

**WSR 08-05-018**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Health and Recovery Services Administration)

[Filed February 12, 2008, 8:34 a.m., effective March 14, 2008]

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

Purpose: The department is amending rules to comply with the provisions of chapter 5, Laws of 2007 (2SSB 5093) which authorize medical assistance coverage for all children living in households with income at or below 250% of the federal poverty level (FPL). An emergency rule has been in effect since July 22, 2007, while HRSA completed the permanent rule-making process. When effective, this rule replaces the emergency rule filed [as] WSR 07-23-057.

Citation of Existing Rules Affected by this Order: Amending WAC 388-416-0015, 388-418-0025, 388-450-0210, 388-478-0075, 388-505-0210, 388-505-0211, 388-542-0010, 388-542-0020, 388-542-0050, and 388-542-0300.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.530, and 74.09.700.

Other Authority: Chapter 5, Laws of 2007 (2SSB 5093).

Adopted under notice filed as WSR 07-22-038 on October 30, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-505-0210 (2)(d), family income is at or below 200% federal poverty level (FPL), as described in WAC 388-478-0075 at each application or review; or

WAC 388-505-0210 (10)(c), they have income that exceeds children's healthcare program standards; or

(d) They are disqualified from receiving premium based children's healthcare coverage as described in subsection (4) of this section because of creditable coverage or nonpayment of premiums.

WAC 388-450-0210(3), unless modified by subsection (4) or (6) of this section,

WAC 388-450-0210 (4)(h), for nonrecurring lump sum payments see chapter 388-455 WAC; and WAC 388-475-0300(4). (Subsections (i) and (ii) removed.)

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 10, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 10, Repealed 0.

Date Adopted: February 7, 2008.

Stephanie E. Schiller  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

**WAC 388-416-0015 Certification periods for categorically needy (CN) ~~((medical and state children's health insurance program (SCHIP)))~~ scope of care medical assistance programs.** (1) A certification period is the period of time a person is determined eligible for a categorically needy (CN) scope of care medical program. Unless otherwise stated in this section, the certification period begins on the first day of the month of application and continues to the last day of the last month of the certification period.

(2) For a child eligible for the newborn medical program, the certification period begins on the child's date of birth and continues through the end of the month of the child's first birthday.

(3) For a woman eligible for a medical program based on pregnancy, the certification period ends the last day of the month that includes the sixtieth day from the day the pregnancy ends.

(4) For families the certification period is twelve months with a six-month report required as a condition of eligibility as described in WAC 388-418-0011.

(5) For children, the certification period is twelve months. Eligibility is continuous without regard to changes in circumstances other than aging out of the program, moving out of state, failing to pay a required premium(s), incarceration or death. ~~((When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:~~

(a) Approved application for cash or food assistance; or  
(b) Completed eligibility review.))

~~((For an SSI-related person the certification period is twelve months.~~

~~((7))~~ (7) When the child turns nineteen the certification period ends even if the twelve-month period is not over. The certification period may be extended past the end of the month the child turns nineteen when:

(a) The child is receiving inpatient services (see WAC 388-505-0230) on the last day of the month the child turns nineteen;

(b) The inpatient stay continues into the following month or months; and

(c) The child remains eligible except for exceeding age nineteen.

~~((8))~~ (7) For an SSI-related person the certification period is twelve months.

(8) When the medical assistance unit is also receiving benefits under a cash or food assistance program, the medical certification period is updated to begin anew at each:

(a) Approved application for cash or food assistance; or  
(b) Completed eligibility review.

(9) A retroactive certification period can begin up to three months immediately before the month of application when:

(a) The client would have been eligible for medical assistance if the client had applied; and

(b) The client received covered medical services as described in WAC 388-501-0060 and 388-501-0065.

~~((9))~~ (10) If the client is eligible only during the three-month retroactive period, that period is the only period of certification.

~~((10))~~ (11) Any months of a retroactive certification period are added to the designated certification periods described in this section.

~~((11))~~ (12) ~~((For a child determined eligible for SCHIP medical benefits as described in chapter 388-542 WAC:~~

(a) The certification periods are described in subsections (1), (5), and (7) of this section;

(b) There is not a retroactive eligibility period as described in subsections (8), (9), and (10); and

~~(c) For a child who has creditable coverage at the time of application, the certification period begins on the first of the month after the child's creditable coverage is no longer in effect, if:~~

~~(i) All other SCHIP eligibility factors are met; and~~

~~(ii) An eligibility decision is made per WAC 388-406-0035)) There is no retroactive eligibility for premium-based children's healthcare as described in WAC 388-505-0210 and chapter 388-542 WAC. If creditable coverage exists at the time of application, the certification period begins the month after creditable coverage ends.~~

AMENDATORY SECTION (Amending WSR 05-23-013, filed 11/4/05, effective 1/1/06)

**WAC 388-418-0025 Effect of changes on medical program eligibility.** (1) You continue to be eligible for ~~((Medicaid))~~ medical assistance until the department determines your ineligibility or eligibility for another medical program. This applies to you if, during a certification period, you become ineligible for, or are terminated from, or request termination from:

(a) A CN Medicaid program; ~~((or))~~

(b) A children's healthcare program; or

(c) Any of the following cash grants:

(i) TANF;

(ii) SSI; or

(iii) GA-X. See WAC 388-434-0005 for changes reported during eligibility review.

(2) If you become ineligible for refugee cash assistance, refugee medical assistance can be continued through the eight-month limit, as described in WAC 388-400-0035(4).

(3) If you receive a TANF cash grant or family medical, you are eligible for a medical extension, as described under WAC 388-523-0100, when your cash grant or family medical program is terminated as a result of:

(a) Earned income; or

(b) Collection of child or spousal support.

(4) A change in income during a certification period does affect eligibility for all medical programs except:

(a) Pregnant women's medical programs;

(b) Children's ~~((medical for newborns (F05)))~~ healthcare programs, except as specified in subsection (5); or

(c) ~~((Children's medical benefits (F06);~~

~~((Children's health program (F08); or~~

~~((e))~~ The first six months of the medical extension benefits.

(5) For a child receiving benefits under ~~((SCHIP))~~ the premium-based children's healthcare programs as described in WAC 388-505-0210 and chapter 388-542 WAC, the department must redetermine eligibility for a ~~((Medicaid))~~ nonpremium-based medical program when the family reports:

(a) Family income has decreased to less than two hundred percent federal poverty level (FPL);

(b) The child becomes pregnant;

(c) A change in family size; or

(d) The child receives SSI.

AMENDATORY SECTION (Amending WSR 05-23-013, filed 11/4/05, effective 1/1/06)

**WAC 388-450-0210 Countable income for medical programs.** (1) For purposes of medical program eligibility, a client's countable income is income which remains when:

(a) The income cannot be specifically excluded; and

(b) All appropriate deductions and disregards allowed by a specific program, have been applied.

(2) A client's countable income cannot exceed the income standard for the specific medical programs described in WAC 388-478-0065, 388-478-0070, 388-478-0075, 388-478-0080, or 388-513-1305, 388-513-1315, or 388-513-1395 unless the program allows for those limits to be exceeded.

(3) Unless modified by subsection (4) or (6) of this section, the TANF/SFA income rules, as described in this chapter, are used to determine a client's countable income for the following programs:

(a) Family medical program as described in WAC 388-505-0220;

(b) Medical extensions as described in chapter 388-523 WAC;

(c) Pregnant women's program as described in WAC 388-462-0015;

(d) Children's ~~((medical))~~ healthcare programs as described in WAC 388-505-0210; and

~~((Children's health program as described in WAC 388-505-0210; and~~

~~((f))~~ Psychiatric indigent inpatient (PII) program as described in WAC 388-865-0217.

(4) Exceptions to the TANF/SFA cash assistance methodology apply as follows:

(a) The financial responsibility of relatives when a client is applying for medical for families, children, pregnant women or for the psychiatric indigent inpatient program is specified in WAC 388-408-0055;

(b) Actual work-related child and dependent care expenses, which are the client's responsibility, are income deductions (the limits on this deduction in WAC 388-450-0170 (3) and (4) do not apply);

(c) Court or administratively ordered current or back support paid to meet the needs of legal dependents, are income deductions;

(d) Only income actually contributed to an alien client from the alien's sponsor is countable unless the sponsor signed the affidavit of support I-864 or I-864A. See subsection (5) of this section;

(e) TANF/SFA gross earned income limits as described in WAC 388-450-0165 do not apply;

(f) The fifty percent earned income deduction is not used to calculate countable income for CN scope of care programs with income levels based upon the federal poverty level (FPL). These programs are listed in subsections (3)(c)(~~7~~) and (d) (~~and (e) of this section~~). The only work related income deductions for these programs are:

(i) Ninety dollars; and

(ii) Actual work-related child and dependent care expenses, as described in (b) of this subsection; and

(iii) Child support as described in (c) of this subsection.

(g) When determining medically needy (MN) or MN scope of care coverage for children or pregnant women for the programs described in subsections (3)(c)(~~7~~) and (d), (~~and (e)~~), the exception described in subsection (4)(f) is not used as the MN income standards are not based on the FPL;

(h) (~~(A)~~) For nonrecurring lump sum ((payment is considered as income in the month the client receives payment, and a resource if the client retains the payment after the month of receipt)) payments, see chapter 388-455 WAC and WAC 388-475-0300(4);

(i) Diversion cash assistance (DCA), is not countable income;

(j) Effective April 1, 2002, the department will disregard an increase in earned income when:

(i) A family is receiving benefits under the family medical program; and

(ii) The increase occurs during the second or third month of eligibility. The disregard stops the last day of the third month of eligibility for a family medical program.

(5) When an alien's sponsor has signed the affidavit of support I-864 or I-864A, the sponsor's income and resources are counted as described in WAC 388-450-0155, 388-450-0156, 388-450-0160, and 388-470-0060.

(6) Except when this state has adopted more liberal rules, SSI income rules are used to determine a client's countable income for the following programs:

(a) SSI-related CN or MN; and

(b) Medicare savings programs. Refer to chapter 388-475 WAC.

AMENDATORY SECTION (Amending WSR 06-16-026, filed 7/24/06, effective 8/24/06)

**WAC 388-478-0075 Medical programs—Monthly income standards based on the federal poverty level (FPL).** (1) Each year, the federal government publishes new federal poverty level (FPL) income standards in the Federal Register found at <http://aspe.hhs.gov/poverty/index.shtml>. The income standards for the following medical programs change on the first of April every year based on the new FPL:

(a) (~~Children's health program is one hundred percent of FPL;~~

(~~b~~)) Pregnant women's program up to one hundred eighty-five percent of FPL;

(~~(e))~~) (~~b~~) Children's (~~(categorically needy))~~ healthcare programs up to two hundred percent of FPL;

(~~(d))~~) (~~c~~) Healthcare for workers with disabilities (HWD) up to two hundred twenty percent of FPL; and

(~~(e) The state children's health insurance program (SCHIP) is~~) (~~d~~) Premium-based coverage under the children's healthcare programs over two hundred percent of FPL but not over two hundred fifty percent of FPL.

(2) The department uses the FPL income standards to determine:

(a) The mandatory or optional Medicaid status of an individual; and

(b) Premium amount, if any, for a (~~(Medicaid))~~ child.

(3) There are no resource limits for the programs under this section.

AMENDATORY SECTION (Amending WSR 05-23-013, filed 11/4/05, effective 1/1/06)

**WAC 388-505-0210 Children's (~~(medical eligibility))~~ healthcare programs.** (~~(1) A child under the age of one is eligible for categorically needy (CN) medical assistance when:~~

(a) The child's mother was eligible for and receiving coverage under a medical program at the time of the child's birth; and

(b) The child remains with the mother and resides in the state;

(2) Children under the age of nineteen are eligible for CN medical assistance when they meet the requirements for:

(a) Citizenship or U.S. national status as defined in WAC 388-424-0001 or "qualified alien" status as described in WAC 388-424-0006 (1) or (4);

(b) State residence as described in chapter 388-468 WAC;

(c) A Social Security number as described in chapter 388-476 WAC; and

(d) Family income does not exceed two hundred percent federal poverty level (FPL) as described in WAC 388-478-0075 at each application or review.

(3) Children under the age of nineteen are eligible for the state children's health insurance program (SCHIP), as described in chapter 388-542 WAC, when:

(a) They meet the requirements of subsection (2)(a), (b), and (c) of this section;

(b) They do not have other creditable health insurance coverage; and

(c) Family income exceeds two hundred percent of the federal poverty level (FPL), but does not exceed two hundred fifty percent of the FPL as described in WAC 388-478-0075.

(4) Children under the age of twenty-one are eligible for CN medical assistance when they meet:

(a) Citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c) of this section;

(b) Income levels described in WAC 388-478-0075; and

(c) One of the following criteria:

(i) Reside, or are expected to reside, in a medical hospital, intermediate care facility for mentally retarded (ICF/MR), or nursing facility for thirty days or more;

(ii) Reside in a psychiatric or chemical dependency facility for ninety days or more;

(iii) Are in foster care; or

(iv) Receive subsidized adoption services.

~~(d) For a child meeting the criteria (c)(i) of this subsection, the only parental income the department considers available to the child is the amount the parent chooses to contribute.~~

~~(e) For a child meeting the criteria in (c)(ii) of this subsection, parental income is counted as described in WAC 388-408-0055 (1)(e).~~

~~(5) Children are eligible for CN medical assistance if they:~~

~~(a) Receive Supplemental Security Income (SSI) payments based upon their own disability; or~~

~~(b) Received SSI cash assistance for August 1996, and except for the August 1996 passage of amendments to federal disability definitions, would be eligible for SSI cash assistance.~~

~~(6) Children under the age of nineteen are eligible for medically needy (MN) medical assistance as defined in chapter 388-500 WAC when they:~~

~~(a) Meet citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c); and~~

~~(b) Have income above two hundred fifty percent federal poverty level (FPL) as described in WAC 388-478-0075.~~

~~(7) A child is eligible for SSI-related MN when the child:~~

~~(a) Meets the blind and/or disability criteria of the federal SSI program or the condition in subsection (5)(b); and~~

~~(b) Has countable income above the level described in WAC 388-478-0070(1).~~

~~(8) Noncitizen children under the age of eighteen, including visitors or students from another country, undocumented children and "qualified alien" children as defined in WAC 388-424-0001 who are ineligible due to the five year bar as described in WAC 388-424-0006(3), are eligible for the state-funded children's health program, if:~~

~~(a) The department determines the child ineligible for any CN or MN scope of care medical program;~~

~~(b) Family income does not exceed one hundred percent federal poverty level (FPL) as described in WAC 388-478-0075;~~

~~(c) They meet state residence as described in chapter 388-468 WAC; and~~

~~(d) Program limits established by the legislature would not result in an overexpenditure of funds.~~

~~(9) There are no resource limits for children under CN, MN, SCHIP, or children's health coverage.~~

~~(10) Children may also be eligible for:~~

~~(a) Family medical as described in WAC 388-505-0220;~~

~~or~~

~~(b) Medical extensions as described in WAC 388-523-0100.~~

~~(11) Except for a client described in subsection (4)(e)(i) and (ii), an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage)) Funding for children's healthcare coverage may come through Title XIX (Medicaid) or Title XXI for the Social Security Act (SCHIP), or through state-funded programs. There are no resource limits for children's medical programs, but children must meet the eligibility criteria below to qualify for these programs.~~

(1) Newborns are eligible for federally matched categorically needy (CN) coverage through their first birthday when:

(a) The child's mother was eligible for and receiving medical assistance at the time of the child's birth; and

(b) The child remains with the mother and resides in the state.

(2) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or qualified aliens as described in WAC 388-424-0001 and WAC 388-424-0006 (1) and (4) are eligible for federally matched CN coverage under children's healthcare programs when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) A social security number or application as described in chapter 388-476 WAC;

(c) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

(d) Family income is at or below two-hundred percent federal poverty level (FPL), as described in WAC 388-478-0075 at each application or review; or

(e) They received supplemental security income (SSI) cash payments in August 1996 and would continue to be eligible for those payments except for the August 1996 passage of amendments to federal disability definitions; or

(f) They are eligible for SSI-related CN or MN coverage.

(3) Noncitizen children under the age of nineteen, who do not meet qualified alien status as described in WAC 388-424-0006 (1) or (4), or are ineligible due to the five-year ban as described in WAC 388-424-0006(3), are eligible for state-funded CN coverage under children's healthcare programs when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC; and

(b) Family income is at or below two hundred percent FPL at each application or review.

(4) Children under the age of nineteen are eligible for premium-based CN coverage under children's healthcare programs as described in chapter 388-542 WAC when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) Family income is over two-hundred percent FPL, as described in WAC 388-478-0075, but not over two-hundred fifty percent FPL at each application or review;

(c) They do not have other creditable health insurance as described in WAC 388-542-0050; and

(d) They pay the required monthly premiums as described in WAC 388-505-0211

(5) Children under age nineteen are eligible for the medically needy (MN) Medicaid program when they meet:

(a) Citizenship or immigrant status, state residence, and social security number requirements as described in subsection (2)(a), (b), and (c); and

(b) They are ineligible for other federal Medicaid programs; and

(c) Meet their spenddown obligation as described in WAC 388-519-0100 and 388-519-0110.

(6) Children under the age of twenty-one who reside or expect to reside in a medical institution, intermediate care facility for the mentally retarded (ICF/MR), hospice care cen-

ter, nursing home, or psychiatric facility may be eligible for medical coverage. See WAC 388-505-0230 "Family related institutional medical" and WAC 388-513-1320 "Determining institutional status for long-term care."

(7) Children who are in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state, are eligible for federally matched CN Medicaid coverage through the month of their:

(a) Eighteenth birthday;

(b) Twenty-first birthday if children's administration determines they remain eligible for continued foster care services; or

(c) Twenty-first birthday if they were in foster care on their eighteenth birthday and that birthday was on or after July 22, 2007.

(8) Children who receive subsidized adoption services are eligible for federally matched CN Medicaid coverage.

(9) Children under age of nineteen may also be eligible for:

(a) Family medical as described in WAC 388-505-0220;

(b) Medical extensions as described in WAC 388-523-0100; or

(c) SSI-related MN if they:

(i) Meet the blind and/or disability criteria of the federal SSI program, or the condition of subsection (2)(e); and

(ii) Have countable income above the level described in WAC 388-478-0070(1).

(10) Children who are ineligible for other children's healthcare programs due to citizenship or immigrant status requirements may be eligible for the alien emergency medical program (AEM) if they meet the following criteria:

(a) They have a documented emergent medical condition as defined in WAC 388-500-0005;

(b) They meet the other AEM program requirements as described in WAC 388-438-0110; and

(c) They have income that exceeds children's healthcare program standards; or

(d) They are disqualified from receiving premium-based children's healthcare coverage as described in subsection (4) of this section because of creditable coverage or nonpayment of premiums.

(11) Except for a client described in subsection (6), an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for children's healthcare programs.

**AMENDATORY SECTION** (Amending WSR 04-16-064, filed 7/30/04, effective 8/30/04)

**WAC 388-505-0211 Premium requirements for ((SCHIP)) premium-based children's healthcare programs.** (1) For the purposes of this chapter, "premium" means an amount paid for medical coverage.

(2) ~~((For a child found eligible for the state children's health insurance program (SCHIP) under WAC 388-505-0210(3), payment of a premium is required as a condition of eligibility))~~ Payment of a premium is required as a condition of eligibility for premium-based children's healthcare coverage, as described in WAC 388-505-0210(4), unless the child is:

(a) Pregnant; or

(b) An American Indian or Alaska native.

(3) ~~((A child is exempt from the premium requirement if the child meets one of the following:~~

~~(a) The child is pregnant; or~~

~~(b) The child is an American Indian or Alaska native.~~

~~(4))~~ The premium requirement begins the first of the month following the determination of eligibility. There is no premium requirement for medical coverage received in a month or months before the determination of eligibility.

~~((5))~~ (4) The premium amount for the assistance unit is based on the net available income as described in WAC 388-450-0005. If the household includes more than one assistance unit, the premium amount billed for the assistance units may be different amounts.

~~((6))~~ (5) The premium amount for each ~~((SCHIP))~~ eligible child is fifteen dollars per month per child, up to a maximum of forty-five dollars per month, per household.

~~((7) The department bills the family for the lesser of:~~

~~(a) A maximum of forty-five dollars per month; or~~

~~(b) The total of the highest premiums, for up to three children in the assistance unit.~~

~~(8) Premium payment is a condition of eligibility for assistance units that include SCHIP children-))~~ (6) All ~~((SCHIP))~~ children in an assistance unit are ineligible for medical coverage when the head of household~~((s))~~ fails to pay required premium payments ~~((are))~~ for three consecutive months ~~((in arrears))~~. ~~((Three months in arrears means a balance exists for three months-))~~

~~((9))~~ (7) When the department terminates the medical coverage of a ~~((SCHIP))~~ child due to nonpayment of premiums, the child has a three-month period of ineligibility beginning the first of the following month. The three-month period of ineligibility is rescinded only when the:

(a) Past due premiums are paid in full prior to the begin date of the period of ineligibility; or

~~(b) ((SCHIP child has a change in circumstances such that))~~ The child becomes eligible for ~~((Medicaid))~~ a nonpremium-based medical program. The department ~~((cannot))~~ will not rescind the three-month period of ineligibility for reasons other than the criteria described in this subsection.

~~((10))~~ (8) The department writes off past-due premiums after twelve months.

~~((11))~~ (9) When the designated three-month period of ineligibility is over, all past due premiums that are an obligation of the head of household must be paid or written off before a child can become eligible for ~~((SCHIP))~~ premium-based children's healthcare.

~~((12))~~ (10) A family cannot designate partial payment of the billed premium amount as payment for a specific child in the assistance unit. The full ~~((amount of the))~~ premium ~~((bill))~~ amount is the obligation of the head of household of the assistance unit. A family can decide to request medical coverage only for certain children in the assistance unit, if they want to reduce premium obligation.

~~((13))~~ (11) A change that affects the premium amount is effective the month after the change is reported and processed.

~~((14))~~ (12) A sponsor or other third party may pay the premium on behalf of the child or children in the assistance

unit. The premium payment requirement remains the obligation of head of household of the assistance unit. The failure of a sponsor or other third party to pay the premium does not eliminate the:

- (a) Establishment of the period of ineligibility described in subsection ~~((9))~~ (7) of this section; or
- (b) Obligation of the head of household to pay past-due premiums.

AMENDATORY SECTION (Amending WSR 06-15-134, filed 7/19/06, effective 8/19/06)

**WAC 388-542-0010 Purpose and scope of ~~((SCHIP))~~ premium-based children's healthcare programs.** ~~((+))~~ The department administers ~~((the state children's health insurance program (SCHIP) to provide access to))~~ premium-based children's healthcare through a combination of state and federal funding sources as described below:

~~((a) Medical care for children whose family income exceeds the limit for Medicaid eligibility but is not greater than two hundred fifty percent of the federal poverty level (FPL); and~~

~~(b) Prenatal care and medical services for a pregnant woman;~~

~~(i) Who is ineligible for Medicaid due to immigration status; and~~

~~(ii) Whose family income is at or below one hundred eighty five percent FPL))~~ (1) Federally-matched healthcare coverage as authorized by Title XXI of the social security act (SCHIP) and RCW 74.09.450 for citizen and federally qualified immigrant children whose family income is above two hundred percent of the federal poverty level (FPL) but is not above two hundred fifty percent of the FPL.

(2) ~~((SCHIP is authorized by Title XXI of the Social Security Act and by RCW 74.09.450))~~ State funded healthcare coverage for noncitizen children with family income above two hundred percent FPL, but not above two hundred fifty percent FPL, who are ineligible for Title XXI federally matched children's healthcare coverage due to immigration issues.

AMENDATORY SECTION (Amending WSR 06-07-014, filed 3/3/06, effective 4/3/06)

**WAC 388-542-0020 Other rules that apply to ~~((SCHIP))~~ premium-based children's healthcare programs.** In addition to the rules of this chapter, ~~((SCHIP))~~ premium-based children's healthcare clients are subject to the following rules:

(1) Chapter 388-538 WAC, Managed care (except WAC 388-538-061, 388-538-063, and 388-538-065) if the child is covered under federally matched CN coverage;

(2) WAC 388-505-0210 ~~((3) and (8))~~ (4), Children's ~~((medical))~~ healthcare program eligibility;

(3) WAC 388-505-0211, Premium requirements for ~~((SCHIP children))~~ premium-based children's healthcare programs;

(4) WAC 388-416-0015~~((+0))~~ (12), Certification periods for categorically needy (CN) scope of care medical assistance programs; and

(5) WAC 388-418-0025 ~~((4) and (5))~~, ~~((Change of circumstance))~~ Effect of changes on medical program eligibility.

AMENDATORY SECTION (Amending WSR 04-16-064, filed 7/30/04, effective 8/30/04)

**WAC 388-542-0050 Definitions for ~~((SCHIP terms))~~ premium-based children's healthcare programs.** The following definitions, as well as those found in WAC 388-538-050 and in 388-500-0005 Medical definitions, apply to ~~((the state children's health insurance program (SCHIP))~~ premium-based children's healthcare programs.

"**Creditable coverage**" means most types of public and private health coverage, except Indian health services, that provides access to physicians, hospitals, laboratory services, and radiology services. This term applies to the coverage whether or not the coverage is equivalent to that offered under ~~((SCHIP))~~ premium-based children's healthcare programs. "Creditable coverage" is described in 42 U.S.C. Sec. 1397jj.

"**Employer-sponsored dependent coverage**" means creditable health coverage for dependents offered by a family member's employer or union, for which the employer or union may contribute in whole or part towards the premium. Extensions of such coverage (e.g., COBRA extensions) also qualify as employer-sponsored dependent coverage as long as there remains a contribution toward the premiums by the employer or union.

AMENDATORY SECTION (Amending WSR 04-16-064, filed 7/30/04, effective 8/30/04)

**WAC 388-542-0300 Waiting period for ~~((SCHIP))~~ premium-based healthcare programs coverage following employer coverage.** (1) The ~~((medical assistance administration (MAA))~~ department requires applicants to serve a waiting period of four full consecutive months before ~~((SCHIP))~~ receiving premium-based children's healthcare programs coverage if the client or family:

(a) Chooses to end employer sponsored dependent coverage. The waiting period begins the day after the employment-based coverage ends; or

(b) Fails to exercise an optional coverage extension (e.g., COBRA) that meets the following conditions. The waiting period begins on the day there is a documented refusal of the coverage extension when the extended coverage is:

(i) Subsidized in part or in whole by the employer or union;

(ii) Available and accessible to the applicant or family; and

(iii) At a monthly cost to the family meeting the limitation of subsection (2)(b)(iv).

(2) ~~((MAA))~~ The department does not require a waiting period prior to ~~((SCHIP))~~ coverage under premium-based children's healthcare programs when:

(a) The client or family member has a medical condition that, without treatment, would be life-threatening or cause serious disability or loss of function; or

(b) The loss of employer-sponsored dependent coverage is due to any of the following:

- (i) Loss of employment with no post-employment subsidized coverage as described in subsection (1)(b);
- (ii) Death of the employee;
- (iii) The employer discontinues employer-sponsored dependent coverage;
- (iv) The family's total out-of-pocket maximum for employer-sponsored dependent coverage is fifty dollars per month or more;
- (v) The plan terminates employer-sponsored dependent coverage for the client because the client reached the maximum lifetime coverage amount;
- (vi) Coverage under a COBRA extension period expired;
- (vii) Employer-sponsored dependent coverage is not reasonably available (e.g., client would have to travel to another city or state to access care); or
- (viii) Domestic violence caused the loss of coverage for the victim.

**WSR 08-05-099****PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed February 15, 2008, 2:36 p.m., effective March 17, 2008]

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

Purpose: The adopted rule adds sections to chapter 388-78A WAC regarding due process rights for persons alleged to have abandoned, abused, neglected, exploited, or financially exploited boarding home residents/resident protection program (RPP). The adopted rule clarifies and defines terms in WAC 388-78A-2020 Definitions and amends WAC 388-78A-2470 Criminal history, for clarity. WAC 388-78A-2600 Policies and procedures, is amended to clarify training requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-2020, 388-78A-2470, and 388-78A-2600.

Statutory Authority for Adoption: RCW 18.20.090.

Other Authority: Chapters 18.20 and 74.34 RCW.

Adopted under notice filed as WSR 07-21-140 on October 24, 2007.

Changes Other than Editing from Proposed to Adopted Version:

**WAC 388-78A-2020 Definitions.**

The definition of "Financial exploitation" was moved from the "abuse" definition within this section to be a stand alone definition.

**WAC 388-78A-2470 Criminal history background checks disclosure and background inquiries.****WAC 388-78A-3420 Reporting preliminary finding.**

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

~~(a) The federal or state department or agency list of individuals found to have abandoned, abused, neglected, exploited or financially exploited a vulnerable adult;~~

~~(b) Other divisions within the department;~~

~~(c) The agency or program identified under RCW 74.34.068 with which the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident is associated as an employee;~~

~~(d) The employer or program that is currently associated with the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident, if known;~~

~~(e) Law enforcement; and~~

~~(f) Other investigative authorities consistent with chapter 74.34 RCW.~~

(2) The notification will identify the finding as a preliminary finding.

**WAC 388-78A-3440 Hearing procedures to dispute preliminary finding.**

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

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

(3) If an administrative law judge within the office of administrative hearings determines that a preponderance of the evidence supports the preliminary finding that the individual ~~alleged to have~~ abandoned, abused, neglected, exploited, or financially exploited a resident, then the administrative law judge will issue an initial order.

**WAC 388-78A-3450 Finalizing a preliminary finding.**

(1) A preliminary finding becomes a final finding when:

(a) The department notifies the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident there is a preliminary finding pursuant to WAC 388-78A-3410; and

(b) The individual alleged to have abandoned, abused, neglected, exploited or financially exploited a resident does not ask for an administrative hearing; or

(c) 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 individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident fails to appeal the initial order to the department's board of appeals; or

(d) The board of appeals issues a final order upholding the finding.

(2) A final finding is permanent.

(3) A final finding will only be removed from the department or agency list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult if: ~~(a) It is rescinded following judicial review, or~~

~~(b) The department may decide to remove a single finding of neglect from its records based upon a written petition by the individual found to have abandoned, abused, neglected, exploited, or financially exploited a resident pro-~~

vided that at least one calendar year must have passed between the date a request was made to remove the finding of neglect and the date the final finding was finalized and recorded.

**WAC 388-78A-3480 Disclosure of investigative and finding information.**

(1) Confidential information about residents and mandated reporters received from the department may only be used by the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident to challenge findings through the appeal process.

(2) Confidential information such as the names and other personal identifying information of the reporter, witnesses, or the resident will be redacted from documents unless release of that information is consistent with chapter 74.34 RCW and other applicable state and federal laws.

**The changes were made because:**

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
<p><b>WAC 388-78A-3420 Reporting preliminary finding.</b> Delete subsection (1)(a) because the finding is a preliminary finding.</p> <p><b>WAC 388-78A-3440 Hearing procedures to dispute preliminary finding.</b> Suggestion to enhance clarity of subsection (3).</p> <p><b>WAC 388-78A-3450 Finalizing a preliminary finding.</b> (1) The department should not include in CR-102 draft language (WAC 388-78A-3450 (3)(b)) that the department may remove a person's name from a department or agency list, upon petition of the person, if there is only one finding of neglect and at least one year has passed. This seems to conflict with keeping boarding home residents safe. (2) Subsection (3)(a) should be a stand-alone subsection. (3) Subsection (3)(b) is confusing with all the allegations listed. Only list neglect.</p>	<p><b>WAC 388-78A-3420 Reporting preliminary finding.</b> A clarifying change was made in response to this comment.</p> <p><b>WAC 388-78A-3440 Hearing procedures to dispute preliminary finding.</b> A clarifying change was made in response to this comment.</p> <p><b>WAC 388-78A-3450 Finalizing a preliminary finding.</b> (1) No change was made in response to this comment. The department chose to retain its decision-making authority and discretion in WAC 388-78A-3450 Finalizing a preliminary finding, about removal of someone, with a single finding of neglect, from a department or agency list. Retaining this authority allows the department to consider individual cases that may merit review. (2) A clarifying change was made in response to this comment. Subsection (3) was revised. A new subsection (4) was also created. (3) A clarifying change was made in response to this comment. Subsection (3) was revised. A new subsection (4) was also created. References to other allegations were deleted.</p>

A final cost-benefit analysis is available by contacting Todd Henry, Mailstop 45600, Department of Social and Health Services, P.O. Box 45600, Olympia, WA 98513, phone (360) 725-2580, fax (360) 438-7903, e-mail henryte@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 9, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 3, Repealed 0.

Date Adopted: February 12, 2008.

Robin Arnold-Williams  
Secretary

AMENDATORY SECTION (Amending WSR 06-13-028, filed 6/13/06, effective 7/14/06)

**WAC 388-78A-2020 Definitions. "Abandonment"** means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable 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 resident. In instances of abuse of a resident 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. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"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 resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the 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 the use of chemical restraints or physical restraints;

(3) **"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 and a resident, whether or not it is consensual;

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

~~(5) **"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)).

**"Activities of daily living"** means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

**"Adult day services"** means care and services provided to a nonresident individual by the boarding home on the boarding home premises, for a period of time not to exceed ten continuous hours, and does not involve an overnight stay.

**"Ambulatory"** means capable of walking or traversing a normal path to safety without the physical assistance of another individual:

(1) **"Nonambulatory"** means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) **"Semiambulatory"** means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

**"Applicant"** means the person, as defined in this section, that has submitted, or is in the process of submitting, an application for a boarding home license.

**"Basic services"** means housekeeping services, meals, nutritious snacks, laundry, and activities.

**"Bathing fixture"** means a bathtub, shower or sit-down shower.

**"Bathroom"** means a room containing at least one bathing fixture.

**"Boarding home"** means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, a boarding home that is licensed for three to six residents prior to or on July 1, 2000, may maintain its boarding home license as long as it is continually licensed as a boarding home. "Boarding home" does not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department of Housing and Urban Development. "Boarding home" may also include persons associated with the boarding home to carry out its duties under this chapter.

**"Building code"** means the building codes and standards adopted by the Washington state building code council.

**"Caregiver"** means anyone providing hands-on personal care to another person including, but not limited to: Cuing, reminding or supervision of residents, on behalf of a boarding home, except volunteers who are directly supervised. 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, is on the premises, and is quickly and easily available to the caregiver.

**"Construction review services"** means the office of construction review services within the Washington state department of health.

**"Continuing care contract"** means, as stated in RCW 70.38.025, a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

**"Continuing care retirement community"** means, as stated in RCW 70.38.025, an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

**"Contractor"** means an agency or person who contracts with a licensee to provide resident care, services or equipment.

**"Crimes relating to financial exploitation"** means the same as "crimes relating to financial exploitation" as defined in RCW 43.43.830 or 43.43.842.

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

**"Dietitian"** means an individual certified under chapter 18.138 RCW.

**"Document"** means to record, with signature, title, date and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, accident, occurrence or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events or activities that are required by law, rule or policy.

**"Domiciliary care"** means:

(1) Assistance with activities of daily living provided by the boarding home either directly or indirectly; or

(2) Health support services, if provided directly or indirectly by the boarding home; or

(3) Intermittent nursing services, if provided directly or indirectly by the boarding home.

**"Enforcement remedy"** means one or more of the department's responses to a boarding home's noncompliance with chapter 18.20 RCW and this chapter, as authorized by RCW 18.20.190.

**"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.

**"Food service worker"** means according to chapter 246-217 WAC an individual who works (or intends to work) with or without pay in a food service establishment and handles unwrapped or unpackaged food or who may contribute to the transmission of infectious diseases through the nature

of his/her contact with food products and/or equipment and facilities. This does not include persons who simply assist residents with meals.

**"General responsibility for the safety and well-being of the resident"** means the provision of the following:

- (1) Prescribed general low sodium diets;
- (2) Prescribed general diabetic diets;
- (3) Prescribed mechanical soft foods;
- (4) Emergency assistance;
- (5) Monitoring of the resident;
- (6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;
- (7) Coordinating health care services with outside health care providers consistent with WAC 388-78A-2350;
- (8) Assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;
- (9) Observation of the resident for changes in overall functioning;
- (10) Blood pressure checks as scheduled;
- (11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or
- (12) Medication assistance as permitted under RCW 69.41.085 and as described in RCW 69.41.010 and chapter 246-888 WAC.

**"Harm"** means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

**"Health support services"** means any of the following optional services:

- (1) Blood glucose testing;
- (2) Puree diets;
- (3) Calorie controlled diabetic diets;
- (4) Dementia care;
- (5) Mental health care; or
- (6) Developmental disabilities care.

**"Independent living unit"** means:

- (1) Independent senior housing;
- (2) Independent living unit in a continuing care retirement community or other similar living environments;
- (3) Boarding home unit where domiciliary services are not provided; or
- (4) Boarding home unit where one or more items listed under "general responsibilities" are not provided.

**"Independent senior housing"** means an independent living unit occupied by an individual or individuals sixty or more years of age.

**"Infectious"** means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

**"Licensee"** means the person, as defined in this chapter, to whom the department issues the boarding home license.

**"Licensed resident bed capacity"** means the resident occupancy level requested by the licensee and approved by the department. All residents receiving domiciliary care or the items or services listed under general responsibility for the safety and well-being of the resident as defined in this

section count towards the licensed resident bed capacity. Adult day services clients do not count towards the licensed resident bed capacity.

**"Majority owner"** means any person that owns:

- (1) More than fifty percent interest; or
- (2) If no one person owns more than fifty percent interest, the largest interest portion; or
- (3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

**"Manager"** means the person defined in this chapter, providing management services on behalf of the licensee.

**"Management agreement"** means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

**"Mandated reporter":**

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of 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.

**"Maximum facility capacity"** means the maximum number of individuals that the boarding home may serve at any one time, as determined by the department.

- (1) The maximum facility capacity includes all residents and respite care residents and adult day services clients.
- (2) The maximum facility capacity is equal to the lesser of:

(a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3); or

(b) Twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); or

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-3030; or

(d) For boarding homes licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC 388-78A-3050; or

(e) For boarding homes licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC 388-78A-3050.

(3) For the purposes of providing adult day services consistent with WAC 388-78A-2360, one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional sixty square feet of day room area greater than the area produced by multiplying the total number of approved bed spaces by twenty square feet, provided that:

(a) There is a least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

(b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); and

(c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

**"Medication administration"** means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

**"Medication assistance"** means assistance with self-administration of medication rendered by a nonpractitioner to a resident of a boarding home in accordance with chapter 246-888 WAC.

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

**"Medication service"** means any service provided either directly or indirectly by a boarding home related to medication administration, medication administration provided through nurse delegation, medication assistance, or resident self-administration of medication.

**"Neglect"** means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; 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 resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

**"Nonresident individual"** means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in a boarding home and may receive one or more of the services listed in WAC 388-78A-2030 (2)(a) through (g). A nonresident individual may not receive domiciliary care as defined in this section, directly or indirectly by the boarding home, and may not receive the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section, except during the time the person is receiving adult day services as defined in this section.

**"Nonpractitioner"** means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter 69.41 RCW.

**"Nurse"** means an individual currently licensed under chapter 18.79 RCW as either a:

(1) **"Licensed practical nurse"** (LPN); or

(2) **"Registered nurse"** (RN).

**"Over-the-counter (OTC) medication"** means any medication that may be legally purchased without a prescriptive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

**"Person"** means any individual, firm, partnership, corporation, company, association, joint stock association or any other legal or commercial entity.

**"Physician"** means an individual licensed under chapter 18.57 or 18.71 RCW.

**"Practitioner"** includes a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

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

**"Prescriber"** means a health care practitioner authorized by Washington state law to prescribe drugs.

**"Problem"** means a violation of any WAC or RCW applicable to the operation of a boarding home:

(1) **"Recurring problem"** means, for all purposes other than those described in RCW 18.20.400, that the department has cited the boarding home for a violation of WAC or RCW and the circumstances of (a) or (b) of this subsection are present:

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(c) If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient.

(d) When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that boarding home if any person affiliated with the new licensee was affiliated with the prior licensee at the same boarding home. A person is considered affiliated with the licensee if the person is an applicant for the boarding home license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(2) **"Serious problem"** means:

(a) There has been a violation of a WAC or RCW; and

(b) Significant harm has actually occurred to a resident;

or

(c) It is likely that significant harm or death will occur to a resident.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected. When a change in licensees occurs, the new licensee is responsible for correcting any remaining violations that may exist, including complying with any plan of correction in effect immediately prior to the change in licensees.

**"Prospective resident"** means an individual who is seeking admission to a licensed boarding home and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

**"Reasonable accommodation"** and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the boarding home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of boarding home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the boarding home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

**"RCW"** means Revised Code of Washington.

**"Records"** means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

**"Resident"** means an individual who:

(1) Chooses to reside in a boarding home, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the boarding home;

(3) Receives basic services; and

(4) Receives one or more of the services listed under general responsibility for the safety and well-being of the resident, and may receive domiciliary care or respite care provided directly, or indirectly, by the boarding home.

**"Resident's representative"** means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the boarding home and to receive information from the boarding home if there is no legal representative. The resi-

dent's representative may not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88.010 (1)(e).

**"Respite care"** means short-term care for any period in excess of twenty-four continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

**"Restraint"** means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) Confinement, unless agreed to as provided in WAC 388-78A-2370;

(2) **"Chemical restraint"** which means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms; and

(3) **"Physical restraint"** which 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 not required to treat the resident's medical symptoms.

**"Room"** means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom or closet.

**"Significant change"** means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

**"Special needs"** means a developmental disability, mental illness, or dementia.

**"Staff person"** means any boarding home employee or temporary employee or contractor, whether employed or retained by the licensee or any management company, or volunteer.

**"State fire marshal"** means the director of fire protection under the direction of the chief of the Washington state patrol.

**"Toilet"** means a disposal apparatus used for urination and defecation, fitted with a seat and flushing device.

**"Volunteer"** means an individual who interacts with residents without reimbursement.

**"Vulnerable adult"** (~~means "vulnerable adult" as defined in chapter 74.34 RCW.~~) includes a person:

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

(2) Found incapacitated under chapter 11.88 RCW; or

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

(4) Admitted to any facility, including any boarding home; or

(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 an individual provider.

(7) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

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

"WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the Washington state department of labor and industries.

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

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

**WAC 388-78A-2470 Criminal history disclosure and background ((checks)) inquires.** (1) This section applies to any individual associated with the licensee or boarding home who may have unsupervised access to residents, including but not limited to:

- (a) Employees;
- (b) Managers;
- (c) Volunteers who are not residents;
- (d) Contractors; and
- (e) Students.

(2) The boarding home must:

(a) Ensure any individual associated with the licensee or boarding home who may have unsupervised access to residents has had a background check of conviction records, pending charges and disciplinary board decisions completed within the past two years, and is repeated every two years thereafter, and that individual has not been:

- (i) Convicted of a crime against children or other persons as defined in RCW 43.43.830 or 43.43.842;
- (ii) Convicted of crimes relating to financial exploitation as defined in RCW 43.43.830 or 43.43.842;
- (iii) Found in any disciplinary board final decision to have abused a vulnerable adult as defined in RCW 43.43.830;
- (iv) The subject in a protective proceeding under chapter 74.34 RCW;
- (v) Convicted of criminal mistreatment; or
- (vi) Found by the department to have abandoned, abused, neglected or exploited a minor, or abandoned, abused, neglected, exploited, or financially exploited a ((minor or)) vulnerable person, provided the individual was offered an administrative hearing to contest the finding, and the finding was upheld, or the individual failed to timely appeal the finding.

(b) Not hire or retain, directly or by contract, or accept as a volunteer, any individual prohibited from having unsupervised access to residents under (a) of this subsection, except as provided in subsection (6) of this section and RCW 43.43.842.

(3) Prior to first starting his or her duties, the boarding home must:

(a) Require each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents to disclose, consistent with RCW 43.43.834(2), whether he or she:

(i) Has been convicted of a crime, including any of the following as defined in RCW 43.43.830:

- (A) All crimes against children or their persons;
- (B) All crimes relating to financial exploitation; and
- (C) All crimes relating to drugs;

(ii) Has had findings made against him or her in any civil adjudicative proceeding as defined in RCW 43.43.830; or

(iii) Has both convictions for (i) and findings made against him or her under (ii).

(b) Require each individual making the disclosures required in subsection (3)(a) of this section:

- (i) To make the disclosures in writing;
- (ii) To swear under penalty of perjury that the contents of the disclosure are accurate; and
- (iii) To sign the disclosure statement.

(4) Prior to first starting his or her duties, the boarding home must take one or more of the following three actions for each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents:

(a) Initiate a background check on the individual through the department, which includes taking the following actions:

(i) Informing the individual that a background check is required.

(ii) Requiring the individual to complete and sign a DSHS background authorization form prior to the individual having unsupervised access to residents;

(iii) Submitting all background check authorization forms to the department's:

(A) Aging and disability services administration with the initial application for licensure; and

(B) Background check central unit for currently licensed boarding homes.

(iv) Verbally informing the named individual of his/her individual background check results and offering to provide him or her a copy of the background check results within ten days of receipt.

(b) Obtain from the individual's prior employer a copy of the completed criminal background inquiry information for the individual, subject to the following conditions:

(i) The prior employer was a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW;

(ii) The nursing home, boarding home or adult family home providing completed criminal background inquiry information for the individual is reasonably known to be the individual's most recent employer;

(iii) No more than twelve months has elapsed from the date the individual was employed by the nursing home, boarding home or adult family home and the date of the individual's current application;

(iv) The background inquiry for the individual is no more than two years old; and

(v) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in RCW 43.43.842.

(c) When using staff persons from a home health, hospice, or home care agency licensed under chapter 70.127 RCW, or a nursing pool registered under chapter 18.52C RCW, the boarding home must establish, maintain and follow a written agreement with the agency or pool to ensure the requirements of subsection (2) of this section are met for the agency or pool staff who may work in the boarding home.

(5) The boarding home must ensure that all disclosure statements, and background check results obtained by the boarding home, are:

(a) Maintained on-site in a confidential and secure manner;

(b) Used for employment purposes only;

(c) Not disclosed to any individual except:

(i) The individual named on the background check result;

(ii) Authorized state and federal employees;

(iii) The Washington state patrol auditor; and

(iv) As otherwise authorized in chapter 43.43 RCW.

(d) Retained and available for department review:

(i) During the individual's employment or association with a facility; and

(ii) At least two years following termination of employment or association with a facility.

(6) The boarding home may conditionally hire, directly or by contract, an individual having unsupervised access to residents pending a background inquiry, provided the boarding home:

(a) Obtains a criminal history background check authorization form from the individual prior to the individual beginning work;

(b) Submits the criminal history background check authorization form to the department no later than one business day after the individual started working; and

(c) Has received three positive references for the individual.

(7) The department may require the boarding home or any other individual associated with the boarding home who has unsupervised access to residents to complete additional disclosure statements or background inquiries if the department has reason to believe that offenses specified under RCW 43.43.830 have occurred since completion of the previous disclosure statement or background inquiry.

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

**AMENDATORY SECTION** (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

**WAC 388-78A-2600 Policies and procedures.** (1) The boarding home must develop and implement policies and procedures in support of services that are provided and are necessary to:

(a) Maintain or enhance the quality of life for residents including resident decision-making rights;

(b) Provide the necessary care and services for residents, including those with special needs;

(c) Safely operate the boarding home; and

(d) Operate in compliance with state and federal law, including, but not limited to, chapters 7.70, 11.88, 11.92, 11.94, 69.41, 70.122, 70.129, and 74.34 RCW, and any rules promulgated under these statutes.

(2) The boarding home must develop, implement and train staff persons on policies and procedures to address what staff persons must do:

(a) Related to suspected abandonment, abuse, neglect, exploitation, or financial exploitation of any resident;

(b) When there is reason to believe a resident is not capable of making necessary decisions and no substitute decision maker is available;

(c) When a substitute decision maker is no longer appropriate;

(d) When a resident stops breathing or a resident's heart appears to stop beating, including, but not limited to, any action staff persons must take related to advance directives and emergency care;

(e) When a resident does not have a personal physician or health care provider;

(f) In response to medical emergencies;

(g) When there are urgent situations in the boarding home requiring additional staff support;

(h) In the event of an internal or external disaster, consistent with WAC 388-78A-2700;

(i) To supervise and monitor residents, including accounting for residents who leave the premises;

(j) To appropriately respond to aggressive or assaultive residents, including, but not limited to:

(i) Actions to take if a resident becomes violent;

(ii) Actions to take to protect other residents; and

(iii) When and how to seek outside intervention.

(k) To prevent and limit the spread of infections consistent with WAC 388-78A-2610;

(l) To manage residents' medications, consistent with WAC 388-78A-2210 through 388-78A-2290; sending medications with a resident when the resident leaves the premises;

(m) When services related to medications and treatments are provided under the delegation of a registered nurse consistent with chapter 246-840 WAC;

(n) Related to food services consistent with chapter 246-215 WAC and WAC 388-78A-2300;

(o) Regarding the safe operation of any boarding home vehicles used to transport residents, and the qualifications of the drivers;

(p) To coordinate services and share resident information with outside resources, consistent with WAC 388-78A-2350;

(q) Regarding the management of pets in the boarding home, if permitted, consistent with WAC 388-78A-2620; and

(r) When receiving and responding to resident grievances consistent with RCW 70.129.060.

(3) The boarding home must make the policies and procedures specified in subsection (2) of this section available to staff persons at all times and must inform residents and residents' representatives of their availability and make them available upon request.

NEW SECTION

**WAC 388-78A-3400 Investigation of reports.** (1) The department may investigate allegations of abandonment, abuse, neglect, exploitation, and financial exploitation of a resident.

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

- (a) A licensee;
- (b) Boarding home administrator;
- (c) Employee of the boarding home;
- (d) Entity representative;
- (e) Anyone affiliated with the boarding home; and
- (f) Caregiver.

NEW SECTION**WAC 388-78A-3410 Notice of preliminary finding.**

(1) The department will notify the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident in writing within ten working days of making a preliminary finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a resident. The written notice:

(a) Will not include the identities of the alleged victim, reporter and witnesses; and

(b) Will include the necessary information for the individual to ask for an administrative hearing to challenge the preliminary finding.

(2) The department must make a reasonable, good faith effort to find the last known address of the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident.

(3) The department may extend the time frame for notification beyond ten working days for good cause.

(4) The department will serve notice of the preliminary finding as provided in chapter 388-02 WAC.

NEW SECTION**WAC 388-78A-3420 Reporting preliminary findings.**

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

- (a) Other divisions within the department;
- (b) The agency or program identified under RCW 74.34.068 with which the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident is associated as an employee;
- (c) The employer or program that is currently associated with the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident, if known;
- (d) Law enforcement; and
- (e) Other investigative authorities consistent with chapter 74.34 RCW.

(2) The notification will identify the finding as a preliminary finding.

NEW SECTION

**WAC 388-78A-3430 Disputing a preliminary finding.** (1) The individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident may request an administrative hearing to challenge a preliminary 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 individual's written request for an administrative hearing within thirty calendar days of the date written on the notice of the preliminary finding.

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

(a) The individual's full legal name, current mailing address and the telephone number;

(b) A brief explanation of why the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident disagrees with the preliminary finding;

(c) A description of any assistance needed in the administrative appeal process by the individual, including a foreign or sign language interpreter or any reasonable accommodation for a disability; and

(d) The individual's signature.

NEW SECTION

**WAC 388-78A-3440 Hearing procedures to dispute preliminary finding.** (1) Chapters 34.05 and 74.34 RCW, chapter 388-02 WAC, and the provisions of this chapter govern any appeal regarding a preliminary finding.

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

(3) If an administrative law judge within the office of administrative hearings determines that a preponderance of the evidence supports the preliminary finding that the individual abandoned, abused, neglected, exploited, or financially exploited a resident, then the administrative law judge will issue an initial order.

NEW SECTION

**WAC 388-78A-3450 Finalizing a preliminary finding.** (1) A preliminary finding becomes a final finding when:

(a) The department notifies the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident there is a preliminary finding pursuant to WAC 388-78A-3410; and

(b) The individual alleged to have abandoned, abused, neglected, exploited or financially exploited a resident does not ask for an administrative hearing; or

(c) 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 individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident fails to appeal the initial order to the department's board of appeals; or

(d) The board of appeals issues a final order upholding the finding.

(2) A final finding is permanent.

(3) A final finding will only be removed from the department or agency list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult if it is rescinded following judicial review.

(4) The department may remove a single finding of neglect from its records based upon a written petition by the individual found to have neglected a resident provided that at least one calendar year must have passed between the date a request was made to remove the finding of neglect and the date the final finding was finalized and recorded.

#### NEW SECTION

**WAC 388-78A-3460 Appeal of administrative law judge's initial order or finding.** (1) If the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident 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, Administrative Procedures Act, 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.

**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 388-78A-3470 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 individual found to have abandoned, abused, neglected, exploited, or financially exploited a resident and for whom there is a final finding;

(2) The boarding home licensee or entity representative that was associated with the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident during the time of the incident;

(3) The employer or program that is currently associated with the individual, if known;

(4) The appropriate licensing, certification or registration authority;

(5) The federal or state department or agency list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult; and

(6) The findings may be disclosed to the public upon request subject to applicable public disclosure laws.

#### NEW SECTION

**WAC 388-78A-3480 Disclosure of investigative and finding information.** (1) Confidential information about residents and mandated reporters received from the department may only be used by the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident to challenge 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 unless release of that information is consistent with chapter 74.34 RCW and other applicable state and federal laws.

**WSR 08-06-004  
PERMANENT RULES  
COLUMBIA RIVER  
GORGE COMMISSION**

[Filed February 20, 2008, 2:49 p.m., effective April 1, 2008]

Effective Date of Rule: April 1, 2008.

Purpose: The purpose of the amendments to Commission Rules 350-11, 350-12, and 350-16 is to conform these rules to the more restrictive of Oregon's and Washington's statutes as required by the Columbia River Gorge National Scenic Area Act (16 U.S.C. § 544c(b)). The amendments are responsive to changes made during the 2007 legislative session in Oregon and Washington.

Citation of Existing Rules Affected by this Order: Amending 350-11-003, 350-12-007, 350-12-008, and 350-16-009.

Statutory Authority for Adoption: RCW 43.97.015.

Other Authority: ORS 196.150; 16 U.S.C. § 544c(b).

Adopted under notice filed as WSR 07-22-052 on November 21 [1], 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 4, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, 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 1, Amended 0, Repealed 0.

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

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

Date Adopted: February 12, 2008.

Nancy A. Andring  
Rules Coordinator

#### **Amendatory Section**

**350-11-003. Meetings of commission to be open to public; location of meetings** (1) All meetings of the commission shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by 350-11-001 to 350-11-010. A member of the public shall not be required, as a condition of attending a meeting, to give his or her name, other information, complete a questionnaire or fulfill any other condition precedent.

(2) No quorum of the commission shall meet in private for the purpose of deciding on or deliberating toward a deci-



sion on any matter except as otherwise provided by 350-11-001 to 350-11-010.

(3) The commission shall not hold a meeting at any place where discrimination on the basis of race, creed, color, sex, age, sexual orientation or national origin is practiced. However, the fact that organizations with restricted membership hold meetings at the place shall not restrict its use by the commission if use of a place by a restricted membership organization is not the primary purpose of the place or its predominant use.

(4) Meetings of the commission shall be held within the geographic boundaries over which the commission has jurisdiction, or at the administrative headquarters of the commission or at the other nearest practical location. Training sessions may be held outside the jurisdiction so long as no deliberations toward a decision are involved. A joint meeting of two or more governing bodies shall be held within the geographical boundaries over which one of the participating public bodies has jurisdiction or at the nearest practical location. Meetings may be held in locations other than those described in this subsection in the event of an actual emergency necessitating immediate action.

(5) Notwithstanding the requirements of section (4) above, committee meetings may be held in any location where the committee deems it useful.

(6) Meetings of the commission shall be held in locations that are accessible to the disabled.

(7) Upon request of a ~~hearing impaired~~ person who is deaf or hard of hearing, the commission shall make a good faith effort to have an interpreter for ~~hearing impaired~~ persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The person requesting the interpreter shall provide the commission at least 48 hours' notice of the request, shall provide the name of the requester, sign language preference and any other relevant information the commission may require. As used in this subsection, "good faith effort" includes, but is not limited to, contacting the Oregon Disabilities Commission, the Washington Aging and Adult Services Administration, or other state or local government or community service agency that maintains a list of qualified interpreters and arranging for the referral of one or more ~~such persons~~ qualified interpreters to provide interpreter services.

(8) It shall be considered discrimination on the basis of disability for commission to meet in a place inaccessible to ~~the disabled persons with disabilities~~, or upon request of a ~~hearing impaired~~ person who is deaf or hard of hearing, to fail to make a good faith effort to have an interpreter for ~~hearing impaired~~ persons who are deaf or hard of hearing provided at a regularly scheduled meeting. The sole remedy for discrimination on the basis of disability shall be as provided in Commission Rule 350-11-008.

(9) Voting by the commission shall take place in public and each member's vote shall be recorded as it is cast. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

## New Section

**350-11-011 Regular meetings to include time for public comment** (1) At all regular meetings of the Commission, the Commission shall provide time for public comment for issues not on the Commission's agenda, and an opportunity for Tribal Nations to address the Commission.

(2) The Commission may limit the time for public comment and opportunity for Tribal Nations to address the Commission in a manner that limits time for each speaker, or the number of speakers.

(3) The Commission may exclude comment that concerns matters likely to come before the Commission in a hearing where the Commission must disclose ex parte communications and comply with the Washington Appearance of Fairness doctrine. The presiding officer may exclude other comment that is inappropriate.

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

## Amendatory Section

**350-12-007. Fulfilling requests.** (1) The Commission shall respond promptly to requests for public records. Within five business days of receiving a public records request, the Commission shall respond by (1) providing the record; (2) acknowledging that the Commission has received the request and providing a reasonable estimate of the time the Commission will require to respond and an estimate of the fees that the requester must pay as a condition of receiving the public records; or (3) denying the public record request. Additional time to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the Commission may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the Commission need not respond to the original request. Denials of requests must be accompanied by a written statement of the specific reasons for denial.

(2) The Commission shall make public records available on a partial or installment basis as records that are part of a larger set of requested records are assembled or make ready for inspection or disclosure.

(3) The Commission shall not deny a request for identifiable public records solely on the basis that the request is overbroad.

## Amendatory Section

**350-12-008. Public records exempt from disclosure.** (1) The following public records are exempt from disclosure under 350-12-001 to 350-12-008 unless the public interest requires disclosure in the particular instance:

(a) Records of the commission pertaining to litigation to which the commission is a party if the complaint has been filed, or if the complaint has not been filed, if the commission shows that such litigation is reasonably likely to occur. This

exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation;

(b) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or service or to locate minerals or other substances, having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it;

(c) Investigatory information compiled for criminal law purposes, except that the record of an arrest or the report of a crime shall not be confidential unless and only so long as there is a clear need in a particular case to delay disclosure in the course of a specific investigation. Nothing in this paragraph shall limit any right constitutionally guaranteed, or granted by statute, to disclosure or discovery in criminal cases. For purpose of this paragraph, the record of an arrest or the report of a crime includes, but is not limited to:

(A) The arrested person's name, age, residence, employment, marital status and similar biographical information;

(B) The offense with which the arrested person is charged;

(C) The conditions of release;

(D) The identity of and biographical information concerning both complaining party and victim;

(E) The identity of the investigation and arresting agency and the length of the investigation;

(F) The circumstances of arrest, including time, place, resistance in apprehending fugitives from justice;

(G) Such information as may be necessary to enlist public assistance in apprehending fugitives from justice.

(d) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination before the examination is given and if the examination is to be used again;

(e) Information relating to the appraisal of real estate prior to its acquisition;

(f) The names and signatures of employees who sign authorization cards or petitions for the purpose of requesting representation or decertification elections;

(g) Investigatory information relating to any complaint filed relating to unlawful employment practices until such time as the complain is resolved, or a final administrative determination is made;

(h) Investigatory information relating to any complaint filed relating to unfair labor practices;

(i) Information concerning the location of archaeological sites or objects, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe's cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known and publicized tourist activity or attraction; and

(j) A personnel discipline action, or materials or documents supporting that action.

~~(k) Sensitive fish, wildlife, and plant data obtained. Sensitive fish, wildlife, and plant data may be released to the following entities and their agents for fish, wildlife, plant, and land management purposes, or scientific research needs: Governments agencies, public utilities, and accredited colleges and universities. Sensitive fish, wildlife, and plant data may be released to tribal governments. Sensitive fish, wildlife, and plant data may also be released to the owner, lessee, or right-of-way or easement holder of private land to which the data pertains. The release of sensitive fish, wildlife, and plant data may be subject to a confidentiality agreement, except upon release of sensitive fish, wildlife, and plant data to the owner, lessee, or right-of-way or easement holder of private land who initially provided the data. Sensitive fish, wildlife, and plant data does not include data related to reports of predatory wildlife posted on the Washington Department of Fish and Wildlife's internet web site. Sensitive fish, wildlife, and plant data must meet at least one of the following criteria as applied by or created by the Gorge Commission. However, sensitive fish, wildlife and plant data may be released to government agencies concerned with the management of fish and wildlife resources. Sensitive fish, wildlife, and plant data includes:~~

(1) The nesting sites or specific locations of endangered, threatened or sensitive species listed in the Management Plan or otherwise designated by the appropriate agencies in Oregon and Washington;

(2) Radio frequencies used in or locational data generated by telemetry studies;

(3) Other location data that could compromise the viability of a specific fish, wildlife or plant population and where one or more of the following criteria are met:

(A) The species has a known commercial or black market value;

~~(B) There is a history of malicious take of that species and the species behavior or ecology renders it especially vulnerable; or~~

~~(C) There is a known demand to visit, take, or disturb; and the species behavior or ecology renders it especially vulnerable the species; or~~

(D) The species has an extremely limited distribution and concentration.

(1) Records or information that would reveal or otherwise identify security measures, or weaknesses or potential weaknesses in security measures, taken or recommended to be taken to protect:

(1) An individual;

(2) Buildings or other property; or

(3) Information processing, communication or telecommunication systems, including the information contained in the systems.

(2) The following public records are exempt from disclosure under 350-12-001 to 350-12-008:

(a) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the commission shows that in the particular instance the public interest in encouraging frank communication between officials and employees of the

commission clearly outweighs the public interest in disclosure;

(b) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(c) Information submitted to the commission in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the commission has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure;

(d) Any public records or information the disclosure of which is prohibited by federal or state law or regulations;

(e) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged;

(f) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(g) Information about review or approval of programs relating to the security of:

(1) Generation, storage or conveyance of:

(A) Electricity;

(B) Gas in liquefied or gaseous form;

(C) Hazardous substances as defined by Oregon or Washington state law;

(D) Petroleum products;

(E) Sewage; or

(F) Water;

(2) Telecommunications systems, including cellular, wireless or radio systems.

(3) Data transmissions by whatever means provided.

(h) Records of mediation communications that are privileged under the Uniform Mediation Act.

(i) Information gathered for the purpose of preparing a small business impact statement or an analysis of significant rules as required by the states' rulemaking requirements that can be identified to a particular business.

(3) If any public record contains material which is not exempt under subsection (1) or (2) of this section, as well as material which is exempt from disclosure, the commission shall separate the exempt and nonexempt material and make the nonexempt material available for examination.

(4) An individual may submit a written request to a public body not to disclose a specified public record indicating the home address or personal telephone number of the individual. A public body shall not disclose the specified public record if the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individ-

ual is in danger if the home address or personal telephone number remains available for public inspection.

(a) A request described in subsection (1) of this section shall remain effective until the public body receives a written request for termination but no later than five years after the date that a public body receives the request.

(b) A public body may disclose a home address or personal telephone number of an individual exempt from disclosure under subsection (1) of this section upon court order, on request from any law enforcement agency or with the consent of the individual.

(c) A public body shall not be held liable for granting or denying an exemption from disclosure under this section or any other unauthorized release of a home address or personal telephone number granted an exemption from disclosure under this section.

(5) Notwithstanding the exemptions in 350-12-008 (1) and (2), public records that are more than 25 years old shall be available for inspection

(6) Notwithstanding 350-12-001 through 350-12-008, the Commission shall not disclose records in violation of a user agreement or license that prohibits the Commission from disclosing such records. The Commission shall refer persons to the creator of the record if the Commission has obtained the records through agreement or license, or for which the Commission was charged a fee, other than a nominal fee for reimbursement of duplicating costs, for the record.

(7) Disclosure of information in violation of Rule 350-12-006(2) is grounds for assessment of a civil penalty pursuant to Rule 350-30 et seq.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

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

### Amendatory Section

**350-16-009. Notice, hearing and record in contested cases; informal dispositions; hearings officer.** (1) In a contested case hearing, all parties shall be afforded an opportunity for hearing after notice of not less than 20 days, served personally or by registered or certified mail.

(2) The notice shall include:

(a) A statement of the party's right to hearing, ~~or a statement of the time and place of the hearing with a description of the procedure and time to request a hearing, or a statement of the time and place of the hearing;~~

(b) A statement of the authority and jurisdiction under which the hearing is to be held;

(c) A reference to the particular sections of the statutes and rules involved;

(d) A short and plain statement of the matters asserted or charged, and identifying the issues to be considered at the hearing;

(e) A statement indicating whether and under what circumstances an order by default may be entered;

(f) A statement that a party may be represented by counsel and that legal aid organizations may be able to assist a party with limited financial resources;

(g) A statement that the party has the right to respond to all issues properly before the presiding officer and present evidence and witnesses on those issues as allowed by the applicable rules under which the hearing is held.

(h) A statement indicating whether discovery is permitted and, if so, how discovery may be requested. A statement that a party who fails to attend or participate in a hearing or other stage of an adjudicative proceeding may be held in default in accordance with this chapter; and

(i) A general description of the hearing procedure including the order of presentation of evidence, what kinds of evidence are admissible, whether objections may be made to the introduction of evidence and what kind of objections may be made and an explanation of the burdens of proof or burdens of going forward with the evidence.

(j) Whether a record will be made of the proceedings and the manner of making the record and its availability to the parties.

(k) The function of the record-making with respect to the perpetuation of the testimony and evidence and with respect to any appeal from the determination or order of the agency.

(l) Whether an attorney will represent the agency in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.

(m) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of the agency, whether the person presiding at the hearing is or is not an employee, officer or other representative of the agency and whether that person has the authority to make a final independent determination.

(n) In the event a party is not represented by an attorney, whether the party may during the course of proceedings request a recess if at that point the party determines that representation by an attorney is necessary to the protection of the party's rights.

(p) Whether there exists an opportunity for an adjournment at the end of the hearing if the party then determines that additional evidence should be brought to the attention of the agency and the hearing reopened.

(q) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed findings of fact, conclusions of law, summary of evidence or recommendations of the officer presiding at the hearing.

(r) A description of the appeal process from the determination or order of the agency.

(es) Unless otherwise ordered by the presiding officer, the names and mailing addresses of all parties to whom notice is being given and, if known, the names and addresses of their representatives;

(ft) The official file or other reference number and the name of the proceeding;

(gu) The name, official title, mailing address, and telephone number of the presiding officer, if known; and

(iv) Any other matters considered desirable by the agency.

(3) Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.

(4) The commission may adopt rules of procedure governing participation in contested cases by person appearing as limited parties.

(5) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

(6) An order adverse to a party may be issued upon default only upon prima facie case made on the record of the commission. When an order is effective only if a request for hearing is not made by the party, the record may be made at the time of issuance of the order, and if the order is based only on material included in the application or other submissions of the party, the commission may so certify and so notify the party, and such material shall constitute the evidentiary record of the proceeding if hearing is not requested. The commission shall serve a default order upon the defaulted party or the party's attorney, if any.

(7) Within seven days after service of a default order under subsection (6) of this section, the party against whom it was entered may file a written motion requesting that the order be vacated, and stating the grounds relied upon. During the time within which a party may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of that party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. At the commencement of the hearing, the officer presiding shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(8) Testimony shall be taken upon oath or affirmation of the witness form when received. The officer presiding at the hearing shall administer oaths or affirmatives to witnesses.

(9) The officer presiding at the hearing shall insure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues property before the presiding officer in the case and the correct application of law to those facts.

(10) The record in a contested case shall include:

(a) All pleadings, motions and intermediate rulings.

(b) Evidence received or considered.

(c) Stipulations.

(d) A statement of matters officially noticed.

(e) Questions and offers of proof, objections and rulings thereon.

(f) A statement of any ex parte communications on a fact in issue made to the officer presiding at the hearing.

(g) Proposed findings and exceptions.

(h) Any proposed, intermediate or final order prepared by the commission or a hearings officer.

(11) A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested for purposes of rehearing or court review. The commission may charge the party requesting transcription, unless the party files an appropriate affidavit of indigency.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 08-06-013**  
**PERMANENT RULES**  
**PARKS AND RECREATION**  
**COMMISSION**

[Filed February 21, 2008, 1:28 p.m., effective March 23, 2008]

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

Purpose: To implement a new statute, RCW 79A.05.351. The purpose of the outdoor education and recreation grant program is to provide funds for outdoor environmental, ecological, agricultural, or other natural resource-based education and recreation programs serving youth; and to establish administrative procedures and set forth eligibility criteria and funding requirements by which the Washington state parks and recreation commission will award outdoor education and recreation grant funds and set conditions related to the use of grant funds.

Statutory Authority for Adoption: RCW 79A.05.030, 79A.05.070, and 79A.05.351.

Adopted under notice filed as WSR 08-01-129 on December 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 10, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 10, Amended 0, Repealed 0.

Date Adopted: February 21, 2008.

J. M. French, Administrator  
 Statewide Recreation Programs

**Chapter 352-80 WAC**

**NO CHILD LEFT INSIDE**

NEW SECTION

**WAC 352-80-010 Purpose and authority.** The purpose of the outdoor education and recreation grant program is to provide funds for outdoor environmental, ecological, agricultural, or other natural resource based education and recreation programs serving youth. The purpose of this chapter is to establish administrative procedures and set forth eligibility criteria and funding requirements by which the Washington state parks and recreation commission will award outdoor education and recreation grant funds and set conditions related to the use of grant funds. This grant program is governed by this chapter and by RCW 79A.05.351.

NEW SECTION

**WAC 352-80-020 Definitions.** (1) "Outdoor education and recreation" means an approach to education and recreation via connectivity and direct experiences in the outdoors; to teach, inspire wonder and creativity while learning from our natural resources and recreational experiences in conjunction with what students are taught in traditional classroom settings.

(2) "Commission" means the Washington state parks and recreation commission.

(3) "Director" means the director of the Washington state parks and recreation commission or the director's designee.

(4) "Education" means to improve students' overall academic performance, life skills, self-esteem, personal responsibility, community involvement, personal health and understanding of nature.

(5) "Recreation" means experiences that take place within natural outdoor environments which foster well-being through a sense of place and interdependence within the natural world.

(6) "State parks" means the operating arm of the Washington state parks and recreation commission, that is responsible for implementation of commission programs established pursuant to statute or policy.

NEW SECTION

**WAC 352-80-030 Eligibility.** Public agencies, private nonprofit organizations, formal school programs, informal after school programs, and community based programs within Washington state are eligible to apply for grants under this chapter. Programs that provide outdoor education opportunities to schools must be fully aligned with the state's essential academic learning requirements.

NEW SECTION

**WAC 352-80-040 Eligible program activities.** The director will select activities eligible for funding. Some of these might include, but are no limited to, the following types of activities:

- (1) Outdoor recreation;
- (2) Outdoor environmental studies;
- (3) Agricultural;
- (4) Natural resource based;
- (5) Conservation;
- (6) Ecological;
- (7) Stewardship or restoration.

NEW SECTION

**WAC 352-80-050 Ineligible program activities.** The following activities are ineligible:

- (1) Activities that may be perceived to lobby or advocate for political purposes.
- (2) Activities that are not in compliance with local, state and federal laws.
- (3) Organized youth sports such as a community league or school team.

NEW SECTION

**WAC 352-80-060 Limitations on the availability and use of funds.** (1) The director may establish limitations on the availability and use of program funds. Any limitations shall be defined in the current application package. The director shall establish such limitations only after considering the following:

- (a) Consistency with the legislative intent of RCW 79A.05.351;
  - (b) Availability of funds.
- (2) The director may determine that applicants be required to make a matching contribution to be eligible for funding.
- (3) The director may limit the amount of funding available for any element(s) of a program.

NEW SECTION

**WAC 352-80-070 Applying for funding.** In order to be considered for receipt of a grant under this chapter, an eligible applicant must complete and submit an application form provided by state parks that follows the instructions provided in the form.

NEW SECTION

**WAC 352-80-080 Evaluation criteria.** The following criteria are used to evaluate applications:

- (1) Proposals that provide for public/private partnerships;
- (2) Proposals that provide for innovative ways to increase the availability and use of outdoor recreation facilities;
- (3) Proposals which show consideration for the economics of installation or implementation to provide greatest cost benefit ratio, for example, where private parties contribute more than the minimum amount;
- (4) Proposals which contribute to the statewide network of facilities or programs;
- (5) Proposals which demonstrate their compatibility with the legislative intent of RCW 79A.05.351;
- (6) Programs that contribute to the reduction of academic failure and drop out rates;
- (7) Programs that make use of research-based, effective environmental, ecological, agricultural, or other natural resource-based educational curriculum;
- (8) Proposals which encourage sound environmental practices through changing education or recreational behavior;
- (9) Proposals which target geographic areas as defined in RCW 79A.05.351;
- (10) Proposals which encourage community involvement;
- (11) Proposals which demonstrate innovative approaches to education or information;
- (12) Programs that will commit matching and in-kind resources;
- (13) Proposals that contribute to healthy lifestyles through outdoor recreation and sound nutrition;

(14) Proposals that use state park and other natural resource venues and personnel as a resource;

(15) Proposals that maximize the number of participants that can be served;

(16) Proposals that provide an opportunity to experience the out-of-doors directly and understand nature and the natural world; and

(17) Proposals that include ongoing program evaluation, assessment and reporting of their effectiveness.

NEW SECTION

**WAC 352-80-090 Program selection.** (1) Completed applications will be reviewed by state parks staff to determine eligibility and will be evaluated in accordance with the purposes, eligibility requirements, limitations, and evaluation criteria in this chapter.

(2) Staff will consult with and consider the recommendations of the advisory committee and will present final recommendations to the director.

(3) The director will make the final decision on funding a project.

NEW SECTION

**WAC 352-80-100 Use of funds.** The following conditions apply to the use of the funds:

(1) Project contract. For every funded project, a contract must be executed on behalf of the commission and by the funding recipient. Generally, the funding recipient will not be reimbursed for costs incurred prior to the execution of the contract by both parties at the sole discretion of state parks.

(2) Technical standards. The funding recipient for grants under this chapter shall ensure that all programs are in accordance with the technical standards provided by state parks.

(3) Reporting requirements. The funding recipient shall submit the reports required by state parks as directed in the funding contract.

(4) Compliance with state and federal laws, regulations, and policies. In accepting project funding, the funding recipient agrees to and certifies compliance with all applicable federal and state laws, regulations and policies.

(5) Accountability. Funding recipients will maintain accurate accounting records on the expenditure of project funds, provide state parks with these records consistent with the agreement or upon request, and will permit state parks to audit the use of funds in accordance with generally accepted audit practices and standards. State parks reserves the right to terminate its participation in any project which fails to perform according to the requirements of this chapter.

(6) Program evaluation should include participants, family members and teachers who can comment on academic grades or increased interest of the participant to remain in or return to school.

(7) Fees charged. Fees for program services may be assessed for program participants with the approval of state parks.

**WSR 08-06-030**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**  
 (Board of Pharmacy)

[Filed February 25, 2008, 3:50 p.m., effective March 27, 2008]

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

Purpose: WAC 246-856-030 Delegation of authority to initiate investigation, the rule allows the board to delegate its authority to decide, for specific category of complaints, if the complaint merits an investigation. Delegation is to a department case management team. Members of the team must include, at a minimum, a board member, the executive director or his or her designee, a pharmacist investigator, and a staff attorney.

Statutory Authority for Adoption: RCW 18.64.005.

Other Authority: RCW 18.130.050 and 18.130.080.

Adopted under notice filed as WSR 07-22-112 on November 7, 2007.

Changes Other than Editing from Proposed to Adopted Version: The adopted rule varied from the proposed rule, but the general subject matter remains the same. Changes were made to reflect public comments. To clarify the intent of the rule, subsection (1) was changed to read "The board delegates the decision whether to initiate an investigation to a department case management team..." and in subsection (3) added to the list of case management team members "a board member..."

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 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 0, Repealed 0.

Date Adopted: December 13, 2007.

Rebecca E. Hille  
 Board Chair

**NEW SECTION**

**WAC 246-856-030 Delegation of authority to initiate investigations.** (1) The board delegates the decision whether to initiate an investigation to a department case management team when the board or the department receives information that a licensee may have engaged in unprofessional conduct or may be unable to practice with reasonable skill and safety by reason of a mental or physical condition for the following categories:

(a) Improper dispensing, including medication errors, unauthorized prescription refills and unauthorized drug product substitution;

- (b) Failure to provide patient counseling;
  - (c) Record or inventory discrepancies;
  - (d) Diversion or impairment;
  - (e) Obtaining drugs by fraud;
  - (f) Compounding or manufacturing violations;
  - (g) Pharmacy inspection violations;
  - (h) Criminal convictions;
  - (i) Misrepresentation or fraud in any aspect of the conduct of the business or profession;
  - (j) Theft;
  - (k) Failure to comply with a board order or monitoring contract;
  - (l) Sexual misconduct;
  - (m) Failure to deliver a lawfully prescribed drug or device.
- (2) All complaints other than those listed under subsection (1) of this section will be reviewed by the board, which will decide whether to authorize the initiation of an investigation.
- (3) The case management team must include, at a minimum, a board member, the executive director or his or her designee, a pharmacist investigator, and a staff attorney.

**WSR 08-06-032**  
**PERMANENT RULES**  
**TRANSPORTATION COMMISSION**

[Filed February 26, 2008, 1:50 p.m., effective April 7, 2008]

Effective Date of Rule: April 7, 2008.

Purpose: The commission is required to establish a toll rate schedule for the SR 167 HOT lanes pilot project. This rule establishes that schedule. In addition, this rule defines what vehicles are exempt from paying tolls.

Statutory Authority for Adoption: RCW 47.56.403.

Adopted under notice filed as WSR 08-01-113 on December 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 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 3, 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: February 19, 2008.

Reema Griffith  
 Executive Director

AMENDATORY SECTION (Amending WSR 07-13-010, filed 6/8/07, effective 7/9/07)

**WAC 468-270-070 What will the toll rates be for the Tacoma Narrows Bridge?**

Rate table \$3.00 cash/\$1.75 "Good to Go!™"  
(two axle vehicles)

Tacoma Narrows Bridge			
	Cash toll rate	"Good To Go!™" toll rates	
2 axle	\$3.00	\$1.75	
3 axle	\$4.50	\$2.65	(3)
4 axle	\$6.00	\$3.50	
5 axle	\$7.50	\$4.40	(3)
6 or more axles	\$9.00	\$5.25	

((SR 167 HOT lanes To be determined))	
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Notes:

- (1) The base toll rate is the toll rate per axle. It is only used to calculate multi-axle rates, which are calculated as a multiplier of the base toll rate (\$1.50 for cash and \$0.875 for "Good to Go!™" toll rates).
- (2) The "Good To Go!™" toll rates are in effect through June 30, 2008, or until changed by the commission. If no further action is taken by the commission, on July 1, 2008, the cash toll rate column becomes the toll rate for all vehicles.
- (3) Rate rounded up to nearest five cents.

NEW SECTION

**WAC 468-270-075 What will the toll rates be for the SR 167 HOT lanes pilot project?** Effective April 7, 2008, a variable toll rate schedule will be applied by WSDOT. Toll rates will vary based upon several factors including time of day, traffic volumes, traffic demand, and overall corridor performance. The toll rate schedule shall be adjusted as needed by WSDOT to meet HOV performance criteria as defined in RCW 47.56.403 and WAC 468-300-828 in order to maintain average HOT lane vehicle speeds above forty-five miles per hour, at least ninety percent of the time during peak hours.

When the SR 167 HOT lanes are in operation, the minimum toll rate is \$0.50 and the maximum toll rate is \$9.00.

AMENDATORY SECTION (Amending WSR 07-13-010, filed 6/8/07, effective 7/9/07)

**WAC 468-270-100 What vehicles are exempt from paying tolls on the SR 167 HOT lanes?** ((RCW 47.56.403 establishes an exempt category of vehicles. The transportation commission may include other exempt vehicles before tolling commences.)) Vehicles described in RCW 47.56.403 and WAC 468-510-010 are exempt from paying tolls, including transit buses and vanpool vehicles owned or operated by any public agency. All other vehicles using the SR 167 HOT lanes must pay the required toll. All toll-paying vehicles must have a transponder and a valid "Good To Go!™" account.

**WSR 08-06-039**

**PERMANENT RULES**

**FOREST PRACTICES BOARD**

[Filed February 27, 2008, 11:37 a.m., effective March 29, 2008]

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

Purpose: To amend the definition of "Northern spotted owl site center" in WAC 222-16-010 which imposes a moratorium on the practice of "decertifying" site centers until December 31, 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 222-16-010.

Statutory Authority for Adoption: RCW 76.09.040.

Adopted under notice filed as WSR 07-22-039 on October 30, 2007.

A final cost-benefit analysis is available by contacting Gretchen Robinson, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1705, fax (360) 902-1428, e-mail gretchen.robinson@dnr.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 0, Repealed 0.

Date Adopted: February 14, 2008.

Victoria Christiansen  
Chair

AMENDATORY SECTION (Amending WSR 07-20-044, filed 9/26/07, effective 10/27/07)

**WAC 222-16-010 \*General definitions.** Unless otherwise required by context, as used in these rules:

"Act" means the Forest Practices Act, chapter 76.09 RCW.

"Affected Indian tribe" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"Alluvial fan" see "sensitive sites" definition.

"Appeals board" means the forest practices appeals board established in the act.

"Aquatic resources" means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.



**"Area of resource sensitivity"** means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

**"Bankfull depth"** means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the flood plain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

**"Bankfull width"** means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For tidal water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

**"Basal area"** means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

**"Bedrock hollows"** (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

**"Board"** means the forest practices board established by the act.

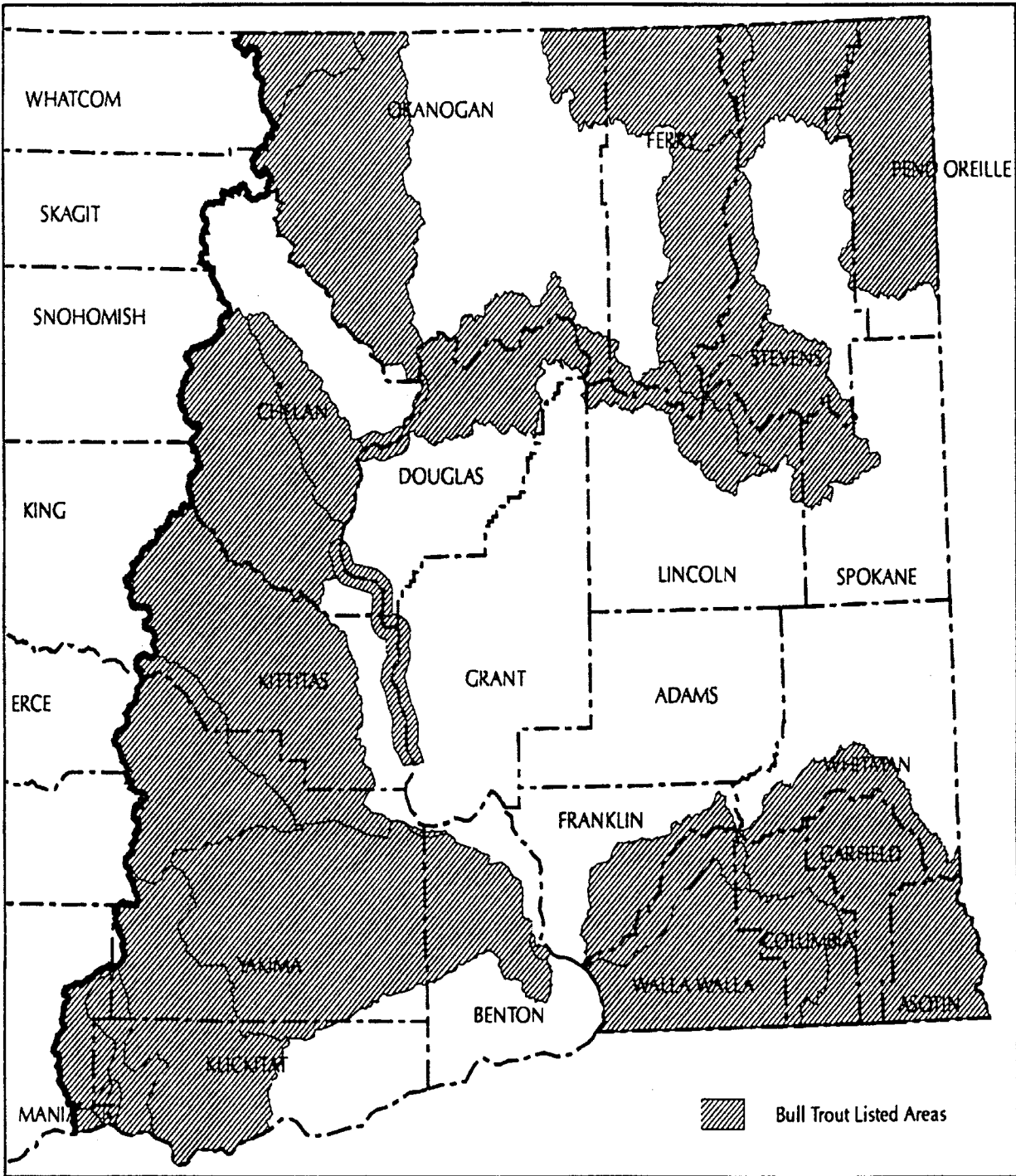
**"Bog"** means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

**"Borrow pit"** means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

**"Bull trout habitat overlay"** means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally-based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the

department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



"Channel migration zone (CMZ)" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

**"Columbia River Gorge National Scenic Area or CRGNSA"** means the area established pursuant to the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(a).

**"CRGNSA special management area"** means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. §544b(b) or revised pursuant to 16 U.S.C. §544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. §544f(o).

**"CRGNSA special management area guidelines"** means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. §544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. §544d.

**"Commercial tree species"** means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

**"Completion of harvest"** means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

**"Constructed wetlands"** means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

**"Contamination"** means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

**"Convergent headwalls"** (or headwalls) means tear-drop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

**"Conversion option harvest plan"** means a voluntary plan developed by the landowner and approved by the local governmental entity indicating the limits of harvest areas, road locations, and open space.

**"Conversion to a use other than commercial timber operation"** means a bona fide conversion to an active use which is incompatible with timber growing.

**"Cooperative habitat enhancement agreement (CHEA)"** see WAC 222-16-105.

**"Critical habitat (federal)"** means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

**"Critical nesting season"** means for marbled murrelets - April 1 to August 31.

**"Critical habitat (state)"** means those habitats designated by the board in accordance with WAC 222-16-080.

**"Cultural resources"** means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

**"Cumulative effects"** means the changes to the environment caused by the interaction of natural ecosystem processes with the effects of two or more forest practices.

**"Daily peak activity"** means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

**"Debris"** means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities which would reasonably be expected to cause significant damage to a public resource.

**"Deep-seated landslides"** means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

**"Demographic support"** means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

**"Department"** means the department of natural resources.

**"Desired future condition (DFC)"** is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

**"Diameter at breast height (dbh)"** means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

**"Dispersal habitat"** see WAC 222-16-085(2).

**"Dispersal support"** means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat

found within RMZs, WMZs or other required and voluntary leave areas.

**"Drainage structure"** means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts,

ditch diversions, water bars, or other such structures demonstrated to be equally effective.

**"Eastern Washington"** means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map



**"Eastern Washington timber habitat types"** means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

Timber Habitat Types	Elevation Ranges
ponderosa pine	0 - 2500 feet
mixed conifer	2501 - 5000 feet
high elevation	above 5000 feet

**"Edge"** of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

**"End hauling"** means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

**"Equipment limitation zone"** means a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

**"Erodible soils"** means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

**"Even-aged harvest methods"** means the following harvest methods:

- Clearcuts;
- Seed tree harvests in which twenty or fewer trees per acre remain after harvest;
- Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;
- Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;
- Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;
- Partial cutting in which fewer than fifty trees per acre remain after harvest;
- Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and
- Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

**"Fen"** means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

**"Fertilizers"** means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

**"Fill"** means the placement of earth material or aggregate for road or landing construction or other similar activities.

**"Fish"** means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

**"Fish habitat"** means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

**"Fish passage barrier"** means any artificial in-stream structure that impedes the free passage of fish.

**"Flood level - 100 year"** means a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section 2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

**"Forest land"** means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term "forest land" excludes the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

**"Forest landowner"** means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land. The following definitions apply only to road maintenance and abandonment planning:

(1) **"Large forest landowner"** is a forest landowner who is not a small forest landowner.

(2) **"Small forest landowner"** is a forest landowner who at the time of submitting a forest practices application or notification meets all of the following conditions:

- Has an average annual timber harvest level of two million board feet or less from their own forest lands in Washington state;

- Did not exceed this annual average harvest level in the three year period before submitting a forest practices application or notification;

- Certifies to the department that they will not exceed this annual harvest level in the ten years after submitting the forest practices application or notification.

However, the department will agree that an applicant is a small forest landowner if the landowner can demonstrate that the harvest levels were exceeded in order to raise funds to pay estate taxes or to meet equally compelling and unexpected obligations such as court-ordered judgments and extraordinary medical expenses.

**"Forest practice"** means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

**"Forest road"** means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices. "Forest road" does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. For road maintenance and abandonment planning purposes only, "forest road" does not include forest

roads used exclusively for residential access located on a small forest landowner's forest land.

**"Forest trees"** does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than 15 years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

**"Full bench road"** means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

**"Green recruitment trees"** means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

**"Ground water recharge areas for glacial deep-seated slides"** means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

**"Headwater spring"** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

**"Herbicide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

**"Historic site"** includes:

Sites, areas and structures or other evidence of human activities illustrative of the origins, evolution and development of the nation, state or locality; or

Places associated with a personality important in history; or

Places where significant historical events are known to have occurred even though no physical evidence of the event remains.

**"Horizontal distance"** means the distance between two points measured at a zero percent slope.

**"Hyporheic"** means an area adjacent to and below channels where interstitial water is exchanged with channel water and water movement is mainly in the downstream direction.

**"Identified watershed processes"** means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

Mass wasting;

Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

Large organic debris;

Shading; and

Stream bank and bed stability.

**"Inner gorges"** means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in con-

tour and/or profile. (See board manual section 16 for identification criteria.)

**"Insecticide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

**"Interdisciplinary team"** (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

**"Islands"** means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

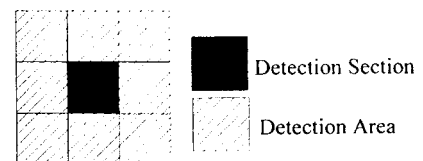
**"Limits of construction"** means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

**"Load bearing portion"** means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

**"Local governmental entity"** means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

**"Low impact harvest"** means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

**"Marbled murrelet detection area"** means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



**"Marbled murrelet nesting platform"** means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

**"Median home range circle"** means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

**"Merchantable stand of timber"** means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

**"Multiyear permit"** means a permit to conduct forest practices which is effective for longer than two years but no longer than five years.

**"Northern spotted owl site center"** means:

(1) Until (~~June 30, 2007~~) December 31, 2008, the location of northern spotted owls:

(a) Recorded by the department of fish and wildlife as status 1, 2 or 3 as of November 1, 2005; or

(b) Newly discovered, and recorded by the department of fish and wildlife as status 1, 2 or 3 after November 1, 2005.

(2) After (~~June 30, 2007~~) December 31, 2008, the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.

Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.

Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

**"Notice to comply"** means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

**"Occupied marbled murrelet site"** means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

(a) A nest is located; or

(b) Downy chicks or eggs or egg shells are found; or

(c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or

(d) Birds calling from a stationary location within the area; or

(e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any

of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1)(e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

(a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or

(b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

**"Old forest habitat"** see WAC 222-16-085 (1)(a).

**"Operator"** means any person engaging in forest practices except an employee with wages as his/her sole compensation.

**"Ordinary high-water mark"** means the mark on the shores of all waters, which will be found by examining the

beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

**"Other forest chemicals"** means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

**"Park"** means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

**"Partial cutting"** means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

**"Pesticide"** means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

**"Plantable area"** is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights of way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

**"Power equipment"** means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

**"Preferred tree species"** means the following species listed in descending order of priority for each timber habitat type:

<b>Ponderosa pine habitat type</b>	<b>Mixed conifer habitat type</b>
all hardwoods	all hardwoods
ponderosa pine	western larch
western larch	ponderosa pine
Douglas-fir	western red cedar
western red cedar	western white pine
	Douglas-fir
	lodgepole pine

**"Public resources"** means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

**"Qualified surveyor"** means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

**"Rehabilitation"** means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

**"Resource characteristics"** means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

- For fish and water:
  - Physical fish habitat, including temperature and turbidity;
  - Turbidity in hatchery water supplies; and
  - Turbidity and volume for areas of water supply.
- For capital improvements of the state or its political subdivisions:
  - Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

**"Riparian function"** includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

**"Riparian management zone (RMZ)"** means:

**(1) For Western Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total RMZ Width
I	200'
II	170'
III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

**(2) For Eastern Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100'*
IV	75' or 100'*
V	75' or 100'*

\* Dependent upon stream size. (See WAC 222-30-022.)



(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) **For exempt 20 acre parcels**, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

**"RMZ core zone"** means:

(1) **For Western Washington**, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the thirty foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

**"RMZ inner zone"** means:

(1) **For Western Washington**, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

**"RMZ outer zone"** means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

**"Road construction"** means either of the following:

- (a) Establishing any new forest road;
- (b) Road work located outside an existing forest road prism, except for road maintenance.

**"Road maintenance"** means either of the following:

- (a) All road work located within an existing forest road prism;
- (b) Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility, such as:
  - Maintaining, replacing, and installing drainage structures;
  - Controlling road-side vegetation;
  - Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

**"Rodenticide"** means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

**"Salvage"** means the removal of snags, down logs, windthrow, or dead and dying material.

**"Scarification"** means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

**"Sensitive sites"** are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

**"Shorelines of the state"** shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

**"Side casting"** means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

**"Site class"** means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) **For Western Washington**

Site class	50-year site index range (state soil survey)
I	137+
II	119-136
III	97-118

Site class	50-year site index range (state soil survey)
IV	76-96
V	<75

(2) For Eastern Washington

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

- (a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.
- (b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.
- (c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.
- (d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

**"Site preparation"** means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

**"Skid trail"** means a route used by tracked or wheeled skidders to move logs to a landing or road.

**"Slash"** means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

**"Small forest landowner long-term application"** means a proposal from a small forest landowner to conduct forest practices activities for terms of three to fifteen years. Small forest landowners as defined in WAC 222-21-010(13) are eligible to submit long-term applications.

**"SOSEA goals"** means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

**"Spoil"** means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

**"Spotted owl dispersal habitat"** see WAC 222-16-085(2).

**"Spotted owl special emphasis areas (SOSEA)"** means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

**"Stop work order"** means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

**"Stream-adjacent parallel roads"** means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

**"Sub-mature habitat"** see WAC 222-16-085 (1)(b).

**"Suitable marbled murrelet habitat"** means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

- (a) Within 50 miles of marine waters;
- (b) At least forty percent of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;
- (c) Two or more nesting platforms per acre;
- (d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

**"Suitable spotted owl habitat"** see WAC 222-16-085(1).

**"Temporary road"** means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

**"Threaten public safety"** means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

**"Threatened or endangered species"** means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

**"Timber"** means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33-035.

**"Unconfined avulsing stream"** means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

**"Validation,"** as used in WAC 222-20-016, means the department's agreement that a small forest landowner has correctly identified and classified resources, and satisfactorily completed a roads assessment for the geographic area described in Step 1 of a long-term application.

**"Water bar"** means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

**"Watershed administrative unit (WAU)"** means an area shown on the map specified in WAC 222-22-020(1).

**"Watershed analysis"** means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

**"Weed"** is any plant which tends to overgrow or choke out more desirable vegetation.

**"Western Washington"** means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

**"Wetland"** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

**"Wetland functions"** include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

**"Wetland management zone"** means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

**"Wildlife"** means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

**"Wildlife reserve trees"** means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

**"Windthrow"** means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

**"Yarding corridor"** means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

**"Young forest marginal habitat"** see WAC 222-16-085 (1)(b).

## WSR 08-06-050

### PERMANENT RULES

#### WASHINGTON STATE PATROL

[Filed February 28, 2008, 2:03 p.m., effective March 30, 2008]

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

Purpose: To simplify and clarify state fire marshal standards and provide more consistency with adopted state fire and building codes.

Citation of Existing Rules Affected by this Order: Repealing WAC 212-12-011, 212-12-200, 212-12-210, 212-12-220, 212-12-230, 212-12-240, 212-12-250, 212-12-260, 212-12-270, 212-12-280, 212-12-290, 212-12-300, 212-12-310, 212-12-320, 212-12-330, 212-12-340, 212-12-350, 212-12-360, 212-12-370, 212-12-380, 212-12-390, 212-12-400 and 212-12-410; and amending WAC 212-12-001, 212-12-005, 212-12-010, 212-12-015, 212-12-020, 212-12-025, 212-12-030, 212-12-040, and 212-12-044.

Statutory Authority for Adoption: RCW 18.20.130, 18.46.110, 18.51.140, 41.12.485, 48.48.030, 48.48.045, 70.62.290, 74.15.050.

Adopted under notice filed as WSR 08-02-082 on December 31, 2007.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, Repealed 23.

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

Date Adopted: February 7, 2008.

John R. Batiste  
Chief

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-001 ((Purpose-)) Statement of authority.** ((The purpose of this chapter is to prescribe regulations consistent with nationally recognized good practice for the safeguarding of life and property from the hazards of fire, explosion, and panic. The director of fire protection is authorized to administer and enforce this chapter.)) The state director of fire protection is authorized to administer and enforce the provisions of this chapter.

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-005 Definitions.** ((Unless otherwise clarified in this section, definitions in the State Building Code shall apply to this chapter. The following definitions shall also apply to this chapter:

(1) "Adult residential rehabilitation center" means a residence, place, or center, including private adult treatment homes, licensed by the department of health under chapter 71.12 RCW and chapter 246-325 WAC. Adult residential rehabilitation facilities shall be classified as a Group LC Occupancy.

(2) "Alcoholism hospital" means facilities or institutions licensed by the department of health under chapter 71.12 RCW and chapter 246-322 WAC. Alcoholism hospitals shall be classified as a Group I, Division 1.1 Occupancy.

(3) "Alcoholism intensive inpatient treatment services" means those services licensed by the department of health under chapter 71.12 RCW and chapter 246-326 WAC. Alcoholism intensive inpatient treatment services shall be classified as a Group LC Occupancy.

(4) "Alcoholism treatment facility" means a facility operated primarily for the treatment of alcoholism licensed by the department of health under chapter 71.12 RCW and chapter 246-362 WAC. Alcoholism treatment facilities shall be classified as follows:

(a) "Alcoholism detoxification services":

(i) Acute: Group I, Division 1.1.

(ii) Sub-acute: A Group LC Occupancy.

(b) "Alcoholism long term treatment services": Alcoholism long term treatment services shall be classified as a Group LC Occupancy.

(c) "Alcohol recovery house services": Alcohol recovery house services shall be classified as a Group LC Occupancy.

(5) "Ambulatory" means physically and mentally capable of walking or traversing a normal path to safety, including the ascent and descent of stairs, without the physical assistance of another person.

(6) "Approved" refers to approval by the director of fire protection as a result of investigation and tests conducted by the director of fire protection or by reason of accepted principles or tests by national authorities, or technical or scientific organizations.

(7) "Authority having jurisdiction" is the director of fire protection or authorized deputy or designee.

(8) "Assistant state fire marshal" means the assistant state fire marshal who manages a specific division within the fire protection bureau or as designated by the director of fire protection.

(9) "Bed and breakfast": See transient accommodation definition in this section.

(10) "Boarding home" means any home or other institution licensed by the department of health under chapter 18.20 RCW and chapter 388-78A WAC. Boarding homes shall be classified as a Group LC Occupancy.

(11) "Building official" means the designated authority appointed by the governing body of each city or county who is in charge of the administration and enforcement of the Uniform Building Code.

(12) "Child birth center" means a facility or institution licensed by the department of health under chapter 18.46 RCW and chapter 246-329 WAC. Child birth centers shall be classified as a Group B Occupancy.

(13) "Child day care center" means an agency which provides child day care outside the abode of the licensee or for thirteen or more children in the abode of the licensee. Such facilities are licensed by the department of social and health services under chapter 74.15 RCW and chapter 388-150 WAC. Child day care centers shall be classified as a Group E, Division 3 Occupancy.

(14) "Director of fire protection" means the director of the fire protection bureau in the Washington state patrol or authorized deputy or designee.

(15) "Evaluation process" means the initial steps in the informal appeals process established by the director of fire protection under the authority of RCW 34.05.060.

(16) "Family child day care home" means a child day care facility located in the family abode of the person or persons under whose direct care and supervision the child is placed, for the care of twelve or fewer children, including

children who reside at the home. Such facilities are licensed by the department of social and health services under chapter 74.15 RCW and chapter 388-155 WAC. Family child day care homes shall be classified as a Group R, Division 3 Occupancy.

(17) "Fire official" means the person or other designated authority appointed by the city or county for the administration and enforcement of the Uniform Fire Code.

(18) "Group care facility" means a facility licensed by the department of social and health services under chapter 74.15 RCW and chapter 388-73 WAC. Group care facilities shall be classified as a Group LC Occupancy.

(19) "Group care facilities for severely and multiply handicapped children" means facilities which are maintained and operated for the care of a group of children as licensed by the department of social and health services under chapter 74.15 RCW and chapter 388-73 WAC. Group care facilities for severely and multiply handicapped children shall be classified as:

(a) A Group LC Occupancy.

(b) Group I, Division 1.1 Occupancy when accommodating more than sixteen nonambulatory clients or residents, excluding staff.

(c) Group I, Division 3 Occupancy when accommodating any number of restrained persons.

(20) "Hospice care center" means any building, facility, or place licensed by the department of health under chapter 70.41 RCW and chapter 246-321 WAC. Hospice care centers shall be classified as a Group I, Division 1.1 Occupancy.

(21) "Hospital" means an institution, place, building, or agency licensed by the department of health under chapter 70.41 RCW and chapter 246-318 WAC. Hospitals shall be classified as a Group I, Division 1.1 Occupancy.

(22) "Nonambulatory" means physically or mentally unable to walk or traverse a normal path to safety without the physical assistance of another person.

(23) "Nursing home" means any home, place, or institution licensed by the department of social and health services under chapter 18.51 RCW and chapter 248-14 WAC. Nursing homes shall be classified as a Group I, Division 1.1 Occupancy.

(24) "Private adult treatment home" means the same as an adult residential rehabilitation center as defined in (1) of this section.

(25) "Psychiatric hospital" means an institution licensed by the department of health under chapter 71.12 RCW and chapter 246-322 WAC. Psychiatric hospitals shall be classified as a Group I, Division 3 Occupancy.

(26) "Residential treatment facility for psychiatrically impaired children and youth" means a residence, place, or facility licensed by the department of health under chapter 71.12 RCW and chapter 246-323 WAC. Residential treatment facilities for psychiatrically impaired children and youth shall be classified as:

(a) A Group LC Occupancy.

(b) Group I, Division 1.1 Occupancy when accommodating more than sixteen nonambulatory, nonrestrained clients or residents, excluding staff.

(c) Group I, Division 3 Occupancy when accommodating any number of restrained persons.

(27) "State fire marshal" means the director of fire protection or authorized deputy or designee.

(28) "Transient accommodation" means any facility licensed by the department of health under chapter 70.62 RCW and chapter 246-360 WAC and shall include bed and breakfast inns. Transient accommodations shall be classified as a Group R, Division 1 Occupancy when accommodating more than ten persons and a Group R, Division 3 Occupancy when accommodating ten or less persons.)) Unless otherwise provided in this section, definitions in the Washington State Building Code, chapter 19.27 RCW, and 42 CFR Ch. IV § 483.70, National Fire Protection Association, standard 101 "Life Safety Code" 2000 edition, as adopted by CMS (Center for Medicare/Medicaid Services) shall apply to this chapter. The following definitions shall also apply to this chapter:

(1) "State director of fire protection" means the director of fire protection within the Washington state patrol, the state fire marshal or authorized deputy or designee.

(2) "New facility" means any facility that is being occupied for the first time, vacated for more than thirty days and reoccupied, or for which the license has expired, shall be considered a new facility and shall meet the current codes and standards as adopted. Except for boarding homes which may be vacated for more than thirty days if approved by the director of fire protection and the department of social and health services.

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-010 Adoption of ((fire safety)) codes and standards. ((1) Application.** This regulation shall apply to:

(a) Transient accommodations (RCW 70.62.290).

(b) Nursing homes (RCW 18.51.140).

(c) Hospitals (RCW 70.41.080).

(d) Boarding homes (RCW 18.20.130).

(e) Private establishments; i.e. private, mental, and alcoholic hospitals (RCW 71.12.485).

(f) Child birth center (RCW 18.46.110).

(g) Agencies licensed by the department of social and health services pursuant to chapter 74.15 RCW, RCW 74.32.040 through 74.32.055, and 74.13.031, except foster family homes and child placing agencies.

(h) Schools under the jurisdiction of the superintendent of public instruction and the state board of education (RCW 48.48.045).

(2) **Purpose.** The purpose of these standards is to specify measures which will provide a reasonable degree of public safety from fire without involving hardship or interference with the normal use and occupancy of a building.

(3) **Fire safety standards.** The fire safety standards of the director of fire protection shall be as follows:

(a) The fire safety standards or applicable portions thereof as found or referenced in the State Building Code Act, chapter 19.27 RCW.

(b) The 1985 edition of the National Fire Protection Association Life Safety Code 101.

(c) Those standards of the National Fire Protection Association applicable to and expressly or impliedly referenced in the Life Safety Code.

(4) **Enforcement.** Enforcement of these fire safety standards shall be as follows:

(a) ~~New construction or major remodeling shall be in conformance with the Uniform Building Code and the Uniform Fire Code, as administered by state and local officials having jurisdiction.~~

(b) ~~Operation and maintenance shall be in conformance with the Uniform Fire Code, as administered by state and local officials having jurisdiction.~~

(c) ~~Existing licensed occupancies previously approved by the state fire marshal as in conformance with the standards then in effect shall have their existing use or occupancy continued, provided such continued use is not dangerous to life and is acceptable to the local fire and building officials having jurisdiction.~~

(d) ~~Occupancies, operations or processes not specifically covered elsewhere, in which the director of fire protection has responsibilities for the removal of fire hazards, shall be conducted and/or maintained in accordance with the latest edition of the National Fire Protection Association Fire Codes which shall be deemed prima facie evidence of good practice.)~~ The following administrative codes and regulations are hereby adopted by reference as if set forth fully herein:

(1) Chapter 51-50 WAC, State Building Code adoption and amendment of the International Building Code.

(2) Chapter 51-51 WAC, State Building Code adoption and amendment of the International Residential Code.

(3) Chapter 51-52 WAC, State Building Code adoption and amendment of the International Mechanical Code.

(4) Chapter 51-54 WAC, State Building Code adoption and amendment of the International Fire Code.

(5) Chapter 51-56 WAC, State Building Code adoption and amendment of the Uniform Plumbing Code.

(6) Chapter 51-57 WAC, State Building Code adoption and amendment of Appendix A, B and Appendix I of the Uniform Plumbing Code.

(7) 42 CFR Ch. IV § 483.70, National Fire Protection Association, standard 101, "Life Safety Code," 2000 edition adopted by CMS (Center for Medicare/Medicaid Services) for application in nursing homes and hospitals.

**AMENDATORY SECTION** (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-015 ((Compliance)) Applicability.** ((1) The director of fire protection has the responsibility under WAC 212-12-010, chapters 19.27 and 48.48 RCW, and chapters 51-40, 51-42, 51-44, and 51-45 WAC to require occupancies, operations, or processes to be conducted and/or maintained so as not to pose a hazard to life or property and for the removal of fire and life safety hazards.

(2) ~~New construction or remodeling shall be in conformance with the State Building Code Act and chapters 19.27 and 48.48 RCW.~~

(3) ~~All occupancies, operations, or processes in which the director of fire protection has responsibility shall comply~~

~~with the provisions of this chapter.)~~ The provisions of this chapter apply to all facilities for which the director of fire protection is responsible for fire protection and enforcement including:

Adult rehabilitation center.

Alcoholism hospital.

Alcoholism intensive inpatient treatment services.

Alcoholism treatment facility.

Psychiatric hospital.

Boarding home.

Birthing center.

Child care occupancies.

Group care facility.

Group care facilities for severely and multiply handicapped children.

Hospital.

Nursing home.

Transient accommodation.

Public buildings.

Enhanced services facilities.

Examination of premises.

Standard of safety.

Schools—Standards for fire prevention and safety—

Plan review and construction inspection.

Removal of fire hazards—Appeal of order—Penalty.

Reports and investigations of fire—Police powers.

Statistical information and reports.

Examination of witnesses.

Criminal prosecution.

Record of fires.

Premises with guard animals—Registration, posting—

Acts permitted fire fighters—Liability for injury to fire fighters.

Hazardous liquid and gas pipeline accidents—Preparedness of local first responders.

**AMENDATORY SECTION** (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-020 ((Inspection)) Additional boarding home requirements.** ((1) The director of fire protection shall have the authority to:

(a) ~~Enter upon and examine any building or premises where any fire has occurred and other buildings and premises adjoining or near thereto per RCW 48.48.030(1), 48.48.060, 48.48.070, and 48.48.080.~~

(b) ~~Enter upon and examine any public building or premises to inspect for fire hazards per RCW 48.48.030(2), 48.48.040, 48.48.045, and 48.48.050.~~

(c) ~~Collect and disseminate statistical information and reports per RCW 48.48.065.~~

(2) The director of fire protection may designate another person or agency to conduct the inspection.) (1) Boarding home resident evacuation capability levels.

(a) Evacuation capability is the ability of the resident of a boarding home licensed by the department of social and health services under chapter 18.20 RCW to respond to an emergency situation and either evacuate the boarding home or move to a point of safety.

(b) Residents shall be classified in one of the following evacuation levels:

(i) Level I - persons physically and cognitively capable of walking or traversing a normal pathway to safety, including the ascent and descent of stairs, and capable of self-preservation, without the physical assistance of another person.

(ii) Level II - persons physically and cognitively capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another person.

(iii) Level III - persons physically or cognitively unable to walk or traverse a normal path to safety without the physical assistance of another person.

(2) Residents with evacuation capabilities of Level II or Level III must reside on the grade level floor unless the boarding home receives written approval by the director of fire protection to house these residents on other floor levels.

(3) The boarding home must not admit or retain more than two residents with evacuation capabilities of Level II or Level III unless:

(a) The boarding home receives written approval by the director of fire protection to care for more than two residents with evacuation capabilities of Level II or Level III;

(b) The boarding home is divided into at least two smoke barrier compartments on each floor; and

(c) The boarding home has an operational automatic sprinkler system throughout the facility, unless the boarding home was initially licensed prior to July 1, 2007, and is licensed for six or fewer residents.

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-025 ((Right of appeal.)) Fire reporting.** ((Any person may appeal any decision made by fire protection bureau under this chapter through the following procedure:

(1) The first level of appeal is to the assistant state fire marshal. The appeal must be submitted in writing to the assistant state fire marshal within thirty days of receipt of the decision in question. The assistant state fire marshal shall reply to the appellant within ten days of receipt of such appeal.

(2) The second level of appeal is to the director of fire protection. If the appellant wishes to appeal the decision of the assistant state fire marshal, he/she shall, within ten days of the receipt of that decision, submit a written appeal to the director of fire protection. The director of fire protection shall reply to the appellant within ten days of receipt of such appeal.

(3) Should this process not satisfy the appellant, he or she may further appeal per chapter 34.05 RCW.) Any facility licensed by the department of health or the department of social and health services, and inspected by the office of the state fire marshal, shall report within twenty-four hours to the office of the state fire marshal any accidental or unintentional fire, any deliberately set improper fire, any unusual incident that required implementation of the facility disaster plan, including any evacuation of all or part of the resident population to another area within the facility or to another address, and any circumstance which threatened or could have threat-

ened the ability of the facility to ensure continuation of normal services to the residents.

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-030 ((Standards.)) Right of appeal for state cited facilities.** ((The fire and life safety standards of the fire protection bureau shall include the following:

(1) Chapter 51-40 WAC, State Building Code adoption of the 1997 edition of the Uniform Building Code, standards and amendments.

(2) Chapter 51-42 WAC, State Building Code adoption of the 1997 edition of the Uniform Mechanical Code, standards and amendments.

(3) Chapter 51-44 WAC, State Building Code adoption of the 1997 edition of the Uniform Fire Code, and amendments.

(4) Chapter 51-45 WAC, State Building Code adoption of the 1997 edition of the Uniform Fire Code Standards.) The following procedure will apply to appeals of orders, decisions or citations made by the state fire marshal's office:

(1) Administrative appeal (step 1) - A facility will have an opportunity to dispute cited deficiencies with a chief deputy state fire marshal. The purpose of this informal process is to give the facility an opportunity to refute cited deficiencies after an inspection. A written request with an explanation of the specific deficiencies that are being disputed shall be submitted within ten days of receipt of the correction notice. All submittals shall be sent to WSP-Fire Protection Bureau, P.O. Box 42600, Olympia, WA 98504-2600. If a facility is successful in demonstrating that a deficiency should not have been cited, the chief deputy state fire marshal will remove or make the appropriate corrections to the citation. If a facility is unsuccessful in demonstrating that a deficiency should not have been cited, the facility will be notified in writing that the citation will remain unchanged. The facility will then have the option to proceed to step #2 in the administrative appeal process.

(2) Administrative appeal (step 2) - If a facility is not satisfied with the decision made during the administrative appeal (step 1), they may appeal the decision in writing within seven days of receipt of the written decision to the prevention division assistant state fire marshal. If a facility is successful in demonstrating that a deficiency should not have been cited, the assistant state fire marshal will remove or make the appropriate corrections to the citation. If a facility is unsuccessful in demonstrating that a deficiency should not have been cited, the facility will be notified in writing that the citation will remain unchanged. The facility will then have the option to proceed to step #3 in the administrative appeal process.

(3) Administrative appeal (step 3) - If a facility is not satisfied with the decision made during the administrative appeal (step 2), they may appeal the decision in writing within seven days of receipt of the written decision to the director of fire protection. If a facility is successful in demonstrating that a deficiency should not have been cited, the director of fire protection will remove or make the appropriate corrections to the citation. If a facility is unsuccessful in

demonstrating that a deficiency should not have been cited, the facility will be notified in writing that the citation will remain unchanged.

(4) This is a final agency action.

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-040 Fire emergency plan.** All Group I, Group E, (~~Group LC~~) and Group ((R)) R2 Occupancies shall develop and maintain a written fire emergency plan. The plan shall include the following:

- (1) Action to take by the person discovering a fire.
- (2) Method of sounding an alarm on the premises.
- (3) Actions to take for evacuation and assuring accountability of the occupants.
- (4) An evacuation floor plan identifying exits.
- (5) In Group R, Division 1 Occupancies and Group R, Division 3 Occupancies used as transient accommodations, a copy of the written evacuation plan shall be posted in each guest room.

AMENDATORY SECTION (Amending WSR 02-16-023, filed 7/29/02, effective 8/29/02)

**WAC 212-12-044 Fire drills.** In all Group I, Group E, (~~Group LC~~) and Group ((R)) R2 Occupancies licensed by the state, at least twelve planned and unannounced fire drills shall be held every year. Drills shall be conducted quarterly on each shift in Group I(~~) and Group ((R)) R2, (~~and Group LC~~) Occupancies and monthly in Group E Occupancies to familiarize personnel with signals and emergency action required under varied conditions. A detailed written record of all fire drills shall be maintained and available for inspection at all times. When drills are conducted between 9:00 p.m. and 6:00 a.m., a coded announcement may be used instead of audible alarms. Fire drills shall include the transmission of a fire alarm signal and simulation of emergency conditions. The fire alarm monitoring company shall be notified prior to the activation of the fire alarm system for drill purposes and again at the conclusion of the transmission and restoration of the fire alarm system to normal mode.~~

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 212-12-011            Applicability.
- WAC 212-12-200           Purpose.
- WAC 212-12-210           Definitions.
- WAC 212-12-220           Applicability.
- WAC 212-12-230           Compliance.
- WAC 212-12-240           Inspection.
- WAC 212-12-250           Approval.
- WAC 212-12-260           Right of appeal.
- WAC 212-12-270           Local codes.

- WAC 212-12-280           Standards.
- WAC 212-12-290           Construction requirements.
- WAC 212-12-300           Modernization or renovation.
- WAC 212-12-310           Additions.
- WAC 212-12-320           Design, operation.
- WAC 212-12-330           Staffing requirements.
- WAC 212-12-340           Fire extinguishers.
- WAC 212-12-350           Lighting.
- WAC 212-12-360           Protection from hazards.
- WAC 212-12-370           Sprinkler systems.
- WAC 212-12-380           Fire alarm.
- WAC 212-12-390           Smoke detection.
- WAC 212-12-400           Equipment, inspection, testing and maintenance.
- WAC 212-12-410           Severability.

**WSR 08-06-057  
PERMANENT RULES  
PUGET SOUND  
CLEAN AIR AGENCY**

[Filed February 29, 2008, 3:29 p.m., effective April 1, 2008]

Effective Date of Rule: April 1, 2008.  
 Purpose: To prohibit burning of land clearing debris in King, Pierce, and Snohomish counties as of June 30, 2008.  
 Citation of Existing Rules Affected by this Order: Amending Sections 8.09, 8.10, and 8.11 of Regulation I.  
 Statutory Authority for Adoption: Chapter 70.94 RCW.  
 Adopted under notice filed as WSR 08-03-108 on January 22, 2008.  
 Changes Other than Editing from Proposed to Adopted Version: In newly adopted Section 8.13(b), "As authorized by WAC 173-425-040(5), residential burning is prohibited in King, Pierce, and Snohomish Counties after June 30, 2010." was replaced with "[reserved – residential burning]."  
 Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.  
 Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.  
 Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.  
 Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.  
 Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.



Date Adopted: February 28, 2008.

Dennis J. McLerran  
Executive Director

### **AMENDATORY SECTION**

#### **REGULATION I SECTION 8.09 DESCRIPTION OF THE KING COUNTY NO-BURN AREA**

As (~~provided~~) authorized by WAC 173-425-040(5), residential burning and land((-))\_clearing burning are prohibited in the following areas of King County until the dates in Section 8.13 of this regulation:

- (a) The King County Urban Growth Area; and
- (b) The former carbon monoxide (CO) non-attainment area (Seattle/Tacoma/Everett urban area as defined by the Washington State Department of Transportation, 1983 version, urban area maps).

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Puget Sound Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

### **AMENDATORY SECTION**

#### **REGULATION I SECTION 8.10 DESCRIPTION OF THE PIERCE COUNTY NO-BURN AREA**

As (~~provided~~) authorized by WAC 173-425-040(5), residential burning and land((-))\_clearing burning are prohibited in the following areas of Pierce County until the dates in Section 8.13 of this regulation:

- (a) The Pierce County Urban Growth Area; and
- (b) The former carbon monoxide (CO) non-attainment area (Seattle/Tacoma/Everett urban area as defined by the Washington State Department of Transportation, 1983 version, urban area maps).

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Puget Sound Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

### **AMENDATORY SECTION**

#### **REGULATION I SECTION 8.11 DESCRIPTION OF THE SNOHOMISH COUNTY NO-BURN AREA**

As (~~provided~~) authorized by WAC 173-425-040(5), residential burning and land((-))\_clearing burning are prohibited in the following areas of Snohomish County until the dates in Section 8.13 of this regulation:

- (a) The Snohomish County Urban Growth Area; and
- (b) The former carbon monoxide (CO) non-attainment area (Seattle/Tacoma/Everett urban area as defined by the Washington State Department of Transportation, 1983 version, urban area maps).

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Puget Sound Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

### **NEW SECTION**

#### **REGULATION I SECTION 8.13 LAND CLEARING AND RESIDENTIAL BURNING PROHIBITED**

(a) As authorized by WAC 173-425-040(5), land clearing burning is prohibited in King, Pierce, and Snohomish Counties after June 30, 2008.

(b) [reserved - residential burning]

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

**WSR 08-06-058**

**PERMANENT RULES**

**DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed February 29, 2008, 4:16 p.m., effective March 31, 2008]

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

Purpose: The proposed rules will assist in the implementation of chapter 72, Laws of 2007 (ESSB 5920) which increases benefits for eligible workers, provides an alternative to vocational services that a worker may accept, and includes accountability to reduce delays and improve vocational service outcomes. This rule making includes amendments of existing rules and new rules intended to implement these changes and assist in improving return to work outcomes for workers. The proposed rules will provide a consistent means for implementing the statutory change, thus reducing inconsistent interpretation and application of the law and potentially unnecessary litigation.

Citation of Existing Rules Affected by this Order: Repealing WAC 296-19A-480 and 296-15-430; and amending WAC 296-19A-030 What are the responsibilities of the parties?, 296-19A-040 What vocational rehabilitation services require authorization?, 296-19A-045 Which rules under "vocational rehabilitation referrals" apply only to state fund claims?, 296-19A-065 What are assessment services?, 296-19A-070 What information must an assessment report include?, 296-19A-080 How often must written progress reports be submitted during assessment activities provided for state fund claims?, 296-19A-090 What are vocational rehabilitation plan development services?, 296-19A-100 What reports are required when vocational plan development services are completed?, 296-19A-110 What are vocational rehabilitation plan implementation and monitoring services?, and 296-19A-120 What reports are required when vocational rehabilitation plan implementation and monitoring services are completed?

Statutory Authority for Adoption: RCW 51.04.020, 51.04.030, 51.32.095, 51.32.099 and 51.32.0991 (chapter 72, Laws of 2007, ESSB 5920).

Adopted under notice filed as WSR 08-01-109 on December 18, 2007.

Changes Other than Editing from Proposed to Adopted Version:

WAC 296-19A-030 What are the responsibilities of the parties?

Subsection (4), amended wording to include worker cooperation.

Subsection (5)(f), added wording to clarify employment security department determines high demand occupations.

Subsection (5)(g), added wording to clarify this is the notification letter approving plan development services.

WAC 296-19A-065 What are assessment services?

Subsection (1), amended language to clarify work restrictions should be documented.

WAC 296-19A-070 What information must an assessment report include?

Subsection (4)(a)(ii), amended wording to clarify job analysis must be for the job or jobs for which the worker is able to work.

Subsection (4)(b)(ii)(C), amended wording to clarify the analysis may include the labor market survey that was conducted.

Subsection (4)(c)(iv) and (v), subsection[s] were combined to clarify the report must include labor market information and other information, as necessary.

WAC 296-19A-080 How often must written progress reports be submitted during assessment activities provided on state fund claims?

Subsection (1), amended wording to clarify reports must be submitted every thirty days or upon request of the department.

WAC 296-19A-090 What are vocational plan development services?

Subsection (1)(a), amended wording for consistency with other sections.

WAC 296-19A-096 How will the department determine whether there is good cause to grant an extension of time?

Subsection (2), added grandchild as immediate family member.

Subsection (3), added language to clarify this applies when the department has issued an order.

WAC 296-19A-098 How often must written progress reports be submitted when plan development services are provided for state fund claims?

Subsection (1), amended wording to clarify reports must be submitted every thirty days or upon request of the department.

WAC 296-19A-110 What are vocational rehabilitation plan implementation and monitoring services?

Subsection (1), amended wording to clarify the vocational provider contacts the trainer or appropriate representative of the training program or school every fourteen days if necessary.

WAC 296-19A-118 How often must written progress reports be submitted when plan implementation and monitoring services are provided for state fund claims?

Subsection (1), amended wording to clarify reports must be submitted every thirty days or upon request of the department.

WAC 296-15-4312 What must the self-insurer do when the vocational rehabilitation plan is successfully completed?

Subsection (1)(a), amended language for clarity.

Subsection (2)(b), amended language for clarity.

Subsection (2)(c), added language to include total time-loss days paid.

WAC 296-15-4314 What must the self-insurer do if the vocational rehabilitation plan is not successfully completed?

Subsection (1)(b)(i) and (ii), (2)(b)(i) and (ii), and (3)(c)(i) and (ii), amended language for clarity.

Subsection (1)(b)(iii), (2)(b)(iii), and (3)(c)(iii), added language to include total time-loss days paid.

WAC 296-15-4318 What must the self-insurer do when the worker elects option 2 benefits and the claim is closed?

Amended to clarify employer will report quarterly for all workers on one report.

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 14, Amended 10, Repealed 2.

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 14, Amended 10, Repealed 2.

Date Adopted: February 29, 2008.

Judy Schurke  
Director

#### NEW SECTION

**WAC 296-15-4302 What is the Self-Insurance Vocational Reporting Form?** The Self-Insurance Vocational Reporting Form replaces the Employability Assessment Report (EAR) and is used as a cover sheet for all vocational reports submitted to the department by the self-insured employer.

**Note:** A Self-Insurance Vocational Reporting Form is not required if the worker is not eligible for vocational services because they returned or were released to work at the job at the time of injury or on the date of disease manifestation.

#### NEW SECTION

**WAC 296-15-4304 What must the self-insurer do when an assessment report is received?** (1) A self-insurer must submit a Self-Insurance Vocational Reporting Form and the assessment report to the department within ten working days after receiving the completed report. A completed

report is one that, in the opinion of the department, meets the requirements in WAC 296-19A-070.

(2) When time-loss is terminated, based on the vocational rehabilitation provider's recommendations, the self-insurer must notify the worker or the worker's representative as required in WAC 296-15-420(9).

(3) The self-insurer can terminate time-loss on the date they receive the recommendation but, if the department determines the assessment report failed to demonstrate the worker is able to work, the self-insurer must request additional information from the vocational rehabilitation provider before resubmitting the report and an updated Vocational Services Reporting Form to the department.

(4) If the self-insurer terminated time-loss based on the assessment report's recommendation but the department concludes the assessment report failed to demonstrate the worker is able to work, the self-insurer must reinstate time-loss effective the day after the last date paid.

#### NEW SECTION

**WAC 296-15-4306 When must a self-insurer submit a vocational rehabilitation plan to the department?** No later than ninety calendar days after the date the department determined the worker was eligible for vocational plan development services, the employer must submit a Self-Insurance Vocational Reporting Form and a completed vocational plan for the worker.

If the plan cannot be completed and submitted to the department within that time period, the self-insurer must, prior to the ninetieth day, submit a Self-Insurance Vocational Reporting Form and the vocational rehabilitation provider's request for an extension as required in WAC 296-19A-094.

#### NEW SECTION

**WAC 296-15-4308 What must the vocational rehabilitation plan include?** The vocational rehabilitation plan must meet the requirements in WAC 296-19A-100.

#### NEW SECTION

**WAC 296-15-4310 What must the self-insurer do when the department denies the vocational rehabilitation plan?** The vocational rehabilitation plan may be denied if the plan does not meet the requirements in WAC 296-19A-100 and the department cannot make a determination based on the information provided.

If the plan does not meet the requirements or is denied as incomplete, the self-insurer must correct the plan and/or obtain the information requested by the department, and resubmit the completed plan and an updated Vocational Services Reporting Form.

If the plan cannot be corrected and/or completed and submitted to the department within ninety calendar days after the date the department determined the worker was eligible for vocational plan development services, the self-insurer must, prior to the ninetieth day, submit a Self-Insurance Vocational Reporting Form and the vocational rehabilitation provider's request for an extension as required in WAC 296-19A-094.

#### NEW SECTION

**WAC 296-15-4312 What must the self-insurer do when the vocational rehabilitation plan is successfully completed?** The self-insurer must:

(1) Notify the worker or the worker's representative of the time-loss termination as required in WAC 296-15-420(9).

(2) Submit a Self-Insurance Vocational Reporting Form to the department within ten working days of the date time-loss benefits ended. The Self-Insurance Vocational Reporting Form must include:

(a) The total cost and time expended for the approved plan;

(b) The total time-loss compensation benefits paid during the plan implementation; and

(c) The total vocational services costs and time-loss days paid since the date the worker was found eligible for services; and

(d) A closing report with a copy to the worker or the worker's representative. The closing report must meet the requirements in WAC 296-19A-120.

#### NEW SECTION

**WAC 296-15-4314 What must the self-insurer do if the vocational rehabilitation plan is not successfully completed?** When a vocational rehabilitation plan ends before successful completion, the vocational rehabilitation provider will submit a closing report to the self-insurer.

(1) **Plan not completed due to causes outside the worker's control.** Within ten working days of receiving the vocational closing report, the self-insurer must:

(a) Continue time-loss benefits; and

(b) Submit a Self-Insurance Vocational Reporting Form to the department. The form must include:

(i) The total cost and time expended for the approved plan;

(ii) The total time-loss compensation benefits paid during the plan implementation;

(iii) The total vocational services costs and time-loss days paid since the date the worker was found eligible for services; and

(iv) A closing report with a copy to the worker or the worker's representative. The closing report must meet the requirements in WAC 296-19A-120(2).

(2) **Plan not completed due to worker's actions.** Within ten working days of receiving the vocational closing report, the self-insurer must:

(a) Submit a request for suspension of benefits with supporting documentation.

(b) Submit a Self-Insurance Vocational Reporting Form to the department. The form must include:

(i) The total cost and time expended for the approved plan;

(ii) The total time-loss compensation benefits paid during the plan implementation;

(iii) The total vocational services costs and time-loss days paid since the date the worker was found eligible for services; and

(iv) A closing report with a copy to the worker or the worker's representative. The closing report must meet the requirements in WAC 296-19A-120(2).

(3) **Worker is employable.** When the worker is employable based on an assessment of the training completed to date, the self-insurer must:

(a) Notify the worker or the worker's representative of the time-loss termination as required in WAC 296-15-420(9).

(b) Submit a Self-Insurance Vocational Reporting Form to the department within five working days of the date time-loss benefits ended.

(c) The Self-Insurance Vocational Reporting Form must include:

(i) The total cost and time expended for the approved plan;

(ii) The total time-loss compensation benefits paid during the plan implementation;

(iii) The total vocational services costs and time-loss days paid since the date the worker was found eligible for services; and

(iv) A closing report with a copy to the worker or the worker's representative. The closing report must meet the requirements in WAC 296-19A-120(2).

#### NEW SECTION

**WAC 296-15-4316 What must the self-insurer do when the worker declines further vocational rehabilitation services and elects option 2 benefits?** When the department approves a rehabilitation plan, the worker will be notified in writing of their right to decline further vocational rehabilitation services and elect option 2 benefits within fifteen calendar days. When the worker elects option 2 benefits, the self-insurer must take the following action within five working days of receiving the worker's request:

(1) Terminate time-loss benefits with proper notification to the worker as required in WAC 296-15-420(9);

(2) Establish the total amount of the option 2 award and a payment schedule for the option 2 benefits that begins the date time-loss is terminated;

(3) Submit a Self-Insurance Vocational Reporting Form to the department. The Self-Insurance Vocational Reporting Form must include:

(a) The total vocational services costs paid since the date the worker was found eligible for services;

(b) The option 2 election form signed by the worker; and

(c) Documentation that includes the total amount of the option 2 award and payment schedule; and

(4) Commence payment of option 2 benefits to the worker according to the established payment schedule. The first payment must be made no later than fifteen days after the date time-loss is terminated. Option 2 benefits may be paid before the department issues an order.

#### NEW SECTION

**WAC 296-15-4318 What must the self-insurer do when the worker elects option 2 benefits and the claim is closed?** The self-insurer must submit a quarterly report to the department on a form stipulated by the department listing the total retraining costs paid to date for each worker since the

option 2 benefit was granted. These quarterly reports must document all funds expended and funds that remain available for all workers of the employer until each worker has expended the total vocational costs available to him or her, or until five years have passed since the benefit was granted.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-15-430 Vocational services.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

**WAC 296-19A-030 What are the responsibilities of the parties?** ~~((All parties will))~~ The attending health care provider, department, self-insured employer, employer, worker and vocational rehabilitation provider have the following responsibilities in assisting the ((injured)) worker to become employable at gainful employment:

(1) Attending health care provider. The attending ~~((physician shall))~~ health care provider must:

(a) Maintain open communication with the ((industrially injured or ill)) worker's assigned vocational rehabilitation ((counselor)) provider and the referral source. ((The attending physician shall))

(b) Respond to any request((s)) for information ((in a timely fashion and will)) which is necessary to evaluate a worker's:

(i) Ability to work;

(ii) Need for vocational services; and

(iii) Ability to participate in a vocational retraining plan.

(c) Do all that is possible to expedite the vocational rehabilitation process, including making an estimate of the ((worker's)) physical or mental capacities that affect the worker's employability. If unable to provide an estimate, refer the worker for the appropriate consultation or evaluation.

(2) ~~((The claims unit within the department shall notify the employer of the referral to a vocational rehabilitation provider.))~~ Department.

(a) State fund claims. For state fund claims, the department must:

(i) Obtain medical information required to initiate vocational rehabilitation services before a referral is made to a vocational rehabilitation provider.

(ii) Notify the chargeable employer(s), if any, at the time any referrals are made to a vocational rehabilitation provider.

(iii) Provide the vocational rehabilitation provider with access to all reports and any other relevant documentation generated during prior vocational rehabilitation services including plans that have been provided on any claim.

(iv) Review the assessment report and determine whether the worker is eligible for vocational rehabilitation plan development services.

(v) Notify all parties of the eligibility determination in writing. When the worker is eligible for plan development services, the notification letter must advise that the charge-

able employer(s), if any, has fifteen calendar days from the date of the letter to make a valid return to work offer.

(vi) Assign plan development services to the vocational rehabilitation provider that completed the assessment report unless the department decides the provider cannot complete the required report.

(vii) Review the submitted vocational rehabilitation plan within fifteen days of receipt at the department, and determine whether to approve or deny the plan.

(viii) Notify all parties of plan approval or denial in writing. Should the department fail to send a notification letter within fifteen calendar days of the date the report is received by the department, the plan is considered approved.

When a plan is approved, the notification must advise the worker that he or she has fifteen calendar days from the date of the notification letter to decline vocational services and elect option 2 benefits as defined in RCW 51.32.099.

(b) **Self-insured claims.** For self-insured claims, the department must:

(i) Review the assessment report and determine whether the worker is eligible for vocational rehabilitation plan development services.

(ii) Notify all parties of the eligibility determination in writing.

When the worker is eligible for plan development services, the notification letter must advise the employer it has fifteen calendar days from the date of the letter to make a valid return to work offer; and

(iii) Review the submitted vocational rehabilitation plan within fifteen days of receipt at the department, and determine whether to approve or deny the plan.

(iv) Notify all parties of plan approval or denial in writing. Should the department fail to send a notification letter within fifteen calendar days of the date the report is received by the department, the plan is considered approved.

When a plan is approved, the notification letter must advise the worker that he or she has fifteen calendar days from the date of the letter to elect option 2 benefits as defined in RCW 51.32.099.

(3) **Employer.** The employer ~~((shall))~~ must:

(a) Assist the vocational rehabilitation ~~((counselor))~~ provider in any way necessary to collect data regarding the ~~((former))~~ worker's gainful employment ~~((of the injured worker. Further, the employer will))~~ at the time of the injury.

(b) Assist the vocational rehabilitation ~~((counselor))~~ provider and attending ~~((physician))~~ health care provider to determine whether ~~((or not))~~ a ~~((modified))~~ job could be made available for employment of the ~~((injured))~~ worker.

(4) ~~((The injured worker shall cooperate with all reasonable requests from all responsible individuals in determining disability, developing and implementing the rehabilitation process. Should the injured worker fail to be cooperative, the sanctions as set out in RCW 51.32.110 shall be applied.))~~

**Worker.** The worker must fully participate and cooperate in all aspects of their vocational services including determination of physical capacities, development of vocational goals, and implementation of the rehabilitation process. Examples include but are not limited to:

- Providing accurate and complete information regarding his or her work history and educational background.

- Attending all scheduled appointments.

- Cooperating with return to work efforts when it is determined return to work opportunities exist.

- Actively participating and cooperating in selecting a job goal when it is determined retraining is necessary.

(5) **Vocational rehabilitation provider.** In assisting the ~~((injured))~~ worker to become employable at gainful employment, the vocational rehabilitation provider ~~((is to))~~ must:

(a) Follow the priorities ~~((as set out))~~ in RCW 51.32.095 and the requirements ~~((as set out))~~ in this chapter. ~~((This includes providing, upon request, copies of reports and attachments submitted to the referral source to the injured worker or their representative.))~~

(b) For state fund claims, immediately inform the department orally if the worker:

(i) Returns to work;

(ii) Is released for work without restrictions;

(iii) Returns to work and is unsuccessful; or

(iv) Fails to cooperate.

**Note:** Written notification and documentation must follow oral notification within two working days.

(c) Identify all vocational rehabilitation counselors and interns who provided services in each reporting period.

(d) Provide copies of reports and attachments submitted to the referral source to the employer (if different than the referral source) and the worker or the worker's representative when requested.

(e) Prior to a determination of eligibility, work with the employer, if necessary, to develop job analyses for work the employer is offering or has available and provide other assistance necessary to facilitate return to work with the employer.

(f) When providing plan development services, the vocational rehabilitation provider should, whenever possible and appropriate, focus on identifying goals and occupations that are considered high demand in the workforce. High demand occupations, as determined by the employment security department, means the number of job openings in the labor market for the occupation or with the required skill set exceeds the supply of qualified workers.

(g) Should the employer choose to make a valid return to work offer within fifteen calendar days of the date of the notification letter approving plan development services, the vocational rehabilitation provider may provide assistance necessary to facilitate return to work with the employer.

**AMENDATORY SECTION** (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

**WAC 296-19A-040 What vocational rehabilitation services require authorization?** All vocational rehabilitation services must be preauthorized. For state fund claims, the department may make one or more of the following type of referrals: Early intervention; ability to work assessment ("AWA" or "assessment"); plan development; plan implementation; forensic services; or stand alone job analysis. Each referral is a separate authorization for vocational rehabilitation services.

AMENDATORY SECTION (Amending WSR 03-22-030, filed 10/28/03, effective 2/1/04)

**WAC 296-19A-045 Which rules under "~~((department))~~ vocational rehabilitation referrals" apply only to ~~((the department))~~ state fund claims?** WAC 296-19A-050, 296-19A-060, 296-19A-080, 296-19A-098, 296-19A-118, and 296-19A-125 through 296-19A-137 pertain only to referrals for vocational rehabilitation services made by the department for state fund claims.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

**WAC 296-19A-065 What are ~~((ability to work))~~ assessment ~~((AWA))~~ services?** ~~((AWA))~~ Assessment services are used by the department or self-insured employer to determine if ~~((an industrially injured or ill))~~ a worker should receive vocational rehabilitation plan development services. ~~((AWA))~~ Assessment services may include, but are not limited to, the following:

- (1) ~~((Performing job analyses;~~
- (2) ~~Conducting labor market surveys;~~
- (3) ~~Assessing transferable skills;~~
- (4) ~~Obtaining work restrictions;~~
- (5) ~~Evaluating the injured worker's ability to work at the job of injury or any other job;~~
- (6) ~~Coordinating with medical providers to obtain physical capacities and restriction information and a release to participate in vocational rehabilitation plan development services;~~
- (7) ~~With authorization from the department, vocational testing may be used to evaluate the industrially injured or ill worker's ability to benefit from vocational rehabilitation services;)~~ Documenting work restrictions:
  - (2) Performing job analyses;
  - (3) Evaluating the worker's ability to work at the job of injury;
  - (4) Assessing transferable skills;
  - (5) Conducting labor market surveys as defined in WAC 296-19A-140;
  - (6) Evaluating the worker's ability to work at any other job;
  - (7) Evaluating the worker's ability to benefit from plan development services, including vocational testing if appropriate; and
- (8) ~~Assessing the ~~((industrially injured or ill))~~ worker's need for preferred worker status and when appropriate educating the worker on the preferred worker benefit~~((, if appropriate))~~).~~

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

**WAC 296-19A-070 What ~~((is an ability to work))~~ information must an assessment report include?** (1) The ~~((AWA))~~ assessment report must include ~~((an))~~ information and evaluation of the ~~((industrially injured or ill))~~ worker's:

- ~~((a))~~ Age, education and experience;
- ~~((b))~~ Transferable skills;

~~((c))~~ Preexisting physical and mental conditions and the effect of those conditions on the worker's employability;

~~((d))~~ Physical and mental conditions proximately caused by the worker's industrial injury or occupational disease and the effect of those conditions on the worker's employability;

~~((e))~~ Wage at the time of injury;

~~((f))~~ Work pattern;

~~((g))~~ Significant barriers to employment;

~~((h))~~ Labor market;

~~((i))~~ Complete work history, addressing any gaps in employment, in addition to information about education level, courses or transcripts, licenses, certifications or registrations that the worker may have obtained in the past; and

~~((j))~~ The report must address the first four return to work priorities set forth in RCW 51.32.095(2).

~~((2))~~ (a) Age;

(b) Education, including information about education level, courses or transcripts, licenses, and certifications or registrations that the worker may have obtained in the past;

(c) Complete work history, addressing any gaps in employment;

(d) Transferable skills and experience, whether obtained from prior employment, prior courses and training, prior vocational rehabilitation services or plans, or nonwork related activities such as hobbies and/or volunteer experience;

(e) Physical and mental conditions proximately caused by the worker's injury or occupational disease, and the effect of those conditions on the worker's ability to work and/or benefit from vocational services;

(f) Preexisting physical and mental conditions and the effect of those conditions on the worker's ability to work and/or benefit from vocational services;

(g) Postinjury physical and mental conditions and the effect of those nonrelated conditions on the worker's ability to work and/or benefit from vocational services;

(h) Wage and employment pattern at the time of injury;

(i) Barriers to employment, including whether the barriers can be removed and/or what is needed to address the barriers; and

(j) Labor market information as defined in WAC 296-19A-140.

(2) If the vocational rehabilitation provider cannot obtain one or more of the above categories of information, the provider must document in the report all efforts made to obtain the information and why the information could not be obtained.

(3) The report must address whether the worker can return to work in any capacity with the employer of injury or if the worker is employable at a new job with transferable skills.

(4) The ~~((AWA))~~ assessment report must also include one of the following recommendations:

(a) **Able to work:** The ~~((injured))~~ worker is employable at gainful employment. The report must include:

(i) Whether the worker is employable with the employer of injury or current employer, or if not, a list of job possibilities for which the worker is qualified;

(ii) A medically approved job analysis for the job or jobs at which the worker is able to work. When this is not obtain-

able, medically approved physical capacities information regarding the worker's ability to perform the job may be used; and

(iii) Labor market information as defined in WAC 296-19A-140 supporting the vocational rehabilitation provider's recommendation. Labor market information is not necessary when the ~~((injured))~~ worker is medically released to work for their job of injury at their previous work pattern;

(b) **Further services appropriate:** Vocational rehabilitation services are necessary and likely to enable the ~~((injured))~~ worker to become employable at gainful employment. The report must include:

(i) ~~((An analysis demonstrating how vocational rehabilitation plan development services are necessary and likely to enable the injured worker to become employable at gainful employment;~~

~~((ii) The specific return to work possibilities investigated and the reasons why they were ruled out including labor market information when necessary; or))~~ The specific return to work possibilities investigated and the reasons why they were ruled out which may include labor market information as defined in WAC 296-19A-140;

(ii) An analysis explaining how vocational rehabilitation plan development services are likely to enable the worker to become employable at gainful employment. The analysis may include but is not limited to:

(A) Vocational evaluation that addresses the worker's ability to benefit from vocational rehabilitation services;

(B) Information regarding the worker's medical and/or psychological condition(s);

(C) Labor market survey that was conducted as defined in WAC 296-19A-140;

(D) A discussion of the worker's participation in vocational activities to date; and

(E) Any other relevant information.

(c) **Further services not appropriate:** The ~~((injured))~~ worker is not likely to benefit from vocational services. The report must include:

(i) An analysis explaining why vocational rehabilitation services are not appropriate;

(ii) ~~((Identifying))~~ Barriers identified that will make it unlikely the worker will benefit from vocational rehabilitation services, consistent with the requirements in WAC 296-19A-010(1);

(iii) Medical, ~~((labor market, and/or))~~ psychological or other vocationally relevant information~~((, as necessary, supporting the)); and~~

(iv) Labor market information as defined in WAC 296-19A-140 and other information, as necessary, supporting the vocational rehabilitation provider's recommendations.

(d) **Return to work:** The ~~((injured))~~ worker has returned to work. The report must specify and/or document attempts to obtain the following information:

(i) A description of the job the worker returned to;

(ii) The name of the employer;

(iii) The date that the worker returned to work; and

(iv) The worker's monthly wages.

~~((3))~~ The provider must immediately inform the department orally if the worker has returned to work or if the provider has documentation that the worker is medically

released without restrictions or has returned to work. The provider must follow the oral notification with written notification within two working days. The provider must attach documentation showing the worker was medically released to work without restrictions. Except for completing the closing report, the provider should not perform any other work on the AWA without the prior authorization of the referral source.)

(5) When the worker has returned to work to the job of injury or is medically released without restrictions, the vocational rehabilitation provider should complete the closing report. No other work should be performed without the prior authorization of the referral source.

AMENDATORY SECTION (Amending WSR 03-22-030, filed 10/28/03, effective 2/1/04)

**WAC 296-19A-080 How often must written progress reports be ~~((completed and))~~ submitted during assessment activities provided for state fund claims?** (1) The vocational rehabilitation provider must submit a written progress report to the department, and upon request, to the ~~((injured))~~ employer and the worker or ~~((the injured worker's))~~ his or her representative, every thirty calendar days from the date of the electronic referral ~~((summarizing progress during the most recent reporting period))~~ or upon request of the department.

(2) The written progress report must summarize progress during the most recent reporting period and include:

~~((1))~~ (a) A detailed explanation why the ~~((AWA))~~ assessment report was not completed as of the date of the report;

~~((2))~~ (b) A summary of all activities taken in the past thirty days, including progress on previously recommended actions;

~~((3))~~ (c) Identification and analysis of any barriers preventing completion of the referral; and

~~((4))~~ (d) A description of the specific actions the provider intends to take to overcome barriers and the expected time frame to complete those actions.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

**WAC 296-19A-090 What are vocational rehabilitation plan development services?** Vocational rehabilitation plan development services are authorized to obtain the vocational rehabilitation provider's assistance in producing a vocational rehabilitation plan for ~~((an industrially injured or ill))~~ a worker. The vocational rehabilitation provider will work with the ~~((industrially injured or ill))~~ worker in the development of the plan. Covered services include, but are not limited to ~~((, the following))~~:

~~((1))~~ (1) ~~((Vocational counseling and occupational exploration;~~

~~((2))~~ (2) ~~((Identifying job goal, training needs, resources, and expenses;~~

~~((3))~~ (3) ~~((Vocational rehabilitation plan development services are authorized for the vocational rehabilitation provider to produce a recommended vocational rehabilitation plan for an industrially injured or ill worker;~~

~~(4) Coordinating with medical providers to obtain physical capacities and restrictions information and a release to participate in a vocational rehabilitation plan;~~

~~(5) Vocational testing; and~~

~~(6) Identify, evaluate, and plan education and training resources, when necessary.)~~ An initial meeting between the assigned vocational rehabilitation provider and the worker.

The assigned vocational rehabilitation provider must meet with the worker in person and fully inform the worker of the return to work priorities set forth in RCW 51.32.095(2) and of his or her rights and responsibilities under the workers' compensation vocational system. The vocational rehabilitation provider must use tools provided by the department in order to document this requirement.

**Exception:** For out-of-state referrals, the counselor providing direct services to the worker may be considered the assigned vocational rehabilitation provider for purposes of this meeting.

The rights and responsibilities include but are not limited to:

(a) The responsibility of the worker and vocational rehabilitation provider to cooperate with the plan development process and to submit a plan within ninety calendar days;

(b) An explanation of the benefits available to the worker, including the right to choose to participate in retraining or elect option 2 benefits after a plan has been approved; and

(c) An explanation of the possible action the department or self-insured employer may take under RCW 51.32.110 and WAC 296-14-410 should the worker be determined to be noncooperative during the plan development process.

(2) Vocational counseling and occupational exploration;

(3) Identifying a potential job goal and estimating the training needs, resources, and expenses necessary to complete that goal;

(4) Vocational testing; and

(5) Coordinating with medical providers to obtain approval of job analyses and a release to participate in a vocational rehabilitation plan.

#### NEW SECTION

**WAC 296-19A-092 When must plan development be completed?** The vocational rehabilitation provider must submit the completed plan within ninety calendar days of the date the worker was notified by letter that plan development services were authorized. The ninety-day requirement may be extended only for good cause. The vocational rehabilitation provider must continue working on plan development while the department evaluates the extension request.

#### NEW SECTION

**WAC 296-19A-094 How can a provider request an extension of time to complete plan development?** (1) When the plan cannot be completed and submitted to the department within ninety calendar days (see WAC 296-19A-092), the vocational rehabilitation provider seeking an extension must submit a written request to the department for state fund claims or the self-insured employer. The vocational

rehabilitation provider must continue working on plan development while the department evaluates the extension request.

(2) The written request for an extension must:

(a) Explain why there is good cause for an extension, with supporting documentation;

(b) Specify the number of additional calendar days requested to complete plan development; and

(c) Identify any anticipated barriers to the completion of plan development.

#### NEW SECTION

**WAC 296-19A-096 How will the department determine whether there is good cause to grant an extension of time?** (1) The department will determine whether good cause exists on a case-by-case basis.

(2) The department will grant an extension of time for good cause when there is a significant delay in the plan development process and the cause is beyond the worker's or vocational rehabilitation provider's control.

Examples of causes that are beyond the worker's or provider's control include, but are not limited to:

- A death in the worker's immediate family. For purposes of this section, immediate family is defined as spouse, domestic partner, child, grandchild, sibling, parent or grandparent.

- Delays caused by documented changes in the worker's medical ability to participate in plan development.

- Information received by the vocational rehabilitation provider that impacts plan development and was not available when assessment services were provided.

- Documented delay in receipt of requested information from a medical provider relevant to developing the vocational plan.

- The impact of previously identified barriers to employment and/or retraining.

(3) Noncooperation by a worker, pursuant to an order issued by the department under RCW 51.32.110 and WAC 296-14-410, is not good cause for granting an extension of time.

(4) If the department finds there is not good cause for the delay in submitting a vocational plan, the department may take action, including but not limited to:

(a) Suspension of further vocational services if the worker has been found noncooperative under RCW 51.32.110 and WAC 296-14-410, until such noncooperative actions cease or have been cured.

(b) Assignment of a new vocational provider.

(c) Allowing the vocational rehabilitation provider to complete the referral with monitoring of further plan development services by the department or self-insured employer.

#### NEW SECTION

**WAC 296-19A-098 How often must written progress reports be submitted when plan development services are provided for state fund claims?** (1) The vocational rehabilitation provider must submit a written progress report to the department every thirty calendar days from the date of the electronic referral or upon request of the department.



(2) The first progress report must document the assigned vocational rehabilitation provider met with the worker in person and fully informed the worker of the return to work priorities in RCW 51.32.095(2) and his or her rights and responsibilities.

(3) All progress reports must summarize progress during the most recent reporting period and include the following:

(a) Description of the return to work goals explored, accepted or ruled out, including any jobs offered by the employer;

(b) Review of the return to work priorities being addressed;

(c) Summary of all actions taken, including progress on previously recommended actions;

(d) Description of the worker's participation in vocational activities and compliance with the responsibilities in WAC 296-19A-030(4).

(e) Identification and analysis of any barriers preventing completion of the referral; and

(f) Description of the specific actions the vocational rehabilitation provider intends to take to overcome barriers and the expected time frame to complete those actions.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

**WAC 296-19A-100 What reports (~~does the department require~~) are required when vocational rehabilitation plan development services are (~~provided at its request~~) completed?** ((1) Progress reports. The vocational rehabilitation provider must submit a written progress report to the department, and upon request, to the injured worker or the injured worker's representative, every thirty calendar days from the date of the electronic referral summarizing progress during the most recent reporting period. The progress report must include the following:

(a) Description of the return to work goals explored, accepted or ruled out;

(b) Review of the return to work priorities being addressed;

(c) Summary of all actions taken, including progress on previously recommended actions;

(d) Identification and analysis of any barriers preventing completion of the referral; and

(e) Description of the specific actions the provider intends to take to overcome barriers and the expected time frame to complete those actions.

(2)) When plan development services are completed, the vocational rehabilitation provider must submit one of the following reports:

(1) **Vocational rehabilitation plan.** The vocational rehabilitation provider must address the return to work priorities listed in RCW 51.32.095(2) in the plan and explain why each preceding priority would not help the (~~industrially injured or ill~~) worker return to work. The vocational plan must also include the following information:

(a) An assessment of the (~~industrially injured or ill~~) worker's skills and abilities considering the (~~industrially injured or ill~~) worker's:

(i) Physical capacities and mental status(~~;~~);

(ii) Aptitudes (~~and~~);

(iii) Transferable skills gained through prior work experience, education, training (~~and avocation~~), hobbies, volunteer experience or other nonwork related activities;

(b) (~~The services necessary to enable the industrially injured or ill worker to become employable in the labor market;~~

(c) Labor market survey supportive of the industrially injured or ill worker's employability upon plan completion;

(d) Documentation of the time and costs required for completion of the plan;

(e) A direct comparison of the industrially injured or ill worker's skills, both existing and those to be acquired through the plan, with potential types of employment to demonstrate a likelihood of plan success;)) Proposed occupational goal:

(c) The services necessary to enable the worker to become employable in the labor market;

(d) Labor market survey as defined in WAC 296-19A-140, supportive of the worker's employability upon plan completion;

(e) Documentation of the time and costs required for completion of the plan;

(f) A medically approved job analysis for the proposed retraining job goal;

(g) (~~Any other information that may significantly affect the plan;~~ and

(h) An agreement signed by the provider and industrially injured or ill worker that:

(i) Acknowledges that the provider and the industrially injured or ill worker have reviewed, understand and agree to the vocational rehabilitation plan; and

(ii) Sets forth the provider's and industrially injured or ill worker's responsibilities for the successful implementation and completion of the vocational rehabilitation plan.)) A list of the skills the worker will acquire through retraining;

(h) A description of the services that will be provided prior to completion of the plan that will assist the worker to successfully transition to gainful employment;

(i) Any other information that may significantly affect the plan; and

(j) An accountability agreement signed by the vocational rehabilitation provider and worker that:

(i) Acknowledges that the vocational rehabilitation provider and the worker have reviewed, understand and agree to the vocational rehabilitation plan;

(ii) Sets forth the vocational rehabilitation provider's and worker's responsibilities for the successful implementation and completion of the vocational rehabilitation plan;

(iii) Details expectations regarding progress, attendance, and other factors influencing completion of the plan; and

(iv) Acknowledges the worker understands that failure to comply with the agreed expectation will result in initiation of the process to suspend benefits in accordance with RCW 51.32.110 and WAC 296-14-410.

The vocational rehabilitation provider must use a statement approved by, or substantially similar to a statement used by, the department in order to document this agreement.

((3)) (2) **Closing report.** If the vocational rehabilitation provider has to stop plan development before a rehabilitation plan is (~~submitted and/or~~) approved, the vocational

rehabilitation provider must submit a plan development closing report. The report must include:

(a) A list of the reasons the vocational rehabilitation provider cannot proceed with vocational rehabilitation plan development activities;

(b) Supporting documentation, such as: ~~((Goals))~~ The goals that were researched, the job analyses that were developed, and/or labor market research as defined by WAC 296-19A-140 that was conducted; and

(c) ~~((Address))~~ An assessment addressing whether ((or not)) further vocational rehabilitation services may be necessary and likely to enable the ((injured)) worker to become employable.

AMENDATORY SECTION (Amending WSR 03-11-009, filed 5/12/03, effective 2/1/04)

**WAC 296-19A-110 What are vocational rehabilitation plan implementation and monitoring services?** Vocational rehabilitation plan implementation and monitoring services are those services a vocational rehabilitation provider provides to assist ~~((an industrially injured or ill))~~ a worker to successfully complete a vocational rehabilitation plan. These services may include, but are not limited to, the following:

~~(1) ((Maintain sufficient contact with the industrially injured or ill worker, trainer and medical providers to make sure the worker successfully enters and progresses in the vocational rehabilitation plan;~~

~~(2))~~ Contacting the worker and, if necessary, the trainer or appropriate representative of the training program or school, at least every fourteen calendar days to:

(a) Confirm ((that)) the ((industrially injured or ill)) worker has received all necessary equipment and supplies;

~~((3))~~ Contact the industrially injured or ill worker and trainer at least every thirty days to identify potential problems;

~~(4) Notify the department if the plan needs to be interrupted;~~

~~(5) Notify))~~ (b) Make sure the worker successfully enters and progresses in the vocational rehabilitation plan;

(c) Identify potential problems;

(d) Monitor the worker's progress; and

(e) Resolve any problems that might arise, or submit documentation regarding why it cannot be resolved;

(2) Notifying the department or self-insured employer when the ((industrially injured or ill)) worker completes the plan;

~~((6))~~ Monitor the industrially injured or ill worker's progress and resolve any problems that might arise or address by submitting supporting documentation regarding why it cannot be brought to resolution;

~~(7))~~ (3) Assisting ((in)) with job search assistance ((prior to)) before the completion of the vocational rehabilitation plan((-

(8) Document the industrially injured or ill)) and may include referral to community based organizations offering free resources for job search assistance such as resume writing and job seeking skills;

(4) Documenting the worker's acquisition of skills; ((and

~~(9) Notify))~~ (5) Notifying the department if the plan needs to be terminated((-

~~(10) Obtain)); and~~

(6) Obtaining preferred worker status for worker, if appropriate.

#### NEW SECTION

**WAC 296-19A-118 How often must written progress reports be submitted when plan implementation and monitoring services are provided for state fund claims?**

(1) The vocational rehabilitation provider must submit a written progress report to the department every thirty calendar days from the date of the electronic referral or upon request of the department.

(2) All progress reports must summarize progress during the most recent reporting period and must include the following:

(a) A review of the worker's compliance with the accountability agreement and vocational rehabilitation plan, including any issues involving attendance, grades and progression;

(b) A list of the dates the vocational rehabilitation provider contacted the worker and training site;

(c) A description of the work-related skills the worker has acquired so far and a comparison with the vocational rehabilitation plan;

(d) A summary of all actions taken in the past thirty days, including progress on previously recommended actions;

(e) Identification and analysis of any barriers preventing completion of the plan and actions taken by the vocational rehabilitation provider to address those barriers; and

(f) A statement of whether the worker is progressing as expected and will complete the plan by the target end date.

AMENDATORY SECTION (Amending WSR 03-22-030, filed 10/28/03, effective 2/1/04)

**WAC 296-19A-120 What reports ((does the department require)) are required when vocational rehabilitation plan implementation and monitoring services are ((provided at its request)) completed?** ~~((1))~~ Progress reports. The vocational rehabilitation provider must submit a written progress report to the department, and upon request, to the injured worker or the injured worker's representative, every thirty calendar days from the date of the electronic referral summarizing progress during the most recent reporting period. The progress report must include the following:

~~(a) Review of the industrially injured or ill worker's compliance with the vocational rehabilitation plan;~~

~~(b) A list of the dates the provider contacted the industrially injured or ill worker and training site;~~

~~(c) Description of the skills the worker has acquired so far and a comparison with the vocational rehabilitation plan;~~

~~(d) Summary of all actions taken in the past thirty days, including progress on previously recommended actions;~~

~~(e) Identification and analysis of any barriers preventing completion of the referral;~~

~~(f) Statement of whether the industrially injured or ill worker will complete the plan by the target plan end date.~~

~~(2) Closing report.)~~ When plan implementation and monitoring services are completed, the vocational rehabilitation provider must submit a closing report with one of the following recommendations:

(1) Plan successfully completed. If the ~~((industrially injured or ill))~~ worker successfully completes the vocational rehabilitation plan, the closing report, at a minimum, must contain the following information:

(a) An assessment of the ~~((industrially injured or ill))~~ worker's employability status at the time of closure;

~~((An assessment of the skills acquired by the industrially injured or ill worker as compared to the vocational rehabilitation plan;))~~ A list of courses the worker completed and an assessment of the work-related skills acquired by the worker during the training plan;

~~((A statement as to))~~ Whether ~~((or not the industrially injured or ill))~~ the worker has returned to gainful employment. If so, list the job title, employer, return to work date, and monthly salary; ~~((and))~~

(d) A description of the barriers, if any, to the ~~((industrially injured or ill))~~ worker's ability to return to gainful employment; and

(e) A description of the job search assistance provided.

~~((3))~~ (2) Plan not completed. If the ~~((industrially injured or ill))~~ worker does not successfully complete the vocational rehabilitation plan, the closing report, at a minimum, must contain the following information:

(a) ~~((Explain))~~ An explanation of why the vocational rehabilitation plan cannot be modified or completed;

(b) ~~((Assess the industrially injured or ill))~~ An assessment of the worker's employability status at the time the plan stopped;

~~((Assess what skills the industrially injured or ill worker acquired and compare them to the vocational rehabilitation plan;))~~ A list of the courses completed and an assessment of the work-related skills the worker acquired during the training plan;

~~((Indicate))~~ Whether ~~((or not the industrially injured or ill))~~ the worker has returned to work. If so, list the job title, employer, return to work date, and monthly salary; and

~~((Describe))~~ A description of any remaining barriers that may keep the ~~((industrially injured or ill))~~ worker from returning to work.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-19A-480	When must providers comply with these rules?
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#### **WSR 08-06-061**

#### **PERMANENT RULES**

#### **PUBLIC DISCLOSURE COMMISSION**

[Filed March 3, 2008, 8:06 a.m., effective April 3, 2008]

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

Purpose: To update WAC 390-16-206 following the state supreme court ruling in *San Juan County v. No New Gas Tax et al.* (2007).

Citation of Existing Rules Affected by this Order: Amending WAC 390-16-206.

Statutory Authority for Adoption: RCW 42.17.370.

Adopted under notice filed as WSR 08-02-036 on December 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 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: February 28, 2008.

Vicki Rippie  
Executive Director

AMENDATORY SECTION (Amending Order 86-02, filed 3/26/86)

**WAC 390-16-206 Ratings and endorsements.** (1) Any person making a measurable expenditure of funds to communicate a rating, evaluation, endorsement or recommendation for or against a candidate or ballot proposition ~~((other than news, feature, or editorial comment in a regularly scheduled issue of a printed periodical or broadcast media program))~~ shall report such expenditure including all costs of preparation and distribution in accordance with chapter 42.17 RCW ((42.17.030 through 42.17.100)). However, rating, endorsement or recommendation expenditures governed by the following provisions are not reportable: The news media exemptions provided in RCW 42.17.020 (15)(b)(iv) and (21)(c), and WAC 390-16-313 (2)(b), and the political advertising exemption in WAC 390-05-290.

(2) A candidate or sponsor of a ballot proposition who, or a political committee which, is the subject of the rating, evaluation, endorsement or recommendation shall not be required to report such expenditure as a contribution unless the candidate, sponsor, committee or an agent thereof advises, counsels or otherwise encourages the person ~~((or committee))~~ to make the expenditure.

~~((3))~~ A candidate who is an officer, director, employee or owner of 10 percent or more in any entity which owns or controls any newspaper, magazine, printed periodical, radio station, television station or other medium of mass communication, and who is provided feature, editorial or advertising space or broadcast time at less than fair market value by the medium with the intent to personally advocate support for his candidacy or to oppose the candidacy of his opponents, must

~~report the fair market value of that space or time as a contribution from the medium. The fair market value shall be the same as that charged for an equal amount of advertising space or time or, if there is no similar space or time, the most expensive advertising space or time sold by the organization.)~~

## WSR 08-06-066

### PERMANENT RULES

#### LOWER COLUMBIA COLLEGE

[Filed March 3, 2008, 1:12 p.m., effective April 3, 2008]

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

Purpose: Adopts a new student code of conduct which more clearly enumerates prohibited acts and behaviors and disciplinary consequences, updates position titles and personnel responsible for matters involving student conduct, and clarifies disciplinary procedures and the appeals process. Repeals former student conduct code.

Citation of Existing Rules Affected by this Order: Repealing chapter 132M-120 WAC.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 07-21-108 on October 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 42, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 42, 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 42, Amended 0, Repealed 0.

Date Adopted: November 27, 2007.

J. McLaughlin  
President

### Chapter 132M-121 WAC

#### STUDENT CODE OF CONDUCT

##### NEW SECTION

**WAC 132M-121-010 Statement of policy and purpose.** (1) Lower Columbia College, an agency of the state of Washington, exists for the development of students and to provide a variety of educational opportunities, and the opportunity to examine cultural, social and recreational aspects of society. Lower Columbia College as an institution of society must maintain conditions conducive to the effective performance of its functions. Consequently, Lower Columbia College has special expectations regarding the conduct of stu-

dents. Student conduct that detracts from, or interferes with, the accomplishment of college purposes is not acceptable.

(2) The student is, first of all, a member of the community at large, and as such has the rights and responsibilities of any citizen. In addition, admission to Lower Columbia College carries with it the presumption that students will conduct themselves as responsible members of the college community. This includes an expectation that students will obey the law, will comply with rules and regulations of the college, will maintain a high standard of integrity and honesty, and will respect the rights, privileges and property of other members of the college community. Lower Columbia College expects an environment of integrity, respect, collaboration, cooperation, diversity, and innovation that fosters personal growth, academic excellence and accountability.

(3) The following rules regarding the conduct of students are adopted in order to provide students a full understanding of the rules that will enable the college to maintain conditions conducive to the effective performance of the college's functions. Sanctions for violations of the rules of student conduct will be administered by the college in the manner provided by said rules. When violations of laws of the state of Washington and/or the United States are also involved, the college may refer such matters to the appropriate authorities. In cases of minors, this conduct may also be referred to parents or legal guardians.

##### NEW SECTION

**WAC 132M-121-020 Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Administration" and "administrator" include the president, vice-presidents, deans, directors of programs or functions, and others designated as a member of the administration.

(2) "Arbitrary or capricious" refers to willful or unreasonable action, taken without consideration of, or in disregard of, facts or circumstances of a particular case. Where there is room for two reasonable opinions, an action shall not be deemed to be arbitrary or capricious when taken honestly and upon due consideration, however much it may be believed that an erroneous conclusion has been reached.

(3) "Assembly" means any overt activity engaged in by two or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.

(4) "College" means Lower Columbia College or any additional community college established within Community College District 13.

(5) "College community" is composed of all individuals who are enrolled in classes and/or employed by the college.

(6) "College facilities" mean and include any and all real and personal property owned, rented, leased or operated by the board of trustees of Community College District 13, and shall include all buildings and appurtenances attached thereto and all parking lots and other grounds.

(7) "Designee" means a person appointed in writing by an officer or other person designated in a rule to perform a function, to perform that function on the appointer's behalf.

(8) "Disciplinary action" and "discipline" shall mean and include warning, reprimand, probation, suspension, dismissal, monetary fine, restitution, and any other action taken against a student as a sanction or penalty for violation of a designated rule of student conduct.

(9) "District" means Community College District 13.

(10) "Faculty member" and "instructor" mean any employee of Community College District 13 who is employed on a full- or part-time basis as a teacher, instructor, counselor or librarian.

(11) "President" is the chief executive officer of the college appointed by the board of trustees.

(12) "Recognized student organization" means an organization established by and operated pursuant to the Constitution of the associated students of Lower Columbia College.

(13) "Student code of conduct" shall mean those rules regulating student conduct as herein adopted.

(14) "Service," "serve," "filing" and "file" shall have the meanings in WAC 10-08-110.

(15) "Student" is any person who is enrolled for classes or is formally in the process of applying for admission to the college.

(16) The singular includes the plural and vice versa, the masculine includes the feminine and vice versa, and the disjunctive includes the conjunctive and vice versa.

#### NEW SECTION

**WAC 132M-121-030 Jurisdiction.** This chapter shall apply to students and student conduct which occurs:

(1) On or in a college facility; or

(2) Whenever a student is present at or engaged in any college-sponsored program or function.

This chapter is not exclusive, and where conduct becomes known which may also violate any other rule or provision of law, nothing herein shall limit the right or duty of any person to report elsewhere or seek another remedy for that conduct.

#### NEW SECTION

**WAC 132M-121-040 Right to demand identification.**

(1) For the purpose of determining identity of a person as a student, any college administrator or member of the security staff, or designee of the president, may demand that any person produce evidence of student enrollment at the college. Presenting a current student identification card with a picture I.D. card will be deemed proof of student status.

(2) Refusal by a student to produce identification as required shall be cause for disciplinary action.

#### NEW SECTION

**WAC 132M-121-041 Freedom of expression.** The right of free speech is fundamental to the democratic process. Students and other members of the college community shall be free to express their views or support causes by orderly means which do not disrupt the regular and essential operations of the college.

#### NEW SECTION

**WAC 132M-121-042 Right to assembly.** (1) Students shall have the right of assembly upon college facilities that are generally available to the public. Such assembly shall:

(a) Be conducted in an orderly manner;

(b) Not unreasonably interfere with vehicular or pedestrian traffic;

(c) Not unreasonably interfere with classes, scheduled meetings or ceremonies; and

(d) Not unreasonably interfere with the regular activities of the college.

(2) A student who conducts or participates in an assembly in a manner which causes or helps to cause a violation of this section shall be subject to discipline.

(3) All speakers at an assembly shall allow time, insofar as circumstances reasonably permit, for a question and answer session.

(4) Sound amplifying equipment shall not be used without permission of the vice-president for student success or designee.

#### NEW SECTION

**WAC 132M-121-043 Right to outside speakers.** (1) Any recognized student organization, after written notification to the vice-president for student success or director of student activities as prescribed herein, may invite a speaker to the college, subject to any restraints imposed by law.

(2) The appearance of an invited speaker at the college does not represent an endorsement, either implicit or explicit, by the college.

(3) The scheduling of facilities for hearing invited speakers shall be made through the student activities office.

(4) All speakers shall allow time, insofar as circumstances reasonably permit, for a question and answer session.

#### NEW SECTION

**WAC 132M-121-044 Distribution of materials.** (1) Handbills, leaflets, newspapers and similar materials may be distributed free of charge upon college facilities designated by the director of student activities, provided that such distribution does not interfere with the ingress and egress of persons or interfere with the free flow of vehicle or pedestrian traffic.

(2) All students and nonstudents shall register with the director of student activities prior to distributing any handbill, leaflet, newspaper or related matter, including, but not limited to, materials to be posted on college bulletin boards. **Materials to be posted on college bulletin boards shall have prior approval by the director of student activities.**

(3) The distribution of materials is prohibited in parking areas.

(4) All handbills, leaflets, newspapers and similar materials should identify the publisher and the distributing organization or individual.

(5) Distribution by means of accosting individuals or unreasonably disruptive behavior is prohibited.

(6) Any student who violates any provision of this rule relating to the distribution and sale of handbills, leaflets, newspapers or similar materials shall be subject to discipline.

(7) Any distribution of the materials regulated in this section shall not be construed as approval of the same by the college.

#### NEW SECTION

**WAC 132M-121-045 Denial of access to Lower Columbia College.** (1) The vice-president for student success or designee may deny admission to a prospective student, or continued attendance to an enrolled student, if it reasonably appears that the student would not be competent to profit from the curriculum offerings of the college, or would, by the student's presence or conduct, create a disruptive atmosphere within the college or a substantial risk of actual harm to a member of the campus community.

(2) Denial of access decisions may be appealed, as or like disciplinary actions, to the student conduct committee.

#### NEW SECTION

**WAC 132M-121-046 Trespass.** (1) In the instance of any event that the vice-president for student success or designee deems to be disruptive of order, or deems to impede the movement of persons or vehicles, or deems to disrupt or threaten to disrupt the ingress or egress of persons from college facilities, the vice-president for student success or designee is authorized to:

(a) Prohibit the entry of any person, or withdraw from any person the license or permission to enter onto or remain upon any portion of a college facility;

(b) Give notice against trespass to any person from whom the license or permission has been withdrawn or who has been prohibited from entering onto or remaining upon all or any portion of a college facility;

(c) Order any person to leave or vacate all or any portion of a college facility.

(2) Any student who disobeys a lawful order given by the vice-president for student success or designee pursuant to subsection (1) of this section shall be subject to discipline.

#### NEW SECTION

**WAC 132M-121-050 Smoking.** Smoking in college buildings and in areas of the campus not specifically posted by the administration as a designated smoking area, is not permitted. Violations of this section shall be cause for discipline.

#### NEW SECTION

**WAC 132M-121-051 Liquor.** Any student who, while in any college facility or participating in a college-related program, uses, possesses, consumes, is demonstrably under the influence of, or sells any liquor as defined in RCW 66.04.010, in violation of law or in a manner which significantly disrupts a college activity, shall be subject to discipline.

#### NEW SECTION

**WAC 132M-121-052 Drugs/substance abuse.** Any student who, while in any college facility or participating in a college-related program, uses, possesses, consumes, is demonstrably under the influence of, or sells, delivers or distributes any narcotic drug or controlled substance as defined in RCW 69.50.101, in violation of law or in a manner which significantly disrupts a college activity, shall be subject to discipline. For purposes of this section, "sell" includes the statutory meaning in RCW 69.50.410.

#### NEW SECTION

**WAC 132M-121-053 Hazing.** Any student who commits hazing, defined as any method of initiation into a student organization or any pastime or amusement engaged in with respect to such an organization 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 any college of Lower Columbia College, shall be subject to discipline, and/or in addition to any other disciplinary action which may be imposed under this chapter, forfeit any entitlement to student-funded grants, scholarships, or awards of a period of time determined by the college.

In addition, any group or organization found to have knowingly permitted hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by the college.

#### NEW SECTION

**WAC 132M-121-054 Failure to comply.** Any student who fails to comply with the direction of college officials acting in the legitimate performance of their duties shall be subject to discipline.

#### NEW SECTION

**WAC 132M-121-055 Disorderly or disruptive conduct.** (1) Any student who significantly disrupts any college function by intentionally engaging in conduct that renders it difficult or impossible to continue such a function in an orderly manner, shall be subject to discipline. A college function for this purpose includes, but is not limited to, meetings, business activities, administrative functions, college-sponsored activities, and any disciplinary, grievance, or appeal meeting or hearing under these rules.

(2) Instructors or building/facility managers have the authority to take necessary and appropriate action to maintain order and proper conduct in the classroom or building/facility.

(3) Any student who is so disorderly or disruptive that it is difficult or impossible to maintain classroom decorum, may be excluded from any class session during which the disruption occurs, by the instructor. The instructor shall report any such exclusion from class to the supervising dean who shall refer the matter to the vice-president for student success or designee. Upon receiving a written complaint and description of the conduct, the vice-president for student success or

designee may initiate disciplinary action as provided in this policy.

(4) A building/facility manager may exclude a student for the single day in which such disorderly or disruptive behavior occurs. The building/facility manager shall report the infraction and exclusion in writing to the vice-president for student success or designee at the earliest opportunity. Upon receiving a written complaint and description of the conduct, the vice-president for student success or designee may initiate disciplinary action as provided in this policy.

#### NEW SECTION

**WAC 132M-121-056 Theft—Stolen property—Robbery.** Any student who commits theft from college premises and/or property: Theft of property of a member of the college community on college premises; or possesses property stolen from college premises and/or a member of the college community while on college premises shall be subject to discipline.

#### NEW SECTION

**WAC 132M-121-057 Damaging property.** Any student who causes or attempts to cause physical damage to property owned, controlled, or operated by the district, or to property owned, controlled, or operated by another person while said property is located on college facilities, shall be subject to discipline.

#### NEW SECTION

**WAC 132M-121-058 Interference—Intimidation—Physical abuse—Verbal abuse—Threats—Harassment—Stalking.** Any student who, while in any college facility or participating in a college-related program, shall interfere by force or violence with, or intimidate by threat of force or violence, or verbally abuse; verbally threaten, physically abuse or harass another person who is in the peaceful discharge or conduct of his/her duties or studies, shall be subject to discipline.

Any student who stalks another person, defined as the willful malicious and/or repeated following or contact of another person with the reasonable intent of creating fear or emotional distress, and/or the making of a threat with the intent to place that person in reasonable fear of death or bodily harm, shall be subject to discipline.

#### NEW SECTION

**WAC 132M-121-059 Obscene, lewd or indecent conduct.** Any student who engages in obscene, lewd or indecent behavior shall be subject to discipline.

#### NEW SECTION

**WAC 132M-121-060 Racial harassment.** Any student who engages in racial harassment, which included ethnic and racial jokes, racial slurs, demeaning comments, looks or gestures or other verbal, written or physical conduct deliberately designed to humiliate and/or cause discomfort to the recipient

or which interferes with job or school performance shall be subject to discipline.

#### NEW SECTION

**WAC 132M-121-061 Sexual harassment.** Any student who, while in any college facility or participating in a college-related program, knowingly engages in unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature which is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from an education program or activity, or to create a hostile or abusive educational environment, shall be subject to discipline.

#### NEW SECTION

**WAC 132M-121-062 Forgery or alteration of records.** Any student, who, while in any college facility or participating in a college-related program, engages in forgery, shall be subject to discipline. Additionally, any student who alters or misuses college documents, records, funds, or instruments of identification shall be subject to discipline.

#### NEW SECTION

**WAC 132M-121-063 Computer trespass.** (1) Any student who, without authorization, intentionally gains access to a computer system or electronic data of another student, a faculty member, or the district; shall be subject to discipline.

(2) Any student who uses college computers or electronic communication devices for other than legitimate college activities, or violates the *Student Computing Resources Policy*, or uses computers to view pornography, or download music or videos using any program, web sites, servers, or other network equipment, is subject to discipline.

#### NEW SECTION

**WAC 132M-121-064 Firearms/explosives.** Any student who, while in any college facility or participating in a college-related program, uses or has on his/her person firearms or explosive materials or dangerous chemicals, without written permission of the vice-president for student success or director of security services or designee, shall be subject to discipline.

#### NEW SECTION

**WAC 132M-121-065 Other punishable acts.** Any student who, while in any college facility or participating in a college-related program, commits any other act which is a crime under the laws of the state of Washington or the United States and which act does not otherwise violate a rule of student conduct, shall be subject to discipline.

#### NEW SECTION

**WAC 132M-121-066 False information.** Providing false information to the college or the intentional making of

false statements and/or filing of false charges against the college and/or members of the college community.

NEW SECTION

**WAC 132M-121-067 Academic dishonesty.** All forms of student academic dishonesty, including cheating, falsification, plagiarism or facilitating, aiding and abetting academic dishonesty.

NEW SECTION

**WAC 132M-121-068 Malicious harassment.** Malicious harassment that involves intimidation or bothersome behavior directed toward another person because of, or related to that person's race, color, religion, gender, sexual orientation, ancestry, national origin, or mental, physical or sensory disability.

NEW SECTION

**WAC 132M-121-100 Initiation of discipline.** (1) Any member of the Lower Columbia College community may file a complaint against a student for violations of the student code of conduct. The complaint should be filed in writing with the vice-president for student success. A complaint should be submitted as soon as possible after the event takes place, and normally within ten academic calendar days.

(2) The vice-president for student success or designee is responsible for initiating disciplinary proceedings for violations of the student code of conduct.

(3) The vice-president for student success may conduct an investigation to determine if the complaint has merit and/or if the matter(s) can be disposed of administratively by mutual consent of the parties involved on a basis acceptable to the vice-president for student success or designee. Such disposition shall be final and there shall be no subsequent proceedings. If the charges described in the complaint are not admitted and/or cannot be disposed of by mutual consent, the vice-president for student success or designee may later serve in the same matter as the student conduct committee or a member thereof. If the student admits violating code of conduct rules, but sanctions are not agreed to, subsequent process, including a hearing if necessary, shall be limited to determining the appropriate sanction(s).

(4) In order that any informality in disciplinary proceedings not mislead any student as to the seriousness of the matter under consideration, the vice-president for student success shall inform the student of the rule that he or she is charged with violating, and what appear to be the range of sanctions, if any.

(5) The vice-president for student success, or designee, after meeting or attempting to meet with the student, and considering the evidence in the complaint, may take any of the following actions:

(a) Terminate the proceeding, exonerating the student or students.

(b) Dismiss the case after providing whatever counseling and advice may be appropriate.

(c) Impose verbal warning or reprimand not subject to student's right of appeal.

(d) Impose additional disciplinary sanctions, subject to the student's right of appeal as described in this procedure. The student shall be notified in writing of the action taken, the reason for the decision and information about the appeals process.

(e) Refer the matter to the student conduct committee for appropriate action. The student shall be notified in writing that the matter has been referred to the committee.

(6) If the student fails to appear at the scheduled meeting without prior notification or evidence of extenuating circumstances, the vice-president for student success may impose any sanctions authorized by this code.

(7) The written decision of the vice-president for student success shall become final unless appealed.

NEW SECTION

**WAC 132M-121-105 Sanctions.** Sanctions for violations of the code of conduct may be imposed independent of any action taken by civil authorities. In the case of minors, misconduct may be referred to parents or legal guardians.

Any of the following disciplinary sanctions may be imposed for violations of one or more provisions of this student code of conduct:

(1) Warning: An oral or written notice to a student that college expectations about conduct have not been met.

(2) Reprimand: A written notice, designated as a reprimand, which censures a student for improper conduct and includes a warning that continuation or repetition of improper conduct may result in other, further discipline.

(3) Probation: A written statement placing specific conditions upon the student's continued attendance at the college, for a stated period of time not exceeding termination of the student's enrollment. Violation of any such condition shall be cause for further disciplinary action.

(4) Suspension or dismissal: Written termination of status as a student at the college, for a period of time that is limited (suspension) or indefinite or open-ended (dismissal). The written notice shall indicate any condition(s) for readmission, and that written application for readmission must be made to the vice-president for student success. Upon receipt of such an application, with justification deemed adequate by the vice-president for student success, the student may be readmitted. No fees will be refunded for the quarter in which the action is taken.

(5) Monetary fine or restitution: A written order, alone or combined with another disciplinary action, requiring the student to pay, within a stated time limit, appropriate restitution for a financial loss caused by the student's misconduct and/or a monetary fine not exceeding one quarter's tuition. Failure to pay shall be cause for further disciplinary action and/or canceling and barring the student's registration and/or withholding a degree.

NEW SECTION

**WAC 132M-121-110 Student conduct committee.** (1) The student conduct committee is hereby established. The purpose of the student conduct committee is to provide a student with an opportunity to be heard by an independent body with regard to nonacademic discipline.



(2) The student conduct committee shall be composed of five members, who will be chosen no later than November 1st of each academic year. The committee members shall be selected as follows:

(a) One administrator or exempt employee appointed by the president of the college or a designee;

(b) An exempt employee or other supervisory employee appointed by the president of the college;

(c) Two members of the tenured faculty, appointed by the president of the Lower Columbia College Faculty Association of Higher Education ("LCCFAHE");

(d) One representative from the student body appointed by ASLCC executive council;

(e) Two alternates for each position will be appointed at the same time. Additional alternates may be appointed at such time as necessary.

(3) None of the above-named persons shall sit on any case in which he or she is a complainant or witness; or in which he or she has a direct or personal interest, in which he/she has acted previously in an advisory or official capacity. Decisions in this regard, including the selection of alternates, shall be made by the committee as a whole. The chair of the student conduct committee shall be elected by members of the committee.

#### NEW SECTION

**WAC 132M-121-115 Appeals.** A student may appeal any nonacademic disciplinary action except warning and reprimand by filing a written appeal addressed to the vice-president for student success, within five calendar days of notification of the disciplinary action. The appeal must clearly state errors in fact or matters in extenuation or mitigation which justify the appeal.

Disciplinary action by any college employee may be appealed to, and shall be reviewed by, the vice-president for student success or designee.

Disciplinary action imposed by the vice-president for student success may be appealed to, and shall be reviewed by, the student conduct committee.

Disciplinary action by the student conduct committee may be appealed to and shall be reviewed by the college president or his/her designee. The president of the college or his/her designated representative, after reviewing the case, including the decision of the committee and any statements filed by the student, shall either indicate his/her approval of the conclusions of the committee by sustaining its decision, shall give directions as to what other disciplinary action shall be taken by modifying its decision or shall nullify previous sanctions imposed by reversing its decision. The president shall then notify the vice-president for student success, the student and the committee chair. The decision of the president is final.

#### NEW SECTION

**WAC 132M-121-120 Groups and organizations.** (1) Recognized student groups and organizations may be charged with violations of this code. Such a group or organization and its officers may be held collectively or individually responsible when violations of this code by those associ-

ated with the group or organization have received the tacit or overt consent or encouragement of the organization, its leaders, officers or spokespersons.

(2) The vice-president for student success may withdraw a student organization's recognition and funding for good cause. Such cause shall include, but not be limited to:

(a) Failure to comply with this rule or other college requirements; or

(b) Hazing.

Additional sanctions for group or organization misconduct may include revocation of the use of college facilities for a specified period of time, denial of funds, as well as other appropriate sanctions permitted under this code. Sanctions imposed on groups or organizations are subject to the appeal process upon request.

#### NEW SECTION

**WAC 132M-121-200 Summary suspension.** (1) A student who presents an imminent danger to the health, safety or welfare of any member of the college community, to college property, or is of significant disruption to the educational process or other normal operations of the college shall be subject to summary suspension.

(2) The vice-president for student success or designee may summarily suspend a student for a period of up to five academic days; and/or for any time period through the final determination of the student's appeal by the student conduct committee. During summary suspension, a student shall be denied access to the campus (including classes) and/or all other activities or privileges for which the student might otherwise be eligible, as the vice-president for student success or designee may determine to be appropriate. The student may enter college premises only to meet with the vice-president for student success or designee; to deliver a written appeal; to attend a hearing; or as otherwise permitted by the vice-president for student success.

(3) The vice-president for student success shall give the student oral or written notice of the reasons for summary suspension, duration of the summary suspension, and of any possible additional disciplinary action that may be taken. If oral notice is given, written notice shall follow within two calendar days. In addition, the vice-president for student success shall set a date for an informal hearing on the summary suspension as soon as practicable.

(a) The presiding officer for an informal hearing shall be an administrator designated by the college president other than the administrator who initially imposed the summary suspension. The presiding officer will decide whether reasonable cause exists to support and continue the summary suspension.

(b) The presiding officer shall issue a written decision within two days of the informal hearing. If summary suspension is continued, the written notice shall stipulate the duration of the summary suspension and conditions under which they may be terminated.

(c) The student may request a *de novo* review of the informal hearing decision before the student conduct committee. Either party may request the review to be consoli-

dated with any other disciplinary proceeding arising from the same matter.

(4) At the end of the summary suspension period, the student shall be reinstated to prior status subject to any other disciplinary sanctions that may have been imposed.

#### NEW SECTION

**WAC 132M-121-300 Adjudicative proceedings before the student conduct committee.** (1) The hearing shall be conducted in accordance with chapters 34.05 RCW, 10-08 and 132M-121 WAC. The committee or chair shall prepare a written opinion that shall include findings of fact, conclusions, and recommendations.

(2) The student's failure to answer the charges, appear at the hearing or cooperate in the hearing shall not preclude the student conduct committee from making its findings of facts, conclusions, and recommendations. This shall not limit the possibility of a default pursuant to RCW 34.05.440.

(3) The committee chair shall give written notice of the time and place of the hearing to all parties in accordance with RCW 34.05.434 and WAC 10-08-040. Such notice shall be given not less than ten calendar days before the date set for the hearing.

(4) The student shall be entitled to:

(a) Hear and examine the evidence against him/her and be informed of the identity of its source; and

(b) Present evidence and argument in his/her own behalf and to cross-examine witnesses.

(5) The student may have one advisor present at the hearing. The advisor may be allowed to advise the student during the proceedings, but is not permitted to speak to the committee; conduct examinations of witnesses; or disrupt the proceeding. No attorney representative of any party may participate in a hearing unless a notice of appearance has been filed and served at least five days before the hearing, but in the event of such notice the college may be represented by an assistant attorney general.

(6) In all disciplinary proceedings, the college may be represented by a designee appointed by the vice-president for student success; that designee may then present the college's case against the student accused of violating the rules of conduct.

(7) The presiding officer is responsible for causing the hearing to be recorded. All hearings shall be recorded by manual, electronic, or other type of recording device. Hearings shall be recorded in accordance with WAC 10-08-170.

(8) The record in an adjudicative proceeding shall consist of all documents as required by law and as specified in RCW 34.05.476 as now or hereafter amended.

(9) The time of the hearing may be continued for good cause by the committee chair upon timely request of any party.

(10) In accordance with the Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g, hearings conducted by the student conduct committee will be held in closed session; provided, the student(s) involved may waive in writing this requirement and request the hearing to be held in open session. The chair may exclude from the hearing room any person who is disruptive of the proceedings and may limit the

number who may attend the hearing in order to afford orderliness to the proceedings. Any person attending the disciplinary hearing who continues to disrupt the proceedings after the chair has asked him/her to cease or leave the hearing room shall be subject to disciplinary action.

#### NEW SECTION

**WAC 132M-121-310 Recordkeeping.** (1) The vice-president for student success shall maintain for at least six years the following records of student grievance and disciplinary actions and proceedings:

(a) Only initial and final orders in cases where a student's grievance has been sustained or a disciplinary action against a student has been reversed and the student fully exonerated;

(b) The complete records, including all orders, in all other cases where adjudication has been requested;

(c) A list or other summary of all disciplinary actions reported or known to the vice-president and not appealed.

(2) Final disciplinary actions shall be entered into student records, provided that the vice-president for student success shall have discretion to remove some or all of that information from a student's record upon the student's request and showing of good cause.

#### NEW SECTION

**WAC 132M-121-320 Evidence admissible in hearings.** (1) Only those matters presented at the hearing, in the presence of the accused student, except where the student fails to attend after receipt of proper notice, will be considered in determining whether the student conduct committee has sufficient cause to believe that the accused student is guilty of violating the rules he/she is charged with having violated. In determining the appropriate sanction that should be recommended, evidence of past misconduct that the committee chair deems relevant may be considered.

(2) The chair of the student conduct committee shall, in the course of presiding at the disciplinary hearing, give effect to the rules of privilege recognized by the law and exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. Hearsay evidence is admissible.

(3) Evidence or testimony to be offered by or on behalf of the student in extenuation or mitigation shall not be presented or considered until all substantive evidence or testimony has been presented.

#### NEW SECTION

**WAC 132M-121-330 Initial order—Petition for administrative review—Final order.** (1) The burden of proof shall be on the party seeking to uphold the discipline to establish sufficient cause by a preponderance of the evidence. Upon conclusion of the disciplinary hearing, the student conduct committee shall consider all the evidence therein presented and decide by majority vote whether to uphold the decision of the vice-president for student success or to recommend any of the following actions:

(a) That the college terminate the proceedings and exonerate the student; or

(b) That the college impose any of the disciplinary actions as provided in this chapter.

(2) Within ninety days specified in RCW 34.05.461, and preferably within thirty days, the chair shall serve on the parties and the president an initial order. At the same time, a full and complete record of the proceedings shall also be transmitted to the president. The initial order shall include a statement of findings and conclusions and otherwise comply with RCW 34.05.461 and WAC 10-08-210. It shall also describe the available administrative review procedures specified in subsection (3) of this section.

(3) The initial order shall become the final order without further action, unless within twenty days of service of the initial order:

(a) The president or designee upon his/her own motion, determines that the initial order should be reviewed; or

(b) A party to the proceedings files with the president a written petition for administrative review of the initial order. The president or designee shall be the reviewing officer and RCW 34.05.464 and WAC 10-08-211 shall apply to any such determination or petition.

NEW SECTION

**WAC 132M-121-340 Suspension for failure to appear.** The vice-president for student success is authorized to enforce the suspension of the summarily suspended student in the event the student has been served notice pursuant to WAC 132M-121-200 and fails to appear at the time designated for the summary suspension proceeding.

NEW SECTION

**WAC 132M-121-350 Final decision.** The president or his/her designee(s) shall review the findings and conclusions of the vice-president for student success in conjunction with the recommendations of the student conduct committee and will issue a final decision within three days.

NEW SECTION

**WAC 132M-121-500 Severability.** If any provision of this policy is adjudged by a court to be unconstitutional or otherwise illegal, the remaining provisions shall continue in effect.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 132M-120-010 General policy.
- WAC 132M-120-020 Definitions.
- WAC 132M-120-025 Student rights.
- WAC 132M-120-030 Access to college facilities.
- WAC 132M-120-040 Student responsibilities.
- WAC 132M-120-065 Disciplinary sanctions.

- WAC 132M-120-095 Delegation of disciplinary authority.
- WAC 132M-120-100 Appeals.
- WAC 132M-120-110 Hearing procedures before the student hearing and grievance committee.
- WAC 132M-120-120 Evidence admissible in proceedings.
- WAC 132M-120-130 Decision by the student hearing and grievance committee.
- WAC 132M-120-200 Summary suspension procedures.
- WAC 132M-120-210 Notice of summary suspension.
- WAC 132M-120-220 Appeals from summary suspension.
- WAC 132M-120-300 Student grievances.
- WAC 132M-120-310 Grievance procedures.
- WAC 132M-120-320 Withdrawal of grievance.

**WSR 08-06-067**

**PERMANENT RULES**

**PUBLIC DISCLOSURE COMMISSION**

[Filed March 3, 2008, 2:09 p.m., effective April 3, 2008]

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

Purpose: Correction. The previous filing cited the wrong WSR number. The correct number is WSR 07-17-059. No changes were made to the rule language.

Citation of Existing Rules Affected by this Order: Amending WAC 390-17-400.

Statutory Authority for Adoption: RCW 42.17.370.

Adopted under notice filed as WSR 07-17-059 on August 10, 2007.

Changes Other than Editing from Proposed to Adopted Version: In subsection (3)(b) add a time specific (11:59 p.m.) when the freeze period ends.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: December 6, 2007.

Vicki Rippie  
Executive Director

AMENDATORY SECTION (Amending WSR 98-23-016, filed 11/6/98, effective 12/7/98)

**WAC 390-17-400 Time limit to solicit or accept contributions.** The purpose of this rule is to clarify and implement RCW 42.17.710.

(1) **"Campaign debt,"** as used in RCW 42.17.710 and this rule, means any debt incurred by a candidate seeking election to a nonfederal public office, including campaigns for state, county, city, town, school district, special district or other state political subdivision elective office.

(2) **"Known candidates"** means individuals who are, or who become, candidates for state or local office during a legislative session freeze period.

(3) **"Legislative session freeze period"** means the period of time in RCW 42.17.710 within which contributions shall not be solicited or accepted by a state official or a person employed by or acting on behalf of a state official.

(a) The freeze period begins at 12:01 a.m. on the thirtieth day before the start of the regular legislative session and ends at 11:59 p.m. on the ~~((thirtieth day following))~~ day of adjournment of the regular legislative session.

(b) If a special session is held immediately following the end of the regular legislative session, the freeze period ends at 11:59 p.m. on the day the special session adjourns ~~((or at 11:59 p.m. on the thirtieth day following adjournment of the regular legislative session, whichever is later)).~~

(c) If a special session is held other than within ~~((30))~~ thirty days before ~~((or after))~~ a regular legislative session, the freeze period begins at 12:01 a.m. on the first day of the special session and ends at 11:59 p.m. on the final day of the special session.

(4) A successful candidate for state office who does not already hold a state office is not required to comply with RCW 42.17.710 until sworn into office.

(5) A state official must comply with RCW 42.17.710 until he or she no longer holds state office.

(6) **"Person employed by or acting on behalf of a state official"** includes a caucus political committee or any political committee financed or controlled by a legislative caucus as a whole or by one or more officers of a caucus political committee.

(7) **State officials may do the following.** During a legislative session freeze period, the activities in which state officials may engage include, but are not limited to:

(a) Soliciting or accepting contributions to assist his or her own campaign for federal office;

(b) Accepting gifts or other items permitted under chapter 42.52 RCW, so long as the gift or other item is not

- A contribution to an incumbent state official or known candidate,
- A contribution to a public office fund,
- Used to pay a nonreimbursed public office related expense, or
- Used to retire a campaign debt;

(c) Attending and speaking at a fund raising event held by or on behalf of a bona fide political party, so long as the contributions raised are not earmarked or otherwise designated for any incumbent state official or known candidate;

(d) Transferring their own personal funds, as defined in WAC 390-17-305, or their own surplus funds, as defined in RCW 42.17.020, to their own campaign account, so long as the funds are properly reported;

(e) Soliciting or accepting contributions on behalf of a nonprofit charity; or

(f) Soliciting or accepting contributions on behalf of any political committee, including a caucus political committee, a bona fide political party or a ballot measure committee, so long as the political committee does not spend the contributions for the benefit of incumbent state officials or known candidates.

(8) **State officials may not do the following.** During a legislative session freeze period, a state official, or a person employed by or acting on behalf of a state official, may not solicit or accept contributions that:

(a) Go to an incumbent state official or known candidate;

(b) Go to a public office fund;

(c) Are used to pay a nonreimbursed public office related expense;

(d) Are used to retire a campaign debt;

(e) Go to a caucus political committee if the committee spends the contributions for the benefit of incumbent state officials or known candidates; or

(f) Go to a bona fide political party or a political committee if the political party or committee spends the contributions for the benefit of incumbent state officials or known candidates.

(9) **Caucus political committees.** During a legislative session freeze period, a caucus political committee

(a) May solicit or accept contributions from caucus members if the members make the contributions with their own personal funds, as defined in WAC 390-17-305, or with their own surplus funds, as defined in RCW 42.17.020;

(b) May not solicit or accept contributions for any of the purposes specified in subsection (8) of this rule.

(10) **Persons acting on behalf of state officials.** During a legislative session freeze period, a person employed by or acting on behalf of a state official may not solicit or accept contributions for any of the purposes specified in subsection (8) of this rule.

(11) **Bona fide political parties.** During a legislative session freeze period, a bona fide political party may not solicit or accept contributions that are

- Used for a public office fund,
- Used for a state official's nonreimbursed public office related expenses,
- Used for retiring a state official's campaign debt, or
- Earmarked contributions to specific incumbent state officials or known candidates.

However, a bona fide political party may solicit or accept contributions for its own fund raising purposes.

(12) **Segregating session freeze funds.** During a legislative session freeze period, if a state official, a caucus political committee, or another person employed by or acting on behalf of a state official solicits or accepts contributions to

- A caucus political committee,
- A bona fide political party, or
- Any political committee that supports or opposes state or local office candidates, the contributions are presumed to violate RCW 42.17.710, unless the contributions are
- Deposited into a separate bank account and
- Not spent for the benefit of incumbent state officials or known candidates.

However, nothing in this subsection authorizes a state official, a caucus political committee or any person employed by or acting on behalf of a state official to take any of the actions prohibited by subsections (8) or (9)(b) of this rule.

(13) **Session freeze solicitations.** If a person is solicited for a contribution during the legislative session freeze period

- By a state official, a caucus political committee, or another person employed by or acting on behalf of a state official, and
- The contribution is to a caucus political committee, a bona fide political party, or a political committee that supports or opposes candidates for state or local office, and
- The person makes a contribution during or after the freeze period in response to this solicitation, the contribution is subject RCW 42.17.710 and subsection (12) of this rule.

(14) **Spending contributions to benefit incumbents or known candidates.** For purposes of complying with subsections (7)(f), (8)(e) and (f), and (12) of this rule, contributions are considered spent for the benefit of incumbent state officials or known candidates if the contributions are used at any time for one or more of the following purposes.

(a) Contributions to incumbent state officials or known candidates.

(b) Independent expenditures supporting incumbent state officials or known candidates, or opposing their opponents, whether or not the opponents are themselves known candidates during a legislative session freeze period.

(c) Payments to staff, consultants or advisors for performing activities that directly assist or promote the election of incumbent state officials or known candidates.

(d) Polls or surveys that relate to incumbent state officials, known candidates or their districts, or to general voter attitudes or preferences, unless

- A poll or survey is produced, conducted, tabulated and analyzed according to the terms of a written confidentiality agreement and, if the agreement is breached, all reasonable steps are taken to enforce it, and
- The results of a poll or survey are not provided by the spender, or with the spender's permission or prior knowledge, to incumbent state officials, known candidates or their agents.

However, candidate recruitment poll or survey results may be provided to an individual who later becomes a known candidate without the expenditure being considered as benefiting a known candidate so long as the poll or survey does not constitute a contribution to the individual or does not otherwise support or promote his or

her election to state or local office. For purposes of this subsection, a "candidate recruitment poll or survey" is a poll or survey that is conducted for the sole purpose of recruiting candidates to run for public office and only determines

- The respondent's party preference,
- The level of support the incumbent currently has and how strong that support is, but not why he or she has that support,
- Whether respondents recognize the names of individuals who may decide to seek that elective office,
- Whether respondents currently hold a favorable opinion about these individuals, their abilities or fitness for elective office, but not why such opinions are held,
- Whether respondents would likely vote for one or more of these individuals were they to seek office, but not why respondents would vote in the manner they indicated or whether they could be persuaded to change their vote, and
- The validity of the poll or survey results.

(e) Any other expenditure that directly benefits or promotes the election to state or local office of incumbent state officials or known candidates.

#### WSR 08-06-074

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed March 4, 2008, 11:25 a.m., effective April 4, 2008]

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

Purpose: The division of developmental disabilities (DDD) is repealing the rules governing the use of the mini-assessment process since DDD is now using the DDD assessment to assess eligible clients.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-824-0001, 388-824-0010, 388-824-0015, 388-824-0020, 388-824-0025, 388-824-0030, 388-824-0040, 388-824-0050, 388-824-0055, 388-824-0060, 388-824-0065, 388-824-0070, 388-824-0080, 388-824-0090, 388-824-0100, 388-824-0120, 388-824-0140, 388-824-0170, 388-824-0190, 388-824-0210, 388-824-0220, 388-824-0230, 388-824-0240, 388-824-0260, 388-824-0280, 388-824-0290, 388-824-0310, 388-824-0320, and 388-824-0330.

Statutory Authority for Adoption: Title 71A RCW, RCW 71A.12.030.

Adopted under notice filed as WSR 07-23-063 on November 16, 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 29.

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 29.

Date Adopted: February 25, 2008.

Stephanie E. Schiller  
Rules Coordinator

WAC 388-824-0090 Does reporting your family's annual gross income and number of family dependents affect your eligibility for paid services?

WAC 388-824-0100 What does DDD do if the respondent does not provide the requested family income and dependent information?

WAC 388-824-0120 What is the difference between a mini-assessment for adults and a mini-assessment for children?

WAC 388-824-0140 How does the mini-assessment use information that is scored during the mini-assessment interview?

WAC 388-824-0170 What occurs when you are assigned to the "high level of need" group?

WAC 388-824-0190 What occurs when you are assigned to the "moderate level of need" group?

WAC 388-824-0210 What occurs when you are assigned to the "low level of need" group?

WAC 388-824-0220 When will I be reassigned to another level of need group?

WAC 388-824-0230 Does the mini-assessment result in paid services?

WAC 388-824-0240 How do you know the results of your mini-assessment?

WAC 388-824-0260 What is the full assessment referral data base?

WAC 388-824-0280 What information does DDD use in deciding whom to refer for a full assessment?

WAC 388-824-0290 When does DDD remove my name from the full assessment referral data base?

WAC 388-824-0310 When DDD adjusts the mini-assessment algorithm, when does the adjustment become effective?

WAC 388-824-0320 Are there appeal rights to the mini-assessment?

WAC 388-824-0330 If you request a hearing to review the results of your mini-assessment, which mini-assessment does the administrative law judge review in the hearing?

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 388-824-0001 What definitions apply to this chapter?

WAC 388-824-0010 What is the DDD mini-assessment?

WAC 388-824-0015 How do you and/or your respondent(s) obtain information about the mini-assessment?

WAC 388-824-0020 What is the purpose of the mini-assessment?

WAC 388-824-0025 What domains does the mini-assessment evaluate to identify your relative level of need?

WAC 388-824-0030 Does the mini-assessment affect other DDD assessments?

WAC 388-824-0040 Who receives a mini-assessment?

WAC 388-824-0050 Who does not receive a mini-assessment?

WAC 388-824-0055 Who participates in the mini-assessment?

WAC 388-824-0060 How does DDD conduct an initial mini-assessment?

WAC 388-824-0065 When does DDD conduct a reassessment?

WAC 388-824-0070 Does DDD require you to disclose financial information?

WAC 388-824-0080 Is the respondent required to provide verification of my family's annual gross income?

**WSR 08-06-079****PERMANENT RULES****DEPARTMENT OF TRANSPORTATION**

[Filed March 4, 2008, 3:18 p.m., effective April 4, 2008]

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

Purpose: This rule-making action will clarify trip reduction performance program project awards as identified in RCW 70.94.996.

Statutory Authority for Adoption: RCW 70.94.996.

Adopted under notice filed as WSR 08-03-136 on January 23, 2008.

Changes Other than Editing from Proposed to Adopted Version: There is one change that differed between the text of the proposed rule as published in the register and the text of the rule as adopted. The change is in WAC 468-60-010(9).

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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: March 3, 2008.

Stephen T. Reinmuth  
Chief of Staff

AMENDATORY SECTION (Amending WSR 07-05-064, filed 2/20/07, effective 3/23/07)

**WAC 468-60-010 Trip reduction performance program.** The Washington state department of transportation (WSDOT), together with the commute trip reduction (CTR) board, will administer the trip reduction performance program (TRPP). This program is designed to create cost-effective trip reduction projects that reduce the number of commute vehicle trips and commute vehicle miles traveled (VMT). The 2003 legislature created this program to provide financial incentives or compensation to organizations that implement and administer cost-effective projects that increase the capacity of the transportation system by reducing the number of vehicle trips and miles traveled for commute purposes. WSDOT awards funds for cost-effective trip reduction projects, based on a price that the project charges WSDOT to reduce an annualized trip, and the projected number of annual commute vehicle trips and commute VMT reduced during the project period (the project goal). Up to half of the award amount is available through reimbursement for start-up costs. WSDOT will determine the remaining award amount, as well as any bonus funds, based on the actual performance of the project in meeting or exceeding the goal. As necessary, WSDOT will revise these rules periodically

to create a more efficient, cost-effective, trip reduction program.

(1) **What are trip reduction performance projects?** WSDOT awards funds on a competitive basis to organizations that create cost-effective projects designed to reduce commute vehicle trips and commute VMT (based on the morning commute). The organization will receive funds based on the price associated with each trip and overall project performance. The TRPP is available to private employers, public agencies, nonprofit organizations, developers, and property managers who find new (to the area), sustainable ways to reduce the number of vehicle trips and vehicle miles traveled per person for commuting, and who provide financial incentives to their own or other employees for ridesharing, public transportation, nonmotorized transportation, telework, and alternative work schedules.

(2) **Definitions.** For purposes of this section, the following definitions apply.

(a) A *financial incentive* is defined as a policy, procedure, capital investment or payment intended to provide employees a financial gain if they commute in ways other than by driving alone. For example, the eligible incentives may include, but are not limited to: Providing a free transit pass, reducing the parking charge for rideshare vehicles, initiating parking charges for employee vehicles, reducing the cost of a transportation service such as a transit pass, paying the membership fee for a car sharing program, providing employees alternative work week schedules, providing a direct cash payment, reducing the insurance rate for employees who reduce the use of their vehicle for commuting, or reducing the distance an employee travels to work by reassigning their work location to a worksite closer to their home.

(b) *Car sharing* means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis.

(c) *Telework* means a program where an employee performs work functions that are normally performed at a traditional workplace, but does so instead at the employee's home, or at a work center that is located closer to the employee's home than to the employee's workplace, for at least one day a week with the effect of reducing the number of trips to the employee's workplace.

(d) A *person-trip* is one one-way commute trip made by one person to get to work. A trip avoided because the employee teleworks, or because the employee works a compressed work week schedule, is also considered a person-trip.

(e) A *mode* is the means of transportation an employee took to work. Driving alone, carpooling, working an alternative work schedule, teleworking, bicycling, etc., are examples of modes.

(f) A *measurement* records the number of person-trips made by employees commuting to work during a period such as a week or month, using each specific transportation mode. A measurement also records the distance each employee commutes to work; the type of work schedule or compressed work week that each employee works; and the number of persons in the employee's carpool or vanpool if the employee uses one of these modes. WSDOT may require that a measurement record additional information.

(g) *Mode share* is the percentage of person-trips made by a population of employees commuting to work using specific modes of transportation. For example, if twenty-three percent of the person-trips made in commuting to a worksite are by carpool, the carpool mode share for that worksite is twenty-three percent.

(h) A *mode split* is the set of mode shares for a population of employees, such as those commuting to a worksite. The sum of the mode shares for the population is one hundred percent. When calculating mode shares and mode split from measurement data, WSDOT makes adjustments as necessary for missing data, days reported by employees as not worked, inconsistency between commute mode and vehicle occupancy data, and reported use of compressed work weeks. When making these adjustments, WSDOT follows CTR board guidelines when these are available, and makes reasonable adjustments otherwise.

(i) *Commute vehicle trips* is the number of vehicle trips made to bring employees to work at a worksite or specified collection of worksites on an average weekday morning, using the mode split from a measurement. WSDOT will provide information to applicants on calculating commute vehicle trips.

Calculation: WSDOT calculates a vehicle trip by dividing a person-trip by the number of persons in the vehicle. For passenger cars, trucks, vans, and motorcycles, WSDOT calculates the vehicle occupancy from measurement data using CTR board guidelines, or from equivalent data as agreed by WSDOT and the applicant. For buses, WSDOT assumes an average occupancy of twenty-five persons. If the CTR board issues guidelines for using bus occupancy, WSDOT will follow the board's guidelines in subsequent projects. A person-trip made by bicycling, walking, or other nonmotorized means of transportation; by riding a train; or avoided either because the employee teleworks or because the employee works a compressed work week schedule, is not considered as using a motor vehicle under this definition. If employees at a worksite work at jobs that last less than a full year, WSDOT annualizes the commute vehicle trips. For example, if the jobs at a worksite last for only nine months, then WSDOT will annualize the commute vehicle trips as three quarters of the commute vehicle trips that would be calculated if the employees worked for a full year. WSDOT then will use the annualized values in determining project performance and payments.

(j) *Reduced commute vehicle trips* is the reduction in the number of commute vehicle trips between a baseline measurement and a subsequent measurement. WSDOT will provide information to applicants on calculating reduced commute vehicle trips.

Calculation: WSDOT calculates reduced commute vehicle trips by subtracting the number of commute vehicle trips made by the employees in the subsequent measurement, from the number of vehicle trips the same number of employees would have made if they had commuted using the mode split from the baseline measurement.

(k) *Commute vehicle-miles traveled per person (VMT)* is the average daily vehicle trips each employee makes in a motorized vehicle, multiplied by the employee's one-way dis-

tance to work, summed for all employees, and the sum then divided by the number of employees.

(l) *Reduced VMT* is the reduction in the number of commute vehicle-miles traveled per person between a baseline measurement and a subsequent measurement. WSDOT calculates reduced VMT by subtracting the commute vehicle-miles traveled per person in the subsequent measurement, from the commute vehicle-miles traveled in the baseline measurement.

(m) A *project goal* is the total number of commute vehicle trips that a TRPP project proposes to reduce when it applies for TRPP funding.

(n) An *interim goal* is the number of commute vehicle trips that a TRPP project proposes to reduce for specified periods shorter than the project's entire duration. Payments for interim goals are subject to WSDOT approval.

(o) *Performance* is defined as the reduction in the number of commute vehicle trips to work locations in the TRPP project, with credit given for reductions in the commute vehicle miles traveled by employees to those work locations. WSDOT will provide directions for calculating this credit as part of the materials used when applying for TRPP funds.

(p) *Agent* is an organization or individual who represents the private employer, public agency, nonprofit organization, developer, or property manager and is charged with managing the TRPP or providing the employee the financial incentive.

(q) The *price per trip (or trip price)* is the amount that WSDOT agrees to pay for each annualized commute vehicle trip reduced by a TRPP project, up to the number of trips proposed in the project goal. WSDOT will set a maximum price per trip that it is willing to pay, that does not exceed the estimated annualized cost of providing new roadway capacity. WSDOT may vary the maximum cost by year. WSDOT will provide the maximum cost per trip as part of the documents for applying for TRPP funds.

(r) A *cost-effective application* is one that defines a project that will reduce commute vehicle trips and commute vehicle miles traveled at a price equal to or less than WSDOT's maximum price per trip.

(s) A basic project is a project that lasts up to two years.

(t) A multi-year project is a project that lasts from three to five years.

(u) The *award amount* for a project is equal to the price per trip multiplied by the project goal.

(3) **Who can apply?** To be eligible for TRPP funds, the applicant must provide financial incentives to their own or other employees for ridesharing, using public transportation, car sharing, nonmotorized commuting, telework, and/or compressed work weeks. The statewide funds are available on a competitive basis for private employers, public agencies, nonprofit organizations, developers, and property managers or their agents who create cost-effective trip reduction projects.

(4) **What kinds of projects will be funded?** To receive funds, the project must meet the program requirements and rank highly in the competitive review. The applicant determines the actual scope and design of the project. New and existing projects are eligible for selection. The primary focus of the review committee will be to select sustainable, cost-



effective trip reduction projects, and if they are new or innovative, they will be given additional consideration.

(5) **How are the program funds appropriated?** The Revised Code of Washington, RCW 70.94.996 authorizes the legislature to appropriate funding for this program.

(6) **Are any of the TRPP funds set aside for specific use?** Any funds appropriated to TRPP beyond the initial program level of seven hundred fifty thousand dollars per year may be used for projects within growth and transportation efficiency centers (GTEC) and for performance of local jurisdictions.

(a) Up to eighty-five percent of any appropriated funds in excess of the initial program level will be available for GTEC projects.

(b) GTEC projects will be subject to the same competitive processes and rules as projects funded with initial program funds.

(c) Fifteen percent of any appropriated funds in excess of the initial program funds will be made available for CTR affected jurisdictions as local jurisdiction performance funds.

(d) Appropriated funds in excess of the initial program funds will be made available to proposals outside of GTECs if there are funds remaining after all proposals within GTECs that fit the program structure for viable, cost-effective, trip reduction projects have been funded.

(e) Any appropriated funds in excess of the initial program funds and any initial program funds that remain after start-up funds, performance funds, and performance bonuses are paid will be used for local jurisdiction performance funds.

(f) WSDOT will determine the jurisdiction performance levels, and payments to the jurisdictions for performance will not exceed the maximum price per trip allowed by WSDOT.

(7) **How will the TRPP funds be distributed?** A minimum amount of the TRPP funds is to be available for each of three funding zones: Ten percent of available funds for Central Puget Sound (CPS) (King, Pierce, Snohomish counties), ten percent of available funds for non-Central Puget Sound applications, and ten percent of available funds for statewide applications (applications with worksites in the CPS and outside the CPS). The remaining funds will be awarded based on the project's ranking and available funds. WSDOT is bound to this distribution only if there are applications that fit the program structure and are viable, cost-effective trip reduction projects. This applies to all current and future funds.

(8) **How much money will be awarded to individual projects?** Funds will be allocated based on the estimated commute vehicle trips and miles traveled reduced for the project. The applicant will provide an estimate of the anticipated performance (their goal), and the price per trip that the project will charge WSDOT for reducing a commute vehicle trip. Once the selection committee ranks the projects, WSDOT will award funds based on committee ranking until half of the program funds are awarded in each fiscal year or all cost effective projects are funded. A project for a single worksite may not receive more than one hundred thousand dollars per fiscal year.

(9) **How much money can be awarded to applications with multiple partners?** Each organization (agency or employer) on the application may receive up to one hundred thousand dollars with the total amount not to exceed two hun-

dred fifty thousand dollars per application, per fiscal year as identified in RCW 70.94.996. If additional funds are appropriated by the legislature for this program, WSDOT may exceed this organization maximum award at their discretion.

(10) **Who can apply for a "partnership"?** An agent "who will provide the financial incentive to the employee" can submit a project partnership application and be the prime recipient for the project.

(11) **How does the applicant apply for the TRPP funds?** WSDOT will notify eligible applicants of the open period for applications. WSDOT may open more than one application period per year depending on whether all funds are awarded. Applicants apply by submitting a completed "TRPP" application form during an open application period. The "TRPP" application form is available upon request from WSDOT. WSDOT recommends that applicants within a CTR affected area notify the jurisdictional authority, e.g., regional transportation planning organization (RTPO), county, city, or transit agency, that they are submitting an application for TRPP funds.

(a) Applicants may submit more than one project application for consideration; however, when the sum of all the project costs are combined, they cannot exceed what the applicant is eligible to receive.

(b) Applicants may submit an application that will cover one or two years (basic project) or apply for projects that cover three to five years (multi-year projects).

(c) All applicants must describe how they will measure performance for their project. Every project must have a baseline measurement and a final measurement. Additional measurements are required for multi-year projects, and interim measurements are optional for all projects.

(d) All applicants must describe how and when they will implement their project.

(e) For basic projects, applicants must estimate the number of vehicle trips and VMT reduced for each fiscal year as well as the project total.

(f) In the case of multi-year projects, applicants must estimate the number of vehicle trips and VMT reduced for each year, as well as a project total.

(12) **Can a basic project be renewed?** A basic project that performs well may be approved for a renewal; however, the contractor must reapply. If the renewal is approved by the selection committee, the applicant may be required to conduct another baseline measurement. Renewal applications may include a proposed adjustment to the trip price and/or goal. Adjustments to the trip price or goal are subject to approval by WSDOT. All basic projects are subject to termination if the project is not performing according to expectations or is not continuing to work towards the reduction of commute trips.

(13) **How will the application be reviewed?** The chair of the CTR board will select a committee comprised of between six and nine members will review the applications and selection. The project selection committee will include at least one member of the CTR board, at least one member from Central Puget Sound and one from the rest of the state, at least one employer, at least one transit member and at least one city government representative. The committee will include at least one member from the CTR technical advisory

group (TAG), a member of WSDOT familiar with performance measurement, and an RTPo representative. The award committee will select projects based on the criteria as defined in subsection (12) of this section.

(14) **What are the review criteria?** The applications will be reviewed based on the following criteria:

(a) **Cost effectiveness:** Does the project have a high likelihood of achieving its benefits at a relatively low expenditure of TRPP funds? Are the projected benefits achievable at a cost less than providing the equivalent roadway capacity?

(b) **Sustainability:** If this project is funded, will its benefits continue after the funding element of the project has been completed? Do the project design and partnerships indicate a high probability for continuing the project after all TRPP funds are used? Can the reduction in trips be sustained over a "multi-year project" timeline?

(c) **Innovation:** Is the proposed project a new idea, or something that's been done before but is new to the area? Does the project propose unique ways to reduce trips?

(d) **Measurability:** The performance of the project must be measurable. If an applicant proposes to use their own measurement approach, a detailed measurement plan must be submitted as a part of the application and must be approved by WSDOT. The measurement approach must be as accurate an estimate of the trips reduced as would be generated if the applicant made use of the WSDOT-developed measurement tool. Deviations from the approved measurement plan will be subject to review and approval by WSDOT. WSDOT may reject an application or terminate the contract if the measurement deviation is not approved.

(e) **Project implementation:** What is the timeline for implementation of the project? When and how will the project be advertised to the target population? All projects must conduct a baseline measurement of all individual participants as they begin taking part in the project. If a project targets an entire worksite, the project must identify the worksite, and all employees must participate in the measurement, or the total number of employees at the worksite must be indicated in the baseline and performance measurements. The applicant must indicate the implementation timeline, proposed measurement methods (if other than WSDOT measurement tool) and measurement schedule in the application.

(f) **Project predictability:** Are the estimates of employee participation, trip reduction, and VMT reduction likely to be achieved based on the assessment of the review committee?

(g) **Redundancy:** Does the project propose to provide services that are already available to the employees?

(h) **Thoroughness:** Has the project been thoroughly researched and carefully thought out? Are adequate details presented in the application?

(15) **How will the recipient receive the money?** Once the projects have been reviewed, prioritized and selected, the applicant will enter into a contract with the Washington state department of transportation for implementation of the project. This contract will establish the amount of money the award recipient can receive for the project, the timelines, performance expectations, and the project's measurement plan. The recipient must submit a TRPP fund disbursement form provided by WSDOT in order to request funds. On this form

the recipient will identify the funds requested and provide documentation of performance or expenditures for reimbursement of start-up costs. Applications for multi-year projects must demonstrate the organization's ability to accept payments for performance, as well as bonus funds, through the end of the project time frame. WSDOT will provide funds to the recipient through three approaches: Start-up, performance and performance bonus.

(a) **Start-up funds:** WSDOT will provide start-up funding on a dollar for dollar, cost-reimbursable basis, but will not exceed fifty percent of the total project award for the duration of the project. The recipient of basic project award may request start-up funds after the baseline measurement has begun. The recipient can request start-up funds throughout the project or until the final performance funds are paid. The recipient of a multi-year project award is eligible for start-up funds through a phased payment approach. To calculate the start-up fund disbursement for multi-year projects, multiply the total project amount by 0.5, then divide that number by the number of years in the project. This is the amount that will be available as start-up funds each year.

(b) **Performance funds:** The remaining award amount will be available to the recipient following performance measurement(s) for the project, based on the project's performance. All basic projects are required to measure at the end of the project and deliver the measurement data to WSDOT by June 1st. Projects that conduct interim measurements will be eligible to receive a prorated portion of the performance funding following each measurement, with the balance available after the final measurement. Projects that do not conduct interim measurements will receive their remaining performance funds after the final measurement. For multi-year projects, the recipient must measure the project's performance at the end of each biennium (and deliver the measurement data to WSDOT by June 1st) at a minimum, and at the end of the project. The amount of performance funds paid will be calculated from the project's price per trip and performance. Projects must reduce trips to be eligible for any performance funds. The project application must describe the measurement schedule for the project, and the contract for the project will include a measurement schedule.

(c) **Performance bonus funds:** WSDOT will provide performance bonus funds only at the end of the contract period. The recipient will receive the funds for additional performance above the award amount based on the same price per trip reduced, including credit for VMT reduced, as identified in their contract. The recipient will be eligible to receive additional bonus funds up to one hundred twenty percent of the contracted price per trip, or up to the maximum price per trip allowed (whichever is less), for every trip that exceeds the project goal. WSDOT will make performance bonus funds available only if funds are remaining in the TRPP account.

(d) **Implementation penalties:** All award recipients must implement their projects within three months (first quarter) after signing the contract in order to receive one hundred percent of the awarded funds. If the project is not implemented until the second quarter, only seventy-five percent of the awarded funds will be available; fifty percent if implementation does not occur until the third quarter; and twenty-

five percent if implementation does not occur until the fourth quarter. A project is subject to termination if it has not been implemented by the fifth quarter.

**(16) What is the measurement/payment schedule?**

Every project must have a baseline measurement, and the baseline measurement must begin before WSDOT will make payments to reimburse start-up costs. Interim measurements can be conducted monthly or quarterly, and must be completed in order to request interim payments. Submission of interim measurements to receive interim payments is subject to prior WSDOT approval. Every project must submit a final performance measurement at the end of the project in order to receive final payment. WSDOT must receive the final performance measurements and request for funds by June 1st of the contract closure year.

**(17) What are interim measurements and payments?**

When applicable and when approved in advance by WSDOT, recipients may request monthly and/or quarterly payments for trip and VMT reductions. WSDOT will prorate payments based on the project timeline and the interim performance measurement. The sum of all performance payments will not exceed the total funds awarded to the project. Recipients will also be able to receive start-up funds that are phased throughout the life of the project (see subsection (15)(a) of this section for details on start-up fund disbursement).

**(18) Can the price per trip be adjusted?** Multi-year projects and basic projects seeking a renewal may apply for an adjustment to the trip price and/or their goal at the end of each biennium. Adjustments to trip price and goal for the project will be subject to review and approval by WSDOT. Payments for multi-year projects are contingent upon the provision of legislative funding in future biennia.

**(19) What happens if a project does not perform?** All projects are subject to termination if the project is not performing according to expectations or is not continuing to work towards the reduction of commute trips. Projects must reduce trips to be eligible for any performance funds.

**(20) How are projects that overlap treated?** No applicant may claim full reduction in employee commute vehicle trips or commute VMT that are claimed as part of another project. WSDOT will make an initial screening of awarded projects to determine whether projects overlap. If WSDOT finds that projects being considered for selection are likely to overlap, WSDOT will notify the applicants, and will provide them with the opportunity to adjust their trip prices and goals. If projects are selected that overlap, WSDOT will ask the applicants to propose a solution to the overlap. If a solution cannot be agreed upon by the applicants, WSDOT will adjust the payments for areas where it can determine overlap occurs, by dividing the amount per trip by the number of TRPP projects involved in the overlap. WSDOT will use the lower price per trip in the overlapped projects to calculate payment.

**(21) Performance documentation:** The applicant must, as part of the TRPP application, describe how the project will measure performance. WSDOT will make measurement instruments available to the project. The applicant may propose alternative ways to measure the project, but must provide a description of the alternative as part of the application. Use of any measurement instrument is subject to approval by WSDOT. WSDOT will incorporate language

describing the project's measurement into the contract documents for the project. WSDOT will calculate the reduction in commute vehicle trips for the project, along with any credit for reduction in vehicle miles traveled. At its discretion, WSDOT may make software available to TRPP recipients to calculate the reductions directly.

**WSR 08-06-100**

**PERMANENT RULES**

**DEPARTMENT OF HEALTH**

(Nursing Care Quality Assurance Commission)

[Filed March 5, 2008, 10:40 a.m., effective April 5, 2008]

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

Purpose: The rules define and clarify requirements that nursing assistant training programs must meet in order to be approved, and maintain approval, by the nursing care quality assurance commission. Approval is required so that students are eligible to apply for a nursing assistant-certified credential. These rules assure that only appropriately trained nursing assistants are certified.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-841-480; and amending WAC 246-841-400, 246-841-410, 246-841-420, 246-841-430, 246-841-440, 246-841-450, 246-841-460, 246-841-470, 246-841-490, 246-841-500, and 246-841-510.

Statutory Authority for Adoption: RCW 18.88A.060(1) and 18.88A.030(5).

Adopted under notice filed as WSR 07-22-113 on November 7, 2007.

A final cost-benefit analysis is available by contacting Kendra Pitzler, P.O. Box 47864, Olympia, WA 98504-7864, phone (360) 236-4723, fax (360) 236-4738, e-mail kendra.pitzler@doh.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, 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 10, Repealed 1.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 11, Repealed 1.

Date Adopted: March 5, 2008.

Judith Personett, EdD, RN, Chair  
Nursing Care Quality  
Assurance Commission

AMENDATORY SECTION (Amending Order 214B, filed 11/19/91, effective 12/20/91)

**WAC 246-841-400 Standards of practice and competencies ((of) for nursing assistants.** ~~((The following standards are supported by statements of the competencies that a nursing assistant must hold to meet the standard to be certified to practice in the state of Washington. The))~~ Competencies and standards of practice are statements of skills and knowledge, and are written as descriptions of observable, measurable behaviors ~~((which can be observed and measured)).~~ All competencies are performed ~~((, as per RCW 18.88A.030,))~~ under the direction and supervision of a licensed ~~((registered((+)) nurse or licensed practical nurse as required by RCW 18.88A.030. ((The level or depth of accomplishment of any given competency is as appropriate to the "assisting" role of basic nursing care under supervision of the licensed nurse.))~~ The following competencies are considered standards of practice for both nursing assistant-certified and nursing assistant-registered:

(1) **Basic technical skills.** ~~((The))~~ A nursing assistant demonstrates basic technical skills which facilitate((s)) an optimal level of functioning for ((the)) client or resident, recognizing individual, cultural, and religious diversity. ((Competencies)) A nursing assistant:

(a) Demonstrates proficiency in cardiopulmonary resuscitation (CPR) and can perform CPR independently.

(b) Takes and records vital signs.

(c) Measures and records height and weight.

(d) Measures and records fluid and food intake and output ((of client)).

(e) Recognizes ((and reports abnormal signs and symptoms of common diseases and conditions)) normal body functions, deviations from normal body functions and the importance of reporting deviations in a timely manner to a supervising nurse.

(f) ~~((Demonstrates sensitivity to))~~ Recognizes, responds to and reports client's or resident's emotional, social, cultural and mental health needs.

(g) ~~((Makes observations of))~~ Recognizes, responds to and reports problems in client's or resident's environment to ensure safety and comfort of client.

(h) Participates in care planning and nursing reporting process.

(2) **Personal care skills.** ~~((The))~~ A nursing assistant demonstrates basic personal care skills. ((Competencies)) A nursing assistant:

(a) Assists client or resident with bathing, ((mouth)) oral care, and skin care.

(b) Assists client or resident with grooming and dressing.

(c) Provides toileting assistance to client or resident.

(d) Assists client or resident with eating and hydration.

(e) ~~((Utilizes))~~ Uses proper oral feeding techniques.

(3) **Mental health and social service needs.** ~~((The))~~ A nursing assistant demonstrates the ability to identify ((the)) psychosocial ((characteristics)) needs of all clients ((including persons with mental retardation, mental illness, dementia, Alzheimer's disease, and related disorders. Competencies:

(a) Modifies his/her own behavior in response to the client's behavior.

~~((b))~~ Identifies adaptations necessary to accommodate the aging process.

~~((c))~~ Provides training in, and the opportunity for, self care according to clients' capabilities.

~~((d))~~ Demonstrates skills supporting client's personal choices.

~~((e))~~ Identifies ways to use the client's family as a source of emotional support for the patient)) or residents based upon awareness of the developmental and age specific processes. A nursing assistant:

~~((4))~~ (a) Addresses individual behavioral needs of the client or resident.

(b) Knows the developmental tasks associated with the developmental and age specific processes.

(c) Allows the client or resident to make personal choices, but provides and reinforces behaviors consistent with the client's or resident's dignity.

(d) Is sensitive and supportive and responds to the emotional needs of the clients or residents and their sources of emotional support.

(4) **Care of cognitively impaired residents.** A nursing assistant demonstrates basic care of cognitively impaired clients or residents. A nursing assistant:

(a) Uses techniques for addressing the unique needs and behaviors of individuals with cognitive impairment including Alzheimer's, dementia, delirium, developmental disabilities, mental illnesses and other conditions.

(b) Communicates with cognitively impaired clients or residents in a manner appropriate to their needs.

(c) Demonstrates sensitivity to the behavior of cognitively impaired clients or residents.

(d) Appropriately responds to the behavior of cognitively impaired clients or residents.

(5) **Basic restorative services.** The nursing assistant incorporates principles and skills ((of restorative nursing)) in providing ((nursing)) restorative care. ((Competencies)) A nursing assistant:

(a) Demonstrates knowledge and skill in using assistive devices in ambulation, transferring, eating, and dressing.

(b) Demonstrates knowledge and skill in the maintenance of range of motion.

(c) Demonstrates proper techniques for turning((/)) and positioning a client or resident in a bed and chair.

(d) Demonstrates proper techniques for transferring and ambulating client or resident.

(e) Demonstrates knowledge about methods for meeting the elimination needs of clients or residents.

(f) Demonstrates knowledge and skill for the use and care ((and use)) of prosthetic devices by client or resident.

~~((5))~~ (g) Uses basic restorative services by training the client or resident in self care according to the client's or resident's capabilities.

(6) **Client((s')) or resident rights and promotion of ((clients')) independence.** ~~((The))~~ A nursing assistant demonstrates behavior which maintains and respects client((s')) or resident rights and promotes ((clients')) independence, regardless of race, religion, life-style, sexual preference, disease process, or ability to pay. ((Competencies)) A nursing assistant:

(a) Recognizes that ~~((the))~~ client or resident has the right to participate in decisions about his~~(/)~~ or her care.

(b) Recognizes and respects ~~((the))~~ clients' or residents' need for privacy and ~~((maintenance of))~~ confidentiality.

(c) Promotes and respects the client~~(/s)~~ or resident right to make personal choices to accommodate their needs.

(d) Reports client~~(/s)~~ or resident concerns.

(e) Provides assistance to client or resident in getting to and participating in activities.

~~(f) ((Provides care of client's personal possessions.~~

~~(g) Provides care which maintains the client free from abuse, mistreatment or neglect; and reports any instances to appropriate facility staff.~~

~~(h) Maintains the client's environment and care through appropriate nursing assistant behavior so as to minimize the need for physical and chemical restraints.~~

~~((6)) Respects the property of client or resident and employer and does not take equipment, material, property or medications for his, her or other's use or benefit. A nursing assistant may not solicit, accept or borrow money, material or property from client or resident for his, her or other's use or benefit.~~

~~(g) Promotes client or resident right to be free from abuse, mistreatment, and neglect.~~

~~(h) Intervenes appropriately on the client's or resident's behalf when abuse, mistreatment or neglect is observed.~~

~~(i) Complies with mandatory reporting requirements by reporting to the department of health and the department of social and health services instances of neglect, abuse, exploitation or abandonment.~~

~~(j) Participates in the plan of care with regard to the use of restraints in accordance with current professional standards.~~

~~(7) **Communication and interpersonal skills.** ((The)) A nursing assistant uses communication and interpersonal skills effectively ((in order)) to function as a member of the nursing team. ((Competencies)) A nursing assistant:~~

~~(a) Reads, writes, speaks, and understands English at the level necessary for performing duties of the nursing assistant.~~

~~(b) Listens and responds to verbal and nonverbal communication in an appropriate manner.~~

~~(c) Recognizes how ~~((one's))~~ his or her own behavior influences client's or resident's behavior and ~~((know))~~ uses resources for obtaining assistance in understanding the client's or resident's behavior.~~

~~(d) ~~((Makes adjustments for))~~ Adjusts his or her own behavior to accommodate client's or resident's physical or mental limitations.~~

~~(e) Uses terminology accepted in the health care ~~((facility))~~ setting to record and report observations and pertinent information.~~

~~(f) Appropriately records and reports observations, actions, and information accurately and in a timely manner.~~

~~(g) ~~((Demonstrates ability))~~ Is able to explain policies and procedures before and during care of the client or resident.~~

~~((7)) **(8) Infection control.** ((The)) A nursing assistant uses ~~((procedures and techniques))~~ standard and transmission based precautions to prevent the spread of microorganisms. ((Competencies)) A nursing assistant:~~

(a) Uses principles of medical asepsis and demonstrates infection control techniques and ~~((universal))~~ standard and transmission based precautions.

(b) Explains how disease causing microorganisms are spread~~((; lists ways that HIV and Hepatitis B can spread from one person to another))~~.

~~(c) Is knowledgeable regarding transmission of blood-borne pathogens.~~

~~((e)) (d) Demonstrates knowledge of cleaning agents and methods which destroy microorganisms on surfaces.~~

~~((8)) **(9) Safety~~(/)~~ and emergency procedures.** ((The)) A nursing assistant demonstrates the ability to identify and implement safety~~(/)~~ and emergency procedures. ((Competencies)) A nursing assistant:~~

~~(a) Provides an environment with adequate ventilation, warmth, light, and quiet ~~((measures))~~.~~

~~(b) ~~((Uses measures that promote comfort, rest, and sleep.~~~~

~~((e)) Promotes a clean, orderly, and safe environment ~~((and))~~ including equipment for ~~((the))~~ a client or resident.~~

~~((d)) (c) Identifies and utilizes measures for accident prevention.~~

~~((e) Identifies and) (d) Demonstrates principles of good body mechanics for self and client or resident, using the safest and most efficient methods to lift and move clients, residents, or heavy items.~~

~~((f)) (e) Demonstrates proper use of protective devices in care of clients or residents.~~

~~((g)) (f) Demonstrates knowledge ~~((of))~~ and follows fire and disaster procedures.~~

~~((h)) (g) Identifies and demonstrates principles of health and sanitation in ~~((the service of))~~ food service.~~

~~((i)) (h) Demonstrates the proper use and storage of cleaning agents and other potentially hazardous materials.~~

~~((9)) **(10) Rules and regulations knowledge.** ((The)) A nursing assistant demonstrates knowledge of and ~~((is responsive to))~~ can explain the practical implications of the laws and regulations which affect ~~((his/her))~~ nursing assistant practice including but not limited to: ~~((Client abuse and neglect, client complaint procedures;))~~~~

~~(a) Mandatory reporting procedures related to client or resident abuse, neglect, abandonment, and exploitation.~~

~~(b) Scope of practice.~~

~~(c) Workers right to know~~((, and))~~.~~

~~(d) The Uniform Disciplinary Act.~~

AMENDATORY SECTION (Amending Order 214B, filed 11/19/91, effective 12/20/91)

**WAC 246-841-410 Purpose of the review and approval of ~~((certified))~~ nursing assistant-certified training programs. The ~~((board of))~~ nursing care quality assurance commission (commission) approve~~((s curriculum in))~~ nursing assistant ~~((education))~~-certified training programs ~~((qualifying for admission to examination for certification for the following purposes))~~. The commission reviews and approves training programs to:**

(1) ~~((To))~~ Assure preparation for safe practice as a nursing assistant-certified by ~~((setting minimum standards for~~

~~education))~~ requiring nursing assistant-certified programs meet minimum standards.

(2) ~~((Fø))~~ Provide guidance for ~~((the))~~ development of new nursing assistant-certified training programs.

(3) ~~((Fø))~~ Facilitate ~~((the))~~ career mobility of nursing assistants-certified ~~((in articulating))~~ into nursing educational programs in other levels of nursing.

(4) ~~((Fø))~~ Identify training standards and achieved competencies of nursing assistants-certified in the state of Washington for the purpose of interstate communications and endorsements.

AMENDATORY SECTION (Amending Order 116B, filed 3/18/91, effective 4/18/91)

**WAC 246-841-420 Requirements for approval of nursing assistant ~~((education and))-certified training programs ~~((approval))~~~~**. ~~((Those institutions or facilities seeking approval to offer a program of training which qualifies graduates to apply for certification, in addition to other agency program approval requirements,))~~ To qualify as a nursing assistant-certified training program, an institution or facility must:

(1) ~~((Request an))~~ Submit a completed application ~~((/ guidelines))~~ packet ~~((from))~~ provided by the department of health ~~((, professional licensing))~~. The packet will include forms and instructions ~~((for the program))~~ to submit the following:

- (a) Program objectives.
- (b) Curriculum content outline.
- (c) Qualifications of program director and additional instructional staff.

(d) ~~((Agency))~~ Contractual agreements ~~((as appropriate))~~ related to providing this training. For any program that uses another facility to provide clinical training, this includes an affiliation agreement between the training program and the facility. The affiliation agreement must describe how the program will provide clinical experience in the facility. The agreement must specify the rights and responsibilities of both parties, students and clients or residents.

- (e) ~~((A))~~ Sample lesson plan for one unit.
- (f) ~~((A sample))~~ Skills checklist.
- (g) Description of ~~((physical resources))~~ classroom facilities.
- (h) ~~((Statement of assurance of compliance with administrative guidelines.~~

(2) If a program currently in existence as an approved program on the date of implementation of this code, submit the completed application, including all forms, fees, and assurances as specified, within sixty days of the effective date of the code for review for reapproval of the program.

(3) If a program not currently holding approval status, submit the completed application packet and fees as instructed, with all forms and assurances as specified, sixty days prior to the anticipated start date of the first class offered by the institution.

(4) Declaration of compliance with administrative guidelines signed by the program director.

(i) Verification that the program director has completed a course on adult instruction as required by WAC 246-841-

470(3) or has one year of experience in the past three years teaching adults. Acceptable experience does not include in-service education or patient teaching. A program director working exclusively in a postsecondary educational setting is exempt from this requirement.

(j) Verification that the nursing assistant-certified training program or school is approved to operate in the state of Washington by:

- (i) The state board for community and technical colleges;
- (ii) The superintendent of public instruction; or
- (iii) The workforce training and education coordinating board.

(2) Agree to on-site survey of the training program, as requested by the ~~((board, on a date mutually agreed upon by the institution and the board))~~ commission. This on-site ~~((visit))~~ will be coordinated with other on-site review requirements when possible.

~~((5))~~ Provide review and update of program information (3) Participate in the renewal process every two years ~~((, or as requested by the board or educational agency))~~. Failure to renew results in automatic withdrawal of approval of the program.

~~((6))~~ (4) Comply with any ~~((future))~~ changes in ~~((education))~~ training standards and guidelines in order to maintain approved status.

~~((7))~~ (5) Notify the ~~((board))~~ commission and ~~((education))~~ any other approving agency of any changes in overall curriculum plan or major curriculum content changes prior to implementation.

~~((8))~~ (6) Notify the ~~((board))~~ commission and ~~((education))~~ any other approving agency of changes in program director or instructors.

AMENDATORY SECTION (Amending Order 214B, filed 11/19/91, effective 12/20/91)

**WAC 246-841-430 Denial ~~((of approval))~~ or withdrawal of approval for nursing assistant-certified training programs ~~((for which the board is the approving authority))~~.** (1) ~~((The board may deny approval to new programs))~~ When ~~((it))~~ the commission determines that a nursing assistant-certified training program fails ~~((substantially))~~ to meet the standards for training as contained in ~~((WAC 246-841-470 through 246-841-510. All such board actions shall be in accordance with the Washington Administrative Procedure Act and/or the administrative rules and regulations of the board.~~

(2) The board may withdraw approval from existing programs when it determines that a nursing education program fails substantially to meet the standards for nursing assistant training as contained in WAC 246-841-470 through 246-841-510. All such actions shall be effected in accordance with the Administrative Procedure Act and/or the administrative rules and regulations of the board)) this chapter, the commission may:

- (a) Deny approval to a new program; or
- (b) Withdraw approval from existing programs.
- (2) The commission may conduct a review or site visit to investigate:

(a) Complaints relating to violations of this chapter.

(b) Failure to notify the commission of any changes in the overall curriculum plan or major content changes prior to implementation.

(c) Failure to notify the commission of changes in program director or instructor.

(d) Providing false or misleading information to students or the public concerning the nursing assistant-certified training program.

(e) Failure to secure or retain a qualified program director resulting in substandard supervision and teaching of students.

(f) Failure to maintain an average passing rate of eighty percent on the state-approved examination. If a program:

(i) Fails to maintain an average passing rate of eighty percent of first time test takers for two consecutive years, the commission will require the program to assess the problem and submit a plan of correction.

(ii) Fails to maintain an average passing rate of eighty percent of first time test takers for three consecutive years, the program must complete an assessment of possible problem areas within six months and the commission may conduct an evaluation visit. The commission may offer technical assistance.

(iii) Fails to maintain an average passing rate of eighty percent of first time test takers for four out of five consecutive years, the commission may place the program on conditional approval and require an evaluation visit.

(3) Commission approval is automatically terminated if the program does not renew.

AMENDATORY SECTION (Amending Order 214B, filed 11/19/91, effective 12/20/91)

**WAC 246-841-440 ((Reinstatement of approval.) How does a nursing assistant training program whose approval has been withdrawn become reinstated?** (1) The ((board)) commission may consider reinstatement ((of withdrawn approval)) of a nursing assistant-certified training program upon submission of satisfactory evidence that the program meets the standards of nursing assistant training((; WAC 246-841-470 through 246-841-510)) as contained in this chapter.

(2) A program that is automatically terminated for failure to participate in the renewal process may be immediately reinstated upon meeting all conditions for a new application approval.

AMENDATORY SECTION (Amending Order 116B, filed 3/18/91, effective 4/18/91)

**WAC 246-841-450 Appeal ((of board decisions)) rights of a nursing assistant-certified training program when the commission has denied or withdrawn approval.** ((A nursing assistant training program deeming itself aggrieved by a decision of the board affecting its approval status shall have the right to appeal the board's decision in accordance with the provisions of chapter 18.88 RCW and the Administrative Procedure Act, chapter 34.05 RCW-)) A nursing assistant-certified training program that has been denied or had approval withdrawn shall have the right to a hearing to appeal the commission's decision according to the

provisions of chapter 18.88A RCW and chapter 34.05 RCW, the Administrative Procedure Act, Parts IV and V.

AMENDATORY SECTION (Amending Order 116B, filed 3/18/91, effective 4/18/91)

**WAC 246-841-460 ((Closing)) Closure of an approved nursing assistant-certified training program.** When ((a governing institution decides to close a program)) an approved nursing assistant-certified training program closes, it shall notify the ((board)) commission in writing, stating the reason and the date of intended closing.

AMENDATORY SECTION (Amending Order 214B, filed 11/19/91, effective 12/20/91)

**WAC 246-841-470 Program directors and instructors in approved nursing assistant-certified training programs.** (1) The program director ((will be)) must hold a current license in good standing as a registered nurse ((licensed)) (RN) in the state of Washington.

(2) ((The program director will meet the minimum qualifications for instructors as required by the superintendent of public instruction in chapter 180-77 WAC or the state board for community college education in chapter 131-16 WAC-)) The commission may deny or withdraw a program director's approval if there is or has been any action taken against the director's health care license or any license held by the director which allows him or her to work with vulnerable populations.

(3) The program director ((will)) must complete a ((“train the trainer” program approved by the state)) training course on adult instruction or have demonstrated ((competence to teach adults as defined by the state)) that he or she has one year experience teaching adults.

(a) Acceptable experience does not include in-service education or patient teaching.

(b) The training course on adult instruction must provide instruction in:

(i) Understanding the adult learner.

(ii) Techniques for teaching adults.

(iii) Classroom methods for teaching adults.

(iv) Audio visual techniques for teaching adults.

(c) A program director working exclusively in a postsecondary educational setting is exempt from this requirement.

(4) The program director will have a minimum of three years of experience as an RN, of which at least one year will be in direct patient care.

(5) The program director must meet the requirements for additional staff under subsection (7)(b) of this section if the program director will also be acting as an instructor.

(6) Program director responsibilities:

(a) Develop and implement a curriculum which meets as a minimum the requirements of WAC 246-841-490. The program director is responsible for all classroom and clinical training content and instruction.

(b) Assure compliance with and assume responsibility for ((all regulations as stipulated in)) meeting the requirements of WAC ((246-841-480)) 246-841-490 through 246-841-510.

(c) ~~((Directly supervise each course offering.))~~ Assure that all student clinical experience is directly supervised. Direct supervision means that an approved program director or instructor is observing students performing tasks.

(d) Assure that the clinical instructor has no concurrent duties during the time he or she is instructing students.

(e) Create and maintain an environment conducive to teaching and learning.

~~((e))~~ (f) Select and supervise all other instructors involved in the course, ~~((to include))~~ including clinical instructors and guest lecturers.

~~((f))~~ (g) Assure that students are not asked to, nor allowed to, perform any clinical skill with patients or clients until first demonstrating the skill satisfactorily to an instructor in a practice setting.

~~((g))~~ (h) Assure evaluation of ~~((competency of))~~ knowledge and skills of students before ~~((issuance of verification of))~~ verifying completion of the course.

~~((h))~~ (i) Assure that students receive a verification of completion when requirements of the course have been satisfactorily met.

~~((6))~~ Additional instructional staff:

~~((a))~~ (7) The program director may select instructional staff to assist in the teaching of the course ~~((, teaching)).~~

(a) Instructional staff must teach in their area of expertise.

(b) ~~((A))~~ Instructional staff must have a minimum of one year experience within the past three years in caring for the elderly ~~((and/))~~ or chronically ill of any age or both.

~~((A guest lecturer, or individual with expertise in a specific course unit may be utilized for the teaching of that unit, following the program director's review of the currency of the content.))~~

(c) All instructional staff must ~~((be, where applicable, currently licensed, registered, and/or certified in their field in the state of Washington))~~ hold a current Washington state license to practice as a registered or licensed practical nurse. The commission may deny or withdraw an instructor's approval if there is or has been any action taken against a health care license or any license held by the applicant which allows him or her to work with vulnerable populations.

(d) Instructional staff may assist the program director in development of ~~((curriculum))~~ curricula, teaching modalities, and evaluation ~~((but)).~~ The instructor will ~~((in all cases))~~ be under the supervision of the program director at all times.

(e) A guest lecturer, or individual with expertise in a specific course unit may be used in the classroom setting for teaching without commission approval, following the program director's review of the currency of content. The guest lecturer, where applicable, must hold a license, certificate or registration in good standing in their field of expertise.

AMENDATORY SECTION (Amending Order 214B, filed 11/19/91, effective 12/20/91)

**WAC 246-841-490 Core curriculum in approved nursing assistant-certified training programs.** (1) The curriculum ~~((will))~~ must be competency based ~~((, that is)).~~ It must be composed of learning objectives and activities that will lead to ~~((the attainment of))~~ knowledge and skills

required for the graduate to demonstrate mastery of the core competencies ~~((CNAs must hold, as per))~~ as provided in WAC 246-841-400.

(2) The program director will determine the amount of time required in the curriculum to achieve the objectives ~~((as above)).~~ The time designated ~~((will be expected to))~~ may vary with characteristics of the learners and teaching ~~((+))~~ or learning variables. ~~((In no case will the hours be less than))~~ There must be a minimum of eighty-five hours total, ~~((comprised of no less than))~~ with a minimum of thirty-five hours of classroom training and ~~((no less than))~~ a minimum of fifty hours of clinical training.

(a) Of the thirty-five hours of classroom training, ~~((no less than))~~ a minimum of seven hours must be in AIDS education ~~((and training, in the subject areas of: Epidemiology, pathophysiology, infection control guidelines, testing and counseling, legal and ethical issues, medical records, clinical manifestations and diagnosis, treatment and disease management, and psychosocial and special group issues))~~ as required by chapter 246-12 WAC, Part 8.

(b) Of the fifty hours of clinical training, at least forty clinical hours must be in the practice setting.

(c) Training to orient the student to the health care facility and facility policies and procedures are not to be included in the minimum hours above.

(3) Each unit of the core curriculum will have:

(a) Behavioral objectives, ~~((that is))~~ which are statements of specific observable actions and behaviors that the learner is to perform or exhibit.

(b) An outline of information the learner will need to know in order to meet the objectives.

(c) Learning activities ~~((that is,))~~ such as lecture, discussion, readings, film, or clinical practice ~~((, etc.) that are))~~ designed to enable the student to achieve the stated objectives.

(4) Clinical teaching in a ~~((given))~~ competency area ~~((will be))~~ is closely correlated with classroom teaching ~~((,))~~ to ~~((facilitate the integration of))~~ integrate knowledge with manual skills.

(a) Students must wear name tags clearly identifying them as students when interacting with patients, clients or residents, and families.

(b) An identified instructor(s) will supervise clinical teaching ~~((+))~~ or learning at all times. At no time will the ratio of students to instructor exceed ten students to one instructor in the clinical setting.

(5) The curriculum ~~((will))~~ must include evaluation processes to ~~((assure))~~ assess mastery of competencies. ~~((Written and oral tests and clinical practical demonstrations are common methods.))~~ Students ~~((will not be asked to, nor allowed to.))~~ cannot perform any clinical skill on ~~((patients or))~~ clients or residents until first demonstrating the skill satisfactorily to an instructor in the practice setting.

AMENDATORY SECTION (Amending Order 116B, filed 3/18/91, effective 4/18/91)

**WAC 246-841-500 Physical resources ~~((for))~~ required for approved ~~((education))~~ nursing assistant-certified training programs.** (1) Classroom facilities must



provide adequate space, lighting, comfort, and privacy for effective teaching and learning.

(2) Adequate classroom resources, such as ~~((chalkboard, AV materials, written materials, etc., with which to accomplish program objectives))~~ white board or other writing device, audio visual materials, and written materials must be available.

(3) ~~((Adequate resources must also be provided for teaching and practice of clinical skills and procedures, before implementation of such skills with patients or residents.))~~ Appropriate equipment must be provided for teaching and practicing clinical skills and procedures before implementing the skills with clients or residents.

AMENDATORY SECTION (Amending Order 116B, filed 3/18/91, effective 4/18/91)

**WAC 246-841-510 Administrative procedures for approved nursing assistant-certified training programs.**

(1) ~~((A student))~~ The program must establish and maintain a file ((will be established and maintained)) for each student enrolled ((which includes)). The file must include:

(a) ~~(((Dates attended((,-evaluation(-)).~~

(b) ~~(((Test((+)) results((-)).~~

(c) ~~(((A skills evaluation checklist with dates of skills testing and signature of ((evaluator, and)) instructor.~~

(d) ~~(((Documentation of successful completion of the course, or ((other)) documentation of the course outcome.~~

(2) Each student file ~~((with))~~ must be maintained by the ~~((institution))~~ program for a period of ~~((thirty-))~~ five years, and copies of documents made available to students who request them.

~~((2))~~ (3) Verification of successful completion of the course of training will be provided to the ~~((board of nursing))~~ commission on forms provided by the ~~((board))~~ commission.

~~((3))~~ (4) For those programs based in a health care facility: ~~((Training evaluation and verification of successful completion of the course, including mastery of the required knowledge and skills, will be determined by the program director separately from other employee/employer issues. Verification of completion will not be withheld from a student who has successfully met the requirements of the course.~~

(4) Programs which are not sponsored by a health care facility, ~~must submit with their application for approval an affiliation agreement between the educational institution and the health care facility which will provide the program access to the experience needed for clinical teaching. This agreement must specify the rights and responsibilities of both parties, students and clients.~~

(5) Failure to adhere to administrative requirements for programs may result in withdrawal of approval status by the ~~board.~~) Verification of program completion and the application for state testing will not be withheld from a student who has successfully met the requirements of the program. Successful completion will be determined by the training program director separately from other employer issues.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-841-480

Students (trainees) in approved training programs.

**WSR 08-06-102  
PERMANENT RULES  
DEPARTMENT OF  
EARLY LEARNING**

[Filed March 5, 2008, 10:57 a.m., effective April 5, 2008]

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

Purpose: The department of early learning (DEL) is adopting new chapter 170-03 WAC, DEL hearing rules. These rules describe the procedures and deadlines for child care providers to appeal adverse decisions by DEL. When effective, the permanent rules will replace and supersede chapter 170-03 WAC, Hearing rules filed under emergency order WSR 08-04-060. Background check rules, chapter 170-06 WAC, filed under emergency order WSR 08-04-060 will remain in effect.

Statutory Authority for Adoption: Chapter 43.215 RCW and RCW 34.05.220.

Other Authority: Chapter 34.05 RCW; chapter 265, Laws of 2006.

Adopted under notice filed as WSR 07-24-091 on December 5, 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 61, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 61, Amended 0, Repealed 0.

Date Adopted: March 3, 2008.

Jone M. Bosworth, JD  
Director

**Chapter 170-03 WAC**

**DEL HEARING RULES**

**I. GENERAL PROVISIONS**

NEW SECTION

**WAC 170-03-0010 Purpose and scope.** (1) **Application.** This chapter contains the procedural rules that apply to

adjudicative proceedings involving the department of early learning (DEL) and:

(a) Individuals or entities who are applicants for child care licenses or who are licensees of DEL and are aggrieved by a DEL denial of an application or a revocation, suspension, or modification of a license;

(b) Applicants for employment or employees of licensed child care agencies, child care providers, staff, volunteers, contracted providers, or other individuals who are required to meet background check standards before being authorized to care for or have unsupervised access to children in child care and who are disqualified by DEL;

(c) Individuals receiving child care subsidies under the seasonal child care program who dispute a program decision or licensed/certified providers who dispute an overpayment under the seasonal child care program.

(2) **Relation to statutes and rules.** The rules of this chapter are intended to supplement RCW 43.215.305, the statute governing hearing rights for applicants and licensees; the Administrative Procedure Act (APA), chapter 34.05 RCW; and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH). If a provision of this chapter conflicts with a provision in any chapter containing a substantive rule, the provision in the chapter containing the substantive rule governs.

(3) **Relation to actions and rules of other agencies.** Actions of DEL sometimes rely in part on actions taken by other agencies, most notably the department of social and health services (DSHS), or are taken in conjunction with the actions of other agencies. For example, DSHS's division of licensed resources/child protective services (DLR/CPS) has statutory responsibility for investigating allegations of child abuse or neglect in licensed child care agencies. If DLR/CPS finds child abuse or neglect occurred in a child care facility, the person who is the subject of the finding will have a right to a hearing to challenge that finding under DSHS rules. If the subject is a licensed provider, the child care license may be denied, revoked, suspended, or modified as a result of the circumstances and finding and the provider also would have a right to a hearing under DEL hearing rules. To the extent the child abuse or neglect case and the licensing case can be consolidated or combined in one hearing, they should be combined.

(4) **Application and amendments.** This chapter and any amendments to this chapter apply to cases pending at the time of the adoption of the rule or amendment, unless the amendment or rule-making order specifically states that it does not apply to pending cases. An amendment to this chapter does not require that anything already done be redone in order to comply with the amendment, unless the amendment expressly says so.

(5) **Effective date.** This chapter is initially effective July 3, 2006. In addition to cases arising on or after the effective date, this chapter, and not its DSHS predecessor, applies to all pending DEL cases that have not gone to a full hearing before an ALJ by July 3, 2006, and to cases in which an initial decision is subject to review, but in which a petition for review has not been filed by July 3, 2006. This chapter does not apply to cases in which the hearing was held or begun prior to July 3, 2006, and/or which are awaiting initial deci-

sions; Provided, Parts VIII and IX of this chapter, governing review of initial and final orders, will apply to review of any initial orders mailed after the effective date of this chapter.

#### NEW SECTION

**WAC 170-03-0020 Definitions.** The following definitions apply to this chapter:

(1) **"Adjudicative proceeding"** means a hearing before an administrative law judge concerning an appeal of department action pursuant to RCW 43.215.305.

(2) **"Administrative law judge"** or **"ALJ"** means an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not DEL employees or DEL designees.

(3) **"Business days"** means all days except Saturdays, Sundays and legal holidays.

(4) **"Calendar days"** means all days including Saturdays, Sundays and legal holidays.

(5) **"Case"** means the entire proceeding following the filing of a request for hearing with OAH.

(6) **"Continuance"** means a change in the date or time of a prehearing conference, hearing or deadline for other action.

(7) **"DEL"** or **"department"** means the department of early learning.

(8) **"Documents"** means papers, letters, writings, or other printed or written items.

(9) **"Ex parte contact"** means a written or oral communication with an ALJ or review judge about something related to the hearing when the other parties are not present. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

(10) **"Final order"** means an order that is the final DEL decision. An ALJ's initial order becomes a final order if the ALJ's initial order is not appealed to a review judge. If an ALJ's initial order is appealed to a review judge, the review judge's order is DEL's final decision.

(11) **"Good cause"** means a substantial reason or legal justification for an action or for failing to appear, act, or respond to an action required under these rules.

(12) **"Hearing"** means a proceeding before OAH that gives an aggrieved party an opportunity to be heard in disputes resulting from actions taken against the party by DEL. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 170 of the Washington Administrative Code, chapter 10-08 WAC, or other law.

(13) **"Initial order"** is a decision made by an ALJ that may be reviewed by a review judge.

(14) **"OAH"** means the office of administrative hearings. This is a separate agency and not part of DEL.

(15) **"Party"** means a person or entity to whom a DEL adverse action is directed and who has a right to be involved in the hearing process. DEL also is a party.

(16) "**Representative**" means the person selected by a party to represent that party in an administrative hearing. "**Lay representative**" means a person or advocate who is assisting a party in presenting that party's case in administrative hearings. "**DEL representative**" means an employee of DEL, a DEL contractor, or an employee of the office of the attorney general authorized to represent DEL in an administrative hearing.

(17) "**Record**" means the official documentation of the hearing process. The record includes tape recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

(18) "**Review**" means the act of reviewing initial orders and issuing the DEL final order as provided by RCW 34.05.-464.

(19) "**Review judge**" or "**DEL review judge**" means an attorney employed by or designated by DEL to act as the reviewing officer and who is authorized to review initial orders and to prepare and enter the final agency order.

(20) "**Rule**" means a state regulation, including a licensure standard. Rules are found in the Washington Administrative Code (WAC).

(21) "**Stay**" means an order temporarily halting the DEL decision or action.

(22) Words of command such as "**will**," "**shall**," and "**must**" are words that impose a mandatory obligation on a participant in the hearing process. The word "**may**" is used when referring to a discretionary act to be taken by a participant in the hearing process.

#### NEW SECTION

**WAC 170-03-0030 Computing time for meeting deadlines in the hearing process.** (1) When counting days to find out when the time allowed or prescribed for an action under these rules or to meet a hearing deadline:

(a) Do not include the day of the action, notice, or order. For example, if an initial order is mailed on Tuesday and a party has twenty-one days from the date of mailing to request a review, count Wednesday as the first day. Similarly, if a DEL notice of denial, revocation, suspension, or modification of a license is received on a Wednesday and an individual has twenty-eight days from the date of receipt to file a request for an adjudicative proceeding, count Thursday as the first day.

(b) Count the last day of the period, unless the last day is a Saturday, Sunday or legal holiday, in which case the deadline is the next business day.

(2) For periods of seven days or less, count only business days. For example, if you have seven days to respond to a review request that was mailed to you on Friday, May 10, the response period ends on Tuesday, May 21.

(3) For periods over seven days, count every day, including Saturdays, Sundays, and legal holidays.

(4) The deadline ends at 5:00 p.m. on the last day.

## II. HEARING RIGHTS AND REQUESTS

### NEW SECTION

**WAC 170-03-0040 The right to a hearing.** (1) A person or entity has a right to a hearing only if a law or DEL rule expressly gives that right and a hearing is timely requested.

(2) A party has only a limited time to request a hearing. The deadline for the request is set by statute or DEL rule. In most cases, DEL will send a notice of adverse action that gives specific information about how, where and when to request a hearing.

(3) A challenge to a DEL adverse action is heard in an administrative hearing by an administrative law judge (ALJ) employed by the office of administrative hearings (OAH). Not all actions of DEL may be challenged through the hearing.

(4) If a party requests a hearing, one will be scheduled.

(5) If DEL or the ALJ questions a party's right to a hearing, the ALJ decides whether the party has that right. The ALJ will decide either:

(a) There is no right to a hearing and dismiss the case; or

(b) There is a right to a hearing and proceed with the hearing.

### NEW SECTION

**WAC 170-03-0050 Requesting a hearing.** (1) A request for hearing must be made in writing. DEL will provide forms that requesting parties may use to request a hearing. The request for hearing can be made by the party requesting the hearing or by the party's representative.

(2) The hearing request shall include:

(a) The requesting party's name, address, and telephone number;

(b) A brief explanation of why the requesting party disagrees with the DEL adverse action;

(c) Any assistance, such as a foreign or sign language interpreter or accommodation for a disability, needed by the requesting party;

(d) A copy of the notice from DEL stating the adverse action.

(3) Within twenty-eight days of receipt of notice of DEL's adverse action, the request shall be filed with OAH and served on DEL.

### NEW SECTION

**WAC 170-03-0060 Filing the request for hearing.** (1) Filing is the act of delivering documents to OAH at the location listed in WAC 170-03-0070.

(2) The date of filing is the date documents are actually received by OAH during office hours.

(3) A party may file documents with OAH by:

(a) Personal service (hand delivery);

(b) First class, registered, or certified mail;

(c) Fax transmission, if the party also mails a copy of the document the same day;

(d) Commercial delivery service; or

(e) Legal messenger service.

(4) A party cannot file documents by e-mail.

NEW SECTION

**WAC 170-03-0070 Location of office of administrative hearings.** (1) The office of administrative hearings (OAH) is open from 8:00 a.m. to 5:00 p.m. Monday through Friday, except legal holidays.

(2) The address for the office of administrative hearings (OAH) is:

Office of Administrative Hearings  
2420 Bristol Court S.W., 1st Floor  
P.O. Box 42488  
Olympia, WA 98504-2488  
360-664-8717  
360-664-8721 (fax)

NEW SECTION

**WAC 170-03-0080 Service of notice and documents.**

(1) Service is the act of delivering a copy of documents to the opposing party. Service gives the opposing party notice of the request for hearing or other action. When a document is given to a party, that party is considered served with official notice of the contents of the document.

(2) A party may serve another party by:

- (a) Personal service (hand delivery);
- (b) First class, registered, or certified mail;
- (c) Fax, if the party also mails a copy of the document the same day;

- (d) Commercial delivery service; or
- (e) Legal messenger service.

(3) A party cannot serve documents by e-mail.

(4) A party must serve all other parties or a party's representative, if the party is represented, whenever the party files a pleading (request for hearing), brief or other document with OAH or the review judge or when required by law.

(5) Service is complete when:

- (a) Personal service is made;
- (b) Mail is properly stamped, addressed and deposited in the United States mail;
- (c) Fax produces proof of transmission;
- (d) A parcel is delivered to a commercial delivery service with charges prepaid; or
- (e) A parcel is delivered to a legal messenger service with charges prepaid.

NEW SECTION

**WAC 170-03-0090 Proof of service.** A party may prove that an opposing party was served with documents by providing any of the following:

- (1) A sworn statement by the person who served the document;
- (2) The certified mail receipt signed by the recipient;
- (3) An affidavit or certificate of mailing;
- (4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service package;
- (5) Proof of fax transmission; or
- (6) Acknowledgment by the party being served.

NEW SECTION

**WAC 170-03-0100 Representation during the hearing process.** (1) The party requesting the hearing may represent himself or herself or may have another person, except a DEL employee, act as the representative.

(2) The representative may be a friend, relative, community advocate, attorney, paralegal, or lay representative.

(3) The representative shall provide OAH and the other parties with the representative's name, address, and telephone number. If the representative is an attorney or lay representative, the representative must file a written notice of appearance in the action. If the representative is not an attorney, the party must provide a written statement to DEL authorizing the release of information about the party to the representative.

(4) DEL may be represented by an employee of DEL, a DEL contractor, or an assistant attorney general.

**III. INTERPRETER SERVICES**NEW SECTION

**WAC 170-03-0110 The right to an interpreter in the hearing process.** (1) If a party or witness has limited English proficiency (LEP), OAH will provide an interpreter during the hearing at no cost.

(2) If OAH is notified that a party is a limited English-speaking person (LES), all notices concerning hearings must:

- (a) Be written in the party's primary language; or
- (b) Include a statement, in the primary language, explaining the importance of the notice and informing the party how to get help in understanding the notice and responding to it.

NEW SECTION

**WAC 170-03-0120 Definitions.** The following definitions apply to rules relating to interpreter services.

(1) "**Limited English proficient person**" includes limited English-speaking persons or other persons unable to readily communicate in spoken English.

(2) "**Limited English-speaking person**" means a person who, because of non-English-speaking cultural background or disability (including a hearing impairment), cannot readily speak or understand the English language.

(3) "**Hearing impaired person**" means a person who, because of a hearing or speech impairment, cannot readily speak, understand or communicate in spoken language.

NEW SECTION

**WAC 170-03-0130 Interpreter qualifications.** (1) OAH must provide a qualified interpreter to assist any person who:

- (a) Has limited English proficiency; or
  - (b) Is limited English speaking or hearing impaired; and
  - (c) Is a party or witness in a hearing.
- (2) OAH may hire or contract with persons to interpret at hearings.

(3) Relatives of any party and DEL employees may not be used as interpreters.

(4) The ALJ must determine, at the beginning of the hearing, if an interpreter can accurately interpret all communication for the person requesting the service.

(5) The parties or their representatives may question the interpreter's qualifications and ability to be impartial.

(6) If at any time before or during the hearing the ALJ finds that the interpreter does not provide accurate and effective communication, OAH must provide another interpreter.

#### NEW SECTION

**WAC 170-03-0140 Waiver of interpreter services.** (1) An eligible party may waive interpreter services.

(2) A request for waiver must be made in writing or through a qualified interpreter on the record.

(3) The ALJ must determine that the waiver has been knowingly and voluntarily made.

(4) A waiver of interpreter services may be withdrawn at any time before or during the hearing.

(5) A waiver of interpreter services at the hearing constitutes a waiver of a right to challenge any aspect of the hearing based on a lack of understanding resulting from an inability to understand or a lack of proficiency in the English language.

#### NEW SECTION

**WAC 170-03-0150 Requirements that apply to the use of interpreters.** (1) Interpreters must:

(a) Use the interpretive mode that the parties, the limited English proficient, limited English speaking, or hearing impaired person, the interpreter, and the ALJ consider the most accurate and effective;

(b) Interpret statements made by the parties, witnesses, and the ALJ;

(c) Not disclose information about the hearing without the written consent of the parties unless required by law; and

(d) Not comment on the hearing or give legal advice.

(2) The ALJ must allow enough time for all interpretations to be made and understood.

(3) The ALJ may videotape a hearing and use it as the official transcript for hearings involving a hearing impaired person.

#### NEW SECTION

**WAC 170-03-0160 Requirements that apply to decisions involving limited English-speaking parties.** (1) When an interpreter is used at a hearing involving limited English-speaking parties, the ALJ must explain that the decision will be written in English but that a party using an interpreter may contact the interpreter for an oral translation of the decision at no cost.

(2) Interpreters must provide a telephone number where they can be reached to the ALJ and to the LES party. This number must be included in any decision or order mailed to the parties.

(3) OAH or the review judge must mail a copy of a decision or order to the interpreter for use in oral translation.

## IV. PREHEARING PROCEDURES

### NEW SECTION

**WAC 170-03-0170 Notice of hearing.** (1) When a hearing is requested, OAH sends the parties a written notice of the hearing or prehearing conference.

(2) The notice of hearing or prehearing conference will include:

(a) The names, mailing addresses, and telephone numbers of all parties and of their representatives;

(b) The name, mailing address, and telephone number of the ALJ;

(c) The date, time, place, and nature of the hearing or prehearing conference;

(d) The legal authority and jurisdiction for the hearing or prehearing conference; and

(e) The date of the hearing request.

(3) OAH also will send information with the notice of hearing or prehearing conference stating:

(a) If a party and the party's representative fail to attend or participate in a prehearing conference or a hearing, that party may lose the right to a hearing and the ALJ may enter an order of default or an order dismissing the case.

(b) If a party or witness needs a qualified interpreter because the party or witness is entitled to an interpreter under WAC 170-03-0110 and 170-03-0130, OAH will provide an interpreter at no cost.

(c) Whether the hearing or prehearing conference is to be held by telephone or in person, and how to request a change in the way it is held.

(d) How to indicate any special needs for a party or witness.

(e) How to contact OAH if a party or witness has a safety concern.

### NEW SECTION

**WAC 170-03-0180 Prehearing conferences.** (1) A prehearing conference is a formal meeting that may be conducted by an ALJ before a full hearing. A prehearing conference may not be conducted in some cases. In others, more than one prehearing conference may be necessary.

(2) Either the ALJ or a party may request a prehearing conference, but the ALJ decides whether to hold a prehearing conference. OAH sends notice of the time and date of the prehearing conference to all parties.

(3) An ALJ may conduct the prehearing conference in person, by telephone conference call, by electronic means, or in any other manner acceptable to the parties.

(4) Attendance of the parties and their representatives is mandatory. A party may lose the right to participate during the hearing if that party and their representative does not attend the prehearing conference. Your appeal may be dismissed if you and your representative do not attend.

(5) Additional prehearing conferences may be requested by the parties and/or set by the ALJ to address the procedural or other issues specific to the case.

NEW SECTION

**WAC 170-03-0190 Purposes of prehearing conference.** (1) The purposes of the prehearing conference are to clarify issues, set deadlines for the parties to exchange information regarding witnesses and evidence, and set the time for the hearing.

(2) During a prehearing conference the parties and the ALJ may:

(a) Simplify or clarify the issues to be decided during the hearing;

(b) Agree to the date, time and place of the hearing;

(c) Identify accommodation and safety issues;

(d) Agree to postpone the hearing;

(e) Allow the parties to make changes in their own documents, including the DEL notice of adverse action or the appealing party's hearing request;

(f) Agree to facts and documents to be entered during the hearing;

(g) Set a deadline for each party to file and serve the names and phone numbers of witnesses, and copies of all documents or other exhibits that will be presented at the hearing;

(h) Schedule additional prehearing conferences;

(i) Resolve the dispute;

(j) Consider granting a stay if authorized by law or DEL rule;

(k) Consider a motion for summary judgment or other motion; or

(l) Determine any other procedural issues raised by the parties.

NEW SECTION

**WAC 170-03-0200 Prehearing order.** (1) After the prehearing conference ends, the ALJ will send a prehearing order describing:

(a) The decisions made or actions taken during the conference;

(b) Any changes to DEL's or other party's initial documents; and

(c) Any agreements reached.

(2) A party may object to the prehearing order by notifying the ALJ in writing within ten days after the mailing date of the order. The ALJ must issue a ruling on the objection.

(3) If no objection is made to the prehearing order, the order determines how the hearing is conducted, including whether the hearing will be in person or held by telephone conference or other means, unless the ALJ changes the order for good cause.

(4) Prehearing orders are not final appealable orders of the department.

NEW SECTION

**WAC 170-03-0210 Assignment and challenge of assignment of administrative law judge.** (1) OAH assigns an ALJ at least five business days before the hearing and discloses that assignment in writing to the parties. A party may ask which ALJ is assigned to the hearing by calling or writing the OAH field office listed on the notice of hearing.

(2) A party may file a motion of prejudice against an ALJ under RCW 34.12.050 by:

(a) Sending a written motion of prejudice at least three business days before the hearing, and before the ALJ rules on a discretionary issue in the case.

(b) The motion of prejudice must include an affidavit that a party does not believe that the ALJ can hear the case fairly.

(c) The party must send the request to the chief administrative law judge in care of the OAH field office where the ALJ works and send a copy of the request to all other parties or, if other parties are represented, to the representatives.

(3) The first timely request for a different ALJ is automatically granted. Any later request may be granted or denied by the chief ALJ or a designee.

(4) A party may also request that an ALJ or review judge be disqualified under RCW 34.05.425, for bias, prejudice, conflict of interest, or any other good cause or if one of the parties or a party's representative has an ex parte contact with the ALJ or review judge by:

(a) Sending a written petition for disqualification. A petition for disqualification is a written explanation to request assignment of a different ALJ or review judge. A party must promptly make the petition upon discovery of facts establishing grounds for disqualification.

(b) A party must send or deliver the petition to the ALJ or review judge assigned to the case and send a copy of the petition to all other parties or, if other parties are represented, to the representatives. The ALJ or review judge must decide whether to grant or deny the petition and must state the facts and reasons for the decision.

## V. LAWS APPLIED IN ADMINISTRATIVE HEARINGS

NEW SECTION

**WAC 170-03-0220 Rules an ALJ or review judge must apply when making a decision.** (1) ALJs and review judges must first apply the DEL rules adopted in the Washington Administrative Code.

(2) If no DEL rule applies, the ALJ or review judge must decide the issues according to the best legal authority and reasoning available, including federal and Washington state constitutions, statutes, rules, and published appellate court decisions.

NEW SECTION

**WAC 170-03-0230 Challenges to validity of DEL rules.** (1) Neither an ALJ nor a review judge may decide that a DEL rule is invalid or unenforceable. Only a court may decide this issue.

(2) If the validity of a DEL rule is raised during the hearing, the ALJ or review judge may allow argument for later court review.

NEW SECTION

**WAC 170-03-0240 Amendment to DEL notice or party's request for hearing.** (1) The ALJ must allow DEL to

amend (change) the notice of a DEL adverse action before or during the hearing to match the evidence and facts.

(2) If DEL amends its notice, it must put the change in writing and give a copy to the ALJ and the other parties.

(3) The ALJ may allow an appealing party to amend a hearing request before or during the hearing to conform with an amended DEL notice.

(4) If there is an amendment to either the DEL notice or the appealing party's request for hearing, the ALJ must offer to continue or postpone the hearing to give the parties more time to prepare or present evidence or argument if there is a significant change from the earlier DEL notice or from the appealing party's request for hearing.

(5) If the ALJ grants a continuance, OAH must send a new hearing notice at least seven business days before the new hearing date.

#### NEW SECTION

**WAC 170-03-0250 Changes of address.** (1) Parties and representatives must tell DEL and OAH, as soon as possible, when the party's or the representative's name, mailing address or telephone number changes.

(2) If OAH and DEL are not notified of a change in a party's or a representative's mailing address and either DEL or OAH continues to send documents to the address stated in the file, the ALJ and DEL may assume that the documents were received.

#### NEW SECTION

**WAC 170-03-0260 Continuances.** (1) Any party may request a continuance either orally or in writing.

(2) Before contacting the ALJ to request a continuance, a party shall contact the other parties, if possible, to find out if they will agree to a continuance.

(3) The party making the request for a continuance must let the ALJ know whether the other parties agree to the continuance.

(a) If the parties agree to a continuance, the ALJ will grant the request, unless the ALJ finds that good cause for a continuance does not exist.

(b) If the parties do not agree to a continuance, the ALJ will set a hearing to decide whether there is good cause to grant or deny the request for continuance.

(4) If a request for continuance is granted, OAH will send written notice of the changed time and date of the hearing.

#### NEW SECTION

**WAC 170-03-0270 Order of dismissal.** (1) An order of dismissal is an order sent by the ALJ to end the hearing. The order is made by agreement of the parties, or because the party who requested the hearing withdrew the request, failed to appear, or refused to participate.

(2) If a hearing is dismissed because the appealing party withdrew the request, did not appear, or refused to participate, the DEL decision stands.

(3) If the hearing is dismissed due to a written agreement between the parties, the parties must follow the agreement.

#### NEW SECTION

**WAC 170-03-0280 Vacating an order of default or order of dismissal.** (1) A party may ask the ALJ to vacate (set aside) an order of default or dismissal.

(a) A request to vacate an order must be filed with OAH within twenty-one calendar days after the date the order of default or dismissal was mailed. If no request is received within that deadline, the order becomes a final order.

(b) The request to vacate an order of default or dismissal must specify why the party believes there is good cause for the order to be vacated.

(2) OAH will schedule a hearing on the request to vacate the order.

(3) At the hearing, the ALJ will receive evidence and argument from the parties on whether there is good cause for an order of default to be vacated.

(4) The ALJ will vacate an order of dismissal and reinstate the hearing if the defaulted party shows good cause or if the DEL representative agrees to waive the deadline.

(5) An agreed order of dismissal may be vacated only upon proof that a party has violated a condition of the agreed order of dismissal.

#### NEW SECTION

**WAC 170-03-0290 Stay of DEL action.** (1) Except as set forth in WAC 170-03-0300, at any point in the proceeding before OAH or the review judge, the appealing party may request that an ALJ or review judge stay (stop) a DEL action until there is a decision entered by the ALJ or review judge.

(2) The ALJ shall not grant a stay unless the ALJ makes specific findings that the stay is in the public interest or is made for good cause. In finding good cause the ALJ must determine:

(a) The party requesting the stay is likely to prevail in the hearing on the merits;

(b) The party requesting the stay will suffer irreparable injury, if the stay is not granted; and

(c) The threat to the public health, safety, or welfare is not sufficiently serious to justify the agency action in the circumstances of the case.

#### NEW SECTION

**WAC 170-03-0300 Stay of summary suspension of child care license.** (1) The department may immediately and summarily suspend a license when:

(a) It finds that conditions in the licensed facility constitute an imminent danger to a child or children in care; or

(b) The public health, safety, or welfare requires emergency action.

(2) A licensee who contests suspension of a license by the department may obtain a stay of the effectiveness of that order only as set forth in this section.

(3) The licensee may request a stay by including such a request in the request for hearing or in a subsequent motion. The request for stay must be accompanied by a statement of grounds justifying the stay and a description of evidence setting forth the factual basis upon which the request is based.

(4) Upon receipt of a request for a stay, the ALJ will schedule a hearing on the request. The hearing may be combined with a prehearing conference. If it appears that a hearing on the merits and issues of the case should be consolidated with the request for a stay, the ALJ may advance the hearing date on its own initiative or by request of the parties.

(5) The ALJ shall not grant a stay unless the ALJ makes specific findings that the stay is in the public interest or is made for good cause. In finding good cause, the ALJ must determine:

(a) The licensee is likely to prevail in the hearing on the licensing action;

(b) The licensee will suffer irreparable injury, if the stay is not granted; and

(c) The threat to the public health, safety, or welfare inherent in the licensee's operation of a child care facility is not sufficiently serious to justify the suspension of the license.

(6) Economic hardship of itself shall be an insufficient reason for a stay of a suspension of a license.

(7) Unless otherwise stipulated by the parties, the ALJ, after granting or denying a request for a stay, will expedite the hearing and decision on the merits.

(8) The decision on the request for the stay is subject to review by the review judge at the request of either DEL or the licensee. The request for review must be filed not later than seven days following the date the decision on the request for stay is mailed by OAH to the parties.

(9) A request for review by the review judge shall be promptly determined. The decision on the request for review by the review judge shall not be subject to judicial review.

## VI. HEARINGS

### NEW SECTION

**WAC 170-03-0340 Conduct of hearings.** (1) Hearings may be held in person or by telephone conference or other electronic means.

(2) All parties, their representatives and witnesses may attend the hearing in person or by telephone conference or other electronic means at the discretion of the ALJ.

(3) Whether a hearing is held in person or by telephone conference, the parties have the right to see all documents, hear all testimony and question all witnesses.

(4) When a hearing is held by telephone or other electronic means, all documentary evidence must be filed and served in advance of the hearing.

(5) All hearings must be recorded.

### NEW SECTION

**WAC 170-03-0350 Authority of the administrative law judge.** (1) The ALJ must hear and decide the issues de novo (anew) based on what is presented during the hearing, provided that the ALJ's authority shall be limited to determining whether the sanction imposed or action taken by the department was warranted and/or justified under the evidence presented during the hearing. The ALJ shall not have authority to substitute or impose an alternative sanction, remedy or action.

(2) As needed, the ALJ may:

(a) Administer oaths and affirmations;

(b) Determine the order for presenting evidence;

(c) Issue subpoenas and protective orders as provided in the Administrative Procedure Act;

(d) Rule on objections, motions, and other procedural matters;

(e) Rule on motions for summary judgment;

(f) Rule on offers of proof and receive relevant evidence;

(g) Pursuant to RCW 34.05.449(5), close parts of a hearing to public observation or order the exclusion of witnesses upon a showing of good cause;

(h) Question witnesses called by the parties in an impartial manner to develop any facts deemed necessary to fairly and adequately decide the matter;

(i) Request additional exhibits and/or testimony following a finding that the additional evidence is necessary to complete the record provided all parties are given a full opportunity for cross-examination and/or rebuttal;

(j) Take official notice of facts pursuant to RCW 34.05.452(5);

(k) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;

(l) Permit or require oral argument or briefs and determine the time limits for submission thereof;

(m) Issue an order of default pursuant to RCW 34.05.440;

(n) Hold prehearing conferences;

(o) Allow a party to waive rights given by chapter 34.05 RCW or these rules unless another law prevents it;

(p) Decide whether a party has a right to a hearing;

(q) Permit and regulate the taking of discovery;

(r) Consider granting a stay if authorized by law or DEL rule; and

(s) Take any other action necessary and authorized by any applicable statute or rule.

(3) The ALJ may, upon his or her own motion or the motion of any party, order that multiple administrative proceedings be consolidated for hearing if they involve common issues or parties.

(4) The ALJ may waive any of the department's procedural rules, other than a rule relating to jurisdiction, for any party not represented by legal counsel or a lay representative upon specific findings that:

(a) The waiver is necessary to avoid manifest injustice to the unrepresented party; and

(b) That the waiver would not prejudice any other party.

(5) The ALJ shall make findings of fact based on the preponderance of the evidence unless otherwise required by law.

### NEW SECTION

**WAC 170-03-0360 Order of the hearing.** (1) At the hearing, the ALJ:

(a) Explains the rights of the parties;

(b) Marks and admits or rejects exhibits;

(c) Ensures that a record is made;

(d) Explains that a decision is mailed after the hearing; and



- (e) Notifies the parties of appeal rights.
- (2) The parties may:
  - (a) Make opening statements to explain the issues;
  - (b) Offer evidence to prove their positions, including oral or written statements of witnesses;
  - (c) Question the witnesses presented by the other parties; and
  - (d) Give closing arguments about what the evidence shows and what laws apply.
- (3) At the end of the hearing if the ALJ does not allow more time to send in evidence, the record is closed.

NEW SECTION

- WAC 170-03-0390 Evidence.** (1) Evidence includes documents, objects, and testimony of witnesses that parties give during the hearing to help prove their positions.
- (2) Evidence may be all or parts of original documents or copies of the originals.
  - (3) Parties may offer statements signed by a witness under oath or affirmation as evidence, if the witness cannot appear.
  - (4) Testimony given with the opportunity for cross-examination by the other parties may be given more weight by the ALJ.
  - (5) The ALJ may only consider admitted evidence to decide a case.

NEW SECTION

- WAC 170-03-0400 Introduction of evidence into the record.** (1) The ALJ may set a deadline before the hearing for the parties to provide proposed exhibits and names of witnesses to the ALJ and to all other parties. If the parties miss the deadline, the ALJ may refuse to admit the evidence unless the parties show:
- (a) They have good cause for missing the deadline; or
  - (b) The other parties agree to waive the deadline.
- (2) The ALJ may admit and consider hearsay evidence. Hearsay is a statement made outside of the hearing used to prove the truth of what is in the statement. The ALJ may only base a finding on hearsay evidence if the ALJ finds that the parties had the opportunity to question or contradict it.
- (3) The ALJ may reject evidence, if it:
    - (a) Is not relevant;
    - (b) Repeats evidence already admitted;
    - (c) Is from a privileged communication protected by law; or
    - (d) Is otherwise legally improper.
  - (4) Except in cases where the department's notice of adverse action alleges the person lacks the character to provide for the needs of any child in care or to have unsupervised access to any child in care, evidence regarding character or reputation shall not be admissible. In cases where such evidence is admissible, the ALJ shall exercise reasonable control over the number of character witnesses so as to avoid duplication of testimony and evidence and needless consumption of time.

NEW SECTION

- WAC 170-03-0410 Objections to evidence.** (1) Although a party may offer any documents and testimony at the hearing to support the party's position, other parties may object to the evidence and may question the witnesses. For example, a party may object to the authenticity or admissibility of any exhibit, or offer argument about how much weight the ALJ should give the exhibit.
- (2) The ALJ determines whether to admit the evidence and what weight (importance) to give it.
  - (3) If the ALJ does not admit the evidence, the party may make an offer of proof to show why the ALJ should admit it. The offer of proof preserves the issue for appeal. To make an offer of proof, a party presents evidence and argument on the record to show why the ALJ should consider the evidence.
  - (4) If a witness refuses to answer any question ruled proper by the ALJ, the ALJ has discretion to strike all testimony previously given by that witness on the proceeding.

NEW SECTION

- WAC 170-03-0420 Stipulations.** (1) A stipulation is an agreement among two or more parties that certain facts or evidence is correct or authentic.
- (2) If an ALJ accepts a stipulation, the ALJ must enter it into the record.

NEW SECTION

- WAC 170-03-0430 Exhibits.** (1) Proposed exhibits are documents or other objects that a party wants the ALJ to consider when reaching a decision. After the document or object is accepted by the ALJ, it is admitted and becomes an exhibit.
- (2) The ALJ may require the parties to mark and number their proposed exhibits before the hearing and to provide copies to the other parties as far ahead of the hearing as possible.
  - (3) The ALJ admits proposed exhibits into the record by marking, listing, identifying, and admitting the proposed exhibits.
  - (4) The ALJ may also exclude proposed exhibits from the record.

NEW SECTION

- WAC 170-03-0440 Judicial notice.** (1) Judicial notice is evidence that includes facts or standards that are generally recognized and accepted by judges, government agencies, or national associations, such as a calendar, building code or standard of practice.
- (2) An ALJ may consider and admit evidence by taking judicial notice.
  - (3) If a party requests judicial notice, or if the ALJ intends to take judicial notice, the ALJ may ask the party to provide a copy of the document that contains the information.
  - (4) The ALJ must give the parties time to object to judicial notice evidence.

NEW SECTION

**WAC 170-03-0450 Witnesses.** (1) A witness is any person who makes statements or gives testimony that becomes evidence in a hearing.

(2) One type of witness is an expert witness. An expert witness is qualified by knowledge, experience, and education to give opinions or evidence in a specialized area.

(3) Witnesses may include:

(a) The appealing party or a DEL representative;

(b) Anyone a party or the ALJ asks to be a witness.

(4) The ALJ decides who may testify as a witness.

(5) Unless DEL agrees, a current or former DEL employee may not be an expert witness against DEL if that employee was actively involved in the case while working for DEL.

NEW SECTION

**WAC 170-03-0460 Requiring witnesses to testify or provide documents.** (1) A party may require witnesses to testify or provide documents by issuing a subpoena. A subpoena is an order to appear at a certain time and place to give testimony, or to provide books, documents, or other items.

(2) ALJs, DEL, and attorneys for the parties may prepare subpoenas.

(3) If a party is not represented by an attorney, the party may ask the ALJ to prepare a subpoena on that party's behalf.

(a) The ALJ may schedule a hearing to decide whether to issue a subpoena.

(b) There is no cost to prepare a subpoena, but a party may have to pay for:

(i) Serving a subpoena;

(ii) Complying with a subpoena; and

(iii) Witness fees according to RCW 34.05.446(7).

(4) A party may request that an ALJ quash (set aside) or change the subpoena at any time before the deadline given in the subpoena.

(5) An ALJ may set aside or change a subpoena if it is unreasonable.

NEW SECTION

**WAC 170-03-0470 Serving a subpoena.** (1) Any person who is at least eighteen years old and not a party to the hearing may serve a subpoena.

(2) Service of a subpoena is complete when the server:

(a) Gives the witness a copy of the subpoena; or

(b) Leaves a copy at the residence of the witness with a person over the age of eighteen.

(3) To prove that a subpoena was served on a witness, the person serving the subpoena must sign a written, dated statement including:

(a) Who was served with the subpoena;

(b) When the subpoena was served;

(c) Where the subpoena was served; and

(d) The name, age, and address of the person who served the subpoena.

NEW SECTION

**WAC 170-03-0480 Testimony.** (1) Direct examination. All witnesses may be asked questions by the party that calls the witness to testify. Each witness:

(a) Must affirm or take an oath to testify truthfully during the hearing;

(b) May testify in person or by telephone;

(c) May request interpreters from OAH at no cost to the parties;

(d) May be subpoenaed and ordered to appear according to WAC 170-03-0460.

(2) Cross-examination. The parties have the right to cross-examine (question) each witness called by any other party.

(3) If a party has a representative, only the representative, and not the party, may question the witness.

(4) The ALJ may also question witnesses.

NEW SECTION

**WAC 170-03-0490 Burden of proof.** (1) The party who has the burden of proof is the party who has the responsibility to provide evidence to persuade the ALJ that a position is correct under the standard of proof required.

(2) Standard of proof refers to the amount of evidence needed to prove a party's position. Unless the rules or law states otherwise, the standard of proof in a hearing is a preponderance of the evidence. This standard means that it is more likely than not that something happened or exists.

(3) The ALJ decides if a party has met the burden of proof.

NEW SECTION

**WAC 170-03-0500 Equitable estoppel.** (1) Equitable estoppel is a legal doctrine defined in case law that may prevent DEL from taking some action against a party in a proceeding to challenge an overpayment notice issued by DEL.

(2) There are five elements of equitable estoppel that must be proved by clear and convincing evidence. All of the following elements must be proved:

(a) DEL made a statement or took action or failed to take action, which is inconsistent with its later claim or position regarding an overpayment.

(b) The appealing party relied on DEL's original statement, action or failure to act.

(c) The appealing party will be injured if DEL is allowed to contradict the original statement, action or failure to act.

(d) Equitable estoppel is needed to prevent a manifest injustice.

(e) The exercise of government functions is not impaired.

(3) If the ALJ concludes that all of the elements of equitable estoppel in subsection (2) of this section have been proved with clear and convincing evidence, DEL is stopped or prevented from taking action or enforcing its claim for repayment of the overpayment.

NEW SECTION

**WAC 170-03-0510 Closing the record.** When the record is closed, no more evidence may be taken, without a showing of good cause. The record is closed:

- (1) At the end of the hearing if the ALJ does not allow more time to send in evidence or argument; or
- (2) After the deadline for sending in evidence or argument is over.

**VII. INITIAL ORDERS**NEW SECTION

**WAC 170-03-0520 Timing of the ALJ's decision.** (1) After the record is closed, the ALJ must write an initial order and send copies to the parties.

- (2) The maximum time an ALJ has to send an initial order is ninety calendar days after the record is closed.

NEW SECTION

**WAC 170-03-0530 Contents of the initial order.** The ALJ initial order must:

- (1) Identify the hearing decision as a DEL case;
- (2) List the name and docket number of the case and the names of all parties and representatives;
- (3) Find the specific facts determined to exist by the ALJ, based on the hearing record, and relied on by the ALJ in resolving the dispute;
- (4) Explain why evidence is credible when the facts or conduct of a witness is in question;
- (5) State the law that applies to the dispute;
- (6) Apply the law to the facts of the case in the conclusions of law;
- (7) Discuss the reasons for the decision based on the facts and the law;
- (8) State the result;
- (9) Explain how to request changes in the decision and the deadlines for requesting them;
- (10) State the date the decision becomes final; and
- (11) Include any other information required by law or DEL program rules.

NEW SECTION

**WAC 170-03-0540 Finality of initial order.** If no one requests review of the initial order or if a review request is dismissed, the initial order becomes the DEL final decision twenty-one calendar days after the date it is mailed to the parties by OAH.

NEW SECTION

**WAC 170-03-0550 Challenges to the initial order.** (1) If a party disagrees with an ALJ's initial order because of a clerical error, the party may ask for a corrected decision from the ALJ as provided in WAC 170-03-0560.

- (2) If a party disagrees with the reasoning and result of an initial order and wants it changed, the party must request

review by the review judge as provided in WAC 170-03-0570 through 170-03-0620.

NEW SECTION

**WAC 170-03-0560 Correcting clerical errors in ALJ's decisions.** (1) A clerical error is a mistake that does not change the result or intent of the decision. Some examples of clerical error are:

- (a) Missing or incorrect words or numbers;
  - (b) Dates inconsistent with the decision or evidence in the record such as using May 3, 1989, instead of May 3, 1998; or
  - (c) Math errors when adding the total of an overpayment.
- (2) A party may ask for a corrected ALJ decision by making the request in writing and sending it to the OAH office that held the hearing. A copy of the request must be sent to the other parties or their representatives.
- (3) A request to correct a clerical error must be made within ten days of the date the decision was mailed to the parties by OAH.
- (4) When asking for a corrected decision, a party must clearly identify the clerical error.
- (5) When a party requests a corrected initial or final order, the ALJ must either:
- (a) Send all parties a corrected order; or
  - (b) Deny the request within three business days of receiving it.
- (6) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes final twenty-one calendar days after the original initial order was mailed.
- (7) Requesting a corrected initial order for a case does not extend the deadline to request review of the initial order by the review judge.

**VIII. REVIEW OF INITIAL ORDERS**NEW SECTION

**WAC 170-03-0570 Appeal of the initial order.** (1) Review of the initial order may occur when a party disagrees with or wants a change in an initial order, other than correcting a clerical error.

- (2) A party must request review of an initial order from the DEL review judge as provided in WAC 170-03-0580 through 170-03-0640.

(3) If more than one party requests review, each request must meet the deadlines in WAC 170-03-0580.

(4) The review judge considers the request, the initial order, and record, before deciding if the initial order may be changed.

(5) Review does not include another hearing by the DEL review judge.

NEW SECTION

**WAC 170-03-0580 Time for requesting review.** (1) The review judge must receive the written petition for review on or before the twenty-first calendar day after the initial order was mailed.

(2) A review judge may extend the deadline if a party both:

- (a) Asks for more time before the deadline expires; and
- (b) Shows good cause for requesting more time.

(3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

(a) The review judge receives the review request on or before the thirtieth calendar day after the deadline; and

- (b) A party shows good cause for missing the deadline.

#### NEW SECTION

**WAC 170-03-0590 Petition for review.** (1) A party must make the review request (petition for review) in writing and clearly identify the:

(a) Parts of the initial order with which the party disagrees; and

- (b) Arguments supporting the party's position.

(2) The petition for review must be filed with the review judge and a copy sent to the other parties and their representatives.

(3) The review judge can be contacted at the following address or at the address stated on the letter containing instructions for obtaining review mailed with the initial order:

Review Judge  
Department of Early Learning  
P.O. Box 40970  
Olympia, WA 98504-0970  
360-725-4665

(4) After receiving a party's review request, the review judge will send a copy to the other parties, their representatives and OAH.

#### NEW SECTION

**WAC 170-03-0600 Response to petition for review.**

(1) A party does not have to respond to the review request. A response is optional.

(2) If a party responds, that party must send the response so that the review judge receives it on or before the seventh business day after the date a copy of the petition for review was mailed to the party by the review judge.

(3) The responding party must send a copy of the response to any other party or representative.

(4) If a party needs more time to respond, the party must contact the review judge by the deadline in subsection (2) of this section and show good cause for an extension of time.

(5) A review judge may accept and consider a party's response even if it is received after the deadline.

#### NEW SECTION

**WAC 170-03-0610 Decision process.** (1) After the response deadline, the record on review is closed unless there is a good cause to reopen the record.

(2) A review judge is assigned to the review after the record is closed.

(3) The review judge only considers evidence given at the original hearing.

(4) The review judge will decide the appeal without oral argument, unless the review judge determines that oral argument is necessary for resolution of the appeal.

(5) The review judge enters a final order that affirms, changes, dismisses or reverses the initial order, or remands (returns) the case to OAH for further specified action.

#### NEW SECTION

**WAC 170-03-0620 Authority of the review judge.** (1)

The review judge has the same decision-making authority as an ALJ, but must consider the ALJ's opportunity to observe the witnesses.

(2) The review judge's order is the DEL final order in the case. If the review judge's final order upholds the department's adverse action, the appealing party must comply with the final order unless the appealing party obtains a stay of the effectiveness of the final order from the review judge.

### **IX. REVIEW OF THE FINAL ORDER**

#### NEW SECTION

**WAC 170-03-0630 Request for reconsideration.** (1) If a party disagrees with the final order issued by a review judge and wants it reconsidered, the party may ask the review judge to reconsider the final order because the party believes the review judge made a mistake. However, the appealing party must comply with the final order pending reconsideration. Filing a petition for reconsideration does not stay the effectiveness of the final order.

(2) If a party asks for reconsideration of the final order, the reconsideration process must be completed before judicial review is sought.

(3) A request for reconsideration must be made in writing and must clearly state the reasons why the party wants the final order reconsidered.

(4) The review judge must receive the written reconsideration request on or before the tenth calendar day after the final order was mailed by the review judge to the parties. The party requesting reconsideration must send a copy of the request to all parties or, if the parties are represented, to their representatives.

(5) If a reconsideration request is received by the review judge after the deadline, the final order will not be reconsidered. However, the review judge may extend the deadline if a party:

- (a) Asks for more time before the deadline expires; and
- (b) Demonstrates good cause for the extension.

(6) After receiving a reconsideration request, the review judge will send a copy to the other parties and representatives giving them time to respond.

(7) If a party does not request reconsideration or ask for an extension within the deadline, the final order will not be reconsidered.

#### NEW SECTION

**WAC 170-03-0640 Response to a request for reconsideration.** (1) A party does not have to respond to a request for reconsideration. A response is optional.

(2) If a party responds, that party must send a response to the review judge by or before the seventh business day after the date OAH or the review judge mailed the request to the party.

(3) A party must send a copy of the response to any other party or representative.

(4) If a party needs more time to respond, OAH or the review judge may extend the deadline if the party demonstrates good cause for an extension within the deadline in subsection (2) of this section.

#### NEW SECTION

**WAC 170-03-0650 Ruling on request for reconsideration.** (1) After the review judge receives a reconsideration request, within twenty calendar days the review judge must either:

(a) Dispose of the petition; or

(b) Send all parties a written notice setting a date by which the review judge will act on the petition.

(2) If the review judge does not dispose of the petition or send the parties written notice setting a date by which the review judge will act on the petition within twenty days of receipt of the reconsideration request, the request is denied.

(3) The review judge decision is final when the reconsideration decision is mailed or the date the reconsideration request is denied.

#### NEW SECTION

**WAC 170-03-0660 Judicial review.** (1) Judicial review is the process of appealing a final order to a court.

(2) Any party, except DEL, may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. The petition must be properly filed and served within thirty calendar days of the date OAH or the review judge mails the final order in the case.

(3) Filing an appeal of a final order does not stay the effectiveness of the final order.

(4) RCW 34.05.510 through 34.05.598 contain further details of the judicial review process.