fishing, use, or operation of gear to fish for crabs for commercial purposes, and shall include the possession of crab on the water for commercial purposes, and the landing or initial delivery of crab for commercial purposes.

The lawful open times and areas for commercial crab fishing are as follows:

(1) All Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas are open for commercial crab

fishing beginning 8:00 a.m. October 1st through the following April 15th and, after 8:00 a.m. October 1st, from one-half hour before sunrise to one-half hour after sunset, except as provided by other subsections below.

(2) For purposes of crab harvest allocation, fishing season, and catch reporting, the Marine Fish-Shellfish Management and Catch Reporting Areas (Catch Areas) are modified as follows:

(a) Catch Area 26A-E shall include those waters of Puget Sound south of a line from Sandy Point (on Whidbey Island) to Camano Head and from Camano Head to the north tip of Gedney Island, and from the southern tip of Gedney Island east to the mainland, and north and east of a line that extends from Possession Point to the shipwreck located .8 nautical miles north of Picnic Point.

(b) Catch Area 26A-W shall include those waters of Puget Sound south and east of a line from Foulweather Bluff to Double Bluff, and northerly of a line from Apple Cove Point to Point Edwards, and south and west of a line that extends from Possession Point to the shipwreck located .8 nautical miles north of Picnic Point.

(3) The following areas are closed to commercial crab fishing except for treaty Indian commercial crab fishing where the treaty Indian crab fisher is following tribal openings that are in accordance with provisions of court orders in *United States v. Washington*:

(a) Areas 25C, 26B, 26C, 26D, 27A, 27B, 27C, 28A, 28B, 28C, and 28D.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Lummi Bay east of a line projected from the entrance buoy at Sandy Point to Gooseberry Point.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A in Bellingham Bay west of a line projected from the exposed boulder at Point Francis to the pilings at Stevie's Point.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A east of a line projected north from the most westerly tip of Skagit Island and extending south to the most westerly tip of Hope Island, thence southeast to Seal Rocks, thence southeast to the green can buoy at the mouth of Swinomish Channel, thence easterly to the west side of Goat Island.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24B inside a line projected from Priest Point to the five-meter tower between Gedney Island and Priest Point, thence northwesterly on a line between the five-meter tower and Barnum Point to the intersection with a line projected true west from Kayak Point, thence east to shore.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25A west of a line from the new Dungeness Light to the abandoned dock at the Three Crabs Restaurant.

(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 25D within a line projected from the Point Hudson Marina entrance to the northern tip of Indian Island, thence to Kala Point, and thence following the shoreline to the point of origin.

(4) The following areas are closed to commercial crab fishing during the periods indicated:

(a) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A between a line from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance of the Birch Bay Marina and a line from the same boat ramp to Birch Point are closed October 1 through October 31 and March 1 through April 15.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24C inshore of the 400 foot depth contour within an area bounded by parallel lines projected northeasterly from Sandy Point and the entrance to the marina at Langley are closed October 1 through October 15.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-W in Useless Bay north and east of a line from the south end of the Double Bluff State Park seawall (47°58.782'N, 122°30.840'W) projected 110 degrees true to the boulder on shore (47°57.690'N, 122°26.742'W) are closed from October 1 through October 15.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Fidalgo Bay south of a line projected from the red number 4 entrance buoy at Cap Sante Marina to the northern end of the eastern most oil dock are closed October 1 through October 31, and March 1 through April 15 of each year.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Deer Harbor north of a line projected from Steep Point to Pole Pass are closed October 1 through October 31 and March 1 through April 15.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A-E east of a line that extends true north from the green No. 1 buoy at Possession Point and west of a line from the green No. 1 buoy at Possession Point northward along the 200-foot depth contour to the Glendale Dock are closed October 1 through October 15.

(5) The following areas are closed to commercial crab fishing until further notice:

(a) Those waters of Area 25E south of a line from Contractors Point to Tukey Point.

(b) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A within a line projected from Rocky Point northeast to the red number 2 buoy north of Ustalady Point, thence to Brown Point on the northeast corner of Ustalady Bay.

(c) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24D south of a line from the point at the southern end of Honeymoon Bay (48°03.047'N, 122°32.306'W) to the point just north of Beverly Beach.

(d) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 26A east of a line projected from the outermost tip of the ferry dock at Mukilteo to the green #3 buoy at the mouth of the Snohomish River and west of a line projected from the #3 buoy southward to the oil boom pier on the shoreline.

(e) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21B in Samish Bay south of a line from Point Williams to Fish Point in waters shallower than 60 feet in depth.

(f) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Westcott and Garrison Bays east of a line projected due south from Point White to San Juan Island.

(g) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 20A in Birch Bay east of a line projected from the boat ramp at the western boundary of Birch Bay State Park to the western point of the entrance to the Birch Bay Marina.

(h) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 21A inside of Chuckanut Bay east of a line projected north from Governor's Point to the east side of Chuckanut Island thence to Chuckanut Rock thence to the most southerly tip of Clark's Point.

(i) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Blind Bay south of a line projected due west from Point Hudson to its intersection with Shaw Island.

(j) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Fisherman Bay south of a line projected east-west through the red number 4 entrance buoy.

(k) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in Mud Bay south of a line projected through Crab and Fortress Islands intersecting Lopez Island at either end.

(l) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22B in Padilla Bay within a line projected easterly from the northern end of the eastern most oil dock at March Point to the red number 2 buoy, thence southeasterly to the red number 8 buoy, thence west to shore and following the shoreline to the point of origin.

(m) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 24A in Cornet Bay south of a line projected true east and west from the northernmost tip of Ben Ure Island.

(n) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 20B which includes all waters of Prevost Harbor between Stuart Island and Satellite Island southwest of a line from Charles Point on Stuart Island to the northwest tip of Satellite Island and southwest of a line projected 120 degrees true from the southeast end of Satellite Island to Stuart Island.

(o) Those waters of Marine Fish-Shellfish Management and Catch Reporting Area 22A in East Sound north of a line from the southern point of Judd Bay on the west to Giffin Rocks on the east.

(6) Coastal, Pacific Ocean, Grays Harbor, Willapa Bay and Columbia River waters are open to commercial crab fishing December 1 through September 15 except that it is lawful to set baited crab gear beginning at 8:00 a.m. November 28. However, the department may delay opening of the coastal crab fishery due to softshell crab conditions, in which case the following provisions will apply:

(a) After consultation with the Oregon Department of Fish and Wildlife, the director may, by emergency rule, establish a softshell crab demarcation line.

(b) For waters of the Pacific Ocean north of Point Arena, California, it is unlawful for a person to use a vessel to fish in any area for which the season opening has been delayed due

to softshell crab for the first thirty days following the opening of such an area if the vessel was employed in the coastal crab fishery during the previous forty-five days.

(c) Fishers may not set crab gear in any area where the season opening has been delayed, except that gear may be set as allowed by emergency rule and shall allow setting sixty-four hours in advance of the delayed season opening time.

(d) It is unlawful to fish for or possess Dungeness crabs or to set crab gear in waters of the Pacific Ocean adjacent to the states of Oregon or California (~~except during the lawful open seasons, areas and times specified by the individual states, except that it is unlawful for the holder of a Washington state Dungeness crab coastal fishery license to fish for or possess Dungeness crab taken in waters north of 41°59'47"N. Lat. and south of 46°15'00"N. Lat. unless the holder also holds the licenses or permits needed to commercially fish for Dungeness crab within the state waters of Oregon~~) without the licenses or permits required to commercially fish for Dungeness crab within the state waters of Oregon or California. Washington coastal Dungeness crab permits are valid only in Washington state waters, the Columbia River, Willapa Bay, Grays Harbor, and the Pacific Ocean in federal waters north of the Washington/Oregon border (46°15'00"N. Lat.), extending 200 nautical miles westward.

#### WSR 07-23-094

#### PERMANENT RULES DEPARTMENT OF

#### FINANCIAL INSTITUTIONS

[Filed November 20, 2007, 11:20 a.m., effective December 21, 2007]

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

Purpose: The amendments include provisions making the rules consistent with federal standards for making small loans to military members; expanding notification of the federal laws licensees must comply with; incorporating SB 5199, Laws of 2007; setting the procedures for cash payments or payoffs of small loans; rules that provide guidance for meeting the federal requirements for the protection of borrowers' nonpublic information, money service businesses, customer identification programs, and anti-money laundering programs; repeal of WAC 208-630-760 because of rule above providing a comprehensive notification of federal laws licensees must comply with; additions to definitions; a restriction of the use of similar names; fee increases; and technical changes to clarify or correct scrivener's errors.

Citation of Existing Rules Affected by this Order: Repealing 1; and amending 10.

Statutory Authority for Adoption: RCW 43.320.040.

Adopted under notice filed as WSR 07-18-089 on September 5, 2007.

Changes Other than Editing from Proposed to Adopted Version: 1. WAC 208-630-110 Definitions. (a)(i) Definition of Annual Percentage Rate. The CR-103 version refers licensees to the federal definition found in the Truth in Lending Act and regulations; the CR-102 version of the proposed rules included a specific definition which industry felt was

inappropriate for small loans because it was similar to the federal definition that applied to open-end credit products.

(a)(ii) Reference to APRWIN calculation product. The CR-103 version is a shortened description of the product and clarifies that licensees may, but are not required, to use this product in calculating the APR. Industry felt the CR-102 version required licensees to use the APRWIN tool and that the APRWIN tool may not be the correct calculation tool in all cases.

(b) Definition of check casher. The CR-103 version deletes the paragraph of the definition of check cashier defining "engages, in whole or in part, in the business of cashing checks." Industry felt this expanded definition created licensing loopholes and other unintended consequences; that the definition of check cashier without this additional language was sufficient to describe the activity of check cashing for licensing and regulatory purposes.

2. WAC 208-630-505 Receipt requirement for cash payments. The CR-102 version of the proposed rules described a process that required, among other information, the signature of the licensee employee accepting the cash payment from the borrower. Industry voiced concern that licensee employees may not want to divulge their full name to borrowers, for personal safety issues. Industry proposed language that would require licensees to provide point of sale systems to identify a specific teller in a specific transaction without providing the teller's name to the borrower. The CR-103 version of the proposed rules reflects this language.

3. WAC 208-630-5401 Making loans to military borrowers. The CR-102 version of this rule reiterated part of the federal restriction on allowable interest rates on loans to military borrowers. The CR-103 version instead refers licensees directly to the federal law itself. The act contains several rules that make a direct reference to an applicable federal law.

4. WAC 208-630-560 Disclosures. The CR-102 version of the proposed rules references the applicable federal law the licensee must comply with and also references more generally other federal laws that may be applicable. Industry requested narrowing the reference to only the specific applicable federal law for clarity. The CR-103 version reflects this change.

5. WAC 208-630-580 Posting certain disclosures. The CR-102 version of the proposed rule language included specific information that licensees must post, and also included the language "in a form prescribed by the director." The language did not include a specific reference to internet payday lenders. Industry suggested that the rule provide the exact required language and include a specific reference to internet payday lenders. The CR-103 language provides the necessary exact required language, notifies internet payday lenders the paragraph requirements also apply to them, and advises licensees they may download the required notice from the department's web site, or obtain the notice directly from the department.

6. WAC 208-630-610 Accounting and financial records. This section is intended to accompany the new process required for accepting cash payment in Section 505. The CR-102 version of the proposed rule language included the same licensee employee name language as Section 505. The CR-

103 version makes the same change as made in Section 505 (see number 2 above) to protect the employee's name from borrowers. The CR-103 language also creates a separate subsection to require the licensee to maintain the receipts required in Section 505.

7. WAC 208-630-710 Other applicable federal laws. (a) The CR-102 version of the proposed rules included a reference to chapter 19.16 RCW, Collection agencies. Industry argued that because this RCW does not apply to check cashers and sellers who act to collect their own debts, it should not be included. The CR-103 version does not include the reference to chapter 19.16 RCW.

(b) The CR-102 version of the proposed rules included a reference to the USA Patriot Act. Industry argued that only a small part of the USA Patriot Act amended the Bank Secrecy Act, that no other provisions of the USA Patriot Act applied to industry licensees, and that the Bank Secrecy Act was already referenced in the rules. For these reason[s], the CR-103 version does not include a reference to the USA Patriot Act.

(c) Finally, the CR-102 version did not include a reference to the specific federal law for military borrower requirements. The CR-103 version includes that reference.

8. WAC 208-630-711 Borrowers' nonpublic personal information. The CR-102 version of the proposed rules included specific guidelines for licensees to create policies and procedures that protect borrowers' nonpublic personal information, as required under the Gramm-Leach-Bliley Act. Industry wanted language added to clarify the department's position that any such policies and procedures would be viewed in light of the licensee's size and complexity, the nature and scope of the licensee's activities, and the type of borrower information held by the licensee. The CR-103 version includes this clarifying language.

9. WAC 208-630-712. The CR-102 version of the proposed rules included specific guidelines for licensees to implement a customer identification program that would meet requirements under the USA Patriot Act. Industry argued that these requirements were not applicable to money service businesses and instead offered language that would clarify licensees' obligations to comply with the federal anti-money laundering provisions under the Bank Secrecy Act. Because this language will help licensees better understand this section of their federal requirements, the CR-103 contains this language.

10. WAC 208-630-721 Bank Secrecy Act requirements for MSBs. The CR-102 version of the proposed rules included detailed guidelines for those licensees that qualify as MSBs for the creation of an anti-money laundering program under the Bank Secrecy Act. Industry argued that the department should refer licensees directly to the federal law and not restate it in the rules. Because this is consistent with the way other federal laws are treated in these rules, the CR-103 version removes the detailed guidelines and instead directly references the federal law.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 5, Amended 4, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 10, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 10, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 6, Amended 10, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 19, 2007.

Deborah Bortner, Director  
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-110 What definitions are required to understand these rules?** The definitions in RCW 31.45.010 and this section apply throughout this chapter unless the context clearly requires otherwise.

"Act" means chapter 31.45 RCW.

"Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is in common control with another person.

"Agent" for purposes of RCW 31.45.079 means a person who, pursuant to the terms of a written agreement and for compensation, performs small loan agent services on behalf of an exempt entity.

"Annual percentage rate" or "APR" means the cost of credit expressed as a yearly rate, determined in accordance with the federal Truth in Lending Act (15 U.S.C. Sec. 1601 et seq.), and Regulation Z (12 C.F.R. Part 226 et seq.), as amended.

The Office of the Comptroller of the Currency (OCC) has developed an APR calculator (APRWIN) that licensees may download and use without charge. APRWIN is available on the OCC's web site at <http://www.occ.treas.gov/aprwin.htm>.

"Board director" means a director of a corporation or a person occupying a similar status and performing a similar function with respect to an organization, whether incorporated or unincorporated.

"Check" means the same as defined in RCW 62A.3-104(f) and, for purposes of conducting the business of making small loans, includes other electronic forms of payment, including stored value cards, internet transfers, and automated clearing house transactions.

"Check casher" means an individual, partnership, unincorporated association, or corporation that, for compensation engages, in whole or in part, in the business of cashing checks, drafts, money orders, or other commercial paper serving the same purpose.

"Check seller" means an individual, partnership, unincorporated association, or corporation that, for compensation engages, in whole or in part, in the business of selling checks, drafts, money orders, or other commercial paper serving the same purpose.

"Close of business" for the purposes of RCW 31.45.86 and these regulations means the actual time a licensee closes for business at the location from which a small loan was originated or 11:59 p.m. Pacific Time, whichever is earlier.

"Department" means the department of financial institutions.

"Exempt entity" means a person described in RCW 31.45.020 that is engaged in the business of making small loans.

"Investigation" means an examination undertaken for the purpose of detecting violations of chapter 31.45 RCW or these rules or obtaining information lawfully required under chapter 31.45 RCW or these rules.

"License" means a license issued by the director to engage in the business of check cashing or check selling under the provision of chapter 31.45 RCW.

"Monetary instrument" means a check, draft, money order or other commercial paper serving the same purpose.

"Payday advance lender" or "payday lender" means a licensee under this chapter who has obtained a small loan endorsement under RCW 31.45.073.

"Payday advance loan," "payday loan" or "deferred deposit loan" means the same as a small loan.

"Postdated check" means a check delivered prior to its date, generally payable at sight or on presentation on or after the day of its date. "Postdated check" does not include any promise or order made or submitted electronically by a borrower to a licensee.

"RCW" means the *Revised Code of Washington*.

"Small loan agent services" means all or substantially all of the following services:

- (1) Marketing and advertising small loans;
- (2) Taking small loan applications;
- (3) Assisting customers in completing small loan documentation;
- (4) Providing required disclosures;
- (5) Disbursing small loan proceeds;
- (6) Collecting small loans;
- (7) Retaining documents and records; and
- (8) Making reports.

"State" means the state of Washington.

"Unsafe or unsound financial practice" means any action, or lack of action, the likely consequences of which, if continued, would impair materially the net worth of a licensee or create an abnormal risk of loss to its customers.

**AMENDATORY SECTION** (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-130 How does a business apply for a check casher's or seller's license or a small loan endorsement to a check casher's or seller's license?** Each applicant for a check casher license, or check seller license, or a small loan endorsement to a check casher's or seller's license must apply to the director by filing the following:

(1) An application in a form prescribed by the director including at least the following information:

(a) The legal name, residence, and business address of the applicant if the applicant is an individual or sole proprietorship, and in addition, if the applicant is a partnership, cor-

poration, limited liability company, limited liability partnership, trust, company, or association, the name and address of every member, partner, officer, controlling person, and board director;

(b) The trade name or name under which the applicant will do business under the act;

The director or the director's designated representative may deny an application for a proposed license or trade name if the proposed license or trade name is similar to a currently existing licensee name, including trade names.

(c) The street and mailing address of each location in which the applicant will engage in business under the act;

(d) The location at which the applicant's records will be kept; and

(e) Financial statements and any other pertinent information the director may require with respect to the applicant and its board directors, officers, trustees, members, or employees, including information regarding any civil litigation filed within the preceding ten years against the applicant or controlling person of the applicant;

(2) A surety bond and related power of attorney, or other security acceptable to the director in an amount equal to the penal sum of the required bond as set forth in this rule. In lieu of the bond, the applicant may demonstrate to the director net worth in excess of three times the amount of the penal sum of the required bond in accordance with RCW 31.45.030 (5)(b) and (e) and this rule;

(3) A current financial statement as of the most recent quarter end prepared in accordance with generally accepted accounting principles which includes a statement of assets and liabilities and a profit and loss statement;

(4) Information on the applicant's or any affiliate's current or previous small loan or related type business in this state or any other state, including, but not limited to, name, address, city, state, licensing authority, and whether any enforcement action is pending or has been taken against the applicant in any state;

(5) Upon request, a complete set of fingerprints and a recent photograph of each sole proprietor, owner, director, officer, partner, member, and controlling person; and

(6) An application fee.

Any information in the application regarding a personal residential address or telephone number, and any trade secret as defined in RCW 19.108.010 including any financial statement that is a trade secret is exempt from the public disclosure requirements of chapter 42.17 RCW.

**AMENDATORY SECTION** (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-320 What examination authority does the director have?** The director determines the frequency of examinations for the purpose of determining compliance with chapter 31.45 RCW and these rules.

The director or designee may at any time examine the records and documents used in the business of any licensee or licensee's agent wherever located. This includes licensees whose business is conducted entirely on the internet.

The director or designee may examine the records and documents of any person the director believes is engaging in



unlicensed business governed by chapter 31.45 RCW wherever located.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-430 When may a licensee expect a fee increase?** ~~((The department intends to increase its fee and assessment rates each year for several bienniums. The department intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees and assessments each fiscal year during the 2005-2007 biennium.))~~

(1) On ~~((July))~~ January 1, ~~((2005))~~ 2008, the fee and assessment rates ~~((as increased in the prior fiscal year,))~~ under WAC 208-630-400 will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025. ~~((However, there will be no rate increase under this subsection (1) for assessments described in WAC 208-630-022 (2)(a)(i), (b)(i) and (c)(i).))~~

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-470 What types of information must a licensee include on a borrower's application for a small loan?** The licensee must require and maintain an application for each borrower in each small loan transaction. Each application must contain the borrower's full name, Social Security number or other unique identifier acceptable to the director, current address, loan origination date, and whether the applicant is a military borrower at any time prior to the termination date of the loan. As used in this section "other unique identifier" means a state identification card, a passport, a document issued by the U.S. Immigration and ~~((Naturalization Service of the United States))~~ Customs Enforcement that provides identification of the borrower, a matricula consular, a driver's license, or other forms as approved by the director.

Licenses may rely upon an applicant representation regarding the applicant's military status, and are not required to conduct an independent investigation regarding military status.

#### NEW SECTION

**WAC 208-630-505 What process must a licensee follow when a borrower pays off a small loan, or makes a payment toward a payment plan, with cash?** A licensee must prepare a receipt with information that includes, but is not limited to, the date of the payment, the borrower's name, the amount of the cash received, an indication that the payment was made in cash, an indication that the payment was made either on a loan, or towards a payment plan, the borrower's signature, and an authorized signature, stamp, or other authenticating mark of the licensee confirming that the licensee received the payment.

#### NEW SECTION

**WAC 208-630-5401 What duties and restrictions must a licensee comply with when making loans to military borrowers?** (1) For purposes of this section, "military borrower" means any active duty member of the armed forces of the United States, or any member of the National Guard or the reserves of the armed forces of the United States who has been called to active duty.

(2) A licensee must:

(a) Comply with the restrictions on loans to military borrowers and their dependents as required by Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007 and 32 C.F.R. Part 232, as amended.

(b) Honor the terms of any repayment agreement, including any repayment agreement negotiated through military counselors or third party credit counselors.

(c) Defer all collection activity against a military borrower who has been deployed to a combat or combat support posting, for the duration of the posting.

(3) A licensee must not:

(a) Garnish any wages or salary paid to a military borrower for service in the armed forces when collecting any delinquent small loan.

(b) Contact a military borrower's chain of command in an effort to collect a delinquent small loan.

(c) Make a loan to a person known to the licensee to be a military borrower from a specific location when the military borrower's commander has notified the licensee in writing that the specific location is designated off-limits to military personnel under their command.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-560 What types of disclosures must a licensee make to a borrower?** (1) A licensee must deliver to the borrower at the time the licensee makes a small loan, a disclosure that meets the requirements of all applicable laws, including the federal Truth in Lending Act.

(2) A licensee must deliver to the borrower at the time the licensee makes the small loan a disclosure of the right to rescind the loan and the right to convert the loan to a payment plan.

(3) A licensee who complies with the federal Truth in Lending Act and Regulation Z, 12 C.F.R. Part 226, will be deemed in compliance with this act.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-580 In addition to providing disclosures to the borrower, does a licensee have to post any disclosures?** (1) Licensees that make small loans must post ~~((at each location where small loans are made a conspicuous notice substantially in the form set forth in the preceding question))~~ the following notices at each location where small loans are made:

(a) A conspicuous notice substantially in the form set forth in WAC 208-630-570; and

(b) A conspicuous notice of how consumers may contact the department, substantially in the following form: "If you have questions about your rights and responsibilities when taking out a payday loan, contact the Department of Financial Institutions at 1-877-746-4334, or 360-902-8700, or 150 Israel Road S.W., Tumwater, Washington, 98501."

(2) Licensees that make small loans using the internet must post the notices required by subsection (1) of this section in a conspicuous location on their web sites.

(3) Licensees may download a copy of the notice required by subsection (1)(b) of this section from the department's web site or by contacting the department directly.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-610 ~~What are ((there)) the accounting and financial records that a licensee must keep?~~** Licensees must maintain as a minimum the following records for at least two years.

(1) A licensee must maintain a record of transactions conducted. Such a record may be limited to the following provided a sufficient audit trail is available through records obtainable from the licensee's bank of account:

- (a) Amount of the checks cashed;
- (b) Amount of fees charged for cashing the check;
- (c) Amount of cash deducted from the transaction for the sales of other services or products;
- (d) Amount of each check or monetary instrument sold;
- (e) Amount of fee charged for the monetary instrument;
- (f) Amount of small loan proceeds disbursed;
- (g) Fees charged for small loans;
- (h) Amount of payments on small loans received;
- (i) Origination date of each small loan;
- (j) Termination date of each small loan;
- (k) Payment plan payment due dates;
- (l) The information required to be maintained for applications in the rule;

(m) Records of cash payments made on small loans. The record must include the date of the payment, the borrower's name, the amount of cash received, the identity of the employee who received the cash, and whether the payment was applied to a loan or payment plan:

(n) Copies of receipts required under WAC 208-630-505.

(2) Licensees must maintain a cash reconciliation summarizing each day's activity and reconciling cash on hand at the opening of business to cash on hand at the close of business. Such reconciliation must separately reflect cash received from the sale of checks, redemption of returned items, bank cash withdrawals, cash disbursed in cashing of checks, cash disbursed in making small loans, cash received in payment of small loans and bank cash deposits.

(3) Records of the disbursement of loan proceeds and the receipt of all payments on the balance of small loans must be kept and must indicate the date of the transaction, the borrower's name, amount, and whether the disbursement or payment is on a loan or payment plan.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-710 What other federal and state laws and regulations must a licensee comply with?** Each licensee must comply with applicable federal and state laws including, but not limited to, applicable provisions of the following:

(1) Washington laws:  
Chapter 63.29 RCW, the Uniform Unclaimed Property Act(~~(-and))~~)

(2) ((The federal Truth in Lending Act.)) Federal Laws and Regulations:

- "Bank Secrecy Act (BSA)" means the Currency and Foreign Transactions Reporting Act, 31 U.S.C. Sec. 5311-5330 and 12 U.S.C. Sec. 1818(s), and 1951-1959, 31 C.F.R. Part 103.

- "Department of Defense Military Borrower Rules" means Section 670 of the John Warner National Defense Authorization Act for Fiscal Year 2007 and 32 C.F.R. Part 232.

- "Equal Credit Opportunity Act" means the Equal Credit Opportunity Act (ECOA), 15 U.S.C. Sec. 1691 et seq., Regulation B, 12 C.F.R. Part 202.

- "Fair Credit Reporting Act" means the Fair Credit Reporting Act (FCRA), 15 U.S.C. Sec. 1681 et seq.

- "Federal Trade Commission Act" means the Federal Trade Commission Act, 15 U.S.C. Sec. 45(a).

- "Gramm-Leach-Bliley Act (GLBA)" means the Financial Modernization Act of 1999, 15 U.S.C. Sec. 6801-6809, and the GLBA-mandated Federal Trade Commission (FTC) privacy rules, at 16 C.F.R. Parts 313-314.

- "Telemarketing and Consumer Fraud and Abuse Prevention Act" means the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. Sec. 6101-6108, Telephone Sales Rule, 16 C.F.R. Part 310.

- "Truth in Lending Act" means the Truth in Lending Act (TILA), 15 U.S.C. Sec. 1601 et seq., Regulation Z, 12 C.F.R. Part 226 et seq.

#### NEW SECTION

**WAC 208-630-711 What are the minimum requirements of a policy that protects borrowers' nonpublic personal information (NPI) under the Gramm-Leach-Bliley Act?** (1) Each licensee must establish policies and procedures with administrative, technical, and physical safeguards appropriate to such licensee's size and complexity, the nature and scope of the licensee's activities, and the sensitivity of borrower information:

(a) To insure the security and confidentiality of borrowers' records and information;

(b) To protect against any anticipated threats or hazards to the security or integrity of such records; and

(c) To protect against any unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any borrower.

(2) The policies and practices must, at a minimum, contain the following elements:

(a) A privacy notice to consumers before you share their NPI with nonaffiliated third parties not otherwise excepted;

(b) A plan to limit the reuse and redisclosure of NPI you receive from a nonaffiliated financial institution. The limits of your use depend on how the information is disclosed to you; and

(c) A plan to prevent the disclosure of account numbers or similar access numbers or codes for marketing purposes.

#### NEW SECTION

**WAC 208-630-712 When must a licensee obtain identifying information about its customers?** Each licensee must obtain, verify and maintain records of identifying information about its customers to the extent required by applicable law, including, without limitation, in the following situations:

(1) When completing and filing suspicious activity reports (SARs) of any suspicious transaction relevant to a possible violation of any law or regulation, as required by 31 C.F.R. Section 103.20.

(2) When completing and filing currency transaction reports (CTRs) for transactions involving more than ten thousand dollars in currency in any one day, as required by 31 C.F.R. Section 103.22.

(3) When issuing or selling one or more checks or drafts, cashier's checks, money orders, or traveler's checks for three thousand dollars or more, in currency in any one day, as required by 31 C.F.R. Section 103.29.

AMENDATORY SECTION (Amending WSR 05-22-009, filed 10/21/05, effective 11/21/05)

**WAC 208-630-720 Is a licensee required to register as a money service business with the Secretary of the Treasury?** ~~((Each licensee must register with the Secretary of the Treasury of the United States if required by 31 U.S.C. Section 5330 or any regulations promulgated thereunder.))~~ Licensees may be required to register as a money services business (MSB) under the Bank Secrecy Act, 31 U.S.C. Section 5330, or any regulations promulgated thereunder. Generally, an MSB is a business that cashes checks or exchanges currency (other than as an agent for another business) in an amount greater than one thousand dollars in currency or monetary or other instruments for any person on any day, in one or more transactions.

#### NEW SECTION

**WAC 208-630-721 If a licensee is considered a money service business (MSB) under the Bank Secrecy Act (see WAC 208-630-720), what are the minimum requirements for the anti-money laundering program the licensee must develop?** A licensee who qualifies as a money services business under the Bank Secrecy Act must develop, implement, and maintain an effective anti-money laundering program consistent with federal law and the requirements of 31 C.F.R. Section 103.125.

## PROHIBITED PRACTICES

### NEW SECTION

**WAC 208-630-8201 What business practices are prohibited?** (1) It is a violation of this chapter for any person subject to this chapter to:

(a) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any borrower, to defraud or mislead any lender, or to defraud or mislead any person;

(b) Directly or indirectly engage in any unfair or deceptive practice toward any person;

(c) Directly or indirectly obtain property by fraud or misrepresentation;

(d) Make a small loan to any person physically located in Washington through use of the internet, facsimile, telephone, kiosk, or other means without first obtaining a small loan endorsement;

(e) Directly or indirectly refer a borrower, or encourage a borrower, to use the services of more than one payday lending business that results in an amount outstanding that exceeds the loan limit in RCW 31.45.073; and

(f) Directly or indirectly structure a loan transaction in order to exceed the loan limit in RCW 31.45.073.

(2) In addition to any other penalties, any transaction in violation of this section is uncollectible and unenforceable.

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 208-630-760

What are the legal restrictions on making small loans?

## WSR 07-23-095

### PERMANENT RULES

#### DAIRY PRODUCTS COMMISSION

[Filed November 20, 2007, 10:49 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The purpose of this rule amendment is to increase the amount of the maximum authorized assessment rate on milk produced in Washington state as allowed under RCW 15.44.080(2) by adding an additional assessment of three-eighths (0.00375) of one cent per hundredweight. This increased assessment is needed to more effectively carry out the powers, duties, and purposes of the Washington dairy products commission under RCW 15.44.060 and 15.44.080 (2). These activities include the following: To participate in federal and state agency hearings, meetings and other proceedings in relation to the regulation of the production, manufacture, distribution, sale or use of dairy products; to develop and engage in research for developing better and more efficient production, marketing, and utilization of agricultural products; and, to protect the interests of consumers by assuring a sufficient pure and wholesome supply of milk and cream of good quality.

Citation of Existing Rules Affected by this Order:  
Amending WAC 142-30-010.

Statutory Authority for Adoption: RCW 15.44.060,  
15.44.130, 15.44.080(2).

Adopted under notice filed as WSR 07-14-041 on June  
27, 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 Nongov-  
ernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Ini-  
tiative: 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 Mak-  
ing: New 0, Amended 0, Repealed 0; or Other Alternative  
Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 19, 2007.

Steve Matzen  
General Manager

**AMENDATORY SECTION** (Amending WSR 01-21-054,  
filed 10/16/01, effective 1/1/02)

**WAC 142-30-010 Declaration of purpose—Effective date.** To effectuate the purposes of chapter 15.44 RCW there is hereby levied upon all milk produced in this state an assessment of:

(1) 0.75 percent of the Class I price for 3.5% butterfat milk, as established in any market area by a market order in effect in that area or by the state department of agriculture in case there is no market order for that area; or

(2) While the Federal Dairy and Tobacco Adjustment Act of 1983, Title I, Subtitle B-Dairy Promotion Program, is in effect:

(a) An assessment rate not to exceed the rate approved at the most recent referendum that would achieve a ten cent per hundredweight credit to local, state or regional promotion organizations provided by Title I, Subtitle B of the Federal Dairy and Tobacco Adjustment Act of 1983; and

(b) An additional assessment of .00625 (five-eighths of one cent) per hundredweight; and

(3) An additional assessment of .00375 (three-eighths of one cent) per hundredweight as allowed under RCW 15.44.-080(2) and the referendum dated March 24, 1983.

**WSR 07-23-108**  
**PERMANENT RULES**  
**NORTHWEST CLEAN**  
**AIR AGENCY**

[Filed November 21, 2007, 9:28 a.m., effective December 22, 2007]

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

Purpose: The regulation amendments will allow the NWCAA to clarify various sections of our rules. See Reviser's note below.

Citation of Existing Rules Affected by this Order: See Reviser's note below.

Statutory Authority for Adoption: Chapter 70.94 RCW.  
Adopted under notice filed as WSR 07-18-024 on  
August 27, 2007.

Changes Other than Editing from Proposed to Adopted Version: See Reviser's note below.

A final cost-benefit analysis is available by contacting Northwest Clean Air Agency, 1600 South Second Street, Mount Vernon, WA 98273, phone (360) 428-1617, fax (360) 428-1620, e-mail [masmundson@nwcleanair.org](mailto:masmundson@nwcleanair.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 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongov-  
ernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Ini-  
tiative: New 0, Amended 27, Repealed 0.

Number of Sections Adopted in Order to Clarify,  
Streamline, or Reform Agency Procedures: New 0,  
Amended 27, Repealed 0.

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

Date Adopted: November 8, 2007.

Mark Asmundson  
Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 08-01 issue of the Register.

**WSR 07-23-109**

**PERMANENT RULES**

**HEALTH CARE AUTHORITY**

[Order 07-07—Filed November 21, 2007, 10:29 a.m., effective November 21, 2007]

Effective Date of Rule: November 21, 2007.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Basic Health rules must be revised consistent with the law. WAC 182-25-030 is revised to reflect the statutory change made by section 36, chapter 259, Laws of 2007. WAC 182-25-040 is revised to correct an internal reference to WAC 182-25-030.

Purpose: Section 36, chapter 259, Laws of 2007, requires the health care authority to give priority enrollment to persons who disenrolled from Basic Health in order to enroll in Medicaid, and subsequently became ineligible for Medicaid. This amendment revises the rules to reflect this change and corrects an internal reference to the affected section.

Citation of Existing Rules Affected by this Order:  
Amending WAC 182-25-030 and 182-25-040.

Statutory Authority for Adoption: RCW 70.47.050.

Adopted under notice filed as WSR 07-19-052 on September 14, 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 2, Repealed 0.

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

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

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

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

Date Adopted: November 21, 2007.

Jason Siems  
Rules Coordinator

AMENDATORY SECTION (Amending Order 06-05, filed 8/31/06, effective 10/1/06)

**WAC 182-25-030 Eligibility.** (1) To be eligible for enrollment in BHP, unless otherwise specified elsewhere in this chapter, an individual must be a Washington state resident who is not:

(a) Eligible for free Medicare coverage or eligible to buy Medicare coverage; or

(b) Institutionalized at the time of enrollment.

(2) Persons not meeting these criteria, as evidenced by information submitted on the application for enrollment or otherwise obtained by BHP, will not be enrolled. An enrollee who is no longer a Washington resident, who becomes eligible for free or purchased Medicare, or who is later determined to have failed to meet BHP's eligibility criteria at the time of enrollment, will be disenrolled from the plan as provided in WAC 182-25-090. An enrollee who was not confined to an institution at the time of enrollment, who is subsequently confined to an institution, will not be disenrolled, provided he or she remains otherwise eligible and continues to make all premium payments when due.

(3) Eligibility for BHP Plus and maternity benefits through medical assistance is determined by DSHS, based on Medicaid eligibility criteria.

(4) For subsidized enrollment in BHP, an individual must meet the eligibility criteria in subsection (1) of this section and the definition of "subsidized enrollee" in WAC 182-25-010(38), and must pay, or have paid on his or her behalf, the monthly BHP premium.

(5) To be eligible for nonsubsidized enrollment in BHP, an individual may have any income level, must meet the eligibility criteria in subsection (1) of this section, and must pay, or have paid on their behalf, the full costs for participation in BHP, including the cost of administration, without subsidy from the HCA.

(6)(a) An individual otherwise eligible for enrollment in BHP as a subsidized enrollee may be denied enrollment if the administrator has determined that acceptance of additional enrollment would exceed limits established by the legislature, would jeopardize the orderly development of BHP, or would result in an overexpenditure of BHP funds. An individual otherwise eligible for enrollment in either the subsidized or nonsubsidized program may also be denied enrollment if no MHCS is accepting new enrollment in that program or from the geographic area where the applicant lives.

(b) If the administrator closes or limits subsidized enrollment, to the extent funding is available, BHP will continue to accept and process applications for subsidized enrollment from:

(i) Children eligible for subsidized BHP, who were referred to DSHS for BHP Plus coverage, but were found ineligible for BHP Plus for reasons other than noncompliance;

(ii) Employees of a home care agency group enrolled or applying for coverage under WAC 182-25-060;

(iii) Eligible individual home care providers;

(iv) Licensed foster care workers;

(v) Persons who disenrolled from basic health in order to enroll in Medicaid, and subsequently became ineligible for Medicaid;

(vi) Limited enrollment of new employer groups;

~~((vii))~~ (vii) Members of the Washington National Guard and Reserves who served in Operation Enduring Freedom, Operation Iraqi Freedom, or Operation Noble Eagle, and their spouses and dependents; and

~~((viii))~~ (viii) Subject to availability of funding, additional space for enrollment may be reserved for other applicants as determined by the administrator, in order to ensure continuous coverage and service for current individual and group accounts. (For example: Within established guidelines, processing routine income changes that may affect subsidy eligibility for current enrollees; adding new family members to an existing account; transferring enrollees between group and individual accounts; restoring coverage for enrollees who are otherwise eligible for continued enrollment under WAC 182-25-090 after a limited suspension of coverage due to late payment or other health care coverage; adding newly hired employees to an existing employer group; or adding new or returning members of federally recognized native American tribes to that tribe's currently approved financial sponsor group.)

(c) If the administrator has closed or limited subsidized enrollment, applicants for subsidized BHP who are not in any of the categories in (b) of this subsection may reserve space on a waiting list to be processed according to the date the waiting list request or application is received by BHP. When enrollment is reopened by the administrator, applicants whose names appear on the waiting list will be notified by BHP of the opportunity to enroll. BHP may require new application forms and documentation from applicants on the waiting list, or may contact applicants to verify continued interest in applying, prior to determining their eligibility.

AMENDATORY SECTION (Amending Order 05-06, filed 5/24/06, effective 7/1/06)

**WAC 182-25-040 Enrollment in the plan.** (1) Any individual applying for enrollment in BHP must submit a signed, completed BHP application for enrollment. Applications for enrollment of children under the age of eighteen must be signed by the child's parent or guardian, who shall also be held responsible for payment of premiums due on behalf of the child. If an applicant is accepted for enrollment, the applicant's signature acknowledges the applicant's obligation to pay the monthly premium in accordance with the terms and conditions identified in the member handbook. Applications for BHP Plus enrollment on behalf of children under the age of nineteen will be referred to the department of social and health services for Medicaid eligibility determination.

(2) Each applicant for subsidized enrollment or BHP Plus must list all eligible dependents, whether or not the dependents will be enrolled, and must supply other information and documentation as required by BHP and, where applicable, DSHS medical assistance.

(a) Applicants for subsidized enrollment must provide documentation showing the amount and sources of their gross family income. Income documentation must include a copy of the applicant's most recently filed federal income tax form or verification of nonfiling status, and copies of pay stubs or other documents showing income for the most recent thirty days or complete calendar month as of the date of application. Applicants who were not required to file a federal income tax return may be required to provide other documentation showing year-to-date income. As described in WAC 182-25-010(17), BHP may use an average of documented income when determining eligibility.

(b) Applicants for subsidized or nonsubsidized enrollment must provide documentation of Washington state residence, displaying the applicant's name and current address, for example, a copy of a current utility bill or rent receipt. Other documentation may be accepted if the applicant does not have a physical residence, for example, a signed statement from a person or other entity who is providing temporary shelter.

(c) BHP may request additional information from applicants for purposes of establishing or verifying eligibility, premium responsibility or MHCS selection.

(d) Submission of incomplete or inaccurate information may delay or prevent an applicant's enrollment in BHP. Intentional submission of false information will result in disenrollment of the subscriber and all enrolled dependents.

(3) Each member may be enrolled in only one BHP account. Each family applying for enrollment must designate a MHCS from which the applicant and all enrolled dependents will receive covered services. All applicants from the same family who are covered under the same account must receive covered services from the same MHCS (with the exception of cases in which a subscriber who is paying for BHP coverage for his/her dependent who lives in a different service area). No applicant will be enrolled for whom designation of a MHCS has not been made as part of the application for enrollment. Procedures for the selection of MHCS are set forth in the BHP member handbook. Generally,

enrollees may change from one MHCS to another only during open enrollment or if they are able to show good cause for the transfer, for example, when enrollees move to an area served by a different MHCS or where they would be billed a higher premium for their current MHCS.

(4) When a MHCS assists BHP applicants in the enrollment process, it must provide them with the toll-free number for BHP and information on all MHCS available within the applicant's county of residence and the estimated premiums for each available MHCS.

(5) If specific funding has been appropriated for that purpose, insurance brokers or agents who have met all statutory and regulatory requirements of the office of the insurance commissioner, are currently licensed through the office of the insurance commissioner, and who have completed BHP's training program, will be paid a commission for assisting eligible applicants to enroll in BHP.

(a) Individual policy commission: Subject to availability of funds, and as a pilot program, BHP will pay a one-time fee to any currently licensed insurance broker or agent who sells BHP to an eligible individual applicant if that applicant has not been a BHP member within the previous five years.

(b) Group policy commission: Subject to availability of funds, and as a pilot program, fees paid for the sale of BHP group coverage to an eligible employer will be based on the number of employees in the group for the first and second months of the group's enrollment.

(c) Insurance brokers or agents must provide the prospective applicant with the BHP toll-free information number and inform them of BHP benefits, limitations, exclusions, waiting periods, co-payments, all MHCSs available to the applicant within his/her county of residence and the estimated premium for each of them.

(d) All statutes and regulations of the office of the insurance commissioner will apply to brokers or agents who sell BHP, except they will not be required to be appointed by the MHCS.

(e) BHP will not pay renewal commissions.

(6) Except as provided in WAC 182-25-030(~~(7)~~) (6)(c), applications for enrollment will be reviewed by BHP within thirty days of receipt and those applicants satisfying the eligibility criteria and who have provided all required information, documentation and premium payments will be notified of their effective date of enrollment.

(7)(a) Eligible applicants will be enrolled in BHP in the order in which their completed applications, including all required documentation, have been received by BHP, provided that:

(i) At least one MHCS is accepting new enrollment in the program for which the applicant is applying and from the geographic area where the applicant lives; and

(ii) The applicant also remits full payment of the first premium bill to BHP by the due date specified by BHP.

(b) In the event a waiting list is implemented, eligible applicants will be enrolled in accordance with WAC 182-25-030(6).

(8) An open enrollment period of at least twenty consecutive days will be held annually. During this open enrollment period, enrollees may apply to enroll additional family members or to transfer their enrollment to a different MHCS, pro-

vided the MHCS selected is accepting new enrollment for the enrollee's program in the geographic area where the enrollee lives.

(9) Not all family members are required to apply for enrollment in BHP; however, any family member for whom application for enrollment is not made at the same time that other family members apply, may not subsequently enroll as a family member until the next open enrollment period, unless the subscriber has experienced a "qualifying change in family status." "Qualifying changes in family status" include:

(a) The loss of other health care coverage, for a family member who has previously waived coverage, provided BHP receives the family member's application within thirty days of the loss of other coverage, along with proof of the family member's continuous medical coverage from the date the subscriber enrolled in BHP;

(b) Marriage or assuming custody or dependency of a child or adult dependent (other than newborn or newly adopted children), provided BHP receives the new family member's application within thirty days of the change in family status;

(c) Addition of an eligible newborn child or a child newly placed for adoption provided BHP receives the child's application for enrollment within sixty days of the date of birth or placement for adoption. These children may be enrolled effective from the date of birth or placement for adoption; or

(d) Addition of a family member who was not previously eligible for coverage, and who has become eligible.

(10) Subscribers must notify BHP of any changes that could affect their eligibility or subsidy or their dependents' eligibility or subsidy:

(a) Within thirty days of the end of the first month of receiving an increased income; or

(b) Within thirty days of a change other than an income change (for example, a change in family size or address).

(11) BHP will verify the continuing eligibility of subsidized enrollees through the recertification process at least once every twelve months. Upon request of BHP, subsidized enrollees must submit evidence satisfactory to BHP, proving their continued eligibility for enrollment and for the premium subsidy they are receiving.

(a) BHP will verify income of subsidized enrollees through comparison with other state and federal agency records or other third-party sources.

(b) If the enrollee's income on record with other agencies or third-party source differs from the income the enrollee has reported to BHP, or if questions arise concerning the documentation submitted, BHP will require updated documentation from the enrollee to prove continued eligibility for the subsidy they are receiving. At that time, BHP may also require updated documentation of residence to complete the recertification process.

(c) Subsidized enrollees who have been enrolled in BHP six months or more and have not provided updated income documentation for at least six months will be required to submit new income documentation if their wage or salary income cannot be compared to an independent source for verification.

(d) Enrollees who have documented that they are not required to file a federal income tax return for previous years will not be required to provide additional verification of non-filing unless their circumstances appear to have changed or other information received indicates they have filed a federal income tax return.

(12) In addition to verification of income, subsidized and nonsubsidized enrollees must annually submit documentation satisfactory to BHP of the following:

(a) Washington state residence;

(b) Full-time student status for dependent students age nineteen through twenty-two; and

(c) Medicare ineligibility for enrollees age sixty-five or over.

(13) When determining eligibility for subsidized enrollment, noncitizens may be required to provide proof of immigration status, to verify whether they are here on a temporary visa to study in the United States.

(14) For good cause such as, but not limited to, when information received indicates a change in income or a source of income the enrollee has not reported, BHP may require enrollees to provide verification required in subsections (11) and (12) of this section more frequently, regardless of the length of time since their last recertification.

(15) Enrollees who fail to comply with a recertification request will be disenrolled, according to the provisions of WAC 182-25-090 (2)(e).

(16) If, as a result of recertification, BHP determines that an enrollee has not reported income or income changes accurately, the enrollee will be subject to the provisions of WAC 182-25-085.

#### WSR 07-23-126

#### PERMANENT RULES

#### DEPARTMENT OF HEALTH

(Board of Psychology)

[Filed November 21, 2007, 10:55 a.m., effective December 22, 2007]

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

Purpose: WAC 246-924-358 Sexual misconduct, this rule will help psychologists avoid sexual misconduct and educate consumers about what they should expect from psychologists. Rules may not reduce or eliminate complaints of sexual misconduct behaviors by psychologists, but they establish basic criteria that creates consistency for practitioners, the department, and the public as complaints are evaluated, investigated and disciplinary action is taken.

Citation of Existing Rules Affected by this Order: Amending WAC 246-924-358.

Statutory Authority for Adoption: RCW 18.83.050 and 18.130.050.

Adopted under notice filed as WSR 07-17-176 on August 22, 2007.

A final cost-benefit analysis is available by contacting Betty Moe, Department of Health, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4912, fax (360) 236-4909, e-mail Betty.Moe@doh.wa.gov.

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

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

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

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

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

Date Adopted: November 21, 2007.

Raymond L. Harry  
Board Chair

AMENDATORY SECTION (Amending Order 337B, filed 3/10/93, effective 4/10/93)

**WAC 246-924-358 Sexual misconduct.** (1) The following definitions apply to this section:

(a) "Health care information" means any information, whether oral or recorded in any form or medium that identifies or can readily be associated with the identity of, and relates to the health care of, a patient or client.

(b) "Key party" means immediate family members and others who would be reasonably expected to play a significant role in the health care decisions of the patient or client and includes, but is not limited to, the spouse, domestic partner, sibling, parent, child, guardian and person authorized to make health care decisions of the patient or client.

(c) "Legitimate health care purpose" means activities for examination, diagnosis, treatment, and personal care of patients or clients, including palliative care, as consistent with community standards of practice for the profession. The activity must be within the scope of practice of psychology.

(d) "Patient" or "client" means an individual who receives psychological services from a psychologist.

~~(The)~~ (2) A psychologist shall never engage, or attempt to engage, in sexual ((contact or sexual activity with current clients:

(2) Sexual contact or sexual activity is prohibited with a former client for two years after cessation or termination of professional services:

(3) The psychologist shall never engage in sexual contact or sexual activity with former clients if such contact or activity involves the abuse of the psychologist-client relationship. Factors which the board may consider in evaluating if the psychologist-client relationship has been abusive includes but is not limited to:

(a) The amount of time that has passed since therapy terminated;

(b) The nature and duration of the therapy;

(c) The circumstances of cessation or termination;

(d) The former client's personal history;

(e) The former client's current mental status;

(f) The likelihood of adverse impact on the former client and others; and

(g) Any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post termination sexual or romantic relationship with the former client.

~~(4) The psychologist shall never engage in sexually harassing or demeaning behavior with current or former clients:~~

~~(5) Psychologists do not accept as therapy patients or clients, persons with whom they have engaged in sexual contact or activity))~~ misconduct with a current patient, client, or key party, inside or outside the health care setting. Sexual misconduct shall constitute grounds for disciplinary action. Sexual misconduct includes, but is not limited to:

(a) Sexual intercourse;

(b) Touching the breasts, genitals, anus or any sexualized body part;

(c) Rubbing against a patient or client or key party for sexual gratification;

(d) Kissing;

(e) Hugging, touching, fondling or caressing of a romantic or sexual nature;

(f) Dressing or undressing in the presence of the patient, client or key party;

(g) Removing patient or client's clothing or gown or draping without emergent medical necessity;

(h) Encouraging masturbation or other sex act in the presence of the psychologist;

(i) Masturbation or other sex act by the psychologist in the presence of the patient, client or key party;

(j) Suggesting or discussing the possibility of a dating, sexual or romantic relationship after the professional relationship ends;

(k) Terminating a professional relationship for the purpose of dating or pursuing a romantic or sexual relationship;

(l) Soliciting a date with a patient, client or key party;

(m) Discussing the sexual history, preferences or fantasies of the psychologist;

(n) Any behavior, gestures, or expressions that may reasonably be interpreted as seductive or sexual;

(o) Making statements regarding the patient, client or key party's body, appearance, sexual history, or sexual orientation other than for psychological service purposes;

(p) Sexually demeaning behavior including any verbal or physical contact which may reasonably be interpreted as demeaning, humiliating, embarrassing, threatening or harming a patient, client or key party;

(q) Photographing or filming the body or any body part or pose of a patient, client, or key party, other than for psychological service purposes; and

(r) Showing a patient, client or key party sexually explicit photographs, other than for psychological service purposes.

(3) A psychologist shall not:

(a) Offer to provide psychological services in exchange for sexual favors;

(b) Use health care information to contact the patient, client or key party for the purpose of engaging in sexual misconduct;



(c) Use health care information or access to health care information to meet or attempt to meet the psychologist's sexual needs.

(4) After the termination of the psychology services, the psychologist shall not engage, or attempt to engage, in the activities listed in subsection (2) of this section with a patient or client for five years or with a key party for two years.

(5) A psychologist shall never engage, or attempt to engage, in sexual misconduct with a former client, patient or key party even after the period of time described in subsection (4) of this section if:

(a) There is a significant likelihood that the patient, client or key party will seek or require additional services from the psychologist; or

(b) There is an imbalance of power, influence, opportunity, and/or special knowledge of the professional relationship.

(6) When evaluating whether a psychologist is prohibited from engaging, or attempting to engage, in sexual misconduct, the board will consider factors, including but not limited to:

(a) Documentation of a formal termination and the circumstances of termination of the psychological services;

(b) Transfer of care to another health care provider;

(c) Duration of the psychological services;

(d) Amount of time that has passed since the last psychological services were provided to the patient or client;

(e) Communication between the psychologist and the patient or client between the last psychological services rendered and commencement of the personal relationship;

(f) Extent to which the patient's or client's personal or private information was shared with the psychologist;

(g) Nature of the patient's or client's mental health condition during and since the professional relationship; and

(h) The patient's or client's emotional dependence and vulnerability.

(7) Initiation or consent by patient, client or key party does not excuse or negate the psychologist's responsibility.

(8) These rules do not prohibit providing psychological services in case of emergency where the services cannot or will not be provided by another psychologist.

(9) Psychologists must not accept as therapy patients or clients persons with whom they have engaged in sexual contact or activity.

amended rules that clarify existing policy or convert policies to rules.

Citation of Existing Rules Affected by this Order: Amending WAC 192-100-500, 192-300-170, 192-310-010, 192-310-020, 192-310-030, 192-310-035, 192-310-040, 192-310-100, 192-320-020, 192-320-070, 192-330-100, and 192-340-010.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Adopted under notice filed as WSR 07-20-124 on October 3, 2007.

A final cost-benefit analysis is available by contacting Juanita Myers, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail [jmyers@esd.wa.gov](mailto:jmyers@esd.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 8, Amended 7, 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 9, Amended 5, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 5, 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 17, Amended 12, Repealed 0.

Date Adopted: November 20, 2007.

Paul Trause  
Deputy Commissioner

AMENDATORY SECTION (Amending WSR 99-20-125, filed 10/6/99, effective 11/6/99)

**WAC 192-100-500 General definitions—Relating to wages and taxes.** For purposes of unemployment insurance taxes only:

(1) **Wages.** Includes all payments for personal services performed by an employee for an employer including the cash value of all remuneration paid in any medium other than cash including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, housing, lodging, payments in kind, tips, and any other similar advantage received from the individual's employer or directly with respect to work for the employer.

(2) **Wages paid.** Includes wages that are actually received by an individual and wages that are contractually due but are not paid because the employer refuses or is unable to make such payment. (See RCW 50.24.015).

(3) **Wages constructively paid.** Those wages set aside, by mutual agreement of both parties (employer and employee) to be paid at a later date. They are reported for tax purposes when actually paid to the employee. The wages set aside can have no substantial limitation or restriction as to the time or manner or condition upon which payment is to be

## WSR 07-23-127

### PERMANENT RULES

#### EMPLOYMENT SECURITY DEPARTMENT

[Filed November 21, 2007, 11:32 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008, except WAC 192-300-170, 192-310-150, 192-310-160, and 192-310-170 which are effective January 1, 2009.

Purpose: The rules implement 2007 legislation concerning tax rates for new employers, reporting requirements, penalties, corporate officers, exempting payments by certain small performing arts industries, requiring notification by religious organizations to their employees, and required employer notices. This filing also incorporates new and

made. In addition the ability to draw on the wages must be within the control and disposition of the employee.

(4) **Deductions.** The amount(s) any federal or state law requires an employer to deduct from the wages of an individual in its employ; and to pay the amount deducted to the federal or state government, or any of their political subdivisions. The amount deducted will be considered wages and to have been paid to the individual at the time of the deduction. Other amounts deducted from the wages of an individual by an employer also constitute wages paid to the individual at the time of the deduction.

(5) **Nominal stipends.** A stipend is considered nominal when it does not exceed six hundred dollars per year.

(6) **Contributions.** Title 50 RCW generally uses the term "contributions" to refer to unemployment taxes. Title 192 WAC generally uses the term "unemployment taxes" to refer to contributions. The two terms are treated interchangeably unless the context provides otherwise.

#### NEW SECTION

**WAC 192-140-220 What happens if I do not respond to a request for information about my corporate officer status?** If you do not respond to a request for information about your corporate officer status, the department will presume you are not unemployed as defined in RCW 50.04.310 and benefits will be denied under RCW 50.20.010. This denial is for an indefinite period of time and will continue until you show you are unemployed as defined under RCW 50.04.310.

#### NEW SECTION

**WAC 192-300-010 What documentation and liability requirements apply to employer representatives?** (1) In order to represent an employer before the department, a representative from a third party must file with the department a power of attorney in a form acceptable to the department. The department may accept a signed power of attorney form by fax or in other electronic form. The department will send a letter to the employer confirming that the employer has authorized the employer representative to represent it before the department.

(2) The employer remains liable for the payments of any taxes, interest, or penalties due if its third party representative errs in registering, filing reports, or paying unemployment taxes.

#### NEW SECTION

**WAC 192-300-060 What are reimbursable employers?** (1) Some nonprofit organizations, states and political subdivisions of the state, and Indian tribes may qualify under chapters 50.44 and 50.50 RCW as reimbursable employers which reimburse the department for unemployment benefits actually paid to separated employees instead of paying unemployment taxes.

(2) In order to qualify, a nonprofit organization must be a section 501 (c)(3) tax-exempt organization under the federal tax code and must provide the department with a copy of its section 501 (c)(3) letter.

(3) If a new employer chooses and qualifies for the reimbursable method, the department may require it to post a bond or security deposit under RCW 50.44.070. Political subdivisions and nonprofit hospitals, colleges, and universities are not required to post a bond or security deposit. For a new employer, the department will base the amount of any required bond on the projected taxable payroll for the coming year, multiplied by the industry average tax rate, with the result rounded down.

(4) For an existing reimbursable employer, the department will base the amount of any required bond based on individual wages of each employee for the previous four complete calendar quarters, multiplied by new taxable wage amounts using the maximum taxable wage base assigned for the coming year, with the result rounded down.

(5) If a reimbursable employer switches to the taxable method, the employer will be assigned the industry average rate until it satisfies the requirements to become a "qualified employer" under RCW 50.29.010. This does not apply to delinquent employers under WAC 192-330-110.

AMENDATORY SECTION (Amending WSR 00-05-064, filed 2/15/00, effective 3/17/00)

**WAC 192-300-170 Requirements for election of unemployment insurance coverage.** The department (~~has to make timely and accurate employer liability determinations and unemployment insurance payments. It is under~~) applies RCW 50.04.165 and 50.24.160 (~~(that we)~~) to establish the election of coverage for unemployment insurance by employers where personal services are not considered employment under the law:

(1) RCW 50.24.160 allows any business to (~~file a~~) request (~~for election of~~) unemployment insurance coverage for personal services that are not covered as employment:

- (a) The request must be in writing to the department;
- (b) The department must approve the request for election of coverage in writing; and
- (c) The request must be signed by someone legally authorized to bind the business.

(2) (~~RCW 50.04.165 allows a corporate employer to elect to cover the personal services of its corporate officers for unemployment insurance coverage:~~

~~(a) A corporate employer must submit a written request for voluntary coverage signed by a person authorized to legally bind the corporation. The department must receive this request no later than thirty days prior to the end of the quarter in which the change is to begin;~~

~~(b) "Corporate officer" is defined in RCW 23A.08.470;~~

~~(c) Corporate officers appointed under RCW 23B.08.400, other than those covered by Chapter 50.44, are not considered services in employment unless the corporation elects coverage of all its corporate officers under RCW 50.04.165;~~

~~(d) All services of corporate officers are considered exempt until the effective date of approval of election of coverage by the department; and~~

~~(e) Corporate officers are exempt under RCW 50.04.165 only if the employer has notified them in writing that they are ineligible for unemployment insurance benefits. The exemp-~~

tion becomes effective with the date of the written notice. The written notice must:

- ~~(i) Have the name(s) of the officer(s) who is/are being exempted;~~
- ~~(ii) Have the effective date of the exemption;~~
- ~~(iii) Have a signature of the officer(s) acknowledging receipt of the request;~~
- ~~(iv) Be kept on file by the corporation; and~~
- ~~(v) Be available for review by any department official upon request.~~

~~(3) If an agricultural corporate employer voluntarily covers its officers, the wages or salaries paid for such services will be used to determine the employer liability of the agricultural employer. Wages or salaries paid for service of corporate officers exempt under RCW 50.04.165 will not be used to determine liability of agricultural employers.~~

~~(4)) All changes in elected coverage remain in effect for at least two calendar years. The business may terminate coverage only at the end of a calendar year. ((A written request by the employer must be sent to the department by January 15th following the end of the last calendar year of desired coverage.)) To terminate coverage, the employer must send a written request to the department by January 15.~~

~~((5)) (3) The department reserves the right to disapprove ((an election for unemployment insurance)) a request for coverage ((due to)) because:~~

~~(a) The applicant ((being nonliable)) is not liable for federal unemployment taxes (FUTA); ((or))~~

~~(b) The ((seasonal nature of the)) occupation or industry is seasonal; or~~

~~(c) Other reasons apply.~~

~~((6)) (4) The department reserves the right to cancel unemployment insurance coverage for a voluntary election employer because:~~

~~(a) Of nonpayment of unemployment insurance taxes(, and) or failure to file an unemployment insurance tax(+) and wage report; ((or))~~

~~(b) Of misrepresentation of facts; ((or))~~

~~(c) Coverage is not used for involuntary unemployment as outlined in RCW 50.01.010; or~~

~~(d) Other reasons apply.~~

#### NEW SECTION

**WAC 192-300-185 Branch accounts.** The department may establish branch accounts for a single registered employer. All branch accounts shall be consolidated for purposes of establishing a single tax rate for the employer.

AMENDATORY SECTION [(Amending WSR 07-22-055, filed 11/1/07)]

**WAC 192-310-020 Tax payments by employers((—)) (RCW 50.24.010).** (1) Taxes must be paid each quarter. Each quarterly payment must include the taxes owed on all wages paid during that calendar quarter. Payments are due to the department by the last day of the month following the end of the calendar quarter for which taxes are due. Payments made by mail are considered paid on the postmarked date. If the last day of the month falls on a Saturday, Sunday, or a

legal holiday, the tax payment must be received or postmarked on the next business day.

(2) Tax payments are due immediately when an employer goes out of business or the account is closed by the department. Taxes not paid immediately are delinquent. However, interest will not be added until the first day of the second month following the end of the calendar quarter for which the taxes are owed.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 05-19-017, filed 9/9/05, effective 10/10/05)

**WAC 192-310-010 What reports are required from an employer?((—)) (RCW 50.12.070.) (1) Master business application.**

Every person or unit with one or more individuals performing services for it in the state of Washington must file a master business application with the department of licensing. ((The application must be in a format approved by the commissioner.))

**(2) Employer registration:**

(a) Every employer shall register with the department and obtain an employment security account number. Registration shall include the names, Social Security numbers, mailing addresses, telephone numbers, and the effective dates in that role of natural persons who are spouses of owners and owners, partners, members, or corporate officers of an employer. Registration of corporations shall include the percentage of stock ownership for each corporate officer, delineated as zero percent, less than ten percent, or ten percent or more, and the family relationship of corporate officers to other corporate officers who own ten percent or more. Every employer shall report changes in owners, partners, members, corporate officers, and percentage of ownership of the outstanding stock of the corporation by corporate officers. The report of changes is due each calendar quarter at the same time that the quarterly tax and wage report is due.

(b) A nonprofit corporation that is an employer shall register with the department, but is not required to provide names, Social Security numbers, mailing addresses, or telephone numbers for corporate officers who receive no compensation from the nonprofit corporation with respect to their services for the nonprofit corporation.

(c) For purposes of this subsection:

(i) "Owner" means the owner of an employer operated as a sole proprietorship;

(ii) "Partner" means a general partner of an employer organized as a partnership, other than limited partners of a limited partnership who are not also general partners of the partnership;

(iii) "Member" means a member of an employer organized as a limited liability company, other than members who, pursuant to applicable law or the terms of the limited liability company's operating agreement or other governing documents, have no right to participate in the management of the limited liability company; and

(iv) "Corporate officer" means an officer described in the bylaws or appointed or elected by the board of directors in accordance with the bylaws or articles or certificates of incor-

poration of an employer organized as a for-profit or nonprofit corporation.

**(3) Quarterly tax and wage reports:**

(a) Tax report. Each calendar quarter, every employer must file a tax report with the commissioner. The report must list the total wages paid to every employee during that quarter.

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

(i) Social Security numbers are required for persons working in the United States;

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

(iii) If the individual does not have a Social Security card, Internal Revenue Service rules allow an employer to hire the individual with the clear understanding that the individual will apply for a Social Security number within seven calendar days of starting work for the employer. The individual must give the employer a document showing he or she has applied for a Social Security card. When the card is received, the individual must give the employer a copy of the card itself. An employer should keep copies of the document(s) for his or her records; and

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

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

(i) Electronically, using the current version of *UIFast-Tax*, *UIWebTax*, or *ICESA* Washington; or

(ii) Paper forms supplied by the department (or an approved version of those forms). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

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

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

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

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

AMENDATORY SECTION (Amending WSR 05-19-017, filed 9/9/05, effective 10/10/05)

**WAC 192-310-030 What are the report and tax payment penalties? (RCW 50.12.220.)** (1) **Penalty for late tax reports.** An employer who does not file a tax report within the time frame required by WAC 192-310-010 ~~((2)(e))~~ **(3)(d)** must pay a penalty of twenty-five dollars for each violation, unless the penalty is waived by the department.

(2) **Definition of incomplete or incorrect format tax report.** An employer must file a tax report that is complete and in the format required by the commissioner.

(a) An "incomplete report" is any report filed by any employer or their agent where:

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

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

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

(iv) A significant number of any given element is not reported, for example, missing Social Security numbers, names, hours, or wages; or

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

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

(b) An "incorrect format" means any report that is not filed in the format required by the commissioner under WAC 192-310-010 ~~((2))~~ **(3)(c)**. Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

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

(i) One employee and reports incomplete wage elements for the one employee; or

~~((19))~~ **(ii)** Two to nineteen employees and reports incomplete wage elements for two or more employees; or

~~((11))~~ **(iii)** Twenty to forty-nine employees and reports incomplete wage elements for three or more employees; or

~~((11))~~ **(iv)** Fifty or more employees and reports incomplete wage elements for four or more employees.

(3) **Penalty for filing an incomplete or incorrect format tax report.** An employer who files an incomplete or incorrectly formatted tax and wage report will receive a warning letter for the first occurrence. For subsequent occurrences of either an incomplete or incorrectly formatted report within five years of the date of the last occurrence (whether or not the last occurrence was before the effective date of this amendatory section), the employer must pay a penalty as follows:

(a) ~~((Two hundred fifty dollars or))~~ When quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter: Ten percent of the quarterly contributions for each occurrence, ((which ever is less-)) up to a maximum of \$250.00, but not less than:

(i) <u>2nd occurrence</u>	<u>\$75.00</u>
(ii) <u>3rd occurrence</u>	<u>\$150.00</u>
(iii) <u>4th and subsequent occurrences</u>	<u>\$250.00</u>

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

(i) <del>((1st))</del> <u>2nd occurrence</u>	\$75.00
(ii) <del>((2nd))</del> <u>3rd occurrence</u>	\$150.00
(iii) <del>((3rd))</del> <u>4th and subsequent occurrences</u>	\$250.00

(c) After five years without an occurrence, prior occurrences will not count and the employer shall receive a warning letter instead of a penalty on the next occurrence.

(4) **Penalty for knowingly misrepresenting amount of payroll.** If an employer knowingly (on purpose) misrepresents to the department the amount of his or her payroll that is subject to unemployment taxes, the penalty is up to ten times, in the discretion of the department, the difference between the taxes paid, if any, and the amount of taxes the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer must also pay the department for the reasonable expenses of auditing his or her books and collecting taxes and penalties due as provided in WAC 192-340-100.

(5) **Late tax payments.** All employers must file a tax report every quarter, including employers who have no payroll for a given quarter. If an employer does not report on time, it will be charged a late fee of \$25.00 for each report. If the payment is late, the employer will be charged interest at a rate of one percent of taxes due per month. A late payment penalty is also charged for overdue taxes:

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

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

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

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

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

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

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

(ii) The delinquency was caused by an employee of the department, such as providing incorrect information to the employer, when the source can be identified;

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

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

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

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

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

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

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

(7) **Incomplete reports or incorrect format penalty waivers.** For good cause, the department may waive penalties or not count occurrences for incomplete reports or reports in an incorrect format ~~((one-time-only))~~ when the employer can demonstrate ~~((making a good faith attempt to correct the problem in a timely manner after the department notified the employer of the problem))~~ that the incomplete or incorrectly formatted report was not due to the fault of the employer.

(8) **Missing and impossible Social Security numbers.** When a Social Security number is impossible or missing, the department may waive penalties for incomplete reports only once for each worker and only when:

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

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

**(9) Penalty waiver requests.**

(a) An employer must request a waiver of penalties in writing, include all relevant facts, attach available proof, and file the request with a tax office. In all cases the burden of proving the facts is on the employer.

(b) At its discretion, the department may waive penalties on its own motion without requiring a request from the employer if it finds that the penalty was caused by the department's own error or for other good cause.

**(10) Extensions.** The department, for good cause, may extend the due date for filing a report. If granted, the employer must make a deposit with the department in an amount equal to the estimated tax due for the reporting period or periods. This deposit will be applied to the employer's debt. The amount of the deposit must be approved by the department.

AMENDATORY SECTION (Amending WSR 99-20-134, filed 10/6/99, effective 11/6/99)

**WAC 192-310-035 Employer reports—Failure to report or incorrectly reporting hours or wages.** (1) If an employer ~~((fails to))~~ does not report hours worked and a former employee ~~((files))~~ applies for benefits, the ~~((benefits will be based on the amount of hours calculated by using))~~ department will divide the wages earned by the state's minimum wage (RCW 49.46.020) in effect at the time to estimate the hours worked.

(2) If the employer ~~((subsequently produces))~~ later provides the actual hours worked, the department will recalculate the former employee's claim ~~((will be recalculated)).~~

(3) ~~((In the event))~~ If the claim is voided~~((;))~~ or benefits are reduced as a result of the recalculation, ~~((the original claim amount will not be considered as an overpayment against))~~ the claimant will not be required to repay any benefits that were overpaid and WAC 192-220-070 will apply.

(4) The employer will be charged under WAC 192-320-080 for benefits paid.

AMENDATORY SECTION (Amending WSR 99-20-141, filed 10/6/99, effective 11/6/99)

**WAC 192-310-040 Employer reports—Further defining hours worked~~((—))~~ (RCW 50.12.070).** This section defines the hours that ~~((should be included on the employer's))~~ employers must include on the quarterly tax and wage report.

**(1) Vacation pay.** ~~((The employer will))~~ Report the number of hours an employee is on paid leave ~~((with pay)).~~ ~~((Cash))~~ Do not report payments made in place of vacation time ~~((will not be counted))~~ as hours worked.

**(2) Sick leave pay.** ~~((In accordance with))~~ As provided in RCW 50.04.330(1), any ~~((amount of))~~ payments made to ~~((the))~~ an employee ~~((covered))~~ under a qualified plan ~~((regarding))~~ for sickness or accident disability, insurance or annuities, medical or hospitalization expenses in connection with sickness or accident disability, death or retirement are not considered ~~((to be))~~ wages or compensation. ~~((Neither hours nor wages are reportable.))~~ Do not report these as hours or wages. For payments under a nonqualified plan, ~~((the))~~ report both wages and hours ~~((are reportable)).~~

**(3) Overtime.** ~~((The employer will))~~ Report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid.

**(4) Commissioned or piecework employees.** ~~((An employer will))~~ Report the actual number of hours worked by employees paid by commission or by piecework. ~~((In the absence of))~~ If there are no reliable time keeping records, ~~((the employer will))~~ report a full-time commissioned or piecework employee for 40 hours worked for each week in which any of their duties were performed.

**(5) Wages in lieu of notice.** When an employee is paid wages in lieu of notice of termination, ~~((the employer will))~~ report the actual number of hours ~~((that would have been))~~ for which they were ~~((compensated))~~ paid. Wages in lieu of notice ~~((compensates))~~ of termination pays the employee ~~((upon termination of service))~~ whose services have been terminated by the employer for the amount of wages they would have earned during the ~~((specified))~~ notice period.

**(6) Employees on salary.** If a salaried employee works other than the regular 40-hour week, ~~((the employer will))~~ report the actual number of hours worked. ~~((In the absence of a))~~ If there are no reliable time keeping records, ~~((the employer will))~~ report 40 hours for each week in which a full-time salaried employee ~~((for 40 hours each week they))~~ worked.

**(7) Faculty employees.** Faculty members of community and technical colleges must teach at least 15 classroom or laboratory hours to be considered full-time. A teaching load of less than 15 hours of instruction is considered part-time.

~~((i))~~ ~~((In the absence of))~~ (a) If there is no reliable hourly information, ~~((an employer will))~~ report the hours of instruction as part-time ~~((using))~~ based on 15 credits as a full-time teaching load and 35 hours as ~~((the base per week using the following computation))~~ full-time employment for a week. For example, an instructor teaches 12 ~~((hours))~~ credits per week. 12 ~~((hours))~~ divided by 15 ~~((hours))~~ equals 80%. 35 hours times 80% equals 28 hours. The employer ~~((will))~~ should report the 28 hours to the department on the employer's quarterly tax and wage report.

~~((ii))~~ (b) Any part-time salaried instructor who does not establish a valid claim because of this formula~~((;))~~ may provide the department with ~~((documentation))~~ evidence of hours worked ~~((which))~~ that exceeds the ~~((reported))~~ hours reported by the employer.

**(8) Severance pay.** ~~((Employers will))~~ Do not report additional hours ~~((worked))~~ for severance pay. Report only the dollar amount paid to the employee. Severance pay is ~~((reportable and))~~ taxable because it is based on past service and compensates the employee upon job separation.

**(9) Payment in kind.** ~~((The employer will))~~ Report the actual hours worked for performing services~~((;))~~ which are compensated only by payment in kind.

**(10) Bonuses, tips and other gratuities.** ~~((An employer will))~~ Do not report additional hours for bonuses, tips or other gratuities if they are received ~~((performing))~~ by an employee who is working regular hours if bonuses, tips and gratuities are the only sources of ~~((their))~~ compensation.

**(11) Fractions of hours.** If the employee's total number of hours for the quarter results in a fraction amount, round the

total (~~(figure will be rounded)~~) to the next higher whole number.

**(12) Practice, preparation, and rehearsal time.** If an employee who is part of a performing group is paid for a performance, but is also required by the employer to attend practice, preparation, and rehearsal on an organized group basis, report the hours spent in the required practice, preparation, and rehearsal as well as the performance.

#### NEW SECTION

**WAC 192-310-080 When are performers in small performing arts industries who receive stipends not considered to be in employment? (RCW 50.04.275.)** (1) A person who is participating in a performance for an employer in subsection (2) of this section is not considered to be in employment if the person receives no remuneration other than a nominal stipend.

(2) This section only applies to employers that are classified in the North American industry classification system as theater companies, dinner theaters, dance companies, musical groups and musical artists, and museums. The employer may not employ more than three individuals during any portion of a day during a calendar year. If an organization employs no more than three individuals who regularly exceed half-time employment, it will be presumed to meet this test.

If an employer becomes ineligible during the course of a year, the employer must from that time forward until the end of the calendar year treat persons who receive only a nominal stipend as in employment.

(3) As used in this section, "participating in a performance" includes serving as an actor or actress, musician, lighting technician, costume designer, stagehand, or in performing other functions relating specifically to the performance.

(4) A stipend is nominal when it is a fixed sum of money which the employer pays periodically to defray incidental expenses involved in participating in a performance and which does not exceed the amount specified under WAC 192-100-500(5).

#### NEW SECTION

**WAC 192-310-090 When is "casual labor" exempt from unemployment insurance? (RCW 50.04.270.)** "Casual labor" that is not in the course of the employer's trade or business and does not promote or advance the employer's trade or business is not considered employment. This exemption only applies to services such as yard work or minor repair work which is performed for a private individual on nonbusiness property. Any employment which is treated as a business expense does not qualify for this exemption.

"Domestic service" is considered a separate exemption under RCW 50.05.160.

#### NEW SECTION

**WAC 192-310-095 When are musicians and entertainers exempt from unemployment insurance? (RCW 50.04.148.)** Musicians or entertainers who contract to perform specific engagements with a purchaser are not consid-

ered in employment when they provide no other duties for the purchaser and are not regularly and continuously employed by the purchaser. This exemption only applies if the primary business purpose of the purchaser is not music or entertainment. The music or entertainment provided must be incidental to the primary business activity of the purchaser. An example would be a tavern that periodically contracts with different bands to play live music.

AMENDATORY SECTION (Amending WSR 99-20-133, filed 10/6/99, effective 11/6/99)

**WAC 192-310-100 (~~(Posting of notices by employers.)~~) What notices does the department require or recommend employers to post?** (Relating to RCW 50.20.140, 50.12.290, and 50.44.045.)(-)

(1) Employers who are responsible for unemployment insurance coverage of their employees must post and maintain printed notices to individuals who are employed by the employer. (~~(These notices inform the individual that this employer is liable for taxes under the Employment Security Act.~~

~~(4))~~) The notices provide information to individuals who may be unemployed about how to (~~(register for work, file claims for benefits, and rights to))~~ apply for benefits. The notices are to be posted in conspicuous places close to the actual location where the personal services are performed.

(2) The department will provide required notices to employers without charge. The department will send required notices to employers when they file a master application for a business license registering for unemployment insurance. The department will send updated notices to employers when there are substantive changes in the information.

(3) The department may also make recommendations of additional materials to post.

(4) A church, a convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or a convention or association of churches shall display in a conspicuous place a poster giving notice that its employees are not considered in employment for purposes of unemployment insurance. The department shall make these posters available without charge.

#### NEW SECTION

**WAC 192-310-150 Are corporate officers covered for unemployment insurance?** (1) For purposes of WAC 192-310-150 through 192-310-190:

(a) "Bona fide officer" means any person empowered in good faith by stockholders or directors, in accordance with articles of incorporation or bylaws, to discharge the duties of a corporate officer;

(b) "Corporate officer" means an officer of a corporation as described or authorized in bylaws under RCW 23B.08.-400;

(c) "Exercise substantial control in the daily management of the corporation" means that the individual makes managerial decisions over a business function or functions that have some effect on the entire corporation.

(d) "Nonpublic company" means a corporation that does not meet the definition of a public company;

(e) "Public company" means a corporation that has a class of shares registered with the Federal Securities and Exchange Commission as defined in RCW 23B.01.400;

(f) "Related by blood within the third degree" means the degree of kinship as computed according to the rules of the civil law. For example, if measured for descendants, it would include a person and that person's children, grandchildren, great grandchildren, brothers and sisters, and nephews and nieces. Alternatively, if measured for ancestors, it would include a person and that person's parents, grandparents, great grandparents, brothers and sisters, and aunts and uncles. Cousins are not related by blood within the third degree under the rules of the civil law and are not included. Legal adoptions or step-relatives are considered as if genetically related.

(g) "Related by marriage" means the union subject to legal recognition under the domestic relations laws of this state.

(2) Unless specifically exempted under WAC 192-310-160 or 192-310-180, services performed by corporate officers are considered services in employment and are covered for purposes of unemployment insurance to the same extent other employment is covered.

#### NEW SECTION

**WAC 192-310-160 How may corporations exempt corporate officers from unemployment insurance coverage?** (1) Subject to RCW 50.04.165 and the other requirements of this section, a corporation may exempt one or more corporate officers from coverage by notifying the department on a form approved by the department. The form must be signed by each exempted officer. Unless the corporate officer exempted is the only officer of the corporation, the form must also be signed by another corporate officer verifying the decision to be exempt from coverage.

(2) The election to exempt corporate officers is effective immediately if made when the corporation first registers with the department as an employer under RCW 50.12.070. If the election to exempt corporate officers is made after that, the exemption is effective on January 1 of the following calendar year. The corporation must send written notice to the department by January 15 for the exemption to be effective on January 1 of that year. The exemption is not effective until filed with the department and will not be applied retroactively, except for the period from January 1 to January 15 if the notice is sent by January 15. A corporation is not eligible for refund or credit for periods before the effective date of the exemption.

(3) A public company as defined in RCW 23B.01.400 may exempt any bona fide corporate officer:

(a) Who is voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation;

(b) Who is a shareholder of the corporation;

(c) Who exercises substantial control in the daily management of the corporation; and

(d) Whose primary responsibilities do not include the performance of manual labor.

(4) A corporation that is not a public company may exempt eight or fewer bona fide corporate officers who voluntarily agree to be exempted from coverage and sign a form approved by the department verifying this. These corporate officers must be voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation and must exercise substantial control in the daily management of the corporation.

(5) A corporation that is not a public company may exempt any number of corporate officers if all officers of the corporation are related by blood within the third degree or by marriage to a person related by blood within the third degree. If any of the corporate officers fail to qualify for this exemption because they are not related by blood or marriage as required, then none of the corporate officers may qualify under this subsection, although they may still qualify under subsection (4) of this section. This is an alternative and not an addition to exemptions under subsection (4) of this section.

For example, a husband and wife, their biological or adopted children or stepchildren, grandchildren, and great grandchildren, their brothers and sisters, their nephews and nieces, and the spouses of any of these people could qualify for exemption as corporate officers under this section without being limited to eight individuals. However, if any of the corporate officers do not meet this test, then this subsection does not apply.

(6) This section does not apply to officers of a corporation covered by chapter 50.44 RCW (some nonprofit or government organizations) or chapter 50.50 RCW (Indian tribes).

#### NEW SECTION

**WAC 192-310-170 How is unemployment insurance coverage of corporate officers reinstated?** (1) Unemployment insurance coverage of corporate officers who have been exempted from coverage may be reinstated under subsection (2) of this section by termination of an exemption or under subsection (3) of this section by election of the corporation.

(2)(a) An exemption for a corporate officer of a public corporation who has been exempted from unemployment insurance coverage under WAC 192-310-160(3) terminates immediately if the officer no longer qualifies for the exemption. For example, the worker may no longer be a bona fide elected or appointed corporate officer, may no longer be a shareholder of the corporation, may no longer exercise substantial control in the daily management of the corporation, or now has primary responsibilities which include the performance of manual labor.

(b) An exemption for a corporate officer of a nonpublic corporation who has been exempted from unemployment insurance coverage under WAC 192-310-160(4) terminates immediately if the officer no longer qualifies for the exemption for reasons other than revocation of a voluntary agreement to be exempted from coverage. For example, the worker may no longer be a bona fide elected or appointed corporate officer or may no longer exercise substantial control in the daily management of the corporation. However, the exemption does not terminate solely because the officer



withdraws a voluntary agreement to be exempted from coverage.

(c) An exemption for a corporate officer of a nonpublic corporation who has been exempted from unemployment insurance coverage under WAC 192-310-160(5) terminates immediately if the officer no longer qualifies for the exemption because of a change in family relationship, such as a change in marital status. The exemption for all other corporate officers also terminates immediately if the entire group of corporate officers no longer qualifies under WAC 192-310-160(5), except to the extent some or all may remain exempt under WAC 192-310-160(4).

(d) A corporation must notify the department on a form approved by the department of a change in status in which an exemption terminates for a corporate officer who had been exempted. The notice is due by the time the next quarterly tax and wage report is due from the corporation. In addition, a corporate officer may notify the department that the exemption has terminated.

(e) A corporation is responsible for any taxes, penalties, and interest due if an exemption terminates and coverage is reinstated, regardless of whether the corporation provided notice to the department of the termination of the exemption.

(3) A corporation that has exempted one or more corporate officers may elect to reinstate coverage for one or more of those previously exempted corporate officers only under the following conditions:

(a) The window of opportunity to reinstate coverage only exists every five years, beginning in 2014. Corporations may reinstate coverage in calendar years 2014, 2019, and every five years thereafter.

(b) Reinstatement is only effective on January 1, 2014, January 1, 2019, and every five years thereafter. The corporation must send written notice to the department by January 15 for the reinstatement to be effective on January 1 of that year. If written notice is sent after January 15, reinstatement will not be allowed until the next window of opportunity five years thereafter. Reinstatement will not be applied retroactively, except for the period from January 1 to January 15 if notice is sent by January 15.

(c) Coverage will not be reinstated if the corporation committed fraud related to the payment of contributions within the previous five years, is delinquent in the payment of taxes at the time of the request to reinstate corporate officers, is currently assigned a tax rate for employers who are delinquent on taxes under WAC 192-320-035, or if the commissioner exercises his or her discretion to determine that there are related reasons why the corporation should not be allowed to reinstate coverage of corporate officers.

#### NEW SECTION

**WAC 192-310-180 Are corporate officers covered for unemployment insurance when the corporation has no other employees?** (1) If a corporation has no employees and all personal services are performed only by bona fide corporate officers, the corporation is not considered an "employer" or "employing unit" under RCW 50.04.080 and 50.04.090. Services of these corporate officers are not considered "services in employment" under RCW 50.04.165 or

WAC 192-310-150 and are not covered for purposes of unemployment insurance unless they specifically elect coverage under subsection (2) of this section.

(2) A corporation that has no employees and in which all personal services are performed only by bona fide corporate officers may elect unemployment insurance coverage if it registers with the department under RCW 50.12.070, elects coverage under RCW 50.24.160, and complies with WAC 192-300-170. The election must cover at least two calendar years and is only effective upon the written approval of the commissioner. Once the election for coverage is approved, it may only be terminated effective January 1 after at least two calendar years and only if the corporation filed a written application for termination of coverage by January 15 of that year.

(3) This section does not apply to officers of a corporation covered by chapter 50.44 RCW (some nonprofit or government organizations) or chapter 50.50 RCW (Indian tribes).

#### NEW SECTION

**WAC 192-310-190 When is a corporate officer with ten percent ownership considered unemployed?** (1) This section applies to:

(a) A corporate officer who owns ten percent or more of the outstanding stock of the corporation; or

(b) A corporate officer who is a family member of another corporate officer who owns ten percent or more of the outstanding stock of the corporation. For purposes of this section, a "family member" is a person related by blood or marriage as parent, stepparent, grandparent, spouse, child, brother, sister, stepchild, adopted child, or grandchild.

(2) A corporate officer whose claim for benefits is based on any wages with that corporation is not considered unemployed in any week during the individual's term of office, even if wages are not being paid at the time. The corporate officer is considered unemployed and potentially eligible for benefits if the corporation dissolves or if the officer permanently resigns or is permanently removed as a corporate officer under the articles of incorporation or bylaws.

(3) For purposes of this section, "permanently" means for a period of indefinite duration, but expected to extend at least through the claimant's benefit year end date. If at any time during the benefit year the claimant resumes his or her position as an officer with the corporation, all benefits paid during that benefit year will be considered an overpayment and the claimant will be liable for repayment.

(4) A corporation must provide notice to the department in a format approved by the department when the ownership of the percentage of stock increases to become ten percent or more or decreases to become less than ten percent. The notice is due by the time the next quarterly tax and wage report is due from the corporation.

AMENDATORY SECTION (Amending WSR 05-19-017, filed 9/9/05, effective 10/10/05)

**WAC 192-320-020 How is the industry average calculated for rate years 2005, 2006, and 2007? ((—)) (RCW 50.29.025.)** (1) As used in this title:

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

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

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

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

**(3) Experience tax.**

(a) The department will calculate the experience tax as follows:

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

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

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

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

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

**(4) Social tax.**

(a) The department will calculate the social tax as follows:

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

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

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

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

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

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

(6) This section applies to rate years 2005, 2006, and 2007.

**NEW SECTION**

**WAC 192-320-025 How are unemployment insurance tax rates determined for new employers? (RCW 50.29.025.)** (1) Beginning in rate year 2008, unemployment insurance tax rates for new employers shall be based on the

history factor of new employers over the last three fiscal years applied to the experience tax and the social cost factor tax for each industry. The history factor shall be ninety percent, one hundred percent, or one hundred fifteen percent, based on the experience of new employers over the last three years, and shall be calculated under RCW 50.29.025.

(2) As used in this section:

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

(b) "Industry average array calculation factor rate" means the average experience-based tax rate for a particular industry. When multiplied by the history factor, it will be referred to as the "experience tax."

(c) "Industry average social cost factor rate" means the average social tax rate for a particular industry. When multiplied by the history factor, it will be referred to as the "social cost factor tax."

(d) "History factor" shall be ninety percent, one hundred percent, or one hundred fifteen percent, depending on the ratio of benefits charged and contributions paid in the last three fiscal years by employers who were not considered a "qualified employer" under WAC 192-320-030 or were not delinquent on taxes under WAC 192-320-035. It shall be computed annually and is not limited to a particular industry.

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

(4) Experience tax.

(a) The department will calculate the experience tax as follows:

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

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

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

(iv) The department will multiply the result by the history factor for that year, and show the final amount as a percentage rounded to two decimal places.

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

(5) Social cost factor tax.

(a) The department will calculate the social cost factor tax as follows:

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

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

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

(iv) The department will multiply the result by the history factor for that year, and show the final amount as a percentage rounded to two decimal places.

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

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

#### NEW SECTION

**WAC 192-320-030 How are unemployment insurance tax rates determined for a current "qualified employer"?** (1) A "qualified employer" means an employer who:

(a) Reported some employment in the twelve-month period beginning with April 1 of the second year preceding the computation date;

(b) Had no period of four or more consecutive calendar quarters for which he or she reported no employment in the two calendar years immediately preceding the July 1 computation date; and

(c) Was not delinquent on taxes under WAC 192-320-035.

(2) Unemployment insurance tax rates for a "qualified employer" are determined under RCW 50.29.025.

#### NEW SECTION

**WAC 192-320-035 How are unemployment insurance tax rates determined for employers who are delinquent on taxes?** (1) An employer that has not submitted by September 30 all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1 of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1.

(3) This section does not apply to services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority if the otherwise qualified domestic employer shows to the satisfaction of the commissioner that he or she acted in good faith and that application of the rate for delinquent taxes would be inequitable.

(4) The department shall provide notice to the employer that he or she may be subject to the higher rate for delinquent taxes if the employer does not comply with this section. Notice may be in the form of an insert in July, August, or September billing statements or in a notice of assessment. Evidence of the routine practice of the department in mailing notice in billing statements or in a notice of assessment shall be sufficient to establish that the department provided this notice.

(5) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher

than that in rate class 40, unless the department approves a deferred payment contract with the employer by September 30 of the previous rate year. If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than in rate class 40.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned a social cost factor rate in rate class 40.

(7) Assignment of the rate for delinquent taxes is not considered a penalty which is subject to waiver under WAC 192-310-030.

#### NEW SECTION

**WAC 192-320-040 When will the department recalculate employer tax rates? (RCW 50.29.080.)** (1) The department may, at its discretion, recalculate the tax rate for any employer if it determines, within three years of the July 1 computation date, that the rate as originally computed was erroneous.

(2) Except as provided in subsection (1) of this section, an employer must submit a written request for rate review or recalculation before the department will recalculate a rate. This does not apply if the department determines that the department's error caused an incorrect tax rate.

(3) The department will not recalculate a tax rate at the request of the employer more than once in a calendar year.

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

**WAC 192-320-070 Conditions for relief of benefit charges due to a voluntary quit.** (1) ~~((For claims with an effective date prior to January 4, 2004, a contribution-paying nonlocal government base year employer, who has not been granted relief of charges under RCW 50.29.020(3) may request relief of charges for a voluntary quit not attributable to the employer under RCW 50.29.020(4) and WAC 192-320-065.~~

~~((2) For claims with an effective date on or after January 4, 2004,)) A contribution-paying nonlocal government base year employer, who has not been granted relief of charges under RCW 50.29.021(3), may request relief of charges for a voluntary quit not attributable to the employer under RCW 50.29.021(4) and WAC 192-320-065.~~

~~((3))~~ **(2) Reasons for a voluntary quit not attributable to the employer.** A claimant may have been denied unemployment benefits for voluntarily quitting work without good cause, but subsequently requalify for unemployment benefits through work and earnings. Even if the claimant has requalified for benefits, the following reasons for leaving work will be considered reasons not attributable to the employer:

(a) The claimant's illness or disability or the illness, disability or death of a member(s) of the claimant's immediate family;

(b) The claimant's domestic responsibilities;

(c) Accepting a job with another employer;

- (d) Relocating for a spouse's employment;
- (e) Starting or resuming school or training;
- (f) Being in jail;
- (g) The distance to the job site when the job was accepted and the distance at the time of the quit remained the same((:)); or the job location may have changed((:)) but the distance traveled or difficulty of travel was not increased;
- (h) Being dissatisfied with wages, hours or other working conditions generally known when the job was accepted; and the working conditions are determined suitable for the occupation in the claimant's labor market; and
- (i) Domestic violence which causes the claimant reasonably to believe that continued employment would jeopardize the safety of the claimant or any member of the claimant's immediate family.

~~((4))~~ **(3) Reasons for a voluntary quit considered attributable to employer** are those work-related factors of such a compelling nature as to cause a reasonably prudent person to leave employment. The work factors must have been reported to the employer if the employer has reasons not to be aware of the conditions, and the employer failed to improve the factors within a reasonable period of time. The reason for quitting may or may not have been determined good cause for voluntarily leaving work under RCW 50.20.-050. For benefit charging purposes, however, such work-related factors may include, but are not limited to:

- (a) Change in work location which causes an increase in distance and/or difficulty of travel, but only if it is clearly greater than is customary for workers in the individual's classification and labor market;
- (b) Deterioration of work site safety provided the employee has reported such safety deterioration to the employer((:)) and the employer has failed to correct the hazards within a reasonable period of time;
- (c) Employee skills no longer required for the job;
- (d) Unreasonable hardship on the health or morals of the employee;
- (e) Reductions in hours;
- (f) Reduction in pay;
- (g) Notification of impending layoff; and
- (h) ~~((Such))~~ Other work-related factors ((as)) the commissioner ((may deem)) considers pertinent.

AMENDATORY SECTION (Amending WSR 00-05-066, filed 2/15/00, effective 3/17/00)

**WAC 192-330-100 Adjustments and refunds—Reduction of refund if wages reported in error—RCW 50.24.150.** (1) An employer may file a written request for refund of, or adjustment to, ~~((contributions))~~ incorrectly paid taxes, interest, or penalties within three years of the date they were paid. The commissioner may also make ~~((refunds or))~~ adjustments for incorrectly paid taxes, interest, or penalties within three years of the date they were paid using his/her own initiative.

(2) When the wages of an employee have been reported in error and the department has paid a claimant benefits based on those wages, any request for refund of the tax will be offset by the amount of benefits paid. If there is any refund of

taxes due the employer, it will be reduced by the amount of benefits paid against the claim(s) and any associated wages.

(3) Refunds will not usually be issued to an ongoing, active business when the credit can be applied to subsequent quarterly reports. Refunds will be allowed for:

- (a) Accounts that are no longer active;
- (b) Duplicate payments of one thousand dollars or more;
- (c) Cases where the business can prove financial hardship from lack of a refund;
- (d) The incorrect payment is due to agency error; or
- (e) Other incorrect payments of one hundred dollars or more, at the discretion of the department.

AMENDATORY SECTION (Amending WSR 00-05-065, filed 2/15/00, effective 3/17/00)

**WAC 192-340-010 Field audit expansion.** The department's audit expansion requirements are as follows:

(1) If underreported or overreported wages for employees ~~((originally reported and/or new workers))~~ are discovered ~~((in the audit year))~~ for the year being audited, the department may expand ~~((to subsequent year(s). Subsequent year(s) and/or quarter(s) means))~~ the audit to prior years within the limits of RCW 50.24.190 and to subsequent years up to the most recently completed calendar quarters where the tax and wages are reported.

(2) ~~((When the department feels there are facts that indicate that the employer has made a conscious effort to avoid taxation, the audit period may be expanded within statutory limitations.~~

~~((3))~~ In the post-audit interview, it is the responsibility of the department to ensure that audit findings or exceptions are discussed and future reporting requirements are understood by the ~~((entity))~~ business being audited.

#### NEW SECTION

**WAC 192-340-020 How may auditors determine payroll and wage information which the employer fails to provide?** If an employer fails or refuses to provide necessary payroll or other wage information during an audit, the department may use RCW 50.12.080 to determine payroll and wage information based on information otherwise available to the department. This may include information from labor market and economic analysis, information provided to other state or local agencies, and the best information otherwise available to the department.

**WSR 07-23-128**

**PERMANENT RULES**

**EMPLOYMENT SECURITY DEPARTMENT**

[Filed November 21, 2007, 11:33 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The rules will implement 2007 legislation that imposes increasing disqualification periods and monetary penalties for individuals who commit fraud more than once. In addition, the rules clarify how the penalties will be calculated, notice provided to the claimant and interested

employer, and repayment requirements. The rules also clarify that overpayments resulting from an employer's failure to correctly report wages and hours will not be charged to the claimant.

Citation of Existing Rules Affected by this Order: Repealing WAC 192-28-122, 192-28-125, 192-28-130, 192-28-135, 192-28-145, and 192-28-150.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, and 50.20.010.

Adopted under notice filed as WSR 07-20-120 on October 3, 2007.

A final cost-benefit analysis is available by contacting Juanita Myers, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.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 6, 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 7, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 7, Amended 0, Repealed 6.

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 13, Amended 0, Repealed 6.

Date Adopted: November 20, 2007.

Paul Trause  
Deputy Commissioner

#### NEW SECTION

**WAC 192-100-050 Fraud defined.** (1) For purposes of RCW 50.20.070, RCW 50.20.190, and Chapter 192-220 WAC, fraud means an action by an individual where all of the following elements are present:

(a) The individual has made a statement or provided information.

(b) The statement was false.

(c) The individual either knew the statement was false or did not know whether it was true or false when making it.

(d) The statement concerned a fact that was material to the individual's rights and benefits under Title 50 RCW.

(e) The individual made the statement with the intent that the department would rely on it when taking action.

(2) To decide whether an individual has committed fraud, the elements in subsection (1) must be shown by clear, cogent, and convincing evidence. Fraud cannot be presumed. Circumstantial evidence, rather than direct evidence, is enough to establish fraud if the evidence is clear, cogent, and convincing.

(3) This definition of fraud also applies to the term "misrepresentation" in RCW 50.20.190. A violation of RCW 50.20.070 must meet this definition of fraud.

#### Chapter 192-220 WAC

#### OVERPAYMENT NOTICE, ~~((AND))~~ ASSESSMENT AND FRAUD

#### NEW SECTION

**WAC 192-220-015 What is an overpayment assessment?** As used in this chapter and Chapter 192-230 WAC, the term "overpayment assessment" includes both unemployment benefits you received for which you were not eligible as well as any penalty assessed under RCW 50.20.070 resulting from fraud.

#### NEW SECTION

**WAC 192-220-040 How will the disqualification period and penalty established by RCW 50.20.070 be assessed?** (1) RCW 50.20.070 provides for increasing disqualification periods and dollar penalties when a second, third or subsequent fraud is committed. The department will decide whether an action is the first, second, third or subsequent occurrence based on the factors in this section.

(2) Once the department mails a fraud decision, any fraud that is found for weeks filed before, or within 14 days after, the mailing date of the decision will be treated as part of the same occurrence of fraud. This applies even if the decisions involve different eligibility issues.

Example: A fraud decision is mailed on June 1 for weeks claimed on April 30. On July 1, a decision is mailed assessing fraud for weeks claimed on March 31. Both decisions will be treated as the same level occurrence because the weeks covered by the July 1 decision were filed before the June 1 decision was mailed.

(3) The department will treat any fraud for weeks filed more than 14 days after the mailing date of a prior fraud decision as a separate occurrence of fraud. This applies even if the weeks claimed occur before the weeks for which fraud was assessed in the prior decision.

Example: On June 1, a decision is mailed assessing fraud for weeks you claimed on March 31. On July 10, late claims are filed for weeks before March 31 in which fraud is committed. The later decision is treated as a subsequent occurrence of fraud because the late claims were filed more than 14 days after June 1.

(4) The department will assess a disqualification period and penalty for each fraud decision issued based on whether it is a first, second, third or subsequent occurrence.

Example 1: A first occurrence of fraud is assessed on June 1 with a disqualification period of 26 weeks beginning with the week of June 1. Another fraud decision is issued on June 12 that is found to be part of the first occurrence. The disqualification period is 26 weeks beginning with the week of June 1st.

Example 2: A first occurrence of fraud is assessed on June 1 with a disqualification period of 26 weeks beginning with the week of June 1. A second occurrence of fraud is assessed on July 10 with a disqualification period of 52 weeks beginning with the week of July 10 and a penalty of 25 percent for the weeks fraudulently paid.

(5) All disqualifications and penalties in this section are in addition to the required repayment of any benefits paid as a result of fraud.

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

#### NEW SECTION

**WAC 192-220-045 How is the fraud penalty calculated?—RCW 50.20.070.** (1) The department will assess the penalty established under RCW 50.20.070 for second, third, or subsequent occurrences of fraud based on a percentage of benefits paid for those weeks in which the fraud occurred or that were paid as a result of fraud. The penalty will not apply to other weeks that may be included in the same eligibility decision.

(a) For a second occurrence, the penalty is 25 percent of benefits overpaid.

(b) For a third or subsequent occurrence, the penalty is 50 percent of benefits overpaid.

(2) The penalty amount, if not a multiple of one dollar, is rounded up to the next higher dollar.

#### NEW SECTION

**WAC 192-220-050 Will I receive a decision if a fraud penalty changes following a redetermination or appeal of another fraud decision?** (1) The department will issue a new decision showing the corrected disqualification period and penalty if a disqualification period or penalty changes because of a change to another fraud decision following a redetermination or appeal.

Example 1: A first occurrence of fraud is assessed on June 1 and a second occurrence is assessed on July 10. The June 1 fraud assessment is overturned through appeal, making the July 10 decision the first occurrence. The department will issue a correction to the July 10 decision showing the penalty for a first occurrence of fraud (26 week disqualification and no dollar penalty).

Example 2: A decision assessing a first occurrence of fraud is mailed on August 1 and benefits are denied for the following 26 weeks. On August 10, another fraud decision is mailed which is considered part of the first occurrence and denies benefits for the 26 weeks beginning August 1. The fraud included in the August 1 decision is overturned through appeal. The August 10 decision remains and the department will issue a correction showing the 26 week denial period begins with the August 10 mailing date.

(2) Although the revised decision does not restart the appeal period included in the original decision, you may appeal a change in the penalty or period of disqualification.

#### NEW SECTION

**WAC 192-220-060 Will I be notified of my right to appeal the overpayment?** (1) The department will notify you and all interested employers in writing about the overpayment assessment and the right to appeal any of the following elements of the assessment:

(a) The reason for the overpayment.

(b) The amount of the overpayment.

(c) The finding of fault or nonfault.

(d) The reason waiver of the overpayment was allowed or denied.

(2) As used in this chapter, an interested employer is:

(a) An employer that provides information to the department which results in an overpayment assessment.

(b) Any base year employer who reimburses the trust fund for benefits paid instead of paying unemployment taxes to the extent waiver is allowed.

#### NEW SECTION

**WAC 192-220-070 Overpayments under RCW 50.12.070 (2)(c).** You are not required to repay benefits improperly paid to you because an employer failed to correctly report your wages or hours and a later correction results in a lower benefit amount or your claim becomes invalid. However, you remain liable for any overpayment assessment resulting from an eligibility decision issued before your claim became invalid that has become final.

#### NEW SECTION

**WAC 192-230-010 Repayment terms defined.** For purposes of this chapter, the following definitions apply:

(1) **Outstanding balance** means the total of all unpaid overpayment assessments (including penalties), court costs, interest charges, and surcharges.

(2) **Due date** means the date by which the minimum monthly payment must be received by the department as shown on the monthly billing statement mailed to your last known address.

(3) **Delinquent** means your minimum monthly payment is not received by the department on or before the due date.

#### NEW SECTION

**WAC 192-230-020 How are cash payments and offsets applied to my overpayment?** (1) If the department has assessed more than one overpayment against you, we will first apply payments against any overpayment involving fraud. If there are multiple overpayments involving fraud, we will apply payments in order beginning with the oldest benefit year. If none of the overpayments involve fraud, we will apply payments in order beginning with the oldest benefit year.

(2) Within the priority established in subsection (1), the department will apply cash payments to the outstanding balance in the following order:

(a) Court costs.

(b) Interest.

(c) Penalties based on fraud.

(d) Overpaid benefits.

(e) Surcharge assessed under RCW 41.14.027.

(3) The department will only apply offsets to the overpaid benefits. Court costs, fraud penalties, interest, and surcharges cannot be offset; they must be repaid.

NEW SECTION

**WAC 192-230-030 How is the minimum payment calculated?** The department will calculate your minimum monthly payment as described in this section, unless we approve another payment amount.

(1) If the overpayment was assessed by another state, the department will not calculate a minimum monthly payment. If the overpayment is being recovered by offset against future benefits, recovery will be done as described in WAC 192-230-100(4).

(2) For overpayments due to fraud, your minimum monthly payment will be the greater of (a) your weekly benefit amount or (b) three percent of your outstanding balance when the billing statement is mailed, rounded down to the next whole dollar amount.

(3) For all other overpayments, your minimum monthly payment will be the greater of (a) one-third of your weekly benefit amount, (b) three percent of your outstanding balance when the billing statement is mailed, rounded down to the next whole dollar amount, or (c) twenty-five dollars.

NEW SECTION

**WAC 192-230-040 When are interest charges added to my overpayment?** (1) Interest will not be charged on an overpayment assessed by another state.

(2) Interest will be charged at the rate of one percent per month for overpayments based on fraud. The interest will be charged on both the overpaid benefits and the fraud penalty, if any. If you appeal the finding of fraud, interest will accrue while the appeal is pending and will be added to your overpayment if the finding of fraud is upheld.

(3) If the overpayment is not based on fraud, interest will be charged at the rate of one percent per month when any portion of two or more minimum monthly payments is delinquent.

(4) If the overpayment includes both fraud and non-fraud weeks, interest will be charged proportionally as described in subsections (2) and (3).

(5) In unusual circumstances, and at his or her discretion, the commissioner may suspend the assessment or collection of interest charges for overpayments not based on fraud.

(6) When calculating the interest charges, a month begins on the day following the last Saturday of one month and ends on the last Saturday of the next month.

NEW SECTION

**WAC 192-230-090 May I repay an overpayment by offset against my benefits?** (1) You may ask to repay an overpayment by offset on a valid benefit year as described in WAC 192-230-100. However, if the new balance available on your current benefit year is equal to or less than the balance of an overpayment on that benefit year, offset will be done at the rate of one hundred percent.

(2) You may ask to repay overpayments owing on prior benefit years by offset as described in WAC 192-230-100.

(3) During any valid benefit year, the total amount of benefits paid to you plus offset credits granted will not exceed the maximum benefits payable on the claim.

(4) If offset of an overpayment is granted against weeks that are later found to have been paid in error or as a result of fraud, the offset for the week(s) will be canceled and the amount will be restored to your overpayment balance.

(5) If any portion of this section conflicts with federal law or regulations, the federal law or regulations will apply.

NEW SECTION

**WAC 192-320-080 Overpayments caused by incorrect reporting of wages and hours—RCW 50.12.070 (2)(c) and RCW 50.29.021 (3)(a).** (1) When an employer incorrectly reports an individual's wages or hours, and the claim becomes invalid due to a later correction in wages or hours, the department will charge that employer one hundred percent of benefits paid to that individual, except as provided in subsection (2).

(2) This section does not apply to the entities listed below. The department will charge only for the percentage of benefits that represent their percentage of base period wages. These include wages earned:

- (a) In another state;
- (b) From a local government employer;
- (c) From the federal government; or
- (d) From any branch of the United States military.

REPEALER

The following sections of the Washington Administrative Code are hereby repealed:

WAC 192-28-122	Applications of offsets or cash repayments.
WAC 192-28-125	Recovery of benefit overpayment—Notification of right to appeal.
WAC 192-28-130	Minimum payment calculation.
WAC 192-28-135	Recovery of benefit overpayment—Overpayment collection and maximum benefit payable.
WAC 192-28-145	Overpayment subject to interest charges.
WAC 192-28-150	Benefit overpayment interest charges—Definitions.

**WSR 07-23-129****PERMANENT RULES****EMPLOYMENT SECURITY DEPARTMENT**

[Filed November 21, 2007, 11:34 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The rules implement 2007 legislation authorizing the department to pay benefits to unemployment insurance claimants who are participating in approved entrepreneurial training with the goal of becoming self-employed.

The rules also describe the model the department will use to identify claimants who are most likely to exhaust benefits.

Citation of Existing Rules Affected by this Order: Repealing WAC 192-12-186; and amending WAC 192-200-005, 192-200-010, 192-200-020, and 192-200-030.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, 50.20.010, and 50.20.250(7).

Other Authority: RCW 50.20.012.

Adopted under notice filed as WSR 07-20-121 on October 3, 2007.

A final cost-benefit analysis is available by contacting Juanita Myers, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail [jmyers@esd.wa.gov](mailto:jmyers@esd.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 6, Amended 4, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 4, Repealed 1.

Date Adopted: November 20, 2007.

Paul Trause

Deputy Commissioner

## NEW SECTION

**WAC 192-180-060 How will the department identify individuals who are likely to exhaust benefits?—RCW 50.20.011.** (1) The department will use the profiling model described in this section to identify claimants who are likely to exhaust benefits and in need of job search assistance to obtain new employment.

(2) **Model.** Take all valid claims with a benefit year ending date that falls within a specified two-year time period. Screen out (a) members of unions participating in the referral union program (see WAC 192-210-100) and (b) claimants who do not have a job search requirement (employer attached, in approved training, or unemployed due to strike or lockout) during the first payable week. For the remaining claimants with a job search requirement, statistically combine information on industry, occupation and other personal characteristics, and labor market characteristics to generate a numerical score indicating the likelihood of exhausting benefits before finding work. The scores may range from 0% (no likelihood of exhaustion) to 100% (certainty of exhaustion). Rank claimants based on their individual score from least likely to most likely to exhaust.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-200-005 Disqualification of students—RCW 50.20.095.** (1) **General rule.** If you are registered in a course of study that provides scholastic instruction of 12 or more credit hours per week, you are disqualified from receiving benefits or credit for your waiting week.

(2) **Period of disqualification.** The disqualification starts with the week the instruction begins or the week you left employment to return to school, whichever is earlier. The disqualification ends at midnight on Saturday of the week prior to the first full week in which you are no longer registered for 12 or more hours of instruction. You ~~((will be required to))~~ must certify to the department that you are not currently registered for 12 or more credit hours and will not be registered for 12 or more credit hours for at least 60 days. If you begin classes within 60 days, all benefits paid since the date of your certification will be considered an overpayment. This overpayment is subject to recovery under RCW 50.20.190. If you are registered for classes that begin more than 60 days in the future, you will not be disqualified under this subsection.

(3) **Disqualification not applicable.** The disqualification does not apply if you:

(a) Are in approved training ~~((as provided by))~~ under RCW 50.20.043;

(b) Are in an approved self-employment assistance program under RCW 50.20.250; or

~~((b))~~ (c) ((When you apply, you demonstrate)) Show by a preponderance of the evidence that your student status does not significantly interfere with your actual availability for work when you apply.

(4) **Definitions.** As used in this section:

(a) "School" includes primary schools, secondary schools, and institutions of higher education as defined in RCW 50.44.037;

(b) "Scholastic instruction" includes all teaching or opportunity for learning subjects other than those of a strictly vocational nature. Subjects of a vocational nature are those embraced in the definition of "training" contained in WAC 192-200-~~((005))~~010.

(c) "Twelve or more hours per week" means 12 or more credit hours per week or its equivalent;

(d) "Preponderance of evidence" means evidence sufficient to persuade a reasonable person considering all the evidence that the proposal is more probably true than not true.

(5) **Students.** Students who claim benefits are subject to all of the provisions of Title 50 RCW including:

(a) RCW 50.20.050 dealing with those who leave work voluntarily without good cause;

(b) RCW 50.20.010 (1)(c) requiring claimants to be able and available for and actively seeking work; and

(c) RCW 50.20.240 requiring claimants to provide evidence of their job search activities as requested by the department.



AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-200-010 Training defined—RCW 50.20-043 and RCW 50.20.250.** (1) The term "training" means

(a) ~~((a))~~ A course of education with the primary purpose of training in skills that will allow you to obtain employment.

(b) A self-employment assistance program that includes entrepreneurial training, approved by the commissioner, that will allow you to become self-employed.

(2) The term "training" does not include ~~((beginning))~~ a course of education primarily intended to meet the requirements of a baccalaureate or higher degree.

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

**WAC 192-200-020 Commissioner approval of training—RCW 50.20.043.** (1) **How do I apply for commissioner approved training?** If you wish to attend school or training while you receive unemployment benefits, and the training will interfere with your availability for full-time work, the training must be approved by the department. Contact the department and ask for an application for commissioner approved training. Your completed application must be returned to the unemployment claims telecenter. ~~((You will receive))~~ We will send you a decision, in writing, denying or approving your training application.

(2) **What factors will the department consider when reviewing my application?** The department will consider the following factors:

(a) Your plan for completion of the training;

(b) The nature of the training facility and the quality of the training;

(c) Whether the training relates to an occupation or skill for which there are, or are expected to be, reasonable employment opportunities in the labor markets in which you intend to seek work;

(d) Whether an oversupply of qualified workers exists;

(e) Whether you have the qualifications and aptitudes to successfully complete such training; and

(f) Whether your employment prospects in occupations in which you have training or experience do not exist or have substantially diminished in the labor market to the extent that the department determines you will probably be unemployed for a lengthy period. These diminished prospects could be the result of business or economic conditions in the area, or due to personal reasons such as your health, physical fitness, criminal background, or other circumstances of a similar nature.

(3) **What about training that is required by my job?** The commissioner will approve training that is required within an occupation if:

(a) The training is a condition of your continued employment;

(b) The scheduling of the training is determined by your employer or a work related entity, and not by you (the claimant); and

(c) The training meets the requirements of subsections (2)(a), (b), (c), (d), and (e) of this section.

(4) **Can academic training be approved?** An academic training course may be approved if the conditions of subsections (1) and (2) of this section are met, and the training meets specific requirements for certification, licensing, or specific skills necessary for the occupation.

(5) **Can these requirements be waived?** In the case of individuals with physical or sensory handicaps, or in other unusual individual circumstances, a written decision of the commissioner may waive any of the requirements of this section on an individual basis.

(6) This section does not apply to training in a self-employment assistance program under RCW 50.20.250.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

**WAC 192-200-030 May I receive ~~((H))~~ unemployment benefits while I am in training?~~((S))~~** (1) To be eligible for unemployment benefits while in training, you must meet the following criteria ~~((must be met))~~:

(a) The training must be full-time as defined by the training facility, including skills training classes designated as full-time by the local WorkSource administrator; and

(b) You must be making satisfactory progress in training ~~((as defined in WAC 192-270-065))~~. Except as provided in subsection (c), "satisfactory progress" is defined in WAC 192-270-065; or

(c) If you are enrolled in an approved self-employment assistance program under RCW 50.20.250, "satisfactory progress" means you are attending classes and participating in other activities related to setting up a business within the timeframes outlined in your approved training plan.

(d) The certification that you are making satisfactory progress in full-time training must be signed by the registrar or equivalent person designated by the training facility.

(2) You must notify the department if you discontinue or suspend training, change your course of study, or reduce enrollment to less than full-time.

(3) If your enrollment drops below full-time or you are not making satisfactory progress, you may be required to show that you are meeting the availability for work and job search requirements of RCW 50.20.010 (1)(c) and 50.20.240, and the provisions of RCW 50.20.080 regarding failure to apply for, or refusal to accept suitable work.

#### NEW SECTION

**WAC 192-200-040 Who is eligible to participate in the self-employment assistance program?** (1) **Eligibility.** To be eligible for the self-employment assistance program, you must:

(a) Be otherwise eligible for regular unemployment benefits;

(b) Have been identified by the department as likely to exhaust regular unemployment benefits using the profiling model established under RCW 50.20.011 and WAC 192-180-060; and

(c) Enroll and satisfactorily participate in a self-employment assistance program approved by the commissioner.

(2) **Likely to exhaust.** The department will use the following process to identify claimants who are likely to

exhaust for purposes of the self-employment assistance program:

(a) Assign profile scores to individuals with a claim ending during the most recent federal fiscal year (October 1 through September 30) using the model described in WAC 192-180-060.

(b) Find the number of these claimants who actually exhausted regular unemployment benefits and determine their percentage of the entire profiled population;

(c) The result will determine the percentile of profiled scores that will be identified as likely to exhaust. For example, assume during the most recent federal fiscal year, 15 percent of profiled claimants actually exhaust benefits. This means the 85th percentile of profile scores will be used to identify claimants who are likely to exhaust.

(d) Determine the lowest score assigned to claimants within this group.

(e) Claimants with that score or higher who file new claims during the following calendar year will be notified by the department they are potentially eligible for the self-employment assistance program.

(3) **Satisfactory participation.** The department will consider you to be satisfactorily participating if you are making satisfactory progress as defined in WAC 192-200-030 (1)(c).

#### NEW SECTION

**WAC 192-200-045 What training programs may be approved under the self-employment assistance program?** (1) To be approved as a training provider under the self-employment assistance program, a training program must include the following:

- (a) Entrepreneurial training;
- (b) Business counseling;
- (c) Technical assistance; and
- (d) Requirements to engage in other activities relating to setting up a business and becoming self-employed.

(2) The commissioner will develop and maintain a list of approved training providers.

#### NEW SECTION

**WAC 192-200-050 What criteria will the department use to approve my self-employment assistance training plan?** The department will consider the following factors when reviewing your application for the self-employment assistance program:

(1) That you have an adequate financial plan for completing training if your unemployment benefits run out before you complete training;

(2) That you have the qualifications and aptitudes to successfully complete the training; and

(3) That you have certified you will not compete with your former employer for up to one year after completing your training program.

(4) If you modify your training plan, the changes must be approved in advance by your training provider and the department.

#### NEW SECTION

**WAC 192-200-055 What other factors affect my eligibility for benefits under the self-employment assistance program?** (1) Any remuneration you receive while enrolled in a self-employment assistance training program will be deducted from your weekly benefit amount as required under RCW 50.20.130.

(2) If you complete your training program before your unemployment benefits run out, you are no longer eligible for benefits unless you meet the availability for work and job search requirements of RCW 50.20.010 (1)(c).

#### NEW SECTION

**WAC 192-200-060 What happens if I do not satisfactorily participate in my self-employment assistance training plan?** (1) If your training provider notifies the department that you are not satisfactorily participating in your approved training, the department will notify you in writing that you are no longer eligible for the self-employment assistance program. You will be required to meet the availability for work and job search requirements of RCW 50.20.010 (1)(c) to remain eligible for unemployment benefits.

(2) If you have been removed from the program because you failed to participate in a training plan, you will not be able to re-enroll in the program during your current benefit year.

#### REPEALER

The following section of the Washington Administrative Code is hereby repealed:

WAC 192-12-186

Training—Commissioner approval or denial of training.

#### **WSR 07-23-130**

#### **PERMANENT RULES**

#### **EMPLOYMENT SECURITY DEPARTMENT**

[Filed November 21, 2007, 11:35 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The rules implement 2007 legislation requiring that professional employer organizations (PEO) register with the department for unemployment insurance tax purposes, ensure their client employers are registered, file tax reports and payments on behalf of their client employers, and maintain records that are available to the department for review. Penalties are established for PEOs that do not comply with the registration requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 192-300-180.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Adopted under notice filed as WSR 07-20-123 on October 3, 2007.

A final cost-benefit analysis is available by contacting Juanita Myers, P.O. Box 9046, Olympia, WA 98507-9046,

phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.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 4, 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 4, Amended 1, Repealed 0.

Date Adopted: November 20, 2007.

Paul Trause  
Deputy Commissioner

AMENDATORY SECTION (Amending WSR 99-20-128, filed 10/6/99, effective 11/6/99)

**WAC 192-300-180 Joint accounts.** ~~((Relates to))~~ (RCW 50.24.170.)

(1) Any two or more employers may form joint accounts (consolidate) for the purposes of reporting and dealing with the ~~((unemployment insurance division of the))~~ department.

(2) Joint accounts must be acceptable to the department and cannot:

~~((i))~~ (a) Impair any obligation by these employers to the ~~((unemployment insurance division))~~ department;

~~((ii))~~ (b) Interfere with the payment of benefits to ~~((workers))~~ claimants;

~~((iii))~~ ~~Result in any administrative inconvenience to the division~~ (c) Increase administrative costs to the department; or

~~((iv))~~ (d) Allow an employer to receive an experience rate to which it was not entitled.

(3) Joint accounts must provide for the maintenance of all records ~~((necessary under the Employment Security Act))~~ required under Title 50 RCW.

(4) Joint accounts may not be formed until the department has approved in writing the consolidation plan ~~((of consolidation, in writing))~~.

(5) A joint account ~~((should never be confused with a common paymaster. A common paymaster is an independent third party who contracts with, and represents, two or more employers, and who files a combined tax report for those employers. Common paymaster does not meet the department's definition of a joint account. We do not allow this type of reporting))~~ may not be established for a third-party payer under RCW 50.04.248, a common paymaster under RCW 50.04.065, or a professional employer organization under RCW 50.04.298.

#### NEW SECTION

**WAC 192-300-200 What is a professional employer organization (PEO)?** A "professional employer organization," as further defined in RCW 50.04.298(1), is a person or entity that enters into an agreement with one or more client employers to provide professional employer services in a coemployment relationship. The professional employer services may include functions such as human resources, risk management, payroll administration services, or unemployment insurance. Both the professional employer organization and the client employer are considered coemployers.

A "professional employer organization" includes entities that use the term "staff leasing company," "permanent leasing company," "registered staff leasing company," "employee leasing company," or "administrative employer" and provide professional employer services to client employers. It does not include independent contractors under RCW 50.04.140, temporary staffing services companies and services referral agencies under RCW 50.04.245, third-party payers under RCW 50.04.248, labor organizations, or common paymasters or common pay agents under RCW 50.04.065.

#### NEW SECTION

**WAC 192-300-210 What requirements apply to professional employer organizations and client employers?**

(1) Both professional employer organizations and client employers must comply with all applicable state laws. Professional employment agreements may not allocate rights and obligations between professional employer organizations and client employers other than in compliance with state law.

(2) Professional employer organizations must file a master business application with the state. They must register with the department under RCW 50.12.070 and obtain an employer reference number issued by the department (employment security number). This applies to professional employer organizations that have their own employees in this state and to professional employer organizations that have client employers who do business or have employees in this state.

(3) Professional employer organizations must ensure that their client employers are registered with the department under RCW 50.12.070. Professional employer organizations may only file papers to register the client employer if they also have filed with the department a power of attorney form signed by an authorized representative of the client employer.

(4) In order to represent a client employer to the department, a professional employer organization must file with the department a power of attorney in a form acceptable to the department. The signed power of attorney form may be sent by fax or in other electronic form acceptable to the department. The department will acknowledge receipt of the power of attorney to the sender and will send a letter to the client employer confirming that the professional employer organization is authorized to represent it to the department.

(5)(a) Professional employer organizations shall provide the department with the following information for client employers: Names, addresses, unified business identifier numbers, employment security numbers, names and Social Security numbers of corporate officers, owners and partners

(if not a corporation or limited liability company), or limited liability company members, effective date the relationship between the professional employer organization and client employer began, and a business location in Washington state where payroll and business records for the client employer will be made available for review or inspection when requested by the department.

Information is due:

(i) By September 1, 2007, for all then existing client employers;

(ii) Within thirty days for any client employer registering with the department for the first time; and

(iii) Within thirty days of the effective date whenever the professional employer organization and a client employer enter a professional employer agreement.

(b) Professional employer organizations shall notify the department within thirty days of the termination of a relationship with a client employer. The notice shall include the name, address, unified business identifier number, employment security number, effective date, and contact information for the client employer.

(c) The department shall provide forms for the information required in this subsection. The department may require professional employer organizations to submit the information in an electronic format.

(6) Professional employer organizations shall maintain accurate payroll records for each client employer and make them available for review and inspection at a business location in Washington state when requested by the department. The location may vary for different client employers. Appropriate department facilities may be used for this purpose with the consent of the department. The department may require client employers or professional employer organizations to produce other business and financial records at an in-state location in the same manner it requires other employers to do so under WAC 192-310-050.

(7) Professional employer organizations shall file quarterly tax and wage reports for client employers they represent in a format specified by the department. Reports shall contain separate and distinct information for each client employer, regardless of the format used. Professional employer organizations may file a single electronic report for multiple client employers, separate paper or electronic reports for individual client employers, or a combination of electronic and paper filing.

(8) The department shall provide an electronic system for filing quarterly tax and wage reports which allows a professional employer organization to make payments when filing for multiple client employers with a single payment for those employers.

(9) If the professional employer organization files separate quarterly tax and wage reports for individual client employers, it shall make separate payments for each employer.

#### NEW SECTION

**WAC 192-300-220 What unemployment taxes apply to professional employer organizations and client employers?** (1) Effective January 1, 2008, each professional

employer organization and each client employer shall be assigned an individual tax rate based on its own experience.

(2)(a) This subsection applies to professional employer organizations and client employers which have a coemployment relationship as of January 1, 2008.

(b) Except as provided in (d) and (e) of this subsection, the tax rate for professional employer organizations and client employers shall be determined on the basis that the client employer transferred from the professional employer organization effective January 1, 2008. A client employer's proportionate experience (benefits charged and taxable payroll) for the entire first quarter beginning January 1, 2008, shall transfer to the client employer. On or after January 1, 2008, experience shall transfer to a client employer regardless of whether the professional employer organization was the base year employer prior to that date.

(c) The client employer's tax rate shall remain unchanged for the remainder of the rate year in which the transfer occurred.

(d) Client employers that are qualified employers under RCW 50.29.010 or are delinquent under RCW 50.29.025 (2)(c)(i) and that joined a professional employment organization after the computation date of July 1, 2007, shall be assigned their own tax rate for 2008 as if they had not joined the professional employer organization. Any experience from July 1, 2007, to December 31, 2007, assigned to the professional employer organization for those client employers shall transfer to the client employer for purposes of setting future rates.

(e) If an employer is registered with the department and has its own tax rate, but is also a client employer for purposes of some of its employees, it shall keep its own tax rate for 2008 and that rate shall apply to all its employees. Any employees of a client employer that is in a coemployment relationship with a professional employer organization shall be considered a branch account under the registered employer.

(f) Beginning on January 1 of the year after the transfer, the client employer's tax rate for each rate year shall be based on a combination of:

(i) The client employer's experience with payrolls and benefits; and

(ii) The experience assigned to the professional employer organization which is attributable to the client employer, based on the percentage of employees transferred as of January 1, 2008, regardless of the date the client employer joined the professional employer organization.

(g)(i) The professional employer organization's tax rate on any payroll retained by the professional employer organization shall remain unchanged for the remainder of the year in which the transfer occurs.

(ii) Beginning on January 1 of the year after the transfer, the professional employer organization's tax rate for each rate year shall be based on its experience with payrolls and benefits as of the regular computation date for that rate year excluding the experience that has been attributed to client employers.

NEW SECTION

**WAC 192-300-230 What enforcement, penalties, and collection procedures apply to professional employer organizations and client employers?** (1) A professional employer organization may collect and make payments on behalf of a client employer, but the client employer remains liable for the payments of any taxes, interest, or penalties due.

(2) Unless the professional employer organization has already notified the department that it has not received payments from the client employer, the department shall first attempt to collect any payments due from the professional employer organization and shall not attempt to collect from the client employer until at least ten days from the date payment was due. Collection procedures shall follow the requirements of chapter 50.24 RCW.

(3) A professional employer organization may elect to provide a bond to cover payments due. Any bond for this purpose shall be filed with the department, shall be in a form satisfactory to the commissioner, and shall be in an amount not less than the amount of contributions due in the highest quarter of the preceding calendar year. A bond does not relieve the professional employer organization or its client employers of ultimate liability for payments due.

(4) In case of error by a professional employer organization in which reports are incomplete, inaccurate, or late, or if the professional employer organization makes a single payment that does not match the amount due for multiple employers, the department will initially apply any penalty and interest charges for all amounts due against the professional employer organization, regardless of whether the professional employer organization has employees in Washington. However, the client employer ultimately remains liable for any taxes, penalties, or interest due.

All client employers of a professional employer organization may be subject to the tax rate for delinquent taxpayers if a delinquency under WAC 192-320-035 cannot be assigned to a specific client employer.

(5) If a professional employer organization reports employees of a client employer as its own employees, a first violation will be considered an incorrect report for the professional employer organization and an untimely report for the client employer under RCW 50.12.220(2). A second violation will be considered knowing misrepresentation under RCW 50.12.220(3). A third violation will be considered grounds for revocation of the authority of a professional employer organization to act on behalf of its client employers.

(6) The department may revoke the authority of a professional employer organization to act on behalf of its client employers if the professional employer organization substantially fails to comply with the provisions of RCW 50.12.300. An order to revoke the authority of a professional employer organization shall be considered an appealable order under chapter 34.05 RCW comparable to an order and notice of assessment under RCW 50.32.030.

**WSR 07-23-131****PERMANENT RULES****EMPLOYMENT SECURITY DEPARTMENT**

[Filed November 21, 2007, 11:35 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The rules implement state legislation passed in 2006 and the SUTA-Dumping Act of 2004 passed by congress. The rules clarify business transfer requirements for both predecessor and successor employers. The goal is to reduce or eliminate the practice of SUTA-dumping, where employers attempt to unlawfully avoid the payment of state unemployment taxes.

Citation of Existing Rules Affected by this Order: Repealing WAC 192-300-050, 192-320-050, 192-320-051, and 192-320-055.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, and 50.29.064.

Adopted under notice filed as WSR 07-20-122 on October 3, 2007.

A final cost-benefit analysis is available by contacting Juanita Myers, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail [jmyers@esd.wa.gov](mailto:jmyers@esd.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 11, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 11, 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 4.

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

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 11, Amended 0, Repealed 4.

Date Adopted: November 20, 2007.

Paul Trause  
Deputy Commissioner

**Chapter 192-350 WAC****TRANSFER OF BUSINESS**NEW SECTION

**WAC 192-350-010 What is a predecessor-successor relationship?** (1) This section applies only to those individuals and organizations that meet the definition of an employer contained in RCW 50.04.080.

(2) A predecessor-successor relationship exists when a transfer occurs and one business (successor) acquires all or part of another business (predecessor). It may arise from the transfer of operating assets, including but not limited to the transfer of one or more employees from a predecessor to a successor. It may also arise from an internal reorganization of affiliated companies. Whether or not a predecessor-suc-

cessor relationship (including a "partial successor" relationship) exists depends on the totality of the circumstances.

(3) **Predecessor.** An employer may be a "predecessor" if, during any calendar year, it transfers any of the following to another individual or organization:

(a) All or part of its operating assets as defined in subsection (5) of this section; or

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

(4) **Successor.** An employer may be a "successor" if, during any calendar year, it acquires substantially all of a predecessor employer's operating assets. It may be a "partial successor" if, during any calendar year, it acquires:

(a) Part of a predecessor employer's operating assets; or

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

(5) **Operating assets.** "Operating assets" include the resources used in the normal course of business to produce operating income. They may include resources that are real or personal, and tangible or intangible. Examples include land, buildings, machinery, equipment, stock of goods, merchandise, fixtures, employees, or goodwill. "Goodwill" includes the value of a trade or business based on expected continued customer patronage due to its name, reputation, or any other factor.

(6) **Transfer of assets.** Transfers from a predecessor to a successor employer may occur by sale, lease, gift, or any legal process, except those listed in subsection (9) of this section.

(7) **Simultaneous acquisition.** For purposes of successor simultaneous acquisition, the term "simultaneous" means all transfers that resulted from acquiring or reorganizing the business, beginning when the acquisition started and ending when the primary unit is transferred.

(8) **Factors.** No single factor is necessarily conclusive, but some of the factors which the department may consider as favoring establishment of a predecessor-successor (including a "partial successor") relationship are:

(a) Whether the employers are in the same or a like business (e.g., providing similar or comparable goods or services or serving the same market);

(b) Whether the asset(s) transferred constitute a substantial or key portion of similar assets for either the predecessor or successor;

(c) Whether the assets were transferred directly and not through an independent third party;

(d) Whether multiple types of assets (e.g., employees, real property, equipment, goodwill) transferred;

(e) Whether a significant number or significant group of employees transferred between employers;

(f) Whether the assets transferred at the same time or in a connected sequence, as opposed to several independent transfers;

(g) Whether the business name of the first employer continued or was used in some way by the second employer;

(h) Whether the second employer retained or attempted to retain customers of the first employer;

(i) Whether there was relative continuity and not a significant lapse in time between the operations of the first and second employers;

(j) Whether there was continuity of management between employers;

(k) Whether the employers shared one or more of the same or related owners;

(l) Whether documents, such as a contract or corporate minutes, show the sale or transfer of a business or a portion of a business; and

(m) Whether other factors indicate that a predecessor-successor relationship exists.

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

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

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

(10) **Burden of proof.** The department has the burden to prove by a preponderance of the evidence that a business is the successor or partial successor to a predecessor business. However, if a business fails to respond to requests for information necessary to determine a predecessor-successor relationship, the department may meet its burden by applying RCW 50.12.080 to determine the necessary facts.

#### NEW SECTION

**WAC 192-350-020 What are examples of when a predecessor-successor relationship exists?** The following examples are intended to illustrate factors that the department may consider in determining whether or not a predecessor-successor relationship exists.

(1) Business A, a sole proprietor widget manufacturer, sells its operations to new business B, a corporation. B plans to continue in the same type of widget manufacturing business as A. The sale includes the name of the business, goodwill, existing inventory, manufacturing equipment, and an ongoing lease. All employees of A transfer to B. This is a predecessor-successor relationship.

(2) Business A, a sole proprietorship retailer, goes out of business. It decides to sell some of its assets, including a company car. Business B, a retailer in a different business, decides to buy the car. It does not acquire any other assets, including employees, from A. Even though B has acquired an asset from A, there is no predecessor-successor relationship because the only relationship is a single asset which is incidental to the primary business of the employers.

(3) Business A and business B are independent corporations, but subdivisions of another entity C. C reorganizes and decides to eliminate A, lay off some employees, and transfer the remaining employees to B. B is the successor to A.

(4) Business A, a small sole proprietorship taxicab company, sells its one taxicab to business B, a much larger taxicab company. No employees transfer, but B tries to retain as much of A's customer base as possible. B is in the same business as A and is in a predecessor-successor relationship.

(5) Business A, a large taxicab company, sells one of its many taxicabs to business B, a small sole proprietorship taxicab company. No employees transfer, but B tries to retain as much of A's customer base as possible. B is in the same business as A and has acquired part of a predecessor employer's operating assets, so B is a partial successor.

(6) Business A, a sit-down restaurant for families which operates in a leased facility, closes. A month later business B, a family restaurant operating under a different name and under a new lease reopens in the same location. One of five servers laid off when business A closed is rehired by business B. If this is the full extent of the relationship between business A and business B, this is not a predecessor-successor relationship. Examples of some of the factors which might change this to a predecessor-successor relationship are: If business B shares some of the same ownership with business A; the extent to which they advertise the same, use the same suppliers, maintain the same restaurant motif and decor, or use the same menu; the extent to which they use the same equipment and dishes; the extent to which the terms of the new lease appear to continue the previous one; and the extent to which other key employees continue from one employer to the other.

#### NEW SECTION

**WAC 192-350-030 Predecessor-successor transfers through intermediaries.** When operating assets are transferred from one employer to another by using an intermediary whose role is to arrange or assist the transfer process (RCW 50.04.320 and 50.29.062), the department will decide on a case-by-case basis whether a predecessor-successor relationship exists. The fact that an intermediary was used does not preclude the existence of a predecessor-successor relationship.

In determining if a predecessor-successor relationship exists, the department will consider the intent of the parties involved and the economic reality of the transactions, as opposed to the strict legal format of the multiple transfers.

#### NEW SECTION

**WAC 192-350-040 What notice must a predecessor or partial predecessor provide to the department?** (1) A predecessor or partial predecessor that quits or disposes of a business is liable for unemployment taxes under RCW 50.24.210. The predecessor or partial predecessor may give notice through the master business license; otherwise, it shall notify the department in writing within thirty days. The notice shall include the predecessor's or partial predecessor's department registration number and the name and contact information for the successor. All unemployment taxes payable are due immediately and shall be paid within ten days.

(2) A partial predecessor that does not quit or dispose of a business shall give written notice to the department within thirty days. The notice shall include the predecessor's or partial predecessor's department registration number and the name and contact information for the successor.

(3) In addition, a predecessor or partial predecessor shall provide the department with requested information about the transfer under WAC 192-350-060.

#### NEW SECTION

**WAC 192-350-050 What notice must a successor or partial successor provide to the department?** (1) A successor or partial successor may be liable for unemployment taxes under RCW 50.24.210.

(2) A successor or partial successor may notify the department through the master business application that it bought, leased, or acquired all or part of an existing business. Otherwise, a successor or partial successor shall notify the department in writing within thirty days. The notice shall include the successor's or partial successor's department registration number and the name of the predecessor.

(3) In addition, a successor or partial successor shall provide the department with requested information about the transfer under WAC 192-350-060.

#### NEW SECTION

**WAC 192-350-060 What are the consequences if the predecessor or successor employer fails to respond to requests for information?** (1) The department may send a letter to a predecessor or successor employer to determine a partial transfer of experience. A partial successor or predecessor employer must respond to the letter within thirty days of the mailing date. The response must show the percentage of operating assets transferred to the partial successor. Operating assets include the employees of the business.

(2) If the employer does not respond, the department may apply RCW 50.12.080 to determine necessary facts. In addition, for subsequent rate years the commissioner may estimate the percentage of operating assets transferred based on the best available information, which may include employment reports filed. That percentage will transfer to the successor until it provides compelling evidence to change the estimate. Any change in the estimate will be prospective only.

#### NEW SECTION

**WAC 192-350-070 What effect does a predecessor-successor relationship have on tax rates?** (1) Under RCW 50.29.062(1), if the successor is an employer at the time of the transfer of a business, the successor's tax rate shall remain unchanged for the rest of the calendar year. Beginning on January 1 of the year after the transfer and until the successor qualifies for its own rate, the successor's tax rate for each rate year shall combine the successor's experience with the experience of the predecessor or the relevant portions of the partial predecessor.

(2)(a) Under RCW 50.29.062 (2)(b), if the successor is not an employer at the time of the transfer of a business and if the transfer occurs after January 1, 2005, the successor's tax rate for the rest of the calendar year shall be the same as the predecessor employer at the time of the transfer. Any experience attributable to the predecessor shall be transferred to the successor.

(b) Under RCW 50.29.062 (2)(b)(ii), if there is a substantial continuity of ownership, control, or management by the successor, beginning on January 1 after the transfer, the successor's tax rate shall be based on a combination of the

successor's experience and the transferred experience from the predecessor.

(c) Under RCW 50.29.062 (2)(b)(i), if there is not a substantial continuity of ownership, control, or management by the successor, beginning on January 1 after the transfer, the successor's tax rate shall be assigned under RCW 50.29.062 (2)(b)(i)(B).

(3) If the successor simultaneously acquires businesses from two or more employers with different tax rates, the successor's tax rate shall be assigned under RCW 50.29.062 (2)(b)(iii).

(4) The tax rate on any payroll retained by a predecessor employer shall remain unchanged for the rest of the rate year in which the transfer occurs. Beginning on January 1 after the transfer, the predecessor's tax rate shall be assigned under RCW 50.29.062 (3)(b).

(5) Changes in rate class for a predecessor or successor are effective only for the rate year the information was provided and for subsequent rate years.

(6) This section does not apply to a transfer of less than one percent of a business.

(7) This section does not apply if there is "SUTA dumping" under RCW 50.29.063.

#### NEW SECTION

**WAC 192-350-080 How does the department determine the percentage of operating assets transferred to a partial successor?** The department will determine the percentage of operating assets transferred primarily by considering employees transferred. The department will first consider the number of employees transferred, but may also consider the total salaries and wages involved in the transfer and other factors.

#### NEW SECTION

**WAC 192-350-100 What is "SUTA dumping" and what are the consequences if a significant purpose for the transfer of a business is SUTA dumping?** (1) Congress enacted the "SUTA Dumping Act of 2004" to establish nationwide minimum standards for curbing unlawful manipulation of unemployment taxes by employers. "SUTA" stands for state unemployment tax acts. Federal law describes "SUTA dumping" as the practice by some employers and financial advisors of manipulating state unemployment experience tax rating systems so that employers pay lower state unemployment insurance taxes than their unemployment experience would otherwise allow. Most frequently, it involves merger, acquisition, or restructuring schemes, especially those that shift workforce or payroll.

To comply with federal requirements, Washington enacted RCW 50.29.063, which imposes higher unemployment insurance tax rates on employers if a significant purpose of the transfer of a business was to obtain a lower tax rate. The law also imposes penalties if the intent was to knowingly evade successorship tax provisions or to knowingly promote the evasion of successorship tax provisions.

(2) Examples of SUTA dumping include an employer with a high tax rate because of its experience that:

(a) Dissolves the business in its present structure and reorganizes into a new entity to obtain a lower tax rate;

(b) Buys a smaller business with a low rate, then transfers employees to the smaller business to obtain the low rate; or

(c) Reorganizes and intentionally gives a false description of its business to obtain a lower rate based on a lower industry average.

#### NEW SECTION

**WAC 192-350-110 What elements must the department prove to establish "SUTA dumping"?** (1) In order to prove SUTA dumping, the department must prove by a preponderance of the evidence that:

(a) A business is a successor or partial successor to a predecessor business under WAC 192-350-010; and

(b) A significant purpose for the transfer of a business was to obtain a lower tax rate under RCW 50.29.063(1).

(2) A "significant purpose" must be more than an incidental purpose, but may be one of many purposes. The department may show that a significant purpose for the transfer was to obtain a lower tax rate by factors such as:

(a) Business records, such as corporate minutes or other documents, show that a lower tax rate was considered as part of the decision for the transfer;

(b) An outside party, such as an accounting firm or tax advisor, recommended the transfer in order to lower the tax rate; or

(c) The employer knew or should have known that transfer of employees to the successor would lower the tax rate and the actual effect of the transfer was to lower taxes significantly.

(3) For additional penalties under RCW 50.29.063 (2) or (3), the department must also prove that an employer intended to knowingly evade or knowingly evaded successorship provisions or that a nonemployer knowingly promoted the evasion of successorship provisions. "Knowingly" means having actual knowledge or acting with deliberate ignorance or reckless disregard for the prohibitions. "Knowingly" includes an intent to evade, misrepresentation, or willful non-disclosure.

#### NEW SECTION

**WAC 192-350-120 What penalties apply if there is intent to knowingly evade successorship or knowingly promote the evasion of successorship provisions?** If the department determines that there was intent to knowingly evade successorship or knowingly promote the evasion of successorship provisions, it may assess penalties under RCW 50.29.063 (2) and (3).

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-300-050

What is a predecessor-successor relationship?



REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 192-320-050	What are the requirements of partial successors under chapter 50.29 RCW?
WAC 192-320-051	What are the requirements of partial predecessors under chapter 50.29 RCW?
WAC 192-320-055	Predecessor-successor transfers through intermediaries.

**WSR 07-23-132****PERMANENT RULES****SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed November 21, 2007, 11:40 a.m., effective December 22, 2007]

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

Purpose: The proposed revision is required to clarify to school districts the reporting requirements of the annual school bus mileage report.

Citation of Existing Rules Affected by this Order: Amending WAC 392-141-160.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 07-20-099 on October 2, 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 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: November 16, 2007.

Dr. Terry Bergeson  
State Superintendent

AMENDATORY SECTION (Amending WSR 07-03-072, filed 1/17/07, effective 2/17/07)

**WAC 392-141-160 District reporting and record-keeping requirements.** Annual or supplementary reports shall be submitted by each school district to the superintendent of public instruction prior to the last business day in October. This report shall reflect to the extent practical the planned pupil transportation program for the entire school

year and which is in operation during ridership count week. Reports shall be submitted with a cover letter signed by the chief school district administrator attesting to the completeness of the requirements below and the accuracy of the data contained therein. The superintendent of public instruction shall have the authority to make modifications or adjustments in accordance with the intent of RCW 28A.160.150, 28A.160.160, and 28A.160.170. Each district shall submit the data required on a timely basis as a condition to the continuing receipt of student transportation allocations. These reports shall be maintained for a period of three school years or until audited and include the following but are not limited to:

(1) School bus route logs completed in ink by bus drivers for five consecutive days. These logs shall include state school bus numbers, each bus stop, the number of students boarding the bus at each stop, and destination schools, transfer points, learning centers, or agencies; and

(2) The number of kindergarten through fifth grade students enrolled during ridership count week and living one radius mile or less from their destination school; and

(3) Other operational data and descriptions, as required by the superintendent of public instruction to determine operation allocation requirements for each district; and

(4) An annual school bus mileage report including ~~((the beginning and ending year odometer reading;))~~ the total to and from school bus miles ~~((for each bus))~~ for the previous school year, an estimate of to and from school bus mileage for the ~~((upcoming))~~ current school year, and total school bus miles for ~~((extended day routes;))~~ field trips, extracurricular, and other ~~((contractual uses of school buses))~~ categories as requested; and

(5) Copies of any and all correspondence, publications, news articles, or campaign materials which encourage ridership during count week of the report that is beyond the normal activity experienced during the school year. School districts shall not utilize incentive programs that provide tangible gifts to reward increases in ridership counts.

School districts shall maintain at least a weekly one-day route log containing the school bus driver's name, state bus number, route number, route type, day of the week, beginning and ending odometer readings, destinations, destination times and student counts. These route logs shall be maintained in the school district files for a period of three years or until audited.