

WSR 09-03-028
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 12, 2009, 8:48 a.m., effective February 12, 2009]

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

Purpose: The purpose of the rule amendment is to clarify requirements and make grammatical correction.

Citation of Existing Rules Affected by this Order: Amending WAC 388-76-10120, 388-76-10125, 388-76-10955, and 388-76-10960.

Statutory Authority for Adoption: RCW 70.128.040.

Adopted under notice filed as WSR 08-22-103 on November 5, 2008.

A final cost-benefit analysis is available by contacting Maureen Lally, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3204, fax (360) 438-7903, e-mail lallyma@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: January 12, 2009.

Stan Marshburn
Interim Secretary

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

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

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

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

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

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

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

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

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

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

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

(a) A Medicaid or Medicare provider agreement by the contracting agency; or

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

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

(9) Been found by a court:

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

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

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

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

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

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

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

(13) The home is currently licensed:

(a) As a boarding home; or

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

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

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

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

(14) If the provider or entity representative has not successfully completed a department approved forty-eight hour adult family home administration and business planning class) (1) The department must not grant a license until the applicant has successfully completed a department-approved forty-eight hour adult family home administration and business planning class.

(2) The department must deny a license if the department finds that it has been less than twenty years since the applicant surrendered or relinquished an adult family home license after receiving notice that the department intended to deny, suspend, not renew or revoke the license.

(3) The department must deny a license if the department finds that the applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has been convicted of a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime under subsections (3)(c) and (3)(d), below;

(c) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(d) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

(e) Has been found in any final decision issued by a disciplining authority to have abused, neglected, exploited, or abandoned a minor or vulnerable adult;

(f) Is listed on a state registry with a finding of abuse, neglect, financial exploitation, or abandonment of a minor or vulnerable adult; or

(g) Has been the subject of a finding or conclusion by a court of law, or any comparable state or federal law, that the individual abused, neglected, financially exploited or abandoned a minor or vulnerable adult. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

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

(1) Been convicted of a crime:

(a) As defined under RCW 43.43.830 or 43.43.842;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(11) Failed or refused to comply with:~~

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

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

~~(12) Misappropriated property of a resident;~~

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

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

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

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

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

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

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

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

~~(21) Found to be in noncompliance with the requirements established in chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations)) The department may deny a license if the department finds that the applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:~~

(1) Has been convicted of:

(a) Simple assault, theft in third degree, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(b) Forgery or theft in the second degree and more than five years has passed since conviction;

(c) Any felony that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home; or

(d) A crime involving a firearm used in commission of a felony or in any act of violence against a person.

(2) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a license denial under WAC 388-76-10120;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed;

(6) Has a history of prior violations of chapter 70.128 RCW or any law regulating residential care facilities that resulted in revocation, suspension, or nonrenewal of a license;

(7) Has been enjoined from operating a facility for the care and services of children or adults;

(8) Has had a Medicaid or Medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state Medicaid agency;

(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license by fraudulent means or misrepresentation;

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

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

(13) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;

(14) Failed or refused to comply with:

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

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

(15) Misappropriated property of a resident, unless such action requires a license denial under WAC 388-76-10120;

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

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

(18) In connection with the operation of any facility for the care of children or adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intended to deny, suspend, or revoke the license, unless such action requires a license denial under WAC 388-76-10120;

(19) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(20) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;

(21) Has failed to meet personal financial obligations;

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

(23) Has not demonstrated financial solvency or management experience in its currently licensed homes, or has not demonstrated the ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes; or

(24) The home is currently licensed:

(a) As a boarding home; or

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

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

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

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

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10955 Remedies—Department must impose remedies. ((The department must impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950 has:

~~(1) A history of prior violations of chapter 70.128 RCW or any law relating to residential care facilities within the past five years that resulted in revocation, suspension, or non-renewal of a license or contract with the department;~~

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

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

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

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

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

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

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

(a) A Medicaid or Medicare provider agreement by the contracting agency; or

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

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

(8) Been found by a court:

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

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

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

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

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

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

(11) Failed to pay the annual licensing fee)) (1) The department must impose a remedy or remedies if the department substantiates a complaint involving harm to a resident and violation of an applicable law or rule.

(2) The department must impose a remedy or remedies if the department substantiates, after licensure, that it has been less than twenty years since the adult family home provider voluntarily surrendered or relinquished an adult family home license in lieu of department initiated denial, suspension, nonrenewal, or revocation of a license.

(3) The department must impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950:

(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the

crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(c) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

(d) Has been found in any final decision issued by a disciplining authority to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult;

(e) Has been convicted of a crime in federal court or in the court of any other state, and the department determines that the conviction is equivalent to a conviction under subsection (3)(b) or (3)(c) above;

(f) Is listed on a state registry with a finding of abuse, neglect, financial exploitation, or abandonment of a minor or vulnerable adult; or

(g) Has been the subject of a finding or conclusion by a court of law that the individual abused, neglected, financially exploited, or abandoned a minor or vulnerable adult. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceedings under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10960 Remedies—Department may impose remedies. ((The department may impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950 has:

(1) Been convicted of a crime:

(a) As defined under RCW 43.43.830 or 43.43.842;

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

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

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

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

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

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

(4) Been found in any dependency action under RCW 13.34.030(5) to have sexually abused, neglected or exploited any minor or to have physically abused any minor;

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

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

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

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

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

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

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

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

(11) Failed or refused to comply with:

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

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

(12) Misappropriated property of a resident;

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

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

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

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

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

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

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

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

(21) Found to be in noncompliance with the requirements established in chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations)) The department may impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950:

(1) Has been convicted of:

(a) Any felony that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home; or

(b) A crime involving a firearm used in the commission of a felony or in any act of violence against a person.

(2) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused, or financially exploited a vulnerable adult, unless such decision requires imposition of a remedy under WAC 388-76-10955;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed;

(6) Has a history of violations of chapter 70.128 RCW, or any law regulating residential care facilities, that resulted in revocation, suspension, or nonrenewal of a license with the department;

(7) Has been enjoined from operating a facility for the care and services of children or adults;

(8) Has had a Medicaid or Medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state Medicaid agency;

(9) Has been the subject of a sanction, corrective, or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(10) Has obtained or attempted to obtain a license by fraudulent means or misrepresentation;

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

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

(13) Willfully prevented, interfered with, or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;

(14) Failed or refused to comply with:

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

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

(15) Misappropriated property of a resident, unless such action requires a remedy under WAC 388-76-10955;

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

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

(18) In connection with the operation of any facility for the care of children or adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intends to deny, suspend, cancel or revoke the license, unless such action requires imposition of a remedy under WAC 388-76-10955;

(19) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(20) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;

(21) Has failed to meet personal financial obligations and that failure has resulted in a failure to provide necessary care and services to the residents; or

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

WSR 09-03-029

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed January 12, 2009, 8:58 a.m., effective February 12, 2009]

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

Purpose: The purpose of the proposed rule is to clarify requirements and make grammatical correction.

Citation of Existing Rules Affected by this Order: Amending WAC 388-76-10000, 388-76-10230, 388-76-10235, 388-76-10330, 388-76-10355, 388-76-10650, 388-76-10720, 388-76-10725, 388-76-10775, 388-76-10840, 388-76-10845, 388-76-10870, 388-76-10930, and 388-76-10995.

Statutory Authority for Adoption: RCW 70.128.040.

Adopted under notice filed as WSR 08-21-036 on October 8, 2008.

Changes Other than Editing from Proposed to Adopted Version: For WAC 388-76-10930 Plan of correction—Required, added subsection (3), "The adult family home must complete an attestation of correction for any inspection report as the department requires."

For WAC 388-76-10235 Guardianship, the following effective date language was added:

"Effective February 1, 2009, the adult family home ((may be)) must ensure that no provider, entity representative, resident manager, or staff becomes any resident's guardian.

(2) Provider, entity representative, resident manager or staff who is a resident's guardian before February 1, 2009 may continue to be that resident's guardian."

The changes were made because residential care services seeks consistency in rule-making language to the extent possible in all settings, nursing homes, boarding homes and adult family homes.

A final cost-benefit analysis is available by contacting Maureen Lally, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-3204, fax (360) 438-7903, e-mail lallyma@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.

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Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 14, 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 14, Repealed 0.

Date Adopted: January 12, 2009.

Stan Marshburn
Interim Secretary

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

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

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

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

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

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

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

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

"Adult family home" means:

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

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

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

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

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

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

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

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

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

"Developmental disability" means:

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

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

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

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

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

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

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and spe-

cialty training if required, or who has been exempted from the basic training requirements and is:

(1) On the premises; and

(2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

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

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

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

"Home" means adult family home.

"Indirect supervision" means oversight by a person who:

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

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

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

"Inspection" means ~~((an on-site visit))~~ a review by department personnel to determine the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

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

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

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

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

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

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

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

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

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

"Neglect" means:

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

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

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

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

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

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

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

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

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

"Qualified staff" means a person who:

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

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

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care (~~and~~). Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the

resident's surrogate decision maker (~~following~~) acting under state law (~~or at the resident's request~~).

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

"Significant change" means:

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

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

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

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

"Staff" means any person who:

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

(2) Provides care and services to any resident.

"Unsupervised" means not in the presence of:

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

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

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

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules, and

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

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but not limited to:

(1) In-ground, above-ground, and on-ground pools;

(2) Hot tubs, spas;

(3) Fixed-in-place wading pools;

(4) Decorative water features;

(5) Ponds; or

(6) Natural bodies of water such as streams, lakes, rivers, and oceans.

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

"Vulnerable adult" includes a person:

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

(2) Found incapacitated under chapter 11.88 RCW;

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

(4) Admitted to any facility;

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

(6) Receiving services from an individual provider; or

(7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

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

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

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

(3) Has proof of ~~((regular immunizations))~~ up-to-date rabies vaccinations.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10235 Guardianship. (1) Effective February 1, 2009, the adult family home ((may be a resident's guardian if:

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

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

(a) Inform the court:

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

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

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

(b) Request the court to direct payment to the home from the resident's funds for the resident's care, maintenance and education)) must ensure that no provider, entity representative, resident manager, or staff becomes any resident's guardian.

(2) Provider, entity representative, resident manager or staff who is a resident's guardian before February 1, 2009 may continue to be that resident's guardian.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

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

(1) Obtain a ~~((new))~~ written assessment that contains accurate information about the prospective resident's current needs and preferences before admitting a resident to the home;

(2) Not admit a resident without an assessment except in cases of a genuine emergency;

(3) Ensure the assessment contains all of the information required in WAC 388-76-10335 unless the assessor can not:

(a) Obtain an element of the required assessment information; and

(b) The assessor documents the attempt to obtain the information in the assessment.

(4) Be knowledgeable about the needs and preferences of each resident documented in the assessment.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

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

(1) A list of the care and services to be provided;

(2) Identification of who will provide the care and services;

(3) When and how the care and services will be provided;

(4) How medications will be managed, including how the resident will get their medications when the resident is not in the home;

(5) The resident's activities preferences and how the preferences will be met;

(6) Other preferences and choices about issues important to the resident, including, but not limited to:

(a) Food;

(b) Daily routine;

(c) Grooming; and

(d) How the home will accommodate the preferences and choices.

(7) If needed, a plan to:

(a) Follow in case of a foreseeable crisis due to a resident's assessed needs;

(b) Reduce tension, agitation and problem behaviors;

(c) Respond to resident's special needs, including, but not limited to medical ~~((devises))~~ devices and related safety plans;

(d) Respond to a resident's refusal of care or treatment, including when the resident's physician or practitioner should be notified of the refusal;

(8) Identification of any communication barriers the resident may have and how the home will use behaviors and nonverbal gestures to communicate with the resident;

(9) A statement of the ability for resident to be left unattended for a specific length of time; and

(10) A hospice care plan if the resident is receiving services for hospice care delivered by a licensed hospice agency.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

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

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

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

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

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10720 Electronic monitoring equipment—Audio monitoring and video monitoring. (1) Except as provided in this section or in WAC 388-76-10725, the adult family home must not use the following in the home:

(a) Audio monitoring equipment~~((= (a) In the home)); or~~
 (b) ~~((In combination with video monitoring equipment; and~~

~~(c) Except as provided in section WAC 388-76-10725))~~
Video monitoring equipment if it includes an audio component.

(2) The home may video monitor and video record activities in the home, without an audio component, only in the following areas:

- (a) Entrances and exits if the cameras are:
 - (i) Focused only on the entrance or exit doorways; and
 - (ii) Not focused on areas where residents gather.
- (b) Outdoor areas not commonly used by residents; and
- (c) Designated smoking areas, subject to the following conditions ~~((when))~~:
 - (i) Residents are assessed as needing supervision for smoking;
 - (ii) A staff person watches the video monitor at any time the area is used by such residents;
 - (iii) The video camera is clearly visible;
 - (iv) The video monitor is not viewable by general public; and
 - (v) The home notifies all residents in writing of the video monitoring equipment.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10725 Electronic monitoring equipment—Resident requested use. (1) The adult family home must ~~((limit resident requested))~~ not use audio or video monitoring equipment to ~~((the sleeping room of the))~~ monitor any resident ~~((who requested the monitoring))~~ unless:

- (a) The resident has requested the monitoring; and
- (b) The monitoring is only used in the sleeping room of the resident who requested the monitoring.

(2) If the resident requests audio or video monitoring, before any electronic monitoring occurs the home must ensure:

- (a) ~~((Appropriate actions are taken to ensure))~~ That the electronic monitoring ~~((is consistent with and))~~ does not violate chapter 9.73 RCW;
- (b) The resident has identified a threat to the resident's health, safety or personal property ~~((and has requested electronic monitoring));~~

(c) The resident's roommate has provided written consent to electronic monitoring, if the resident has a roommate; and

(d) The resident and the home have agreed upon a specific duration for the electronic monitoring documented in writing.

- (3) The home must:
 - (a) Reevaluate the need for the electronic monitoring with the resident at least quarterly ~~((and: (a) Must document the reevaluation in writing)); and~~
 - (b) Have each reevaluation in writing signed and dated by the resident.

(4) The home must immediately stop electronic monitoring if the:

- (a) Resident no longer wants electronic monitoring;
- (b) Roommate objects or withdraws the consent to the electronic monitoring, or
- (c) Resident becomes unable to give consent.

(5) For the purposes of consenting to video electronic monitoring, without an audio component, the term "resident" includes the resident's decision maker.

(6) For the purposes of consenting to audio electronic monitoring, the term "resident includes only:

- (a) The resident residing in the home; or
- (b) The resident's court-appointed guardian or attorney-in-fact who has obtained a court order specifically authorizing the court-appointed guardian or attorney-in-fact to consent to audio electronic monitoring of the resident.

(7) If the resident's decision maker consents to audio electronic monitoring as specified in subsection (6) above, the home must maintain a copy of the court order authorizing such consent in the resident's record.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10775 Temperature and ventilation. The adult family home must:

(1) Ensure that the maximum and minimum temperature of any room used by a resident is comfortable for the resident and does not compromise the resident's health and safety.

- (2) At a minimum, keep room temperature at:
 - (a) Sixty-eight degrees Fahrenheit or more during waking hours; and
 - (b) Sixty degrees Fahrenheit or more during sleeping hours; ~~((and~~
 - (c) ~~Not more than seventy-eight degrees Fahrenheit day or night)).~~

~~((2))~~ (3) Provide ventilation in the home to ensure the health and comfort of each resident is met.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10840 Emergency food supply. The adult family home must have an on-site emergency food supply that can be stored with other food in the home and that:

- (1) Will last for a minimum of seventy-two hours for each resident and each household member; and
- (2) Meets the dietary needs of each resident, including any specific dietary restrictions any resident may have.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10845 Emergency drinking water supply. The adult family home must have an on-site emergency supply of drinking water that:

- (1) Will last for a minimum of seventy-two hours for each resident and each household member;
- (2) Is at least three gallons for each resident and each household member;
- (3) Is stored in food grade or glass containers;
- (4) Is chemically treated or replaced every six months; and
- (5) Is stored appropriately.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10870 Resident evacuation capability levels—Identification required. The adult family home must ensure that each resident preliminary ((~~service~~)) care plan and negotiated care plan contains the resident's ability to evacuate the home according to the following levels:

- (1) **Level 1** - resident is ((~~capable of walking or traversing a normal pathway to safety~~)) able to get out of the home safely and independently without ((the physical)) mobility aids or any assistance ((of)) from another individual;
- (2) **Level 2** - resident is physically and mentally capable of traversing a normal pathway to safety with mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual; and
- (3) **Level 3** - resident is unable to walk or transverse a normal pathway to safety without the physical assistance of another individual.

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 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10930 Plan of correction (POC)—Required. ((The plan of correction included on the inspection report must:

- (1) ~~Be completed by the adult family home and returned to the department within ten days of receiving the inspection report;~~
- (2) ~~Include an attestation statement stating:~~
 - (a) ~~What the home did or will do to correct each deficiency;~~
 - (b) ~~That all deficiencies are or will be corrected;~~
 - (c) ~~The home will stay in compliance with the licensing requirements;~~
 - (d) ~~Dates, acceptable to the department, by which each cited deficiency has been or will be corrected; and~~
 - (e) ~~A signature by the home, certifying that the home has or will correct each deficiency.)~~ (1) The adult family home must comply with all applicable licensing laws and regulations at all times.

(2) When the department finds the adult family home out of compliance with any licensing law or regulation, the

department will send the home an inspection report with an attestation of correction statement for each cited deficiency.

(3) The adult family home must complete an attestation of correction for any inspection report as the department requires.

(4) For the purposes of this section an "attestation of correction statement" means a statement, developed by the department and signed and dated by the home, that the home:

- (a) Has or will correct each cited deficiency; and
 - (b) Will maintain correction of each cited deficiency.
- (5) The home must be able to show to the department, upon request, that, for each deficiency cited, the home has:
- (a) A plan of correction and maintaining correction;
 - (b) Corrected or is correcting each deficiency; and
 - (c) Maintained or is maintaining compliance.

(6) On each attestation of correction statement, the home must:

- (a) Give a date, approved by the department, showing when the cited deficiency has been or will be corrected; and
- (b) By signature and date show that the home has or will correct, and maintain correction, of each deficiency.

(7) The home must return the inspection report, with completed attestation of correction statements, to the department within ten calendar days of receiving the report.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10995 Notice, hearing rights, and effective dates relating to imposition of remedies. (1) Chapter 34.05 RCW applies to department actions under this chapter and chapter 70.128 RCW, except that orders of the department imposing license suspension, stop placement, or conditions on license are effective immediately upon notice and must continue pending a final administrative decision.

(2) A provider contesting any decision by the department to impose a remedy must within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt ((with)) to the ((board of appeals at the)) agency at the mailing address contained in ((WAC 388-02-0030)) the department's notice imposing the remedy; and

(b) Include in or with the application:

- (i) The reasons for contesting the department decision; and

(ii) A copy of the contested department decision.

(3) Administrative proceedings are governed by chapter 34.05 RCW, RCW 43.20A.215, where applicable, this section, and chapter 388-02 WAC. If any provision in this section conflicts with chapter 388-02 WAC, the provision in this section governs.

WSR 09-04-008
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed January 22, 2009, 11:37 a.m., effective February 22, 2009]

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

Purpose: WAC 458-57-105 explains the nature of Washington state's estate tax imposed by chapter 83.100 RCW. It also provides definitions of terms that are used throughout chapter 458-57 WAC. WAC 458-57-115 provides guidance to help taxpayers prepare their return and pay the correct amount of Washington state estate tax. It explains the steps for determining the tax and provides examples of how the tax is calculated.

The department is amending these rules to clarify when an amount included in the federal taxable estate pursuant to IRC Sec. 2044 (inclusions of amounts for which a federal QTIP election was previously made) is subtracted out when calculating the Washington taxable estate. The rules clarify that the Washington taxable estate is only reduced by the amount included in the federal taxable estate pursuant to IRC Sec. 2044 when it is received from a predeceased spouse that died on or after May 17, 2005.

Citation of Existing Rules Affected by this Order: Amending WAC 458-57-105 Nature of estate tax, definitions and 458-57-115 Valuation of property, property subject to estate tax, and how to calculate the tax.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 08-19-113 on September 17, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

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

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

Date Adopted: January 22, 2009.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-07-051, filed 3/9/06, effective 4/9/06)

WAC 458-57-105 Nature of estate tax, definitions. (1) **Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and describes the nature of Washington state's estate tax as it is imposed by chapter 83.100 RCW (Estate and Transfer Tax Act). It also defines terms that will be used throughout chapter 458-57 WAC (Washington Estate and Transfer Tax Reform Act rules). The estate tax rule on the nature of estate tax and definitions for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-005.

(2) **Nature of Washington's estate tax.** The estate tax is neither a property tax nor an inheritance tax. It is a tax

imposed on the transfer of the entire taxable estate and not upon any particular legacy, devise, or distributive share.

(a) **Relationship of Washington's estate tax to the federal estate tax.** The department administers the estate tax under the legislative enactment of chapter 83.100 RCW, which references the Internal Revenue Code (IRC) as it existed January 1, 2005. Federal estate tax law changes enacted after January 1, 2005, do not apply to the reporting requirements of Washington's estate tax. The department will follow federal Treasury Regulations section 20 (Estate tax regulations), in existence on January 1, 2005, to the extent they do not conflict with the provisions of chapter 83.100 RCW or 458-57 WAC. For deaths occurring January 1, 2009, and after, Washington has different estate tax reporting and filing requirements than the federal government. There will be estates that must file an estate tax return with the state of Washington, even though they are not required to file with the federal government. The Washington state estate and transfer tax return and the instructions for completing the return can be found on the department's web site at <http://www.dor.wa.gov/> under the heading titled forms. The return and instructions can also be requested by calling the department's estate tax section at 360-570-3265, option 2.

(b) **Lifetime transfers.** Washington estate tax taxes lifetime transfers only to the extent included in the federal gross estate. The state of Washington does not have a gift tax.

(3) **Definitions.** The following terms and definitions are applicable throughout chapter 458-57 WAC:

(a) "Absentee distributee" means any person who is the beneficiary of a will or trust who has not been located;

(b) "Decedent" means a deceased individual;

(c) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;

(d) "Escheat" of an estate means that whenever any person dies, whether a resident of this state or not, leaving property in an estate subject to the jurisdiction of this state and without being survived by any person entitled to that same property under the laws of this state, such estate property shall be designated escheat property and shall be subject to the provisions of RCW 11.08.140 through 11.08.300;

(e) "Federal return" means any tax return required by chapter 11 (Estate tax) of the Internal Revenue Code;

(f) "Federal tax" means tax under chapter 11 (Estate tax) of the Internal Revenue Code;

(g) "Federal taxable estate" means the taxable estate as determined under chapter 11 of the Internal Revenue Code without regard to:

(i) the termination of the federal estate tax under section 2210 of the IRC or any other provision of law; and

(ii) The deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the IRC.

(h) "Gross estate" means "gross estate" as defined and used in section 2031 of the Internal Revenue Code;

(i) "Internal Revenue Code" or "IRC" means, for purposes of this chapter, the United States Internal Revenue Code of 1986, as amended or renumbered on January 1, 2005;

(j) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;

(k) "Person required to file the federal return" means any person required to file a return required by chapter 11 of the Internal Revenue Code, such as the personal representative (executor) of an estate;

(l) "Property," when used in reference to an estate tax transfer, means property included in the gross estate;

(m) "Resident" means a decedent who was domiciled in Washington at time of death;

(n) "State return" means the Washington estate tax return required by RCW 83.100.050;

(o) "Taxpayer" means a person upon whom tax is imposed under this chapter, including an estate or a person liable for tax under RCW 83.100.120;

(p) "Transfer" means "transfer" as used in section 2001 of the Internal Revenue Code. However, "transfer" does not include a qualified heir disposing of an interest in property qualifying for a deduction under RCW 83.100.046;

(q) "Washington taxable estate" means the "federal taxable estate":

(i) Less one million five hundred thousand dollars for decedents dying before January 1, 2006, or two million dollars for decedents dying on or after January 1, 2006;

(ii) Less the amount of any deduction allowed under RCW 83.100.046 as a farm deduction;

(iii) Less the amount of the Washington qualified terminable interest property (QTIP) election made under RCW 83.100.047;

(iv) Plus any amount deducted from the federal estate pursuant to IRC § 2056 (b)(7) (the federal QTIP election);

(v) Plus the value of any trust (or portion of a trust) of which the decedent was income beneficiary and for which a Washington QTIP election was previously made pursuant to RCW 83.100.047; and

(vi) Less any amount included in the federal taxable estate pursuant to IRC § 2044 (inclusion of amounts for which a federal QTIP election was previously made) from a predeceased spouse that died on or after May 17, 2005.

AMENDATORY SECTION (Amending WSR 06-07-051, filed 3/9/06, effective 4/9/06)

WAC 458-57-115 Valuation of property, property subject to estate tax, and how to calculate the tax. (1) Introduction.

This rule applies to deaths occurring on or after May 17, 2005, and is intended to help taxpayers prepare their return and pay the correct amount of Washington state

estate tax. It explains the necessary steps for determining the tax and provides examples of how the tax is calculated. The estate tax rule on valuation of property etc., for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-015.

(2) Determining the property subject to Washington's estate tax.

(a) **General valuation information.** The value of every item of property in a decedent's gross estate is its date of death fair market value. However, the personal representative may elect to use the alternate valuation method under section 2032 of the Internal Revenue Code (IRC), and in that case the value is the fair market value at that date, including the adjustments prescribed in that section of the IRC. The valuation of certain farm property and closely held business property, properly made for federal estate tax purposes pursuant to an election authorized by section 2032A of the 2005 IRC, is binding on the estate for state estate tax purposes.

(b) **How is the gross estate determined?** The first step in determining the value of a decedent's Washington taxable estate is to determine the total value of the gross estate. The value of the gross estate includes the value of all the decedent's tangible and intangible property at the time of death. In addition, the gross estate may include property in which the decedent did not have an interest at the time of death. A decedent's gross estate for ((federal)) estate tax purposes may therefore be different from the same decedent's estate for local probate purposes. Sections 2031 through 2046 of the IRC provide a detailed explanation of how to determine the value of the gross estate.

(c) **Deductions from the gross estate.** The value of the ((federal)) taxable estate is determined by subtracting the authorized exemption and deductions from the value of the gross estate. Under various conditions and limitations, deductions are allowable for expenses, indebtedness, taxes, losses, charitable transfers, and transfers to a surviving spouse. While sections 2051 through 2056A of the IRC provide a detailed explanation of how to determine the value of the taxable estate the following areas are of special note:

(i) Funeral expenses.

(A) Washington is a community property state and under *Estate of Julius C. Lang v. Commissioner*, 97 Fed. 2d 867 (9th Cir. 1938) affirming the reasoning of *Wittwer v. Pember-ton*, 188 Wash. 72, 76, 61 P.2d 993 (1936) funeral expenses reported for a married decedent must be halved. ((Adminis-trative)) Administration expenses are not a community debt and are reported at 100%.

(B) **Example.** John, a married man, died in 2005 with an estate valued at \$2.5 million. On Schedule J of the federal estate tax return listed following as expenses:

SCHEDULE J - Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims			
Item Number	Description	Expense Amount	Total Amount
1	A. Funeral expenses: Burial and services	\$4,000	
	(1/2 community debt)	(\$2,000)	
	Total funeral expenses.		

	B. Administration expenses:	
	1. Executors' commissions - amount estimated/agreed upon paid. (Strike out the words that do not apply.).	\$10,000
	2. Attorney fees - amount estimated/agreed upon/paid. (Strike out the words that do not apply.).	\$5,000

The funeral expenses, as a community debt, were properly reported at 50% and the other administration expenses were properly reported at 100%.

(ii) **Mortgages and liens on real property.** Real property listed on Schedule A should be reported at its fair market value without deduction of mortgages or liens on the property. Mortgages and liens are reported and deducted using Schedule K.

(iii) **Washington qualified terminable interest property (QTIP) election.**

(A) A personal representative may choose to make a larger or smaller percentage or fractional QTIP election on the Washington return than taken on the federal return in order to reduce Washington estate liability while making full use of the federal unified credit.

(B) Section 2056 (b)(7) of the IRC states that a QTIP election is irrevocable once made. Section 2044 states that the value of any property for which a deduction was allowed under section 2056 (b)(7) must be included in the gross estate of the recipient. Similarly, a QTIP election made on the Washington return is irrevocable, and a surviving spouse who ~~(receives)~~ is the lifetime beneficiary of property for which a Washington QTIP election was made must include the value of the remaining property in his or her gross estate for Washington estate tax purposes. If the value of property for which a federal QTIP election was made is different, this value is not includible in the surviving spouse's gross estate for Washington estate tax purposes; instead, the value of property for which a Washington QTIP election was made is includible.

(C) The Washington QTIP election must adequately identify the assets, by schedule and item number, included as part of the election, either on the return or, if those assets have not been determined when the estate tax return is filed, on a statement to that effect, prepared when the assets are definitively identified. Identification of the assets is necessary when reviewing the surviving spouse's return, if a return is required to be filed. This statement may be filed with the department at that time or when the surviving spouse's estate tax return is filed.

(D) **Example.** A decedent dies in 2009 with a gross estate of \$5 million. The decedent established a QTIP trust for the benefit of her surviving spouse in an amount to result in no federal estate tax. The federal unified credit is \$3.5 million for the year 2009. In 2009 the Washington statutory deduction is \$2 million. To pay no Washington estate tax the personal representative of the estate has the option of electing a larger percentage or fractional QTIP election resulting in the maximization of the individual federal unified credit and paying no tax for Washington purposes.

The federal estate tax return reflected the QTIP election with a percentage value to pay no federal estate tax. On the Washington return the personal representative elected QTIP treatment on a percentage basis in an amount so no Washington estate tax is due. Upon the surviving spouse's death the

assets remaining in the Washington QTIP trust must be included in the surviving spouse's gross estate.

(iv) **Washington qualified domestic trust (QDOT) election.**

(A) A deduction is allowed for property passing to a surviving spouse who is not a U.S. citizen in a qualified domestic trust (a "QDOT"). An executor may elect to treat a trust as a QDOT on the Washington estate tax return even though no QDOT election is made with respect to the trust on the federal return; and also may forgo making an election on the Washington estate tax return to treat a trust as a QDOT even though a QDOT election is made with respect to the trust on the federal return. An election to treat a trust as a QDOT may not be made with respect to a specific portion of an entire trust that otherwise would qualify for the marital deduction, but if the trust is actually severed pursuant to authority granted in the governing instrument or under local law prior to the due date for the election, a QDOT election may be made for any one or more of the severed trusts.

(B) A QDOT election may be made on the Washington estate tax return with respect to property passing to the surviving spouse in a QDOT, and also with respect to property passing to the surviving spouse if the requirements of IRC section 2056 (d)(2)(B) are satisfied. Unless specifically stated otherwise herein, all provisions of sections 2056(d) and 2056A of the IRC, and the federal regulations promulgated thereunder, are applicable to a Washington QDOT election. Section 2056A(d) of the IRC states that a QDOT election is irrevocable once made. Similarly, a QDOT election made on the Washington estate tax return is irrevocable. For purposes of this subsection, a QDOT means, with respect to any decedent, a trust described in IRC section 2056A(a), provided, however, that if an election is made to treat a trust as a QDOT on the Washington estate tax return but no QDOT election is made with respect to the trust on the federal return:

(I) The trust must have at least one trustee that is an individual citizen of the United States resident in Washington state, or a corporation formed under the laws of the state of Washington, or a bank as defined in IRC section 581 that is authorized to transact business in, and is transacting business in, the state of Washington (the trustee required under this subsection is referred to herein as the "Washington Trustee");

(II) The Washington Trustee must have the right to withhold from any distribution from the trust (other than a distribution of income) the Washington QDOT tax imposed on such distribution;

(III) The trust must be maintained and administered under the laws of the state of Washington; and

(IV) The trust must meet the additional requirements intended to ensure the collection of the Washington QDOT tax set forth in (c)(iv)(D) of this subsection.

(C) The QDOT election must adequately identify the assets, by schedule and item number, included as part of the election, either on the return, or, if those assets have not been

determined when the estate tax return is filed, or a statement to that effect, prepared when the assets are definitively identified. This statement may be filed with the department at that time or when the first taxable event with respect to the trust is reported to the department.

(D) In order to qualify as a QDOT, the following requirements regarding collection of the Washington QDOT tax must be satisfied.

(I) If a QDOT election is made to treat a trust as a QDOT on both the federal and Washington estate tax returns, the Washington QDOT election will be valid so long as the trust satisfies the statutory requirements of Treas. Reg. Section 20.2056A-2(d).

(II) If an election is made to treat a trust as a QDOT only on the Washington estate tax return, the following rules apply:

If the fair market value of the trust assets exceeds \$2 million as of the date of the decedent's death, or, if applicable, the alternate valuation date, the trust must comply with Treas. Reg. Section 20.2056A-2 (d)(1)(i), except that: If the bank trustee alternative is used, the bank must be a bank that is authorized to transact business in, and is transacting business in, the state of Washington, or a bond or an irrevocable letter of credit meeting the requirements of Treas. Reg. Section 20.2056A-2 (d)(1)(i)(B) or (C) must be furnished to the department.

If the fair market value of the trust assets is \$2 million or less as of the date of the decedent's death, or, if applicable, the alternate valuation date, the trust must comply with Treas. Reg. Section 20.2056A-2 (d)(1)(ii), except that not more than 35 percent of the fair market value of the trust may be comprised of real estate located outside of the state of Washington.

A taxpayer may request approval of an alternate plan or arrangement to assure the collection of the Washington QDOT tax. If such plan or arrangement is approved by the department, such plan or arrangement will be deemed to meet the requirements of this (c)(iv)(D).

(E) The Washington estate tax will be imposed on:

(I) Any distribution before the date of the death of the surviving spouse from a QDOT (except those distributions excepted by IRC section 2056A (b)(3)); and

(II) The value of the property remaining in the QDOT on the date of the death of the surviving spouse (or the spouse's deemed date of death under IRC section 2056A (b)(4)). The tax is computed using Table W. The tax is due on the date specified in IRC section 2056A (b)(5). The tax shall be reported to the department in a form containing the information that would be required to be included on federal Form 706-QDT with respect to the taxable event, and any other information requested by the department, and the computation of the Washington tax shall be made on a supplemental statement. If Form 706-QDT is required to be filed with the Internal Revenue Service with respect to a taxable event, a

copy of such form shall be provided to the department. Neither the residence of the surviving spouse or other QDOT beneficiary nor the situs of the QDOT assets are relevant to the application of the Washington tax. In other words, if Washington state estate tax would have been imposed on property passing to a QDOT at the decedent's date of death but for the deduction allowed by this subsection (c)(iv)(E) (II), the Washington tax will apply to the QDOT at the time of a taxable event as set forth in this subsection (c)(iv)(E)(II) regardless of, for example, whether the distribution is made to a beneficiary who is not a resident of Washington, or whether the surviving spouse was a nonresident of Washington at the date of the surviving spouse's death.

(F) If the surviving spouse of the decedent becomes a citizen of the United States and complies with the requirements of section 2056A (b)(12) of the IRC, then the Washington tax will not apply to: Any distribution before the date of the death of the surviving spouse from a QDOT; or the value of the property remaining in the QDOT on the date of the death of the surviving spouse (or the spouse's deemed date of death under IRC section 2056A (b)(4)).

(d) **Washington taxable estate.** The estate tax is imposed on the "Washington taxable estate." The "Washington taxable estate" means the "federal taxable estate":

(i) Less one million five hundred thousand dollars for decedents dying before January 1, 2006, or two million dollars for decedents dying on or after January 1, 2006;

(ii) Less the amount of any deduction allowed under RCW 83.100.046 as a farm deduction;

(iii) Less the amount of the Washington qualified terminable interest property (QTIP) election made under RCW 83.100.047;

(iv) Plus any amount deducted from the federal estate pursuant to IRC § 2056 (b)(7) (the federal QTIP election);

(v) Plus the value of any trust (or portion of a trust) of which the decedent was income beneficiary and for which a Washington QTIP election was previously made pursuant to RCW 83.100.047; and

(vi) Less any amount included in the federal taxable estate pursuant to IRC § 2044 (inclusion of amounts for which a federal QTIP election was previously made) from a predeceased spouse that died on or after May 17, 2005.

(e) **Federal taxable estate.** The "federal taxable estate" means the taxable estate as determined under chapter 11 of the IRC without regard to:

(i) The termination of the federal estate tax under section 2210 of the IRC or any other provision of law; and

(ii) The deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the IRC.

(3) Calculation of Washington's estate tax.

(a) The tax is calculated by applying Table W to the Washington taxable estate. See (d) of this subsection for the definition of "Washington taxable estate."

Table W

Washington Taxable Estate is at Least	But Less Than	The Amount of Tax Equals Initial Tax Amount	Plus Tax Rate %	Of Washington Taxable Estate Value Greater Than
\$0	\$1,000,000	\$0	10.00%	\$0

Table W

Washington Taxable Estate is at Least	But Less Than	The Amount of Tax Equals Initial Tax Amount	Plus Tax Rate %	Of Washington Taxable Estate Value Greater Than
\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000	\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$550,000	17.00%	\$4,000,000
\$6,000,000	\$7,000,000	\$890,000	18.00%	\$6,000,000
\$7,000,000	\$9,000,000	\$1,070,000	18.50%	\$7,000,000
\$9,000,000		\$1,440,000	19.00%	\$9,000,000

(b) Examples.

(i) A widow dies on September 25, 2005, leaving a gross estate of \$2.1 million. The estate had \$100,000 in expenses deductible for federal estate tax purposes. Examples of allowable expenses include funeral expenses, indebtedness, property taxes, and charitable transfers. The Washington taxable estate equals \$500,000.

Gross estate	\$2,100,000
Less allowable expenses deduction	- \$100,000
Less \$1,500,000 statutory deduction	- \$1,500,000
Washington taxable estate	\$500,000

Based on Table W, the estate tax equals \$50,000 (\$500,000 x 10% Washington estate tax rate).

(ii) John dies on October 13, 2005, with an estate valued at \$3 million. John left \$1.5 million to his spouse, Jane, using the unlimited marital deduction. There is no Washington estate tax due on John's estate.

Gross estate	\$3,000,000
Less unlimited marital deduction	- \$1,500,000
Less \$1,500,000 statutory deduction	- \$1,500,000
Washington taxable estate	\$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy of the filed and signed federal return and all supporting documentation.

gram the option to volunteer to participate more than one hundred twenty hours per month.

Citation of Existing Rules Affected by this Order: Amending WAC 388-444-0005 and 388-444-0040.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.04.515, 74.08.090, 74.08A.903.

Other Authority: Food, Conservation and Energy Act of 2008.

Adopted under notice filed as WSR 08-23-102 on November 19, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, 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 2, Repealed 0.

Date Adopted: January 22, 2009.

Stephanie E. Schiller
Rules Coordinator

WSR 09-04-009

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed January 22, 2009, 1:22 p.m., effective February 22, 2009]

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

Purpose: The department is amending WAC 388-444-0005 Food stamp employment and training (FS E&T) program—General requirements and 388-444-0040 Work programs for ABAWDs in the food stamp employment and training program, to allow participants in the FS E&T pro-

AMENDATORY SECTION (Amending WSR 07-14-125, filed 7/3/07, effective 8/3/07)

WAC 388-444-0005 Food stamp employment and training (FS E&T) program—General requirements. (1) To receive Basic Food some people must register for work and participate in the food stamp employment and training (FS E&T) program.

(2) We determine if you must register for work and participate in FS E&T under WAC 388-444-0010:

(a) If we require you to register for work and participate in FS E&T you are nonexempt from FS E&T.

(b) If you meet one of the conditions under WAC 388-444-0015, you are exempt from FS E&T. If you are exempt,

you may choose to receive services through the FS E&T program.

(3) If you are nonexempt from FS E&T requirements, we register you for work:

(a) When you apply for Basic Food benefits or are added to someone's assistance unit; and

(b) Every twelve months thereafter.

(4) If you are nonexempt, you must meet all the FS E&T program requirements in subsections (5) through (7) of this section. If you fail to meet the requirements without good cause, we disqualify you from receiving Basic Food benefits:

(a) We define good cause for not meeting FS E&T requirements under WAC 388-444-0050; and

(b) We disqualify nonexempt persons who fail to meet E&T requirements as described under WAC 388-444-0055.

(5) If you are nonexempt, you must:

(a) Report to us or your FS E&T service provider and participate as required;

(b) Provide information regarding your employment status and availability for work when we ask for it;

(c) Report to an employer when we refer you; and

(d) Accept a bona fide offer of suitable employment. We define unsuitable employment under WAC 388-444-0060.

(6) If you are nonexempt, you must participate in one or more of the following FS E&T activities:

(a) Job search;

(b) Paid or unpaid work;

(c) Training or work experience;

(d) General education development (GED) classes; or

(e) English as a second language (ESL) classes.

(7) If you must participate in WorkFirst under WAC 388-310-0200, you have certain requirements for the Food Stamp Employment and Training Program:

(a) Your FS E&T requirement is to fully participate in the WorkFirst activities approved in your Individual Responsibility Plan (IRP) under WAC 388-310-0500; and

(b) If your IRP includes unpaid community service or work experience, we use your TANF grant and the Basic Food benefits received by members of your TANF assistance unit to determine the maximum hours of unpaid work we include in your plan.

(8) ~~((Your FS E&T activities including paid or unpaid work will not exceed one hundred twenty hours a month whether you are exempt or nonexempt))~~ Exempt or nonexempt FS E&T participants will not be required to participate more than one hundred and twenty hours per month, but exempt or nonexempt FS E&T participants may volunteer to participate beyond one hundred and twenty hours.

AMENDATORY SECTION (Amending WSR 99-07-024, filed 3/10/99, effective 4/10/99)

WAC 388-444-0040 Work programs for ABAWDs in the food stamp employment and training program. Work programs are available to clients eighteen to fifty years of age who are able to work and have no dependents.

(1) The following are considered work programs:

(a) Workfare consists of:

(i) Thirty days of job search activities in the first month beginning with the first day of application, or sixteen hours of volunteer work with a public or private nonprofit agency; and

(ii) In subsequent months, sixteen hours per month of volunteer work with a public or private nonprofit agency allows the client to remain eligible for food stamps. Workfare is not enforced community service or for paying fines or debts due to legal problems.

(b) Work experience (WEX) is supervised, unpaid work for at least twenty hours a week. The work must be for a nonprofit agency or governmental or tribal entity. This work is to improve the work skills of the client.

(c) On-the-job training (OJT) is paid employment for at least twenty hours a week. It is job training provided by an employer at the employer's place of business and may include some classroom training time.

(2) The department may not **require you to participate more than** ~~((thirty hours a week of Workfare and paid work combined))~~ one hundred and twenty hours per month in a work program, paid work, or a combination of activities. ABAWDs may volunteer to participate in activities beyond one hundred and twenty hours per month.

(3) The department may pay for some of a client's actual expenses needed for the client to participate in work programs. Standards for paying expenses are set by the department.

WSR 09-04-014

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed January 23, 2009, 12:10 p.m., effective February 23, 2009]

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

Purpose: The purpose of the proposed rule changes is to be in compliance with RCW and to effectively educate English language learners (ELLs).

Citation of Existing Rules Affected by this Order:
Amending WAC 392-160-020.

Statutory Authority for Adoption: RCW 28A.180.010.

Adopted under notice filed as WSR 08-22-002 on October 23, 2008.

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

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

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

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

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

Date Adopted: January 23, 2009.

Randy I. Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending Order 12, filed 8/12/91, effective 9/12/91)

WAC 392-160-020 Approved test((s)) for determining initial eligibility—English proficiency scores. ((+))
~~Approved English proficiency test((s). The following tests are approved for the purpose of annually determining the English proficiency of newly enrolled students (other than those who speak little or no English) whose primary language is other than English:~~

- ~~(a) Language assessment scales (LAS and Pre LAS);~~
- ~~(b) Basic inventory of natural language (BINL);~~
- ~~(c) Bilingual syntax measure (BSM); and~~
- ~~(d) Secondary level English proficiency test (SLEP). (To be used only at 8-12 level).~~

~~(2) Scores which establish an English skills deficiency. In the event a student scores within the appropriate range provided by the test maker to establish such English skill deficiency, the student's English skills shall be deemed sufficiently deficient or absent to impair learning~~

~~(3) The superintendent of public instruction may approve a school district request for use of a test other than those approved for use in this section when such request is supported by evidence that:~~

~~(a) The approved tests for use identified in this section are either unsuitable, inappropriate, or impractical for use by the school district;~~

~~(b) The scores that establish English skills deficiency for the requested test correspond with the scores that establish English skills deficiency for approved tests identified in this section; and~~

~~(c) The skills being measured by the requested test correspond to the skills measured by the approved tests identified in this section): Washington language proficiency placement test (WLPT).~~

WSR 09-04-022

PERMANENT RULES

PUBLIC DISCLOSURE COMMISSION

[Filed January 27, 2009, 11:32 a.m., effective February 27, 2009]

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

Purpose: To describe when a communication to a "member" as that term is used in chapter 42.17 RCW, the public disclosure commission statutes, including RCW 42.17.020 and 42.17.100, is an internal political communication and not a contribution. The rule specifically addresses (and excludes) entities that describe their customers as "members" but their relationship is more akin to that of seller-buyer and also provides an additional factor to determine membership.

Citation of Existing Rules Affected by this Order:
Amending WAC 390-05-515.

Statutory Authority for Adoption: RCW 42.17.370.

Adopted under notice filed as WSR 09-01-042 on December 10, 2008.

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: January 22, 2009.

Vicki Rippie
Executive Director

AMENDATORY SECTION (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

WAC 390-05-515 Member. In determining whether a communication is to a "member" as that term is used in RCW 42.17.020 and 42.17.100, and for the purposes of RCW 42.17.105(8) ~~((and)),~~ 42.17.640 and 42.17.645:

(1) The commission will examine whether the organization is a legitimate membership organization with common interest goals and objectives, taking into account such factors as the organization's permanence, structure and whether it has formal organizing documents, membership criteria and services it provides its members.

(2) With respect to the status of members of an organization, the commission will examine whether a valid, active relationship exists between the organization and its members or classes of members for purposes other than influencing the outcome of an election, taking into account such factors as whether the members affirmatively accept membership and the rights and obligations conferred on members by the organization including whether members have the right to vote for:

(a) Election of directors or officers; or

(b) Changes to the articles or bylaws; or

(c) The disposition of all or substantially all of the assets of the organization or on a merger or dissolution.

A required payment of a predetermined amount of membership dues is also a factor; however, an organization will not be considered a membership organization if it is primarily a commercial entity or for-profit entity selling products to customers even though it may refer to its customers as "members."

(3) If a membership organization and its members satisfy the criteria regarding "membership associations" and "members" established by the Federal Election Commission (FEC) in 11 C.F.R. Sec. 100.134 (e)-(g), the commission will consider the organization and its members as qualifying for the exemption in RCW 42.17.020 (15)(b)(v) and (21)(g), unless

the communication was not sent primarily to members. However, these FEC criteria are not the only indicators of legitimate membership organizations or valid members, a determination that will be made by the commission on a case-by-case basis as necessary.

(4) In determining whether an internal political communication is "primarily" limited to the members of an organization or political committee, the commission will consider whether any distribution to nonmembers is incidental and isolated.

WSR 09-04-023

PERMANENT RULES

BUILDING CODE COUNCIL

[Filed January 27, 2009, 1:53 p.m., effective July 1, 2009]

Effective Date of Rule: Amendments to WAC 51-51-0202 and 51-51-0302 take effect July 1, 2009; and amendments to WAC 51-51-0325 take effect July 1, 2010.

Purpose: To amend portions of chapter 51-51 WAC, the state amendments to the International Residential Code.

Citation of Existing Rules Affected by this Order: Amending WAC 51-51-0202, 51-51-0302, and 51-51-0325.

Statutory Authority for Adoption: RCW 19.27.190 and 19.27.020.

Other Authority: Chapters 19.27 and 34.05 RCW.

Adopted under notice filed as WSR 08-17-089 on August 19, 2008.

Changes Other than Editing from Proposed to Adopted Version: The definition for Air Impermeable Insulation was not adopted. Changes to WAC 51-51-0806 were not adopted. In WAC 51-51-0325, Option 1 for Section R325.8 was adopted.

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 3, 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 3, Repealed 0.

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

Date Adopted: November 14, 2008.

John P. Neff
Council Chair

AMENDATORY SECTION (Amending WSR 08-01-102, filed 12/18/07, effective 4/1/08)

WAC 51-51-0202 Section R202—Definitions.

ADULT FAMILY HOME means a dwelling in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

BALCONY, EXTERIOR. Definition is not adopted.

CHILD DAY CARE, shall, for the purposes of these regulations, mean the care of children during any period of a 24 hour day.

CHILD DAY CARE HOME, FAMILY is a child day care facility, licensed by the state, located in the dwelling 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.

DECK. Definition is not adopted.

DWELLING UNIT. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. Dwelling units may also include the following uses:

1. Adult family homes, foster family care homes and family day care homes licensed by the Washington state department of social and health services.

2. Offices, mercantile, food preparation for off-site consumption, personal care salons or similar uses which are conducted primarily by the occupants of the dwelling unit and are secondary to the use of the unit for dwelling purposes, and which do not exceed 500 square feet (46.4m²).

FIRE SEPARATION DISTANCE. The distance measured from the foundation wall or face of the wall framing, whichever is closer, to one of the following:

1. To the closest interior lot line; or

2. To the centerline of a street, an alley or public way; or

3. To an imaginary line between two buildings on the lot.

The distance shall be measured at a right angle from the wall.

SMALL BUSINESS. Any business entity (including a sole proprietorship, corporation, partnership or other legal entity) which is owned and operated independently from all other businesses, which has the purpose of making a profit, and which has fifty or fewer employees, or which has a million dollars or less per year in gross sales, of window products.

UNUSUALLY TIGHT CONSTRUCTION. Construction meeting the following requirements:

1. Walls exposed to the outside atmosphere having a continuous water vapor retarder with a rating of 1 perm (57 ng/s·m²·Pa) or less with openings gasketed or sealed;

2. Openable windows and doors meeting the air leakage requirements of the *International Energy Conservation Code*, Section 502.1.4; and

3. Caulking or sealants are applied to areas such as joints around window and door frames, between sole plates and floors, between wall-ceiling joints, between wall panels, at penetrations for plumbing, electrical and gas lines, and at other openings; or

4. Buildings built in compliance with the 1986 or later editions of the Washington State Energy Code chapter 51-11 WAC, Northwest Energy Code, or Super Good Cents weatherization standards or equivalent.

AMENDATORY SECTION (Amending WSR 08-01-102, filed 12/18/07, effective 4/1/08)

WAC 51-51-0302 Section R302—Location on lot.

R302.1 Exterior walls. Exterior walls with a fire separation distance (~~(less than)~~) of 3 feet (914 mm) or less shall have not less than a one-hour fire-resistive rating with exposure from both sides. Projections shall not extend to a point closer than 2 feet (610 mm) from the line used to determine the fire separation distance.

EXCEPTION: Detached garages accessory to a dwelling located within 2 feet of a lot line may have roof eave projections not exceeding 4 inches.

Projections extending into the fire separation distance shall have not less than one-hour fire-resistive construction on the underside. The above provisions shall not apply to walls which are perpendicular to the line used to determine the fire separation distance.

EXCEPTIONS: 1. Tool and storage sheds, playhouses and similar structures exempted from permits by Section R105.2 are not required to provide wall protection based on location on the lot. Projections beyond the exterior wall shall not extend over the lot line.
2. Eave projections into the fire separation distance do not require one-hour fire-resistive construction where no openings are provided in the eaves, including openings for ventilation.

R302.2 Openings. Openings shall not be permitted in the exterior wall of a dwelling or accessory building with a fire separation distance (~~(less than)~~) of 3 feet (914 mm) or less. Openings, including openings for ventilation, shall be limited to 25% of the exterior wall area with a fire separation distance between 3 feet (914 mm) to less than 5 feet (1524 mm). This distance shall be measured perpendicular to the line used to determine the fire separation distance.

EXCEPTIONS: 1. Openings shall be permitted in walls that are perpendicular to the line used to determine the fire separation distance.
2. Foundation vents installed in compliance with this code are permitted.

R302.3 Penetrations. Penetrations located in the exterior wall of a dwelling with a fire separation distance (~~(less than)~~) of 3 feet (914 mm) or less shall be protected in accordance with Section R317.3.

EXCEPTION: Penetrations shall be permitted in walls that are perpendicular to the line used to determine the fire separation distance.

AMENDATORY SECTION (Amending WSR 07-01-090, filed 12/19/06, effective 7/1/07)

WAC 51-51-0325 Section R325—Adult family homes.

**SECTION R325
ADULT FAMILY HOMES**

R325.1 General. This section shall apply to all newly constructed adult family homes and all existing single family homes being converted to adult family homes. This section shall not apply to those adult family homes licensed by the state of Washington department of social and health services prior to July 1, 2001.

R325.2 Submittal Standards. In addition to those requirements in Section 106.1, the submittal shall identify the project as a Group R-3 Adult Family Home Occupancy. A floor plan shall be submitted identifying the means of egress and the components in the means of egress such as stairs, ramps, platform lifts and elevators. The plans shall indicate the rooms used for clients and the sleeping room classification of each room.

R325.3 Sleeping Room Classification. Each sleeping room in an adult family home shall be classified as:

1. Type S - where the means of egress contains stairs, elevators or platform lifts.
2. Type NS1 - where one means of egress is at grade level or a ramp constructed in accordance with ~~((R311-6))~~ R325.9 is provided.
3. Type NS2 - where two means of egress are at grade level or ramps constructed in accordance with ~~((R311-6))~~ R325.9 are provided.

R325.4 Types of Locking Devices. All bedroom and bathroom doors shall be openable from the outside when locked.

Every closet shall be readily openable from the inside.

Operable parts of door handles, pulls, latches, locks and other devices installed in adult family homes shall be operable with one hand and shall not require tight grasping, pinching or twisting of the wrist. The force required to activate operable parts shall be 5.0 pounds (22.2 N) maximum. Exit doors shall have no additional locking devices.

R325.5 Smoke Alarm Requirements. All adult family homes shall be equipped with smoke alarms installed as required in Section R313. Alarms shall be installed in such a manner so that the fire warning may be audible in all parts of the dwelling upon activation of a single device.

R325.6 Escape Windows and Doors. Every sleeping room shall be provided with emergency escape and rescue windows as required by Section R310. No alternatives to the sill height such as steps, raised platforms or other devices placed by the openings will be approved as meeting this requirement.

R325.7 Fire Apparatus Access Roads and Water Supply for Fire Protection. Adult family homes shall be served by fire apparatus access roads and water supplies meeting the requirements of the local jurisdiction.

R325.8 Grab Bars. Grab bars shall be installed for all water closets and bathtubs and showers. The grab bars shall comply with ICC/ANSI A117.1 Sections 604.5 and 607.4 and 608.3.

EXCEPTION: Grab bars are not required for water closets and bathtubs and showers used exclusively by staff of the adult family home.

R325.9 Ramps. All interior and exterior ramps, when provided, shall be constructed in accordance with Section R311.6 with a maximum slope of 1 vertical to 12 horizontal. The exception to R311.6.1 is not allowed for adult family homes. Handrails shall be installed in accordance with R325.9.1.

R325.9.1 Handrails for Ramps. Handrails shall be installed on both sides of ramps between the slope of 1 vertical to 12 horizontal and 1 vertical and 20 horizontal in accordance with R311.6.3.1 through R311.6.3.3.

R325.10 Stair Treads and Risers. Stair treads and risers shall be constructed in accordance with R311.5.3.2. Handrails shall be installed in accordance with R325.10.1.

R325.10.1 Handrails for Treads and Risers. Handrails shall be installed on both sides of treads and risers numbering from one riser to multiple risers. Handrails shall be installed in accordance with R311.5.6.1 through R311.5.6.3.

WSR 09-04-025

PERMANENT RULES

OLYMPIC COLLEGE

[Filed January 28, 2009, 8:46 a.m., effective February 28, 2009]

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

Purpose: The proposed changes are intended to update policy to provide clarity, eliminate redundancy, and bring the policies into alignment with current practice. None of these changes will substantially change the intent of the bylaws. WAC 132C-104-060 Regular meetings of the board of trustees, will be subsumed into the revised bylaws.

Citation of Existing Rules Affected by this Order: Repealing WAC 132C-104-060; and amending chapter 132C-104 WAC.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Adopted under notice filed as WSR 09-01-002 on December 3, 2008.

A final cost-benefit analysis is available by contacting Thomas Oliver, 1600 Chester Avenue, Bremerton, WA 98337, phone (360) 475-7502, fax (360) 475-7505, e-mail toliver@olympic.edu.

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

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

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

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

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

Date Adopted: January 27, 2009.

Thomas Oliver
Rules Coordinator

Chapter 132C-104 WAC

BYLAWS AND STANDING ORDERS OF ~~((GOVERNING))~~ BOARD(S) OF TRUSTEES

NEW SECTION

WAC 132C-104-001 Preamble. (1) Community College District No. 3 is established in Title 28B RCW as a public institution of higher education. The institution is governed by a five-member board of trustees appointed by the governor. The terms "Community College District No. 3," "district," "Olympic College," and "college" are used interchangeably throughout this title.

(2) The administrative office of Olympic College is located at 1600 Chester Avenue, Bremerton, Washington 98337-1699. (The office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays.)

NEW SECTION

WAC 132C-104-002 Name, composition and powers of the board of trustees. (1) **Name:** The name of the governing board of Washington Community College District No. 3, shall be "the board of trustees of Olympic Community College." The terms "the board of trustees of Olympic Community College," "the board of trustees," or "board" are used interchangeably throughout this title.

(2) **Composition and powers:** The composition and powers of the board of trustees are those set forth in chapter 28B.50 RCW.

(3) **Bylaws:** The board shall by resolution adopt such bylaws for its own governance and for the governance of the college as the board shall from time to time determine in accordance with RCW 28B.50.100 and other applicable law.

(4) **Amendments:** The bylaws adopted by the board may be amended or repealed at any meeting in whole or in part by the affirmative vote of a majority of the members of the board.

(5) **Policies and rules:** Rules and policies are promulgated by the board of trustees of Community College District No. 3 as general policies of Olympic College. Requests for adoption, repeal, or amendment of a college rule may be addressed to the rules coordinator for the college.

(6) **Exercise of powers:** The board and its committees shall act only at meetings called as provided by applicable law and the board bylaws. All matters coming before the board shall be determined by the majority vote of not less than three of its members present, the members present being not less than a quorum. The member of the board who is presiding at a meeting shall be entitled to make motions, second

motions, vote, and otherwise participate in the meeting to the same extent as the other members of the board.

NEW SECTION

WAC 132C-104-003 Regular meetings. The board of trustees customarily holds a regular meeting once per month unless otherwise determined by the board. The time and location of these meetings may be found in the *Washington State Register* or by contacting the office of the president, Olympic College, 1600 Chester Avenue, Bremerton, Washington. The chairperson of the board may cancel any regular meeting. All such regular meetings will be conducted in conformance with the laws of the state of Washington governing such meetings.

NEW SECTION

WAC 132C-104-004 Petition to board for promulgation, amendment, or repeal of rule. (1) Persons having an interest in the promulgation, amendment, or repeal of a "rule" as defined in RCW 34.05.010(16) may submit a written petition therefore to the secretary of the board of trustees. Any petition so submitted shall include the following as required by the office of financial management under WAC 82-05-020:

- (a) The name of the agency responsible for administering the rule; and
- (b) The rationale for adoption of a new rule or amendment or repeal of an existing rule; and
- (c) In addition to any other concerns, the petitioner should address whether:
 - The rule is authorized;
 - The rule is needed;
 - The rule conflicts with or duplicates other federal, state, or local laws;
 - Alternatives to the rule exist that will serve the same purpose at less cost;
 - The rule applies differently to public and private entities;
 - The rule serves the purposes for which it was adopted;
 - The rule imposes unreasonable costs;
 - The rule is clearly and simply stated; and
 - The rule differs, without adequate justification, from a federal law which applies to the same activity or subject matter.

(2) The petition should contain sufficient information so that the agency and public can understand the proposal. Forms for submitting petitions for promulgation, amendment, or repeal of rules are available from the office of financial management. The petition shall be considered by the board not less than sixty days after the date the petition was submitted to the secretary, provided, that the board may consider the petition at any earlier regular or special meeting of the board. No later than sixty days after receipt of a petition, the college must either:

- (a) Initiate rule-making proceedings in accordance with chapter 34.05 RCW; or
- (b) Deny the petition in writing, stating its reasons for the denial and specifically addressing the concerns stated in the petition. Where appropriate, the college must indicate alter-

native means by which the college will address the concerns raised in the petition.

NEW SECTION

WAC 132C-104-006 Standing orders of the board of trustees. (1) **Delegation of authority:** The board of trustees delegates to the president general authority to manage the college pursuant to RCW 28B.50.140. In addition to such other specific authority as has been or may be delegated to the president, the board further delegates all express or implied authority to carry out the administration and operation of the district except as provided in subsection (2) and (3) of this section.

(2) **Reservation of powers:** Notwithstanding this broad delegation of authority to the president of Olympic College, the board of trustees reserves to itself jurisdiction and authority over the following matters:

- (a) Hiring and retention of the president, assigning or reassigning the president's duties, and setting the president's salary and working conditions;
- (b) Granting or denying tenure to faculty;
- (c) Adoption, amendment, or revocation of rules under the Administrative Procedure Act;
- (d) Reduction in force of faculty and dismissal of full-time faculty, including nonrenewal of tenure track faculty;
- (e) Approval of employee collective bargaining agreements;
- (f) Approval of college operating budget and capital budget requests to the state board for community and technical colleges;
- (g) Naming of college buildings;
- (h) Approval of tuition rates, operating fees and special fees when at the discretion of the college;
- (i) Approval of request for employee indemnification and representation;
- (j) Authorization to purchase real estate and every lease of real property for a term of three years or more when the college is required to make payment of fifty thousand dollars or more in a fiscal year under the terms of the lease; and
- (k) Other matters as may from time to time be approved by the board.

(3) **Fiscal limitations on delegation:** Notwithstanding the board delegation of authority to the president of Olympic College, the board of trustees reserves to itself jurisdiction and authority over the following matters when the dollar value is in excess of the following limits:

- (a) Approval of preliminary and final design of capital projects over five million dollars;
- (b) Modifications to the operating budget in excess of three percent;
- (c) Sale or conveyance of gifted property when the value is in excess of fifty thousand dollars;
- (d) Acceptance of gifts when the value is in excess of twenty-five thousand dollars; and
- (e) Other matters as may from time to time be approved by the board.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132C-104-060 Regular meetings of the board of trustees.

WSR 09-04-026
PERMANENT RULES
SECRETARY OF STATE

[Filed January 28, 2009, 10:48 a.m., effective February 28, 2009]

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

Purpose: Rules contained in this chapter have not been updated since 1974. Rule making is also necessary in order to revise provisions related to requests for public records in order to reflect model rules on the subject developed by the attorney general pursuant to RCW 42.56.570. Provisions related to the organizational structure of the office of the secretary of state require updating.

Amended rules will update and revise provisions related to requests for public records and provide an updated explanation of the organizational structure of the office.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-12A-020, 434-12A-050, 434-12A-060, 434-12A-070, 434-12A-080, 434-12A-090, 434-12A-130, 434-12A-140, 434-12A-990, and 434-12A-99001; and amending WAC 434-12A-010, 434-12A-030, 434-12A-040, 434-12A-100, 434-12A-110, 434-12A-120, and 434-12A-150.

Statutory Authority for Adoption: RCW 42.56.040.

Adopted under notice filed as WSR 08-19-022 on September 8, 2008.

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 2, Amended 7, Repealed 10.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 7, Repealed 10.

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

Date Adopted: January 28, 2009.

Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending Order 74-2, filed 2/19/74)

WAC 434-12A-010 Authority and purpose. ((The purpose of this chapter shall be to provide an official public

record of the information required by RCW 42.17.250 to be adopted by the office of the secretary of state.)) (1) RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

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

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

AMENDATORY SECTION (Amending Order 74-2, filed 2/19/74)

WAC 434-12A-030 Description of the organization of the office of the secretary of state. (1) The secretary of state's ((major activities are to:

(a) Serve as chief election officer under the provisions of RCW 29.04.070;

(b) Register and license all domestic and foreign, profit and nonprofit corporations, and record related filings;

(c) Act as repository for filings required or permitted under the Uniform Commercial Code;

(d) Register and attest to the official acts of the legislature and the governor;

(e) Affix the state seal and attest to commissions, pardons, and other public instruments to which the signature of the governor is required;

(f) Record conveyances made to the state, certified copies of franchises, or other papers filed in the office;

(g) Receive and file official bonds of those officers required by law to submit them to the secretary of state;

(h) Certify to the legislature all matters required by the law to be certified;

(i) Attest to and authenticate certificates and other documents issued by the secretary of state's office;

(j) Serve as an agent for official communications to the public disclosure commission and provide certain administrative services to that agency.

(2)) general duties are set forth in chapter 43.07 RCW, and relate generally to elections, the formation and maintenance of business organizations, charitable solicitations,

charitable trusts, registration of domestic partnerships, archives and records management, the state library, and the address confidentiality program. Additional functions include regulating the use of the state seal, filing or attesting to official acts of the legislature or governor, certifying to the legislature all matters legally required to be certified, issues apostilles, and other actions required or authorized by law. In addition to these constitutional and statutory duties, the secretary of state is frequently called upon to represent the state of Washington in international trade and cultural missions, and to greet and confer with dignitaries and delegations visiting the state of Washington from other countries.

(2) The functions of the secretary of state are performed through the following divisions and programs:

(a) The elections division, through which the secretary acts as the state's chief election officer:

(b) The corporations division, through which the secretary accepts filings as provided by law related to profit and nonprofit corporations and other forms of business organization, accepts registrations pursuant to the Charitable Solicitations Act and the Charitable Trust Act, accepts filings and issues licenses related to digital signatures, accepts registrations of domestic partnerships, and issues apostilles:

(c) The archives and records management division, through which the secretary provides services as required by law related to archives and records management:

(d) The Washington state library, providing library services to the public and state government and related services:

(e) The special programs division, which includes:

(i) The productivity board, which the secretary chairs and whose staff provides organizational support and which provides awards and incentives related to state employee brainstorm and teamwork incentive programs:

(ii) The address confidentiality program, for victims of domestic violence, sexual assault and stalking; and

(iii) The legacy project, which conducts, publishes and preserves oral histories of significant figures in Washington history.

(3) The offices of the secretary of state and their staff are located at:

(a) Main Administrative Office, Legislative Building, 416 Sid Snyder Way, P.O. Box 40220, Olympia, WA 98504-0220.

(b) ~~(Corporations Division, Legislative Building, Olympia.~~

~~(c) Uniform Commercial Code Section, Insurance Building, Olympia.~~

~~(d) Elections Division, Insurance Building, Olympia.~~

(3) The organizational chart, attached hereto as Appendix A, illustrates the general structure and organization of the staff of the secretary of state.) Elections Division, 520 Union Ave. S.E., P.O. Box 40229, Olympia, WA 98504-0229;

(c) Corporations Division, 801 Capitol Way South, P.O. Box 40234, Olympia, WA 98504-0234;

(d) Archives and Records Management Division, 1129 Washington Street S.E., P.O. Box 40238, Olympia, WA 98504-0238. The archives and records management division also includes:

(i) The state records center, located at 7590 New Market Street S.W., Tumwater, WA, mailing address: P.O. Box 40239, Olympia, WA 98504-0239;

(ii) Regional archive facilities:

(A) Olympia Regional Branch, located at 1129 Washington Street S.E., P.O. Box 40238, Olympia, WA 98504-0238;

(B) Puget Sound Regional Branch, located at 3000 Landerholm Circle S.E., MS-N100, Bellevue, WA 98007-6484;

(C) Northwest Regional Branch, located at Western Washington University, MS-9123, Bellingham, WA 98225-9123;

(D) Central Branch, located at 400 E. University Way, Mail Stop 7547, Ellensburg, WA 98926-7547; and

(ii) The Washington State Digital Archives, and Eastern Washington Regional Branch, located at 960 Washington Street, Cheney, WA 99004;

(e) The Washington State Library, Point Plaza East, 6880 Capitol Blvd. South, Tumwater, P.O. Box 42460, Olympia, WA 98504-2460;

(f) The Productivity Board and Legacy Project, 6880 Capitol Blvd. South, Tumwater, P.O. Box 40224, Olympia, WA 98504-0224; and

(g) The Address Confidentiality Program, Legislative Building, P.O. Box 40220, Olympia, WA 98504-0220.

(4) Any person wishing to request access to public records of the office of the secretary of state, or seeking assistance in making such a request, should contact the public records officer by mail at P.O. Box 40224, Olympia, WA 98504-0224, or by fax at 360-586-4311, or by e-mail at Publicrecords@secstate.wa.gov. Information is also available at the secretary of state's web site, at www.secstate.wa.gov.

(5) The public records officer will oversee compliance with the act but another secretary of state staff member may process the request. Therefore, these rules will refer to the public records officer "or designee." The public records officer or designee and the office of the secretary of state will provide the fullest assistance to the requestor; create and maintain for use by the public and the office of the secretary of state an index to public records of the office by making available those records retention schedules applicable to the office of the secretary of state; and prevent fulfilling public records requests from causing excessive interference with essential functions of the office.

AMENDATORY SECTION (Amending Order 74-2, filed 2/19/74)

WAC 434-12A-040 Public records available. All public records of the office ((as defined in WAC 434-12-020(1) {434-12A-020(1)}) are deemed to be available for public inspection and copying pursuant to these rules ((except as provided by RCW 42.17.310 and WAC 434-12-110) and applicable state law, as follows:

(1) Hours for inspection of records. Public records are available for inspection and copying during normal business hours of the office of the secretary of state, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays.

Records must be inspected at the office of the secretary of state. An appointment may be required.

(2) **Records index.** An index of public records is available for use by members of the public, consisting of those records retention schedules applicable to the office of the secretary of state.

(3) **Organization of records.** The office of the secretary of state will maintain its records in a reasonably organized manner. The office will take reasonable actions to protect records from damage and disorganization. A requestor shall not take original records from the office. A variety of records are available on the secretary of state web site at www.sec.state.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

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

(a) Any person wishing to inspect or obtain copies of public records of the office of the secretary of state should make the request in writing by letter, fax, or e-mail addressed to the public records officer and including the following information:

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

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Copies will be made by secretary of state staff unless other arrangements are agreed upon. Costs for copying are specified in WAC 434-12A-100.

(c) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing. The office will presume that the request is fully and accurately described in this confirmation unless the requestor promptly indicates otherwise in writing.

NEW SECTION

WAC 434-12A-045 Processing of public records requests—General. (1) **Providing "fullest assistance."** The office of the secretary of state is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

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

- (a) Make the records available for inspection or copying;
- (b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available; or
- (d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or
- (e) Deny the request.

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

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

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

(6) **Inspection of records.**

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

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

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

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

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

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

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

NEW SECTION

WAC 434-12A-055 Processing of public records requests—Electronic records. (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record. Costs for providing electronic records are governed by WAC 434-12A-100.

(3) **Customized access to data bases.** With the consent of the requestor, the agency may provide customized access under RCW 43.105.280 if the record is not reasonably locatable or not reasonably translatable into the format requested. The office of the secretary of state may charge a fee consistent with RCW 43.105.280 for such customized access.

AMENDATORY SECTION (Amending Order 74-2, filed 2/19/74)

WAC 434-12A-100 Inspection and copying. (1) No fee shall be charged for the personal inspection of public records.

(2) Where an individual requests a copy, or a certified copy, of a document or instrument (~~which is not a public~~

~~record, as that term is defined by RCW 42.17.020(24) and WAC 434-12-020(1) [434-12A-020(1)], the office of the secretary of state shall charge a fee of:~~

~~(a) Fifty cents per page for the first ten pages and twenty-five cents per page thereafter for providing copies of corporation records;~~

~~(b) Five dollars per document for certified copies of profit corporation records;~~

~~(c) Two dollars plus fifty cents per page for certified copies of nonprofit corporation records;~~

~~(d) Four dollars for copies of statements listed to an individual debtor from Uniform Commercial Code records;~~

~~(e) Fifty cents per page for the first ten pages, and twenty-five cents per page for each additional page for a copy of any law, resolution, record or other document filed in the office of the secretary of state)) for which the cost of copies is not governed by chapter 42.56 RCW, the office of the secretary of state may charge fees specified pursuant to other law, including other chapters of this title.~~

(3) Where an individual requests a copy of a document or record ~~for which ((is a public record, as that term is defined by RCW 42.17.020(24) and WAC 434-12-020(1) [434-12A-020(1)], and which has been filed with the office of the secretary of state pursuant to a specific statutory requirement to file such documents, the office of the secretary of state shall charge fifty cents per page for the first ten pages and twenty-five cents per page for each additional page of such document or record.~~

~~(4) Where an individual requests a copy of a document or record which is a public record, as that term is defined by RCW 42.17.020(24) and WAC 434-12-020(1) [434-12A-020(1)] but which has not been filed with the office of the secretary of state pursuant to a specific statutory requirement to file such documents, the office of the secretary of state shall charge a fee of ten cents per page for each page of such document or record. This charge is intended to reimburse the office of the secretary of state for a portion of the actual costs of copying, but not to exceed such actual costs.~~

~~(5) Where an individual requests to personally make a copy of a document or record referred to in subsection (3) or (4) of this section and the public records officer determines that this would not result in excessive interference with other essential functions of the agency, the charge shall be equal to the amount necessary to reimburse the office of the secretary of state for its actual costs incidental to such copying as determined by the public records officer of that section or division)) fees are established pursuant to chapter 42.56 RCW, a requestor may obtain standard black and white photocopies for fifteen cents per page. Copies in color or larger-sized documents will be based on the actual cost to reproduce them at the time of the request.~~

The Washington state archives research fees covered by WAC 434-690-080 are determined by archives according to its terms. The corporations fees are per WAC 434-112-085.

(4) Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the pay-

ment of the costs of copying an installment before providing that installment. The office of the secretary of state will not charge sales tax when it makes copies of public records.

(5) **Costs for electronic records.** The cost of electronic copies of records shall be five dollars for information on a CD-ROM or DVD. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee.

(6) **Costs of mailing.** The office of the secretary of state may also charge actual costs of mailing, including the cost of the shipping container.

(7) **Payment.** Payment may be made by cash, check, or money order to the office of the secretary of state, or by those credit or debit cards accepted by the office.

AMENDATORY SECTION (Amending Order 74-2, filed 2/19/74)

WAC 434-12A-110 Exemptions~~((, deletions, and denials))~~. (1) The Public Records Act provides that a number of document types are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the office of the secretary of state for inspection and copying:

RCW 5.60.060(2) (attorney-client privilege, together with attorney work product privilege).

RCW 5.60.060(5) (communications to a public officer in official confidence).

RCW 5.60.070 (communications between a mediator and a party to mediation).

RCW 19.34.240 (digital signatures).

RCW 19.34.420 (digital signatures).

RCW 29A.08.710 through 29A.08.785 (voter registration records).

RCW 29A.32.100 (arguments and statements for voters pamphlet).

RCW 29A.60.080 (sealing of voting devices).

RCW 29A.60.110 (sealing of ballot containers).

RCW 40.14.030 (exempt records accessioned into state archives).

RCW 40.24.070 (address confidentiality program).

RCW 43.07.100 (records of entities supplying information to the bureau of statistics).

5 U.S.C. § 552(a) (the federal Privacy Act).

The foregoing list is for informational purposes only and failure to list an exemption shall not affect the efficacy of any exemption. The secretary of state reserves the right to determine that a public record ((requested in accordance with the procedures outlined in WAC 434-12-090 [434-12A-090])) is exempt under the provisions of ((RCW 42-17-310)) state law.

(2) ((In addition, pursuant to RCW 42.17.260 the secretary of state reserves the right to delete identifying details when he makes available or publishes any public record, in any cases where there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW.

(3) All denials of requests for public records will be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.)) The office of the secretary of state is prohibited by statute from disclosing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending Order 74-2, filed 2/19/74)

WAC 434-12A-120 Review of denials of public records request. ((1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by so indicating in the space provided for this purpose on the standard request form adopted by WAC 434-12-130 [434-12A-130] or by tendering a written request for review. The request for review shall specifically refer to, or be accompanied by, a copy of the written statement by the public records officer, or other staff member, which constituted or accompanied the denial.

(2) Immediately after receiving a request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the secretary of state, or in his absence, a designee of the secretary of state. The secretary of state or designee, as the case may be, shall immediately consider the matter and either affirm or reverse such denial. In any case, the request shall be returned with a final decision, within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the secretary of state or his designee has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever first occurs.)) (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

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

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

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

AMENDATORY SECTION (Amending Order 74-2, filed 2/19/74)

WAC 434-12A-150 Revolving fund. Pursuant to RCW 43.07.130, and subject to the current availability of such materials, the office of the secretary of state will supply any of the following items of printed matter to the public for a charge equal to the costs of printing, reprinting, and distributing such printed matter:

- (1) Lists of active corporations;
- (2) The provisions of Title 23 RCW;
- (3) The provisions of Title 23A RCW;
- (4) The provisions of Title 24 RCW;
- (5) The provisions of chapter 25.10 RCW;
- (6) The provisions of Title 29 RCW;
- ~~((6) The provisions of Title 62A RCW;))~~
- (7) The provisions of chapter 18.100 RCW;
- (8) The provisions of chapter 19.77 RCW;
- (9) The provisions of chapter 43.07 RCW;
- (10) The provisions of the Washington state constitution;
- (11) The provisions of ~~((initiative measure 276 and rules and regulations adopted by the public disclosure commission))~~ chapters 40.14, 40.16, and 40.20 RCW, and any statutes, rules, schedules, indexes, guides, descriptions, or other materials related to the public records of state or local government or to the state archives; and
- (12) Rules and ~~((regulations))~~ informational publications related to the statutory provisions set forth above.

Upon request, any person may receive a list of such printed matter currently available, the cost of each such item of printed matter, and instructions for ordering one or more items. The revenue derived in this manner shall be placed in the secretary of state's revolving fund.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-12A-020	Definitions.
WAC 434-12A-050	Office hours.
WAC 434-12A-060	Public records officer.
WAC 434-12A-070	Protection of public records.
WAC 434-12A-080	Records index.
WAC 434-12A-090	Requests for public records.
WAC 434-12A-130	Adoption of standard request form.
WAC 434-12A-140	Communications and submissions relating to public records.
WAC 434-12A-990	Appendix A—Form—Organization chart.
WAC 434-12A-99001	Appendix B—Form—Request for public record.

WSR 09-04-027
PERMANENT RULES
BUILDING CODE COUNCIL

[Filed January 28, 2009, 4:20 p.m., effective July 1, 2009]

Effective Date of Rule: Amendments to WAC 51-54-0400 take effect July 1, 2009; and amendments to WAC 51-54-0900 and 51-54-1000 take effect July 1, 2010.

Purpose: To amend portions of chapter 51-54 WAC, the 2006 International Fire Code.

Citation of Existing Rules Affected by this Order: Amending WAC 51-54-0400, 51-54-0900, and 51-54-1000.

Statutory Authority for Adoption: RCW 19.27.190 and 19.27.020.

Other Authority: Chapters 19.27 and 34.05 RCW.

Adopted under notice filed as WSR 08-17-090 on August 19, 2008.

Changes Other than Editing from Proposed to Adopted Version: The amendment proposed to Section 9073.2.7, requiring a full NFPA 13 system in boarding homes, was not adopted.

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 2, 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 3, Repealed 0.

Date Adopted: November 14, 2008.

John P. Neff
Council Chair

AMENDATORY SECTION (Amending WSR 07-01-093, filed 12/19/06, effective 7/1/07)

WAC 51-54-0400 Chapter 4—Emergency planning and preparedness.

401.2 Approval. Where required by the fire code official, fire safety plans, emergency procedures, and employee training programs shall be approved.

SECTION 402 DEFINITIONS

EMERGENCY DRILL. An exercise performed to train staff and occupants and to evaluate their efficiency and effectiveness in carrying out emergency procedures.

LOCKDOWN. An action used to position occupants behind secured openings and isolated from threats.

Full lockdown. Occupants remain out of sight and as quiet as possible, with only limited authorized entry, exit, or movement within the building. Occupants in corridors, com-

mon areas, or unsecured areas move quickly to the nearest secured area.

Modified lockdown. Occupants of a facility are isolated from potential outside threats by remaining within a building with exterior doors and other exits secured, and that entry and exit from the building is limited to that which is authorized. During a modified lockdown, interior movement and other activities within the building may be allowed or restricted in accordance to the lockdown plan.

SHELTER-IN-PLACE. An emergency response used to minimize exposure of facility occupants to chemical or environmental hazards by taking refuge in predetermined interior rooms or areas where actions are taken to isolate the interior environment from the exterior hazard.

SECTION 404 EMERGENCY PLANS

404.1 General. Fire safety, evacuation, shelter-in-place, and lockdown plans shall comply with the requirements of this section.

404.2 Fire safety and evacuation plans. Fire safety and evacuation plans shall comply with the requirements of Sections 404.2.1 through 404.2.4.

404.2.1 Where required. A fire safety and evacuation plan shall be prepared and maintained in accordance with this chapter for the following occupancies and buildings when required by the fire code official.

1. Group A having an occupant load of 100 or more.
2. Group B buildings having an occupant load of 500 or more persons or more than 100 persons above or below the lowest level of exit discharge.
3. Group E.
4. Group H.
5. Group I.
6. Group R-1.
7. Group R-2 college and university buildings. Boarding homes, group homes, and residential treatment facilities licensed by the state of Washington.
8. High-rise buildings.
9. Group M buildings having an occupant load of 500 or more persons or more than 100 persons above or below the lowest level of exit discharge.
10. Covered malls exceeding 50,000 sf in aggregate floor area.
11. Underground buildings.
12. Buildings with an atrium and having an occupancy in Group A, E, or M.

~~((404.4 Maintenance. Fire safety and evacuation plans shall be reviewed by the owner or occupant annually or as necessitated by changes in staff assignments, occupancy, or the physical arrangement of the building.))~~ **404.2.2 Contents.** Fire safety and evacuation plan contents shall be in accordance with Sections 404.2.2.1 and 404.2.2.2.

404.2.2.1 Fire evacuation plans. Fire evacuation plans shall include the following:

1. Emergency egress or escape routes and whether evacuation of the building is to be complete or, where approved, by selected floors or areas only.

2. Procedures for employees who must remain to operate critical equipment before evacuating.

3. Procedures for accounting for employees and occupants after evacuation has been completed.

4. Identification and assignment of personnel responsible for rescue or emergency medical aid.

5. The preferred and any alternative means of notifying occupants of a fire or emergency.

6. The preferred and any alternative means of reporting fires and other emergencies to the fire department or designated emergency response organization.

7. Identification and assignment of personnel who can be contacted for further information or explanation of duties under the plan.

8. A description of the emergency voice/alarm communication system alert tone and preprogrammed voice messages, where provided.

404.2.2.2 Fire safety plans. Fire safety plans shall include the following:

1. The procedure for reporting a fire or other emergency.
2. The life safety strategy and procedures for notifying, relocating, or evacuating occupants.

3. Site plans indicating the following:

- 3.1 The occupancy assembly point.

- 3.2 The locations of fire hydrants.

- 3.3 The normal routes of fire department vehicle access.

4. Floor plans identifying the locations of the following:

- 4.1 Exits.

- 4.2 Primary evacuation routes.

- 4.3 Secondary evacuation routes.

- 4.4 Accessible egress routes.

- 4.5 Areas of refuge.

- 4.6 Manual fire alarm boxes.

- 4.7 Portable fire extinguishers.

- 4.8 Occupant-use hose stations.

- 4.9 Fire alarm annunciators and controls.

5. A list of major fire hazards associated with the normal use and occupancy of the premises, including maintenance and housekeeping procedures.

6. Identification and assignment of personnel responsible for maintenance of systems and equipment installed to prevent or control fires.

7. Identification and assignment of personnel responsible for maintenance, housekeeping and controlling fuel hazard sources.

404.2.3 Maintenance. Fire safety and evacuation plans shall be reviewed by the owner or occupant annually or more often, as necessitated by changes in staff assignments, occupancy, or the physical arrangement of the building.

404.2.4 Availability. Fire safety and evacuation plans shall be available in the workplace for reference and review by employees, and copies shall be furnished to the fire code official for review upon request.

404.3 Shelter-in-place and lockdown plans. Shelter-in-place and lockdown plans shall comply with the requirements of Sections 404.3.1 through 404.3.4.

404.3.1 Where required. A shelter-in-place and lockdown plan shall be prepared and maintained for all Group E occupancies.

EXCEPTION: Day cares not colocated on a Group E campus.

404.3.2 Contents. Shelter-in-place and lockdown plan contents shall be in accordance with Sections 404.3.2.1 and 404.3.2.2.

404.3.2.1 Shelter-in-place plans. Shelter-in-place plans shall include the following:

1. Identification of the procedures of initiating the shelter-in-place plan throughout the facility or campus.
2. Identification of prearranged alert and recall signals to notify all occupants.
3. Identification of procedures for reporting the facility is sheltering-in-place to the local emergency dispatch center.
4. A means of two-way communication between a central location and each secure area.
5. Identification of protective security measures.
6. Location of emergency supplies.
7. Accountability procedures for staff to report the presence or absence of occupants.
8. Identification of crisis response team members in accordance with the National Incident Management System.
9. Actions to be taken in the event of a fire or medical emergency while sheltering-in-place.

404.3.2.2 Lockdown plans. Lockdown plans shall include the following:

1. Identification of the procedures of initiating the lockdown plan throughout the facility or campus.
2. Identification of prearranged alert and recall signals to notify all occupants.
3. Identification of procedure for access to facility for emergency responders.
4. Identification of procedures for reporting the facility is in lockdown to the local emergency dispatch center.
5. A means of two-way communication between a central location and each secure area.
6. Identification of protective security measures.
7. Location of emergency supplies.
8. Accountability procedures for staff to report the presence or absence of occupants.
9. Identification of crisis response team members in accordance with the National Incident Management System.
10. Actions to be taken in the event of a fire or medical emergency while in lockdown.

404.3.3 Maintenance. Shelter-in-place and lockdown plans shall be reviewed by the owner or occupant annually or more often, as necessitated by changes in staff assignments, occupancy, or the physical arrangement of the building.

404.3.4 Availability. Shelter-in-place and lockdown plans shall be available in the workplace for reference and review by employees, and copies shall be furnished to the fire code official for review upon request.

Sections 404.4 and 404.5 are not adopted.

SECTION 405 EMERGENCY DRILLS

405.1 General. Emergency drills shall comply with the requirements of this section.

405.2 Emergency evacuation drills. Emergency evacuation drills complying with the provisions of this section shall be conducted at least annually in the occupancies listed in Section 404.2.1 or when required by the fire code official. Drills shall be designed in cooperation with the local authorities.

405.2.1 Frequency. Required emergency evacuation drills shall be held at the intervals specified in Table 405.2.1 or more frequently where necessary to familiarize all occupants with the drill procedure.

**TABLE 405.2.1
FIRE AND EVACUATION DRILL
FREQUENCY AND PARTICIPATION**

<u>GROUP OR OCCUPANCY</u>	<u>FREQUENCY</u>	<u>PARTICIPATION</u>
Group A	Quarterly	Employees
Group B ^c	Annually	Employees
Group E	Monthly ^{a,e}	All occupants
Group I	Quarterly on each shift	Employees ^b
Group R-1	Quarterly on each shift	Employees
Group R-2 ^f	Quarterly on each shift	Employees
Group R-2 ^d	Four annually	All occupants
High-rise buildings	Annually	Employees

- a. The frequency shall be allowed to be modified in accordance with Section 408.3.2.
- b. Fire and evacuation drills in residential care assisted living facilities shall include complete evacuation of the premises in accordance with Section 408.10.5. Where occupants receive habilitation or rehabilitation training, fire prevention and fire safety practices shall be included as part of the training program.
- c. Group B buildings having an occupant load of five hundred or more persons or more than one hundred persons above or below the lowest level of exit discharge.
- d. Applicable to Group R-2 college and university buildings in accordance with Section 408.3.
- e. Group E and day cares colocated on a Group E campus shall jointly perform at least six fire and evacuation drills per school year.
- f. Applicable to boarding homes, group homes, and residential treatment facilities licensed by the state of Washington.

405.2.2 Leadership. Responsibility for the planning and conduct of drills shall be assigned to competent persons designated to exercise leadership.

405.2.3 Time. Drills shall be held at unexpected times and under varying conditions to simulate the unusual conditions that occur in case of fire.

405.2.4 Recordkeeping. Records shall be maintained of required emergency evacuation drills and include the following information:

1. Identity of the person conducting the drill.
2. Date and time of the drill.

3. Notification method used.
4. Staff members on duty and participating.
5. Number of occupants evacuated.
6. Special conditions simulated.
7. Problems encountered and corrective action taken.
8. Weather conditions when occupants were evacuated.
9. Time required to accomplish complete evacuation.

405.2.5 Notification. Where required by the fire code official, prior notification of emergency evacuation drills shall be given to the fire code official.

405.2.6 Initiation. Where a fire alarm system is provided, emergency evacuation drills shall be initiated by activating the fire alarm system. 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.

EXCEPTION: Drills conducted between the hours of 9:00 p.m. and 6:00 a.m., in Group R-2 boarding homes, group homes and residential treatment facilities licensed by the state of Washington, are allowed to utilize a coded announcement.

405.2.7 Accountability. As building occupants arrive at the assembly point, efforts shall be made to determine if all occupants have been successfully evacuated or have been accounted for.

405.2.8 Recall and reentry. An electrically or mechanically operated signal used to recall occupants after an evacuation shall be separate and distinct from the signal used to initiate the evacuation. The recall signal initiation means shall be manually operated and under the control of the person in charge of the premises or the official in charge of the incident. No one shall reenter the premises until authorized to do so by the official in charge.

405.3 Shelter-in-place and lockdown drills. Shelter-in-place and lockdown drills complying with the provisions of this section shall be conducted in the occupancies listed in Section 404.3.1 or when required by the fire code official. Drills shall be designed in cooperation with local authorities.

405.3.1 Frequency. Shelter-in-place and lockdown drills required by this section shall each be held at least annually to familiarize all occupants with the emergency procedures. Group E and colocated day cares shall drill jointly.

405.3.2 Leadership. Responsibility for the planning and conduct of drills shall be assigned to competent persons designated to exercise leadership.

405.3.3 Time. Drills shall be held at unexpected times and under varying conditions to simulate the unusual conditions that occur in case of an emergency.

405.3.4 Recordkeeping. Records shall be maintained of required shelter-in-place and lockdown drills and include the following information:

1. Identity of the person conducting the drill.
2. Date and time of the drill.
3. Notification method used.
4. Staff members on duty and participating.

5. Number of occupants sheltered and unaccounted for.
6. Special conditions simulated.
7. Problems encountered and corrective actions taken.
8. Time required to accomplish complete sheltering.

405.3.5 Notification. Where required by the fire code official, prior notification of shelter-in-place and lockdown drills shall be given to appropriate emergency response agencies.

405.3.6 Signals. Alerting signals shall be separate and distinct from the fire alarm and other signals.

405.3.7 Accountability. Efforts shall be made to determine if all occupants have been successfully sheltered and accounted for.

SECTION 406 EMPLOYEE TRAINING AND RESPONSE PROCEDURES

406.1 General. Employees in the occupancies listed in Sections 404.2.1 and 404.3.1 shall be trained in the procedures described in their emergency plans. Training shall be based on these plans and as described in Sections 404.2.2 and 404.3.2.

406.3 Employee training program. Employees shall be trained in fire prevention, evacuation, fire safety, shelter-in-place, and lockdown in accordance with Sections 406.3.1 through 406.3.4.

406.3.4 Shelter-in-place and lockdown training. Employees shall be familiarized with the alert and recall signals, their assigned duties in the event of an alarm or emergency, communication system, location of emergency supplies, and the use of the incident notification and alert system.

SECTION 408 USE AND OCCUPANCY-RELATED REQUIREMENTS

408.2.1 Seating plan. The fire safety and evacuation plans for assembly occupancies shall include the information required by Section 404.2.2 and a detailed seating plan, occupant load, and occupant load limit. Deviations from the approved plans shall be allowed provided the occupant load limit for the occupancy is not exceeded and the aisles and exit accessways remain unobstructed.

408.3.2 Emergency evacuation drill deferral. In severe climates, the fire code official shall have the authority to modify the emergency evacuation drill frequency specified in Section 405.2.1.

408.5.4 Drill frequency. Emergency evacuation drills shall be conducted at least six times per year, two times per year on each shift. Twelve drills shall be conducted in the first year of operation. Drills are not required to comply with the time requirements of Section 405.2.3.

408.6 Group I-2 occupancies. Group I-2 occupancies shall comply with the requirements of Sections 408.6.1 and 408.6.2 and Sections 401 through 406. Drills are not required to comply with the time requirements of Section 405.2.3.

Section 408.10 is not adopted.

408.11.1 Lease plan. A lease plan shall be prepared for each covered mall building. The plan shall include the following information in addition to that required by Section 404.2.2.2:

1. Each occupancy, including identification of tenant.
2. Exits from each tenant space.
3. Fire protection features, including the following:
 - 3.1 Fire department connections.
 - 3.2 Fire command center.
 - 3.3 Smoke management system controls.
 - 3.4 Elevators and elevator controls.
 - 3.5 Hose valves outlets.
 - 3.6 Sprinkler and standpipe control valves.
 - 3.7 Automatic fire-extinguishing system areas.
 - 3.8 Automatic fire detector zones.
 - 3.9 Fire barriers.

408.11.1.1 Submittal. The lease plan shall be submitted to the fire code official, and shall be maintained on-site for immediate reference by responding fire service personnel.

408.11.1.2 Revisions. The lease plan shall be reviewed and revised annually or as often as necessary to keep them current. Modifications or changes in occupancies shall not be made without prior approval of the fire code official and building official.

AMENDATORY SECTION (Amending WSR 08-01-101, filed 12/18/07, effective 4/1/08)

WAC 51-54-0900 Chapter 9—Fire protection systems.

902.1 Definitions.

PORTABLE SCHOOL CLASSROOM. A structure, transportable in one or more sections, which requires a chassis to be transported, and is designed to be used as an educational space with or without a permanent foundation. The structure shall be trailerable and capable of being demounted and relocated to other locations as needs arise.

903.2.2 Group E. An automatic sprinkler system shall be provided for Group E Occupancies.

- EXCEPTIONS:
1. Portable school classrooms, provided aggregate area of any cluster or portion of a cluster of portable school classrooms does not exceed 5,000 square feet (1465 m²); and clusters of portable school classrooms shall be separated as required in Chapter 5 of the building code.
 2. Group E Occupancies with an occupant load of 50 or less.

903.2.7 Group R. An automatic sprinkler system installed in accordance with Section 903.3 shall be provided throughout all buildings with a Group R fire area.

- EXCEPTION:
- Group R-1 if all of the following conditions apply:
1. The Group R fire area is no more than 500 square feet and is used for recreational use only.
 2. The Group R fire area is on only one story.
 3. The Group R fire area does not include a basement.
 4. The Group R fire area is no closer than 30 feet from another structure.
 5. Cooking is not allowed within the Group R fire area.
 6. The Group R fire area has an occupant load of no more than 8.
 7. A hand held (portable) fire extinguisher is in every Group R fire area.

903.6.2 Nightclub. An automatic sprinkler system shall be provided throughout Group A-2 nightclubs as defined in this code. An existing nightclub constructed prior to July 1, 2006, shall be provided with automatic sprinklers not later than December 1, 2009.

907.2.9.1 Group R-2 boarding homes. A manual fire alarm system shall be installed in Group R-2 occupancies where the building contains a boarding home licensed by the state of Washington.

EXCEPTION: In boarding homes licensed by the state of Washington, manual fire alarm boxes in resident sleeping areas shall not be required at exits if located at all constantly attended staff locations, provided such staff locations are visible, continuously accessible, located on each floor, and positioned so no portion of the story exceeds a horizontal travel distance of 200 feet to a manual fire alarm box.

909.6.3 Elevator shaft pressurization. Where elevator shaft pressurization is required to comply with Exception 6 of IBC Section 707.14.1, the pressurization system shall comply with and be maintained in accordance with IBC 707.14.2.

909.6.3.1 Activation. The elevator shaft pressurization system shall be activated by a fire alarm system which shall include smoke detectors or other approved detectors located near the elevator shaft on each floor as approved by the building official and fire code official. If the building has a fire alarm panel, detectors shall be connected to, with power supplied by, the fire alarm panel.

909.6.3.2 Power system. The power source for the fire alarm system and the elevator shaft pressurization system shall be in accordance with Section 909.11.

AMENDATORY SECTION (Amending WSR 07-01-093, filed 12/19/06, effective 7/1/07)

WAC 51-54-1000 Chapter 10—Means of egress.

1008.1.2 Door swing. Egress doors shall be side-hinged swinging.

- EXCEPTIONS:
1. Private garages, office areas, factory and storage areas with an occupant load of 10 or less.
 2. Group I-3 Occupancies used as a place of detention.
 3. Critical or intensive care patient rooms within suites of health care facilities.
 4. Doors within or serving a single dwelling unit in Groups R-2 and R-3 as applicable in Section 101.2.
 5. In other than Group H Occupancies, revolving doors complying with Section 1008.1.3.1.
 6. In other than Group H Occupancies, horizontal sliding doors complying with Section 1008.1.3.3 are permitted in a means of egress.
 7. Power-operated doors in accordance with Section 1008.1.3.2.
 8. Doors serving a bathroom within an individual sleeping unit in Group R-1.
 9. In other than Group H Occupancies, manually operated horizontal sliding doors are permitted in a means of egress from spaces with an occupant load of 10 or less.

Doors shall swing in the direction of egress travel where serving an occupant load of 50 or more persons or a Group H Occupancy.

The opening force for interior side-swinging doors without closers shall not exceed a 5-pound (22 N) force. For other side-swinging, sliding, and folding doors, the door latch shall release when subjected to a 15-pound (67 N) force. The door shall be set in motion when subjected to a 30-pound (133 N) force. The door shall swing to a full-open position when subjected to a 15-pound (67 N) force. Forces shall be applied to the latch side.

1008.1.8.3 Locks and latches. Locks and latches shall be permitted to prevent operation of doors where any of the following exists:

1. Places of detention or restraint.
 2. In buildings in occupancy Group A having an occupant load of 300 or less, Group B, F, M and S, and in places of religious worship, the main exterior door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:

2.1 The locking device is readily distinguishable as locked.

2.2 A readily visible durable sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN BUILDING IS OCCUPIED. The sign shall be in letters 1 inch (25 mm) high on a contrasting background; and

2.3 The use of the key-operated locking device is revocable by the fire code official for due cause.

3. Where egress doors are used in pairs, approved automatic flush bolts shall be permitted to be used, provided that the door leaf having the automatic flush bolts has no door-knob or surface-mounted hardware.

4. Doors from individual dwelling or sleeping units of Group R occupancies having an occupant load of 10 or less are permitted to be equipped with a night latch, dead bolt or security chain, provided such devices are openable from the inside without the use of a key or tool.

5. Approved, listed locks without delayed egress shall be permitted in nursing homes or portions of nursing homes, and boarding homes licensed by the state of Washington, provided that:

5.1 The clinical needs of one or more patients require specialized security measures for their safety;

5.2 The doors unlock upon actuation of the automatic sprinkler systems or automatic fire detection system;

5.3 The doors unlock upon loss of electrical power controlling the lock or lock mechanism;

5.4 The lock shall be capable of being deactivated by a signal from a switch located in an approved location; and

5.5 There is a system, such as a keypad and code, in place that allows visitors, staff persons and appropriate residents to exit. Instructions for exiting shall be posted within six feet of the door.

1009.12 Stairways in individual dwelling units. Stairs or ladders within an individual dwelling unit used for access to areas of 200 square feet (18.6 m²) or less, and not containing the primary bathroom or kitchen, are exempt from the requirements of Section 1009.

1014.2.2 Group I-2. Habitable rooms or suites in Group I-2 Occupancies shall have an exit access door leading directly to a corridor.

EXCEPTION: Rooms with exit doors opening directly to the outside at ground level.

1014.2.2.1 Definition. For the purposes of this section, a suite is defined as a cluster of rooms or spaces sharing common circulation. Partitions within a suite are not required to have smoke or fire-resistance-rated construction unless required by another section of this Code.

1014.2.3 Suites in patient sleeping areas. Patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites if one of the following conditions is met:

1. The intervening room within the suite is not used as an exit access for more than eight patient beds.

2. The arrangement of the suite allows for direct and constant visual supervision by nursing personnel.

1014.2.3.1 Area. Suites of sleeping rooms shall not exceed 5,000 square feet (465 m²).

1014.2.3.2 Exit access. Any patient sleeping room, or any suite that includes patient sleeping rooms, of more than 1,000 square feet (93 m²) shall have at least two exit access doors remotely located from each other.

1014.2.3.3 Travel distance. The travel distance between any point in a suite of sleeping rooms and an exit access door of that suite shall not exceed 100 feet (30,480 mm).

1014.2.4 Suites in areas other than patient sleeping areas. Areas other than patient sleeping areas in Group I-2 Occupancies shall be permitted to be divided into suites.

1014.2.4.1 Area. Suites of rooms, other than patient rooms, shall not exceed 10,000 square feet (929 m²).

1014.2.4.2 Exit access. Any rooms or suite of rooms, other than patient sleeping rooms, of more than 2,500 square feet (232 m²) shall have at least two exit access doors remotely located from each other.

1014.2.4.3 One intervening room. For rooms other than patient sleeping rooms, suites of rooms are permitted to have one intervening room if the travel distance within the suite is not greater than 100 feet (30,480 mm).

1014.2.4.4 Two intervening rooms. For rooms other than patient sleeping rooms located within a suite, exit access travel from within the suite shall be permitted through two intervening rooms where the travel distance to the exit access door is not greater than 50 feet (15,240 mm).

1014.2.5 Travel distance. The travel distance between any point in a Group I-2 Occupancy patient room and an exit access door in that room shall not exceed 50 feet (15,240 mm).

1014.2.6 Separation. Suites in Group I-2 Occupancies shall be separated from other portions of the building by a smoke partition complying with Section 710.

1015.1 ((HFC 1015.1)) Exits or exit access doorways from spaces. Two exits or exit access doorways from any space shall be provided where one of the following conditions exists:

1. The occupant load of the space exceeds one of the values in Table 1015.1.

EXCEPTION: One means of egress is permitted within and from dwelling units with a maximum occupant load of 20 where the dwelling unit is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

2. The common path of egress travel exceeds one of the limitations of Section 1014.3.

3. Where required by Sections 1015.3, 1015.4, 1015.5, 1015.6 or 1015.6.1.

EXCEPTION: Group I-2 Occupancies shall comply with Section 1014.2.2.

**TABLE 1015.1 ((HFC 1015.1))
SPACES WITH ONE MEANS OF EGRESS**

OCCUPANCY	MAXIMUM OCCUPANT LOAD
A, B, E ^a , F, M, U	49
H-1, H-2, H-3	3
H-4, H-5, I-1, I-3, I-4, R	10
S	29

a. Day care maximum occupant load is 10.

1015.1.1 ((HFC 1015.1.1)) Three or more exits or exit access doorways. Three exits or exit access doorways shall be provided from any space with an occupant load of 501-1,000. Four exits or exit access doorways shall be provided from any space with an occupant load greater than 1,000.

~~((1017.1 Construction. Corridors shall be fire resistance rated in accordance with Table 1017.1. The corridor walls required to be fire resistance rated shall comply with Section 708 for fire partitions.~~

EXCEPTIONS:

1. A fire resistance rating is not required for corridors in an occupancy in Group E where each room that is used for instruction has at least one door directly to the exterior and rooms for assembly purposes have at least one-half of the required means of egress doors opening directly to the exterior. Exterior doors specified in this exception are required to be at ground level.
2. A fire resistance rating is not required for corridors contained within a dwelling or sleeping unit in an occupancy in Group R.
3. A fire resistance rating is not required for corridors in open parking garages.
4. A fire resistance rating is not required for corridors in an occupancy in Group B which is a space requiring only a single means of egress complying with Section 1015.1.
5. In Group R-2 boarding homes and residential treatment facilities licensed by Washington state, rest areas constructed as required for corridors shall be allowed to be open to the corridor provided:
 - 5.1 The area does not exceed 150 square feet, excluding the corridor width;
 - 5.2 The floor is separated into at least two compartments complying with Section 407.4;
 - 5.3 Combustible furnishings located within the rest area shall be in accordance with the International Fire Code, Section 805;
 - 5.4 Emergency means of egress lighting is provided as required by Section 1006 to illuminate the area.

~~**1017.6 Subdivision of building spaces—Smoke barriers.** Smoke barriers complying with Section 709 shall be installed on floors other than the level of exit discharge of a Group R-2 boarding home or residential treatment facility licensed by Washington state, where a fire resistance rated corridor is required by Table 1017.1 The smoke barrier shall subdivide the floor into at least two compartments complying with Section 407.4.)~~

1019.1 ((HFC 1019.1)) Exits from stories. All spaces within each story shall have access to the minimum number of exits as specified in Table 1019.1 based on the occupant load of the story, except as modified in Section 1019.2. For the purposes of this chapter, occupied roofs shall be provided with exits as required for stories. The required number of exits from any story, including basements, shall be maintained until arrival at grade or the public way.

EXCEPTION: One means of egress is permitted within and from dwelling units with a maximum occupant load of 20 where the dwelling unit is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1.

**TABLE 1019.1 ((HFC 1019.1))
MINIMUM NUMBER OF EXITS FOR OCCUPANT LOAD**

OCCUPANT LOAD (persons per story)	MINIMUM NUMBER OF EXITS (per story)
1-500	2
501-1,000	3
More than 1,000	4

1019.2 ((HFC 1019.2)) Buildings with one exit. Only one exit shall be required in buildings as specified below:

1. Buildings meeting the limitations of Table 1019.2, provided the building has not more than one level below the first story above grade plane.
2. Buildings of Group R-3 Occupancy.
3. Single-level buildings with occupied spaces at the level of exit discharge provided each space complies with Section 1015.1 as a space with one exit or exit access doorway.

**TABLE 1019.2 ((HFC 1019.2))
BUILDINGS WITH ONE EXIT**

OCCUPANCY	MAXIMUM HEIGHT OF BUILDING ABOVE GRADE PLANE	MAXIMUM OCCUPANTS (OR DWELLING UNITS) PER FLOOR AND TRAVEL DISTANCE
A, B ^d , E ^e , F, M, U	1 Story	49 occupants and 75 feet travel distance
H-2, H-3	1 Story	3 occupants and 25 feet travel distance
H-4, H-5, I, R	1 Story	10 occupants and 75 feet travel distance
S ^a	1 Story	29 occupants and 100 feet travel distance

**TABLE 1019.2 ((~~IFC 1019.2~~))
BUILDINGS WITH ONE EXIT**

OCCUPANCY	MAXIMUM HEIGHT OF BUILDING ABOVE GRADE PLANE	MAXIMUM OCCUPANTS (OR DWELLING UNITS) PER FLOOR AND TRAVEL DISTANCE
B ^b , F, M, S ^a	2 Stories	30 occupants and 75 feet travel distance
R-2	2 Stories ^c	4 dwelling units and 50 feet travel distance

For SI: 1 foot = 304.8 mm.

- a. For the required number of exits for open parking structures, see Section 1019.1.1.
- b. For the required number of exits for air traffic control towers, see Section 412.1.
- c. Buildings classified as Group R-2 equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and provided with emergency escape and rescue openings in accordance with Section 1026 shall have a maximum height of three stories above grade plane.
- d. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 with an occupancy in Group B shall have a maximum travel distance of 100 feet.
- e. Day care maximum occupant load is 10.

**WSR 09-04-031
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed January 29, 2009, 12:14 p.m., effective March 1, 2009]

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

Purpose: The purpose of the proposed rule is to update rules to follow the new procedures that were recently modified.

Citation of Existing Rules Affected by this Order: Amending WAC 392-300-070.

Statutory Authority for Adoption: RCW 28A.400.303.

Adopted under notice filed as WSR 09-01-017 on December 5, 2008.

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

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

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

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

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

Date Adopted: January 28, 2009.

Randy I. Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 00-21-077, filed 10/17/00, effective 11/17/00)

WAC 392-300-070 Private school fingerprint process. Fingerprinting of subject individuals employed by private schools.

- (1) Definitions of private school terms.
- (a) "Subject individual" means: Any person, certified or classified employed by a private school in a position having regularly scheduled, unsupervised access to children;
- (b) "Regularly scheduled, unsupervised access to children" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision;
- (c) "Fee" means the total charges assessed to process fingerprint cards through the Washington state patrol and Federal Bureau of Investigation records check;
- (d) "Information to be required" means all information requested by the office of the superintendent of public instruction (~~including the following:~~
 - (A) ~~Completed fingerprint card to be mailed, with the fee, to the Washington state patrol;~~
 - (B) ~~Completed information form to be mailed to the superintendent of public instruction);~~
- (e) "Convictions of crimes" means, notwithstanding any other statutes or Washington administrative rule, conviction of a crime listed in WAC 180-86-013, or being under indictment for any of the crimes listed in WAC 180-86-013;
- (f) "Private school" means a school that is approved with the Washington state board of education under chapter 180-90 WAC.
- (2) The office of the superintendent of public instruction shall request criminal information from the Washington state patrol and the Federal Bureau of Investigation in the manner prescribed by law. A fee shall be charged for such services.
- (3) Upon the private school's submission of the completed fingerprint cards and information form, the office of the superintendent of public instruction shall review the criminal records of subject individual.
- (4) The office of the superintendent of public instruction shall not provide copies of criminal records to anyone except as provided by law. The private school will receive a copy of subject individual's record of arrest and prosecution (RAP) sheet from the Washington state patrol. The subject individual will be sent a copy of his or her personal criminal records.
- (5) For the Federal Bureau of Investigation portion, the superintendent of public instruction or designee shall notify the private school if the subject individual has been convicted of a crime listed in WAC 180-86-013, or the substantial equivalent of any of those crimes if the conviction occurred in another jurisdiction or in Washington under a different statutory name or number; if the subject individual falsified information on the application form; or if the subject individual has no conviction of crimes as listed in WAC 180-86-013.

(6) The office of the superintendent of public instruction shall assure the destruction of all fingerprint cards, facsimiles or other materials from which fingerprints can be reproduced used by Washington state patrol or Federal Bureau of Investigation.

(7) Only cards and forms approved by the office of the superintendent of public instruction will be accepted. The office of the superintendent of public instruction will hold fingerprint cards on file and notify the private school and subject individual when there is no fee, an incorrect fee, when necessary information is missing from the fingerprint cards, or the information form was not received.

(8) The office of the superintendent of public instruction will return to the private school any fingerprint cards that the Washington state patrol or Federal Bureau of Investigation rejects for poor quality prints. The private school will be responsible for having the subject individual submit additional prints as required.

(9) The superintendent's office shall maintain a record of all properly submitted fingerprint cards in the current records data base for a period of at least two years. The record shall include at least the following:

- (a) Card sequence number;
- (b) Name of private school submitting the cards;
- (c) Date cards received at the Washington state patrol;
- (d) Date letter regarding incomplete card was sent to the subject individual with a copy to the private school (only if applicable);
- (e) Date Washington state patrol received fingerprint cards;
- (f) Date private school was notified of Washington state patrol criminal history record or clearance;
- (g) Date private school was notified of Federal Bureau of Investigation record or lack of record.

WSR 09-04-033

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed January 29, 2009, 1:24 p.m., effective March 1, 2009]

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

Purpose: WAC 458-12-140, this rule explains when the boundaries of a taxing district must be established for the purpose of levying property taxes. It also explains the requirement that county assessors must transmit taxing district boundary information to the property tax division of the department of revenue when there is a change in taxing district boundaries or when a new taxing district is established, and provides guidance to assessors in designating tax code areas to be used in the listing of real and personal property.

This rule revision is to incorporate provisions of ESSB 5836 (chapter 285, Laws of 2007) and ESB 6663 (chapter 86, Laws of 2008). ESSB 5836 changes the date that taxing district boundaries are established for property tax purposes to August 1 for all taxing jurisdictions. ESB 6663 revised RCW 84.09.030 to correct and clarify its provisions and to remove obsolete sections.

Citation of Existing Rules Affected by this Order:
Amending WAC 458-12-140 Taxing district boundaries—
Designation of tax code area.

Statutory Authority for Adoption: RCW 84.08.010.

Adopted under notice filed as WSR 08-23-070 on November 18, 2008.

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: January 29, 2009.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-14-011, filed 6/20/02, effective 7/21/02)

WAC 458-12-140 Taxing district boundaries—Designation of tax code area. (1) **Introduction.** This rule explains when the boundaries of a taxing district must be established for the purpose of levying property taxes. No property tax levy can be made for a given year on behalf of any taxing district whose boundaries are not established as of the dates provided in this rule. This rule also explains that county assessors are required to transmit taxing district boundary information to the property tax division of the department of revenue (department) when there is a change in taxing district boundaries or when a new taxing district is established. Lastly, this rule provides guidance to assessors in designating tax code areas to be used in the listing of real and personal property.

For purposes of this rule, the definition of "taxing district" is the same as in WAC 458-19-005.

(2)(a) **Establishment of taxing district boundaries.** Except as ~~((follows))~~ set forth in (b) and (c) of this subsection, for the purpose of property taxation and the levy of property taxes, the boundaries of counties, cities, and all other taxing districts ~~((, for purposes of property taxation and the levy of property taxes,))~~ must be the established official boundaries of the taxing districts existing on ~~((March))~~ August 1st of the year in which the property tax levy is made.

~~((a))~~ **Boundaries of certain newly incorporated taxing districts.** ~~The official boundaries of certain newly incorporated taxing districts will be established at a different date in the year in which the incorporation occurred as follows:~~

~~(i) **Newly incorporated cities.** Boundaries for a newly incorporated city must be the established official boundaries existing on March 31st of the year in which the initial prop-~~

erty tax levy is made. The boundaries of a road district, library district, or fire protection district or districts, that include any portion of the area that was incorporated within the boundaries of a newly incorporated city, must be altered as of March 31st to exclude this area if the budget for the newly incorporated city is filed as provided in RCW 84.52.020 and the levy request of the newly incorporated city is made in accordance with RCW 84.52.070. Whenever a proposed city incorporation is on the March special election ballot, the county auditor must submit the legal description of the proposed city to the department on or before March 1st.

~~((ii))~~ **(b) Newly incorporated port districts and regional fire protection service authorities.** The boundaries for a newly incorporated port district or regional fire protection service authority must be the established official boundaries existing on October 1st of the year in which the initial property tax levy is made if the boundaries of the newly incorporated port district or regional fire protection service authority are coterminous with the boundaries of another taxing district or districts, as they existed on ~~(March)~~ August 1st of that year.

~~((iii))~~ **Newly incorporated water sewer districts.** Boundaries for a newly incorporated water sewer district must be the established official boundaries existing on June 15th of the year in which the proposition under RCW 57.04.050 is approved authorizing a water sewer district excess levy.

~~((iv))~~ **Other newly incorporated taxing districts.** Boundaries of any other newly incorporated taxing district must be the established official boundaries existing on June 1st of the year in which the initial property tax levy is made if the taxing district has boundaries coterminous with the boundaries of another taxing district, as they existed on March 1st of that year.

~~((b))~~ **(c) Mosquito control districts.** Boundaries of a mosquito control district must be the established official boundary existing on September 1st of the year in which the property tax levy is made.

~~((e))~~ **Addition or removal of property from a taxing district after March 1st.** Except as otherwise provided in this rule, the boundaries of a taxing district will be established on June 1st if territory with boundaries coterminous with the boundaries of another taxing district as they existed on March 1st of that year has been added to, or removed from, the taxing district after March 1st of that year. The boundaries of a road district, library district, or fire protection district or districts, that include any portion of the area that was annexed to a city or town within its boundaries, must be altered as of June 1st to exclude this area.)

(3) Withdrawal of certain areas of a library district, metropolitan park district, fire protection district, or public hospital district. Notwithstanding the provisions of RCW 84.09.030 and subsection (2) of this ~~(rule)~~ section, the boundaries of a library district, metropolitan park district, fire protection district, or public hospital district, that withdraws an area from its boundaries under RCW 27.12.355, 35.61.360, 52.04.056, or 70.44.235, which area has boundaries that are coterminous with the boundaries of a tax code area, will be established as of October 1st in the year in which the area is withdrawn.

(4) School district boundary changes. Each school district affected by a transfer of territory from one school district to another school district under chapter 28A.315 RCW must retain its preexisting boundaries for the purpose of the collection of excess tax levies authorized under RCW 84.52.053 before the effective date of the transfer. The preexisting boundaries must be retained for such tax collection years and for such excess tax levies as the regional committee on school district organization (committee) may approve. The committee may order that the transferred territory will either be subject to or relieved of such excess levies. For the purpose of all other excess tax levies previously authorized under chapter 84.52 RCW and all excess tax levies authorized under RCW 84.52.053 subsequent to the effective date of a transfer of territory, the boundaries of the affected school districts must be modified to recognize the transfer of territory subject to RCW 84.09.030 and subsection (2) of this ~~(rule)~~ section.

(5) Copy of instrument setting forth taxing district boundary changes must be provided to the department. Any instrument setting forth the official boundaries of a newly established taxing district, or setting forth any change in taxing district boundaries, that is required by law to be filed in the office of the county auditor or other county official must be filed in triplicate. The county official with whom the instrument is filed must forward two copies of of the instrument to the county assessor. The assessor must provide one copy of the instrument, together with a copy of a plat showing the new boundaries, to the property tax division of the department of revenue within thirty days of the establishment of the boundaries of such taxing district.

(6) Designation of tax code areas. Assessors must designate the name or number of each tax code area in which each description of real or personal property is located and assessed. The tax code area designation must be entered opposite each assessment in a column provided for that purpose in the detail and assessment list.

For purposes of this rule, the definition of "tax code area" is the same as in WAC 458-19-005.

(a) Personal property. Assessors must designate the tax code area on all listings of personal property in accordance with the applicable rules controlling "taxable situs" as of the assessment date.

(b) Property located in more than one tax code area. When real and personal property of any person is located and assessable in more than one tax code area, a separate listing must be made on the detail and assessment list and identified by the name or number of the tax code area in which each portion of the property or properties is located.

WSR 09-04-034

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed January 29, 2009, 1:26 p.m., effective March 1, 2009]

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

Purpose: WAC 458-15-100 describes the availability of an appeal from a determination of eligibility of special valuation. This rule is amended to update citations and other statutory references.

Citation of Existing Rules Affected by this Order:
Amending WAC 458-15-100 Appeals.

Statutory Authority for Adoption: RCW 84.08.010(2) and 84.08.070.

Adopted under notice filed as WSR 08-23-069 on November 18, 2008.

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

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

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

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

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

Date Adopted: January 29, 2009.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending Order PT 87-2, filed 2/13/87)

WAC 458-15-100 Appeals. (1) The owner may appeal a determination of eligibility of special valuation by a local review board to superior court under RCW (~~(34.04.130)~~) 34.05.510 through 34.05.598 or to the legislative authority if local ordinances so provide.

(2) Disqualification or removal of the property from special valuation may be appealed to the county board of equalization (~~(within thirty days of being notified of the disqualification or removal, or July 15th of the current year, whichever is later)~~) in accordance with RCW 84.40.038.

WSR 09-04-035

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed January 29, 2009, 1:31 p.m., effective March 1, 2009]

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

Purpose: WAC 458-07-030 defines the phrase "true and fair value," and explains how an assessor should determine true and fair value when valuing property. This rule is revised to conform to HB 1450 (chapter 301, Laws of 2007). HB 1450 exempts rental properties for very low-income households owned or used by nonprofit entities if the households have received financial assistance from:

- A federal program administered by a city or county government; or
- Surcharges authorized by RCW 36.22.178 and 36.22.-179 and any of the surcharges authorized in chapter 43.185C RCW.

HB 1450 also amended RCW 84.40.030 to specify that the highest and best use of a parcel cannot be in conflict with zoning or land use or planning laws or other governmental restrictions. Further, for property assessments, consideration the assessor is directed/should be given to any agreement with a government agency that restricts rental income, appreciation, and liquidity, and to the impact of government restrictions on operating expenses and on ownership rights.

Citation of Existing Rules Affected by this Order:
Amending WAC 458-07-030 True and fair value—Defined—Criteria—Highest and best use—Data from property owner.

Statutory Authority for Adoption: RCW 84.08.070.

Adopted under notice filed as WSR 08-23-067 on November 18, 2008.

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: January 29, 2009.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-01-043, filed 12/7/99, effective 1/7/00)

WAC 458-07-030 True and fair value—Defined—Criteria—Highest and best use—Data from property owner. (1) **True and fair value—Defined.** All property must be valued and assessed at one hundred percent of true and fair value unless otherwise provided by law. "True and fair value" means market value and is the amount of money a buyer of property willing but not obligated to buy would pay a seller of property willing but not obligated to sell, taking into consideration all uses to which the property is adapted and might in reason be applied.

(2) **True and fair value—Criteria.** In determining true and fair value, the assessor may use the sales (market data) approach, the cost approach, or the income approach, or a combination of the three approaches to value. The provisions of (b) and (c) of this subsection, the cost and income approaches, respectively, shall be the dominant factors considered in determining true and fair value in cases of property of a complex nature, or property being used under terms of a franchise granted by a public agency, or property being operated as a public utility, or property not having a record of sale within five years and not having a significant number of sales of comparable property in the general area. When the cost or

income approach is used, the assessor shall provide the property owner, upon request, with the factors used in arriving at the value determined, subject to any lawful restrictions on the disclosure of confidential or privileged tax information.

(a) **Sales.** Sales of the property being appraised or sales of comparable properties that occurred within five years of January 1st of the assessment year are valid indicators of true and fair value. In valuing property, the following shall be considered:

(i) Any governmental policies or practices, regulations or restrictions in effect at the time of appraisal that affect the use of property, including a comprehensive land use plan, developmental regulations under the Growth Management Act (chapter 36.70A RCW), and zoning ordinances. No appraisal may assume a land usage or highest and best use not permitted under existing zoning or land use planning ordinances or statutes or other government restrictions, unless such usage is otherwise allowed by law;

(ii) Physical and environmental influences that affect the use of the property;

(iii) When a sale involves a real estate contract, the extent, if any, to which the down payment, interest rate, or other financing terms may have increased the selling price;

(iv) The extent to which the sale of a comparable property actually represents the general effective market demand for property of that type, in the geographical area in which the property is located; and

(v) Sales involving deed releases or similar seller-developer financing arrangements shall not be used as sales of comparable property in determining value.

(b) **Cost.** In determining true and fair value, consideration may be given to cost, cost less depreciation, or reconstruction cost less depreciation.

(c) **Income.** In determining true and fair value, consideration may be given to the capitalization of income that would be derived from prudent use of the property, as limited by law or ordinance. Consideration should be given to any agreement between an owner of rental housing and any government agency that restricts rental income, appreciation, and liquidity and to the impact of government restrictions on operating expenses and on ownership rights in general of such housing.

(d) **Manuals.** Appraisal manuals or guides published or approved by the department of revenue shall be considered in conjunction with the three approaches to value. The data contained in these manuals or guides must be analyzed and adjusted by the assessor to consider time, location, and any other applicable factors to properly reflect market value in the county.

(3) **True and fair value—Highest and best use.** Unless specifically provided otherwise by statute, all property shall be valued on the basis of its highest and best use for assessment purposes. Highest and best use is the most profitable, likely use to which a property can be put. It is the use which will yield the highest return on the owner's investment. Any reasonable use to which the property may be put may be taken into consideration and if it is peculiarly adapted to some particular use, that fact may be taken into consideration. Uses that are within the realm of possibility, but not

reasonably probable of occurrence, shall not be considered in valuing property at its highest and best use.

(4) **Valuation of land and improvements.** In valuing any lot, tract, or parcel of real property, the assessor must determine the true and fair value of the land, excluding the value of any structures on the land and excluding the value of any growing crops. The assessor must also determine the true and fair value of any structure on the land. The total value of the land and the structures must not exceed one hundred percent of the true and fair value of the total property as it exists at the time of appraisal.

(5) **Valuation data from property owners.** The assessor may require property owners to submit pertinent data regarding property in their control, including sales data, costs and characteristics of improvements, and other facts necessary for appraisal of the property.

WSR 09-04-036

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed January 29, 2009, 1:33 p.m., effective March 1, 2009]

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

Purpose: WAC 458-16-560, this rule explains the exemption that may be claimed by nonprofit entities providing rental housing or lots for mobile homes within a mobile home park for occupancy by a very low-income household in accordance with RCW 84.36.560.

This rule is revised to incorporate provisions of HB 1450 (chapter 301, Laws of 2007). HB 1450 amended RCW 84.36.560 by adding a federal program administered by a city or county government and document recording fee surcharges imposed for the purpose of affordable housing development or to reduce homelessness to the sources of financial assistance that rental properties for very low-income households owned or used by nonprofit entities may receive and be exempt from property taxes.

Citation of Existing Rules Affected by this Order: Amending WAC 458-16-560 Housing for very low-income households.

Statutory Authority for Adoption: RCW 84.36.865 and 84.36.560.

Adopted under notice filed as WSR 08-23-068 on November 18, 2008.

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 Mak-

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

Date Adopted: January 29, 2009.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-15-020, filed 7/8/02, effective 8/8/02)

WAC 458-16-560 Housing for very low-income households. (1) **Introduction.** This rule explains the exemption that may be claimed by nonprofit entities providing rental housing or lots for mobile homes within a mobile home park for occupancy by a very low-income household in accordance with RCW 84.36.560.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) "CTED" means the state department of community, trade, and economic development or its successor agency;

(b) "Department" means the state department of revenue;

(c) "Group home" means a single-family dwelling financed, in whole or in part, by the state department of community, trade, and economic development or by an affordable housing levy under RCW 84.52.105. A "group home" has multiple units occupied on a twenty-four-hour basis by persons who are not related by birth or marriage and who are not dependent upon each other financially. Residents of a "group home" typically receive financial assistance from the federal or state government, such as Social Security benefits or supplementary security insurance;

(d) "Mobile home lot" or "mobile home park" means the same as these terms are defined in RCW 59.20.030;

(e) "Occupied dwelling unit" means a living unit that is occupied by an individual or household as of December 31st of the first assessment year the rental housing or mobile home park becomes operational or is occupied by an individual or household on January 1st of each subsequent assessment year in which the claim for exemption is submitted;

(f) "Rental housing" means a residential housing facility or group home that is occupied, but not owned, by very low-income households;

(g) "Very low-income household" means a single person, family, or unrelated persons living together whose income is at or below fifty percent of the median income adjusted for family size as most recently determined by the federal department of housing and urban development for the county in which the rental housing or mobile home park is located. The median income level is that which is in effect as of January 1st of the year the application for exemption is submitted; and

(h) "Nonprofit entity" means a:

(i) Nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended;

(ii) Limited partnership in which a general partner is a nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended, a public corporation established under RCW 35.21.660, 35.21.670, or 35.21.730, a housing authority created under RCW 35.82.030 or 35.82.300, or a

housing authority meeting the definition in RCW 35.82.210 (2)(a); or

(iii) Limited liability company in which a managing member is a nonprofit as defined in RCW 84.36.800 that is exempt from income tax under section 501(c) of the federal Internal Revenue Code, as amended, a public corporation established under RCW 35.21.660, 35.21.670, or 35.21.730, a housing authority established under RCW 35.82.030 or 35.82.300, or a housing authority meeting the definition in RCW 35.82.210 (2)(a).

(3) **Total exemption - Requirements for rental housing or lot(s) for a mobile home.** Real and personal property is exempt from all property taxes if:

(a) The property is owned or used by a nonprofit entity in providing rental housing for very low-income households or used to provide a lot of land upon which a mobile home for a very low-income household will be placed in a mobile home park;

(b) The benefit of the exemption is received by the nonprofit entity. That is, if the property is leased to or used by, but not owned by, a nonprofit entity, the reduction in property taxes due to the exemption is passed on to the nonprofit user either through a reduction in rent, reimbursement of rent, or property tax paid;

(c) At least seventy-five percent of the occupied dwelling units in the rental housing or lots in the mobile home park are occupied by very low-income households; and

(d) The rental housing or lots in the mobile home park are insured, financed, or assisted, in whole or in part, through one or more of the following sources:

(i) A federal or state housing program administered by CTED; ~~((or))~~

(ii) A federal housing program administered by a city or county government;

(iii) An affordable housing levy authorized under RCW 84.52.105; or

(iv) The surcharges authorized by RCW 36.22.178 and 36.22.179 and any of the surcharges authorized in chapter 43.185C RCW.

(4) **Partial exemption - Determination of the amount of exemption.** If less than seventy-five percent of the occupied dwelling units within the rental housing or lots in the mobile home park are occupied by very low-income households, the rental housing or mobile home park is eligible for a partial exemption on the real property and a total exemption on the housing's or park's personal property. The property must be owned or used by a nonprofit entity in providing rental housing for very low-income households or used to provide a lot upon which a mobile home for a very low-income household will be placed in a mobile home park.

(a) A partial exemption will be allowed for each dwelling unit in the rental housing or for each lot in the mobile home park occupied by a very low-income household; and

(b) The amount of the real property exemption will be calculated by multiplying the assessed value of the property reasonably necessary to provide the rental housing or to operate the mobile home park by a fraction. The formula for determining the fraction is as follows:

(i) The numerator of the fraction is the number of dwelling units or lots occupied by very low-income households as

of December 31st of the first assessment year in which the rental housing facility or mobile home park becomes operational or on January 1st of each subsequent assessment year in which the claim for exemption is submitted; and

(ii) The denominator of the fraction is the total number of dwelling units or lots occupied as of December 31st of the first assessment year in which the rental housing facility or mobile home park becomes operational or on January 1st of each subsequent assessment year in which the claim for exemption is submitted.

(5) **Exempt facility with only three or less units or mobile home park with only three or less lots with vacancy on January 1st - Size of exemption.** If the rental housing or mobile home park is comprised of *only* three or less dwelling units or lots and there are any unoccupied dwelling units or lots on January 1st after receipt of a property tax exemption, the department will determine the size of the exemption based on the number of occupied dwelling units or lots on May 1st of the assessment year in which a claim for exemption is submitted. For example, if one-half of an exempt duplex is vacant on January 1st, which is the duplex's third year of operation, the department will determine the size of the exemption based on the number of occupied units on May 1st of that assessment year.

(6) **Facilities with ten or less units or mobile home parks with ten or less lots - Allowance for income growth.** Because the occupants of rental housing and mobile home parks granted an exemption under RCW 84.36.560 are generally attempting to improve their financial situation, the income of the household is likely to fluctuate during the time they occupy the housing unit or lot in the mobile home park.

(a) In an attempt to assist these households in improving their circumstances, the exemption will continue for specific rental units or mobile home lots when the household's income rises above fifty percent of median income under the following conditions:

(i) The currently exempt rental housing unit in a facility with ten units or fewer or mobile home lot in a mobile home park with ten lots or fewer was occupied by a very low-income household at the time the exemption was granted;

(ii) The household's income rises above fifty percent of the median income but remains at or below eighty percent of median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located; and

(iii) The rental housing or mobile home park continues to meet the certification requirements of a very low-income housing program (~~administered by CTED or the affordable housing levy under RCW 84.52.105~~) listed in subsection (3)(d) of this section; and

(b) If a dwelling unit or mobile home lot receiving an exemption under this exception becomes vacant and is subsequently rented, the income of the household moving into the unit or onto the mobile home lot must be at or below fifty percent of the median income adjusted for family size as most recently determined by the federal Department of Housing and Urban Development for the county in which the rental housing or mobile home park is located to remain exempt from property tax.

(c) Example. If a unit is occupied by a household whose income rises up to sixty percent of median income, the unit will retain its exempt status as long as the household continues to occupy the unit and the household's income remains below eighty percent of median income. If the residents of this unit move out on June 1st and the unit is subsequently rented to a household whose income is at or below fifty percent of median income, the unit will retain its exempt status. Conversely, if the unit is rented to a household whose income is above fifty percent of median income, the unit becomes ineligible for exemption as of January 1st of the following year.

(7) **Group homes - Income of residents.** The income of the individual residents of a group home, as defined in subsection (2) of this rule, will not be combined so as to constitute the income of a single household. Each resident will be considered an independent household occupying a separate dwelling unit. In other words, the income of the residents of a group home will not be aggregated when the department determines the size of the exemption the group home is entitled to receive. For example, if there are six residents in a group home, the department will process the application for exemption as if there were six separate dwelling units and determine the size of the exemption on that basis. If three of the residents have income at or below fifty percent of median income, the home will receive a fifty percent reduction in the property taxes due on the home.

(8) **Eligibility of property unoccupied at the time of initial application or at any time after the exemption is granted.** Property that is unoccupied at the time of application or on January 1 of any subsequent year is still eligible for exemption if certain conditions are met. If the property is currently taxable, it may receive exempt status as of the assessment year in which the claim for exemption is submitted. If the property is currently exempt but the exempt use will cease or will be reduced because of renovations or repairs, the exempt status of the property may be continued for taxes payable the next year. The following conditions must be satisfied to receive an exemption under either of these circumstances:

(a) The rental housing or mobile home park will be used for the exempt purpose stated in RCW 84.36.560 within two assessment years;

(b) The nonprofit entity applying for or receiving the exemption has obtained a commitment for financing, in whole or in part, to acquire, construct, remodel, renovate, or otherwise convert the property to provide housing for very low-income households from(=

~~(i) A federal or state housing program administered by CTED; or~~

~~(ii) An affordable housing levy authorized under RCW 84.52.105)) one or more of the sources listed in subsection (3)(d) of this section;~~

(c) The nonprofit entity has manifested its intent in writing to construct, remodel, renovate, or otherwise convert the rental housing or mobile home park to housing for very low-income households; and

(d) If less than the entire facility or mobile home park will be used to provide rental housing or mobile home lots for very low-income households, only that portion that will be so used is entitled to an exemption under this subsection.

(9) **Exclusive use required.** To be exempt under RCW 84.36.560, the property must be exclusively used to provide rental housing or mobile home lots for very low-income households, except as provided in RCW 84.36.805.

(10) **Payments in-lieu of property tax will be accepted.** Any nonprofit entity that qualifies for a property tax exemption under RCW 84.36.560 may agree to make payments to the city, county, or other political subdivision for the improvements, services, and facilities furnished by the city, county, or political subdivision for the benefit of the exempt rental housing facility or mobile home lots. However, these payments may not exceed the amount of property tax last levied as the annual tax by the city, county, or political subdivision upon the property prior to the time the exemption was effective.

WSR 09-04-041

PERMANENT RULES

DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed January 30, 2009, 9:04 a.m., effective March 2, 2009]

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

Purpose: The purpose is to repeal WAC 246-808-640 because it conflicts with RCW 18.25.005 and WAC 246-808-505.

RCW 18.25.005 defines the scope of practice for chiropractic. In 2002, the law was amended to include dietary advice and recommendation of nutritional supplementation. However, WAC 246-808-640 was never updated. This rule conflicts with the law because the rule prohibits the use of herbs. In addition, it also prohibits sputum, hair, and urine analysis as well as blood samples. All these procedures can be ordered as part of a chiropractic physical exam.

In 1991, the chiropractic disciplinary board began maintaining the classification of chiropractic procedures and instrumentation list (list) of approved and nonapproved instruments and procedures as directed by the law and defined in WAC 246-807-410.

In 1995, the chiropractic disciplinary board and licensing board merged creating the commission, as chapter 246-808 WAC.

With the creation of the commission in 1995, the list became WAC 246-808-505. The list primarily focused on procedures and instruments that are within the scope of practice.

The commission also adopted WAC 246-808-640 Scope of practice. This rule focused on instruments and procedures that are not within the scope of practice.

WAC 246-808-640 is inaccurate and unnecessary because RCW 18.25.005 and WAC 246-808-505 accurately cover the chiropractic scope of practice. Therefore, WAC 246-808-640 needs to be repealed.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-808-640.

Statutory Authority for Adoption: RCW 18.25.0171.

Adopted under notice filed as WSR 08-19-051 on September 11, 2008.

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 1.

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

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

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

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

Date Adopted: January 23, 2009.

Mark Sutton, DC
Chair

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-808-640

Scope of practice—Revocation or suspension of license authorized for practice outside scope.

WSR 09-04-042

PERMANENT RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed January 30, 2009, 9:09 a.m., effective March 2, 2009]

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

Purpose: WAC 246-817-701 through 246-817-780, administration of anesthetic agents for dental procedures. The adopted rules add equipment, education and training requirements to establish minimum requirements consistent with current standards of practice. The adopted rules merge all rules associated with administration of anesthetic agents for dental procedures into one section of chapter 246-817 WAC.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-817-170, 246-817-175, 246-817-180 and 246-817-750; and amending WAC 246-817-701, 246-817-710, 246-817-720, 246-817-730, 246-817-740, 246-817-760, 246-817-770, and 246-817-780.

Statutory Authority for Adoption: RCW 18.32.640 and 18.32.0365.

Adopted under notice filed as WSR 08-21-157 on October 22, 2008.

Changes Other than Editing from Proposed to Adopted Version: The dental quality assurance commission adopted the rules with the following clarifying nonsubstantive changes:

1. WAC 246-817-724 Recordkeeping, equipment and emergency medications or drugs required in all sites where anesthetic agents of any kind are administered, subsection (3)(b)(c), removed "narcotic" and "benzodiazepine antagonists" and added "sugar" and "aspirin" to the emergency drug list. This change clarifies that it was intended for dentists to have the appropriate emergency drugs available for the level of sedation provided. Narcotic and benzodiazepine antagonists would never be used with local, minimal, or moderate sedation. It also creates a list consistent with American Dental Association (ADA) published emergency drug list.

2. WAC 246-817-745 "Minimal sedation," subsection (1)(a), added "a single" to oral agents. The change clarifies the intent for a single agent to be used.

3. WAC 246-817-745 "Minimal sedation," subsection (1)(b), changed "Any agent or combination of agents" to "Any oral agent in combination with a different agent or multiple agents other than nitrous oxide or injectable agents." The change clarifies the intent of the type of sedation to be used.

4. WAC 246-817-745 "Minimal sedation," removed subsection (3) as it is duplicative to WAC 246-817-724. The change clarifies the rule.

5. WAC 246-817-745 "Minimal sedation," subsection (4), the item number was changed to subsection (3) and the term "dosage" was added. The change clarifies that the dentist should note the dosage used in the patient's chart.

6. WAC 246-817-755 Moderate sedation, subsection (1), "Twenty-one hours" was added to the language. The change clarifies the number of hours of education needed by including the total number of hours required. This change no longer refers the reader back to WAC 246-817-745 to calculate the total number of hours needed.

7. WAC 246-817-755 Moderate sedation, subsection (2)(f), added "Patient's receiving these forms of sedation must be accompanied by a responsible adult upon departure from the treatment facility." This is an established requirement in WAC 246-817-776. The change clarifies that it was intended to require this for all levels of moderate sedation.

8. WAC 246-817-755 Moderate sedation, subsection (4)(b), added "pediatric advanced life support (PALS)" as an option for continuing education. This change is consistent with continuing education options for other levels of sedation.

A final cost-benefit analysis is available by contacting Jennifer Bressi, P.O. Box 47867, Olympia, WA 98504-7867, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.bressi@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 8, Amended 8, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 8, Amended 8, Repealed 4.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 8, Repealed 4.

Date Adopted: December 4, 2008.

Padmaraj Angolkar, D.D.S., Chair
Dental Quality Assurance Commission

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-701 ((~~Purpose~~)) Administration of anesthetic agents for dental procedures. The purpose of WAC 246-817-701 through ((246-817-795)) 246-817-790 is to govern the administration of sedation and general anesthesia by dentists licensed in the state of Washington in settings other than hospitals as defined in WAC ((246-318-010(31))) 246-320-010 and ambulatory surgical facilities as defined in WAC 246-310-010((~~(5)~~)), pursuant to the DQAC((~~(s)~~)) authority in RCW 18.32.640((~~(2)~~)).

(1) The DQAC has determined that anesthesia permitting should be based on the "level" of anesthesia because anesthesia/sedation is a continuum, and the route of administration and drug combinations are both capable of producing a deeper level of sedation/anesthesia than is initially intended. Practitioners intending to produce a given level of sedation should be able to rescue patients who enter a state deeper than initially intended.

(2) All anesthesia providers must provide twenty-four hour, on-call availability following an anesthesia procedure.

(3) The dental assistant and expanded function dental auxiliary may not administer any general or local anesthetic, including intravenous sedation.

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-710 Definitions ((~~for~~))—The definitions in this section apply throughout WAC 246-817-701 through ((246-817-795)) 246-817-790 unless the context clearly requires otherwise. (1) "Analgesia" is the diminution of pain in the conscious patient.

((~~"Conscious sedation" is a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and/or verbal command, produced by a pharmacologic method, and that carries a margin of safety wide enough to render unintended loss of protective reflexes unlikely.~~)) (2) "Anesthesia" is the loss of feeling or sensation, especially loss of sensation of pain.

(3) "Anesthesia assistant/anesthesia monitor" means a credentialed health care provider specifically trained in monitoring patients under sedation and capable of assisting with procedures, problems and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

(4) "Anesthesia provider" means a dentist, physician anesthesiologist, dental hygienist or certified registered nurse anesthetist licensed and authorized to practice within the state of Washington.

(5) "Deep sedation/analgesia" is a drug induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

(6) "Direct supervision" means that a licensed provider whose patient is being treated has personally diagnosed the condition to be treated and has personally authorized the procedure to be performed. A dentist must be physically present in the treatment facility while the procedures are performed.

(7) "Direct visual supervision" means direct supervision and direct line of sight to the activity being performed, chairside.

(8) "General anesthesia" ((to include deep sedation) is a controlled state of depressed consciousness or unconsciousness, accompanied by partial or complete loss of protective reflexes, including the ability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or nonpharmacologic method, or combination thereof)) is a drug induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or nonpharmacologic method, or combination thereof may be impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

(9) "Local anesthesia" is the elimination of sensations, especially pain, in one part of the body by the topical application or regional injection of a drug.

(10) "Minimal sedation" is a drug induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected.

(11) "Moderate sedation" is a drug induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. Moderate sedation can include both moderate sedation/analgesia (conscious sedation) and moderate sedation with parenteral agent.

(12) "Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal (GI) tract (i.e., intramuscular, intravenous, intranasal, submuscular, subcutaneous, intraosseous).

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-720 Basic life support requirements. ((Whenever a licensee administers local anesthesia, nitrous oxide sedation, conscious sedation, or general anesthesia

(including deep sedation) in an in-office or out-patient setting, the dentist and his/her staff providing direct patient care must have a current basic life support (BLS) certification. New staff hired shall be allowed thirty days from the date they are hired to obtain BLS certification.)) Dental staff providing direct patient care in an in-office or out-patient setting must hold a current and valid health care provider basic life support (BLS) certification. Dental staff providing direct patient care include: Licensed dentists, licensed dental hygienists, licensed expanded function dental auxiliaries, and registered dental assistants.

Newly hired office staff providing direct patient care are required to obtain the required certification within forty-five days from the date hired.

NEW SECTION

WAC 246-817-722 Defibrillator. Every dental office in the state of Washington that administers anesthetic must have an automatic external defibrillator (AED) or defibrillator. The dentist and staff must be prepared to use this equipment in an emergency.

NEW SECTION

WAC 246-817-724 Recordkeeping, equipment and emergency medications or drugs required in all sites where anesthetic agents of any kind are administered. (1) Dental records must contain an appropriate medical history and patient evaluation. Any adverse reactions, and all medications and dosages, must be recorded.

(2) Office facilities and equipment must include:

(a) Suction equipment capable of aspirating gastric contents from the mouth and pharynx;

(b) Portable oxygen delivery system including full face masks and a bag-valve-mask combination with appropriate connectors capable of delivering positive pressure, oxygen enriched ventilation to the patient;

(c) Blood pressure cuff (sphygmomanometer) of appropriate size;

(d) Stethoscope or equivalent monitoring device.

(3) The following emergency drugs must be available and maintained:

(a) Bronchodilator;

(b) Sugar (glucose);

(c) Aspirin;

(d) Antihistaminic;

(e) Coronary artery vasodilator;

(f) Anti-anaphylactic agent.

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-730 Local anesthesia. ((1) Procedures for administration:)) Local anesthesia shall be administered only by a person qualified under this chapter and dental hygienists as provided in chapter 18.29 RCW.

(((2) Equipment and emergency medications:)) (1) All offices ((in which local anesthesia is administered)) must comply with the ((following recordkeeping and equipment standards:

(a) ~~Dental records must contain an appropriate medical history and patient evaluation. Any adverse reactions shall be indicated.~~

(b) ~~Office facilities and equipment shall include:~~

(i) ~~Suction equipment capable of aspirating gastric contents from the mouth and pharynx.~~

(ii) ~~Portable oxygen delivery system including full face masks and a bag valve mask combination with appropriate connectors capable of delivering positive pressure, oxygen-enriched ventilation to the patient.~~

(iii) ~~A blood pressure cuff (sphygmomanometer) of appropriate size and stethoscope; or equivalent monitoring devices.~~

~~(3)) requirements listed in WAC 246-817-724.~~

~~(2) A permit of authorization is not required.~~

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-740 ((Nitrous oxide/oxygen sedation)) "Minimal sedation by inhalation" (to include but not limited to nitrous oxide). (1) Training requirements: To administer ((nitrous oxide sedation,)) inhalation minimal sedation a dentist must have completed a course containing a minimum of fourteen hours of either predoctoral dental school or postgraduate instruction in inhalation minimal sedation.

(2) Procedures for administration: ((Nitrous oxide shall)) Inhalation minimal sedation must be administered under the close supervision of a person qualified under this chapter and dental hygienists as provided in chapter 18.29 RCW((-));

(a) When administering ((nitrous oxide)) inhalation minimal sedation, a second individual ((shall)) must be on the office premises ((who can)) able to immediately respond to any request from the person administering the ((nitrous oxide,)) inhalation minimal sedation;

(b) The patient ((shall)) must be continuously observed while ((nitrous oxide)) inhalation minimal sedation is administered.

(3) Equipment and emergency medications: All offices in which ((nitrous oxide)) inhalation minimal sedation is administered must comply with the ((following)) recordkeeping and equipment standards(=

(a) ~~Dental records must contain an appropriate medical history and patient evaluation. A notation must be made in the chart if any nitrous oxide and/or oxygen is dispensed.~~

~~(b) Office facilities and equipment shall include:~~

~~(i) Suction equipment capable of aspirating gastric contents from the mouth and pharynx.~~

~~(ii) Portable oxygen delivery system including full face masks and a bag valve mask combination with appropriate connectors capable of delivering positive pressure, oxygen-enriched ventilation to the patient.~~

~~(iii) A blood pressure cuff (sphygmomanometer) of appropriate size and stethoscope; or equivalent monitoring devices)) listed in WAC 246-817-724.~~

(4) Dental records must contain documentation in the chart of either nitrous oxide, oxygen or any other inhalation sedation agent dispensed. In the case of nitrous oxide seda-

tion only "N₂O used" is required. Other inhalation agents require a dose record noting the time each concentration or agent was used.

(5) Continuing education: A dentist who administers ((nitrous oxide)) inhalation sedation to patients must participate in seven hours of continuing education or equivalent every five years.

(a) The education must include instruction in one or more of the following areas: Sedation((-)); physiology((-)); pharmacology((-nitrous oxide)); inhalation analgesia((-)); patient evaluation((-); patient monitoring((-) and medical emergencies((-basic life support (BLS), or advanced cardiac life support (ACLS)));

(b) Healthcare provider basic life support (BLS), or advanced cardiac life support (ACLS) training does not count towards this requirement; however, these continuing education credit hours may be used to meet renewal requirements for the dental license.

~~((5)) (6) A permit of authorization is not required.~~

NEW SECTION

WAC 246-817-745 "Minimal sedation." (1) Training requirements: To administer "minimal sedation," including:

(a) A single oral agent, a dentist must have completed a course containing a minimum of fourteen hours of a predoctoral dental school, postgraduate instruction, or continuing education (as defined in WAC 246-817-440) in the use of oral agents;

(b) Any oral agent in combination with a different agent or multiple agents other than nitrous oxide or injectable agents, a dentist must have completed a course containing a minimum of twenty-one hours of either predoctoral dental school or postgraduate instruction.

(2) Procedures for administration:

(a) Oral sedative agents can be administered in the treatment setting or prescribed for patient dosage prior to the appointment;

(b) A second individual must be on the office premises and able to immediately respond to any request from the person administering the drug;

(c) The patient shall be continuously observed while in the office under the influence of the drug;

(d) Any adverse reactions must be documented in the records;

(e) If a patient unintentionally enters into a moderate level of sedation, the patient must be returned to a level of minimal sedation as quickly as possible. While returning the patient to the minimal sedation level, periodic monitoring of pulse, respiration, and blood pressure must be maintained. In such cases, these same parameters must be taken and recorded at appropriate intervals throughout the procedure and vital signs and level of consciousness must be recorded during the sedation and prior to dismissal of the patient.

(3) Dental records must contain documentation in the chart of all agents administered and dosage for minimal sedation. In the case of nitrous oxide sedation only "N₂O used" is required. Other inhalation agents require a dose record noting the time each concentration and agent was used.

(4) Continuing education: A dentist who administers minimal sedation to patients must participate in seven hours of continuing education or equivalent every five years.

(a) The education must include instruction in one or more of the following areas:

- (i) Sedation;
- (ii) Physiology;
- (iii) Pharmacology;
- (iv) Nitrous oxide analgesia;
- (v) Patient evaluation;
- (vi) Patient monitoring; and
- (vii) Medical emergencies;

(b) Health care provider basic life support (BLS) or advanced cardiac life support (ACLS) must be taken in addition to the continuing education requirement; however, these continuing education credit hours may be used to meet the renewal requirements for the dental license.

(5) A permit of authorization is not required.

NEW SECTION

WAC 246-817-755 Moderate sedation. (1) Training requirements: To administer moderate sedation the dentist must have completed a course containing a minimum of seven hours of a predoctoral dental school, postgraduate instruction, or continuing education (as defined in WAC 246-817-440) in moderate sedation in addition to twenty-one hours for minimal sedation.

(2) Procedures for administration:

(a) Oral sedative agents can be administered in the treatment setting or prescribed for patient dosage prior to the appointment.

(b) A second individual must be on the office premises who can immediately respond to any request from the person administering the drug.

(c) The patient must be continuously observed while in the office under the influence of the drug.

(d) Any adverse reactions must be documented in the records.

(e) If a patient unintentionally enters a deeper level of sedation, the patient must be returned to a level of moderate sedation as quickly as possible. While returning the patient to the moderate level of sedation, periodic monitoring of pulse, respiration, and blood pressure and pulse oximetry must be maintained. In such cases, these same parameters must be taken and recorded at appropriate intervals throughout the procedure and vital signs and level of consciousness must be recorded during the sedation and prior to dismissal of the patient.

(f) Patients receiving these forms of sedation must be accompanied by a responsible adult upon departure from the treatment facility.

(3) Equipment and emergency medications: All offices must comply with the requirements listed in WAC 246-817-724. When a sedative drug is used that has a reversal agent, the reversal agent must be in the office emergency kit and the equipment to administer the reversal agent must be stored with the delivery device. Pulse oximetry equipment or equivalent respiratory monitoring equipment must be available in the office.

(4) Continuing education: A dentist who administers moderate sedation to patients must participate in seven hours of continuing education or equivalent every five years.

(a) The education must include instruction in one or more of the following areas: Sedation; physiology; pharmacology; nitrous oxide analgesia; patient evaluation; patient monitoring or medical emergencies.

(b) Health care provider basic life support (BLS), advanced cardiac life support (ACLS) or pediatric advanced life support (PALS) must be taken in addition to the continuing education requirement; however, these continuing education credit hours may be used to meet the renewal requirements for the dental license.

(5) A permit of authorization is required. See WAC 246-817-774 for permitting requirements.

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-760 (~~Conscious sedation with parenteral or multiple oral agents.~~) **Moderate sedation with parenteral agents.** (~~Conscious sedation with parenteral or multiple oral agents includes the prescription or administration of more than one oral agent to be used concurrently for the purposes of sedation either as a combined regimen or in association with nitrous oxide-oxygen. For purposes of this section, oral agents shall include any non-parenteral agents regardless of route of delivery. This also includes the parenteral administration of medications for the purpose of conscious sedation of dental patients.~~)

~~(1) Procedures for administration: Multiple oral sedative agents may be administered in the treatment setting or prescribed for patient dosage prior to the appointment. In the treatment setting, a patient receiving conscious parenteral sedation must have that sedation administered by a person qualified under this chapter. Only a dentist meeting the above criteria for administration of conscious parenteral sedation may utilize the services of a nurse licensed pursuant to chapter 18.88 RCW to administer conscious parenteral sedation under the close supervision of the dentist as defined in WAC 246-817-510. An intravenous infusion shall be maintained during the administration of a parenteral agent. The person administering the medications must be continuously assisted by at least one individual experienced in monitoring sedated patients.~~

In the treatment setting, a patient experiencing conscious sedation with parenteral or multiple oral agents shall have visual and tactile observation as well as continual monitoring of pulse, respiration, and blood pressure and/or blood oxygen saturation. Unless prevented by the patient's physical or emotional condition, these vital sign parameters must be noted and recorded whenever possible prior to the procedure. In all cases these vital sign parameters must be noted and recorded at the conclusion of the procedure. Blood oxygen saturation must be continuously monitored and recorded at appropriate intervals throughout any period of time in which purposeful response of the patient to verbal command cannot be maintained. The patient's level of consciousness shall be recorded prior to the dismissal of the patient and individuals receiving these forms of sedation must be accompanied by a responsi-

ble individual upon departure from the treatment facility. When verbal contact cannot be maintained during the procedure, continuous monitoring of blood oxygen saturation is required.

(2) Equipment and emergency medications: All offices in which parenteral or multiple oral sedation is administered or prescribed must comply with the following recordkeeping and equipment standards:

(a) Dental records must contain appropriate medical history and patient evaluation. Dosage and forms of medications dispensed shall be noted.

(b) Office facilities and equipment shall include:

(i) Suction equipment capable of aspirating gastric contents from the mouth and pharynx.

(ii) Portable oxygen delivery system including full face masks and a bag-valve-mask combination with appropriate connectors capable of delivering positive pressure, oxygen-enriched patient ventilation and oral and nasal pharyngeal airways of appropriate size.

(iii) A blood pressure cuff (sphygmomanometer) of appropriate size and stethoscope; or equivalent monitoring devices.

(iv) An emergency drug kit with minimum contents of:

-Sterile needles, syringes, and tourniquet

-Narcotic antagonist

-A and B adrenergic stimulant

-Vasopressor

-Coronary vasodilator

-Antihistamine

-Parasympatholytic

-Intravenous fluids, tubing, and infusion set

-Sedative antagonists for drugs used if available.

(3) Continuing education: A dentist who administers conscious parenteral or multiagent oral sedation must participate in eighteen hours of continuing education or equivalent every three years. The education must include instruction in one or more of the following areas: Venipuncture, intravenous sedation, physiology, pharmacology, nitrous oxide analgesia, patient evaluation, patient monitoring, medical emergencies, basic life support (BLS), or advanced cardiac life support (ACLS).

(4) A permit of authorization is required. (See WAC 246-817-175 for training requirements.) (1) Training requirements: To administer moderate sedation with parenteral agents, the dentist must have successfully completed a postdoctoral course(s) of sixty clock hours or more which includes training in basic moderate sedation, physical evaluation, venipuncture, technical administration, recognition and management of complications and emergencies, monitoring, and supervised experience in providing moderate sedation to fifteen or more patients.

(2) In addition to meeting the above criteria, the dentist must also have a current and documented proficiency in advanced cardiac life support (ACLS) or pediatric advanced life support (PALS). One way to demonstrate such proficiency is to hold a valid and current ACLS, PALS certificate or equivalent.

(3) Procedures for administration:

(a) In the treatment setting, a patient receiving moderate parenteral sedation must have that sedation administered by a person qualified under this chapter.

(b) A patient may not be left alone in a room and must be monitored by a dentist or trained anesthesia monitor.

(c) An intravenous infusion shall be maintained during the administration of a parenteral agent.

(d) When the operative dentist is also the person administering the moderate sedation, the operative dentist must be continuously assisted by at least one individual experienced in monitoring sedated patients.

(e) In the treatment setting, a patient experiencing moderate sedation with parenteral agents shall have visual and tactile observation as well as continual monitoring of pulse, respiration, blood pressure and blood oxygen saturation. Unless prevented by the patient's physical or emotional condition, these vital sign parameters must be noted and recorded whenever possible prior to the procedure. In all cases these vital sign parameters must be noted and recorded at the conclusion of the procedure.

(f) Blood oxygen saturation must be continuously monitored and recorded at appropriate intervals.

(g) The patient's level of consciousness shall be recorded prior to the dismissal of the patient.

(h) Patient's receiving these forms of sedation must be accompanied by a responsible adult upon departure from the treatment facility.

(i) If a patient unintentionally enters a deeper level of sedation, the patient must be returned to a level of moderate sedation as quickly as possible. While returning the patient to the moderate level of sedation, periodic monitoring of pulse, respiration, blood pressure and continuous monitoring of oxygen saturation must be maintained. In such cases, these same parameters must be taken and recorded at appropriate intervals throughout the procedure and vital signs and level of consciousness must be recorded during the sedation and prior to dismissal of the patient.

(4) Dental records must contain appropriate medical history and patient evaluation. Dosage and forms of medications dispensed shall be noted.

(5) Equipment and emergency medications: All offices in which moderate parenteral sedation is administered or prescribed must comply with the following equipment standards:

Office facilities and equipment shall include:

(a) Suction equipment capable of aspirating gastric contents from the mouth and pharynx;

(b) Portable oxygen delivery system including full face masks and a bag-valve-mask combination with appropriate connectors capable of delivering positive pressure, oxygen-enriched patient ventilation and oral and nasal pharyngeal airways of appropriate size;

(c) A blood pressure cuff (sphygmomanometer) of appropriate size and stethoscope; or equivalent monitoring devices;

(d) An emergency drug kit with minimum contents of:

(i) Sterile needles, syringes, and tourniquet;

(ii) Narcotic antagonist;

(iii) Alpha and beta adrenergic stimulant;

- (iv) Vasopressor;
- (v) Coronary vasodilator;
- (vi) Antihistamine;
- (vii) Parasympatholytic;
- (viii) Intravenous fluids, tubing, and infusion set; and
- (ix) Sedative antagonists for drugs used, if available.

(6) Continuing education: A dentist who administers moderate parenteral sedation must participate in eighteen hours of continuing education or equivalent every three years.

(a) The education must include instruction in one or more of the following areas: Venipuncture; intravenous sedation; physiology; pharmacology; nitrous oxide analgesia; patient evaluation; patient monitoring and medical emergencies.

(b) Health care provider basic life support (BLS), advanced cardiac life support (ACLS) or pediatric advanced life support (PALS) must be taken in addition to the continuing education requirement; however, these continuing education credit hours may be used to meet the renewal requirements for the dental license.

(7) A permit of authorization is required. See WAC 246-817-774 for permitting requirements.

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-770 General anesthesia ((including) and deep sedation((b)). Deep sedation and general anesthesia must be administered by an individual qualified to do so under this chapter.

~~((1) Training requirements for monitoring personnel: In addition to those individuals necessary to assist the practitioner in performing the procedure, a trained individual must be present to monitor the patient's cardiac and respiratory functions. The individual monitoring patients receiving deep sedation or general anesthesia must have received a minimum of fourteen hours of documented training in a course specifically designed to include instruction and practical experience in use of all equipment required in this section. This must include, but not be limited to, the following equipment:~~

- ~~(a) Sphygmomanometer;~~
- ~~(b) Pulse oximeter;~~
- ~~(c) Electrocardiogram;~~
- ~~(d) Bag valve mask resuscitation equipment;~~
- ~~(e) Oral and nasopharyngeal airways;~~
- ~~(f) Defibrillator;~~
- ~~(g) Intravenous fluid administration set.~~

~~A course, or its equivalent, may be presented by an individual qualified under this section or sponsored by an accredited school, medical or dental association or society, or dental specialty association.~~

~~(2) Procedures for administration: Patients receiving deep sedation or general anesthesia must have continual monitoring of their heart rate, blood pressure, and respiration. In so doing, the licensee must utilize electrocardiographic monitoring and pulse oximetry. The patient's blood pressure, heart rate, and respiration shall be recorded at least every five minutes. During deep sedation or general anesthesia, the per-~~

~~son administering the anesthesia and the person monitoring the patient, may not leave the immediate area.~~

~~During the recovery phase, the patient must be monitored continually by an individual trained to monitor patients recovering from general anesthesia or deep sedation. A discharge entry shall be made in the patient's record indicating the patient's condition upon discharge and the responsible party to whom the patient was discharged.~~

~~(3) Equipment and emergency medications: All offices in which general anesthesia (including deep sedation) is administered must comply with the following recordkeeping and equipment standards:~~

~~(a) Dental records must contain appropriate medical history and patient evaluation. Anesthesia records shall be recorded during the procedure in a timely manner and must include: Blood pressure, heart rate, respiration, blood oxygen saturation, drugs administered including amounts and time administered, length of procedure, any complications of anesthesia.~~

~~(b) Office facilities and equipment shall include:~~

~~(i) An operating theater large enough to adequately accommodate the patient on a table or in an operating chair and permit an operating team consisting of at least three individuals to freely move about the patient.~~

~~(ii) An operating table or chair which permits the patient to be positioned so the operating team can maintain the airway, quickly alter patient position in an emergency, and provide a firm platform for the administration of basic life support.~~

~~(iii) A lighting system which is adequate to permit evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit conclusion of any operation underway at the time of general power failure.~~

~~(iv) Suction equipment capable of aspirating gastric contents from the mouth and pharyngeal cavities. A backup suction device must be available.~~

~~(v) An oxygen delivery system with adequate full face masks and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate portable backup system.~~

~~(vi) A recovery area that has available oxygen, adequate lighting, suction, and electrical outlets. The recovery area can be the operating theater.~~

~~(vii) Ancillary equipment which must include the following:~~

~~(A) Laryngoscope complete with adequate selection of blades, spare batteries, and bulb.~~

~~(B) Endotracheal tubes and appropriate connectors.~~

~~(C) Oral airways.~~

~~(D) Tonsillar or pharyngeal suction tip adaptable to all office outlets.~~

~~(E) Endotracheal tube forceps.~~

~~(F) Sphygmomanometer and stethoscope.~~

~~(G) Adequate equipment to establish an intravenous infusion.~~

~~(H) Pulse oximeter.~~

~~(I) Electrocardiographic monitor.~~

~~(J) Synchronized defibrillator available on premises.~~

~~(e) Drugs. Emergency drugs of the following types shall be maintained:~~

~~(i) Vasopressor.
(ii) Corticosteroid.
(iii) Bronchodilator.
(iv) Muscle relaxant.
(v) Intravenous medications for treatment of cardiac arrest.~~

~~(vi) Nareotic antagonist. Sedative antagonist, if available.~~

~~(vii) Antihistaminic.~~

~~(viii) Anticholinergic.~~

~~(ix) Antiarrhythmic.~~

~~(x) Coronary artery vasodilator.~~

~~(xi) Antihypertensive.~~

~~(xii) Anticonvulsant.~~

~~(4) Continuing education: A dentist granted a permit to administer general anesthesia (including deep sedation) under this chapter, must participate in eighteen hours of continuing education every three years. A dentist granted a permit must maintain records that can be audited and must submit course titles, instructors, dates attended, sponsors, and number of hours for each course every three years. The education must be provided by organizations approved by the DQAC and must be in one or more of the following areas: General anesthesia, conscious sedation, physical evaluation, medical emergencies, monitoring and use of monitoring equipment, pharmacology of drugs and agents used in sedation and anesthesia, or basic life support (BLS), or advanced cardiac life support (ACLS).~~

~~(5) A permit of authorization is required:)) (1) Training requirements: To administer deep sedation or general anesthesia, the dentist must meet one or more of the following criteria:~~

~~(a) Any provider currently permitted as of the effective date of this revision to provide deep sedation or general anesthesia by the state of Washington will be grandfathered regarding formal training requirements, provided they meet current continuing education and other ongoing applicable requirements.~~

~~(b) New applicants with anesthesia residency training will be required to have had two years of continuous full-time anesthesia training meeting the following requirements based on when they began their anesthesia training:~~

~~(i) For dentists who began their anesthesia training prior to 2008, training must include two full years of continuous full-time training in anesthesiology beyond the undergraduate dental school level, in a training program as outlined in part 2 of "Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry," published by the American Dental Association, Council on Dental Education (last revised October 2005).~~

~~(ii) For dentists who begin their anesthesia training in January 2008 or after, must have either received a certificate of completion.~~

~~(A) From a dental anesthesiology program accredited by CODA (ADA Commission on Dental Accreditation, "Accreditation Standards for Advanced General Dentistry Education Programs in Dental Anesthesiology," January 2007); or~~

~~(B) From a dental anesthesiology program approved by the Dental Quality Assurance Commission; or~~

(C) With a minimum of two years of full-time anesthesia residency training at a medical program accredited by the Accreditation Council for Graduate Medical Education (ACGME).

(c) New applicants who completed residency training in oral and maxillofacial surgery must meet at least one of the following requirements:

(i) Be a diplomate of the American Board of Oral and Maxillofacial Surgery;

(ii) Be a fellow of the American Association of Oral and Maxillofacial Surgeons; or

(iii) Be a graduate of an Oral and Maxillofacial Residency Program accredited by CODA.

(2) In addition to meeting one or more of the above criteria, the dentist must also have a current and documented proficiency in advanced cardiac life support (ACLS).

(3) Procedures for administration:

(a) Patients receiving deep sedation or general anesthesia must have continual monitoring of their heart rate, blood pressure, and respiration. In so doing, the licensee must utilize electrocardiographic monitoring and pulse oximetry;

(b) The patient's blood pressure and heart rate shall be recorded every five minutes and respiration rate shall be recorded at least every fifteen minutes;

(c) During deep sedation or general anesthesia, the person administering the anesthesia and the person monitoring the patient may not leave the immediate area;

(d) During the recovery phase, the patient must be continually observed by the anesthesia provider or credentialed personnel;

(e) A discharge entry shall be made in the patient's record indicating the patient's condition upon discharge and the responsible party to whom the patient was discharged.

(4) Dental records must contain appropriate medical history and patient evaluation. Anesthesia records shall be recorded during the procedure in a timely manner and must include: Blood pressure; heart rate; respiration; blood oxygen saturation; drugs administered including amounts and time administered; length of procedure; and any complications of anesthesia.

(5) Equipment and emergency medications: All offices in which general anesthesia (including deep sedation) is administered must comply with the following equipment standards:

(a) An operating theater large enough to adequately accommodate the patient on a table or in an operating chair and permit an operating team consisting of at least three individuals to freely move about the patient;

(b) An operating table or chair which permits the patient to be positioned so the operating team can maintain the airway, quickly alter patient position in an emergency, and provide a firm platform for the administration of basic life support;

(c) A lighting system which is adequate to permit evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit conclusion of any operation underway at the time of general power failure;

(d) Suction equipment capable of aspirating gastric contents from the mouth and pharyngeal cavities. A backup suction device must be available;

(e) An oxygen delivery system with adequate full face masks and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate portable backup system;

(f) A recovery area that has available oxygen, adequate lighting, suction, and electrical outlets. The recovery area can be the operating theater;

(g) Ancillary equipment which must include the following:

(i) Laryngoscope complete with adequate selection of blades, spare batteries, and bulb;

(ii) Endotracheal tubes and appropriate connectors, and laryngeal mask airway (LMA) and other appropriate equipment necessary to do an intubation;

(iii) Oral airways;

(iv) Tonsillar or pharyngeal suction tip adaptable to all office outlets;

(v) Endotracheal tube forceps;

(vi) Sphygmomanometer and stethoscope;

(vii) Adequate equipment to establish an intravenous infusion;

(viii) Pulse oximeter or equivalent;

(ix) Electrocardiographic monitor;

(x) Defibrillator or automatic external defibrillator (AED) available and in reach within sixty seconds from any area where general or deep anesthesia care is being delivered. Multiple AEDs or defibrillators may be necessary in large facilities. The AED or defibrillator must be on the same floor. (In dental office settings where sedation or general anesthesia are not administered, AEDs or defibrillators are required as defined in WAC 246-817-722);

(h) Emergency drugs of the following types shall be maintained:

(i) Vasopressor or equivalent;

(ii) Corticosteroid or equivalent;

(iii) Bronchodilator;

(iv) Muscle relaxant;

(v) Intravenous medications for treatment of cardiac arrest;

(vi) Narcotic antagonist;

(vii) Benzodiazepine antagonist;

(viii) Antihistaminic;

(ix) Anticholinergic;

(x) Antiarrhythmic;

(xi) Coronary artery vasodilator;

(xii) Antihypertensive;

(xiii) Anticonvulsant.

(6) Continuing education:

(a) A dentist granted a permit to administer general anesthesia (including deep sedation) under this chapter, must complete eighteen hours of continuing education every three years.

A dentist granted a permit must maintain records that can be audited and must submit course titles, instructors, dates attended, sponsors, and number of hours for each course every three years.

(b) The education must be provided by organizations approved by the DQAC and must be in one or more of the following areas: General anesthesia; conscious sedation; physical evaluation; medical emergencies; pediatric advanced life

support (PALS); monitoring and use of monitoring equipment; pharmacology of drugs; and agents used in sedation and anesthesia.

(c) Hourly credits earned from certification in health care provider basic life support (BLS) and advanced cardiac life support (ACLS) courses may not be used to meet the continuing education hourly requirements for obtaining or renewing a general anesthesia and deep sedation permit, however these continuing education hours may be used to meet the renewal requirement for the dental license.

(7) A permit of authorization is required. See WAC 246-817-774 for permitting requirements.

NEW SECTION

WAC 246-817-772 Training requirements for anesthesia monitor. (1) In addition to those individuals necessary to assist the practitioner in performing the procedure, a trained individual must be present to monitor the patient's cardiac and respiratory functions.

(2) When the dentist is also administering the deep sedation or general anesthesia, one additional appropriately trained team member must be designated for patient monitoring.

(3) When deep sedation or general anesthesia is administered by a dedicated anesthesia provider, the anesthesia provider may serve as the monitoring personnel.

(4) The dentist cannot employ an individual to monitor patients receiving deep sedation or general anesthesia unless that individual has received a minimum of fourteen hours of documented training (such as national certification American Association of Oral and Maxillofacial Surgeons "AAOMS") in a course specifically designed to include instruction and practical experience in use of equipment to include, but not be limited to, the following equipment:

(a) Sphygmomanometer; or a device able to measure blood pressure;

(b) Pulse oximeter; or other respiratory monitoring equipment;

(c) Electrocardiogram;

(d) Bag-valve-mask resuscitation equipment;

(e) Oral and nasopharyngeal airways;

(f) Defibrillator; automatic external defibrillator.

(5) The course referred to in subsection (4) of this section must also include instruction in:

(a) Basic sciences;

(b) Evaluation and preparation of patients with systemic diseases;

(c) Anesthetic drugs and techniques;

(d) Anesthesia equipment and monitoring; and

(e) Office anesthesia emergencies.

NEW SECTION

WAC 246-817-774 Permitting/renewal requirements. (1) To administer moderate sedation (oral and/or parenteral), or general anesthesia (including deep sedation), a dentist must first meet the requirements of this chapter, possess and maintain a current dental license pursuant to chapter 18.32 RCW and obtain a permit of authorization from the DQAC through the department of health. Application forms

for permits may be obtained on-line or from the department and must be fully completed and include the current application fee.

(2) A permit of authorization is valid for three years from the date of issuance and must be renewed prior to the expiration date.

(3) In addition to the renewal application form, the permit holder must:

(a) Demonstrate continuing compliance with this chapter.

(b) Submit satisfactory evidence of continuing education hours as required by this chapter.

The dentist must maintain records that can be audited and must submit course titles, instructors, dates of attendance, sponsors and number of hours for each course every three years as required by this chapter.

(c) Pay the applicable renewal fee.

(4) Site visits may be conducted at the DQAC discretion. Site visits will be conducted by an anesthesia provider permitted at the same level, in conjunction with a department of health investigator. Site visits may include the evaluation of equipment, medications, patient records, documentation of training of personnel, and other items as determined necessary.

NEW SECTION

WAC 246-817-776 Discharge criteria for all levels of sedation/general anesthesia. The anesthesia provider must assess patient responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(1) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(2) The patient is alert and oriented to person, place and time as appropriate to age and preoperative psychological status;

(3) The patient can talk and respond coherently to verbal questioning as appropriate to age and preoperative psychological status;

(4) The patient can sit up unassisted;

(5) The patient can walk with minimal assistance;

(6) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness;

(7) A discharge entry must be made in the patient's record by the anesthesia provider indicating the patient's condition upon discharge, and the name of the responsible party to whom the patient is released (if a patient is required to be released to a responsible party);

(8) If the patient does not meet established discharge criteria, the anesthesia provider must evaluate the patient and determine if the patient has safely recovered to be discharged. The evaluation determining that the patient can be safely discharged must be noted in the patient's record.

NEW SECTION

WAC 246-817-778 Nondental anesthesia providers.

(1) A licensed dentist, certified registered nurse anesthetist (CRNA) or physician anesthesiologist may provide anesthesia services in dental offices where dentists do not have an

anesthesia permit when the anesthesia provider ensures that all equipment, facility, monitoring and assistant training requirements as established within this chapter related to anesthesia have been met. The anesthesia provider is exclusively responsible for the pre, intra, and post operative anesthetic management of the patient.

(2) The dentist without a general anesthesia permit must establish a written contract with the anesthesia provider to guarantee that when anesthesia is provided, all facility, equipment, monitoring and training requirements, for all personnel, as established by DQAC related to anesthesia, have been met.

(a) The dentist and the anesthesia provider may agree upon and arrange for the provision of items such as facility, equipment, monitoring and training requirements to be met by either party, provided the delineation of such responsibilities is written into the contract.

(b) Any contract under this section must state that the anesthesia provider must ensure anesthesia related requirements as set forth in this chapter have been met.

AMENDATORY SECTION (Amending WSR 95-21-041, filed 10/10/95, effective 11/10/95)

WAC 246-817-780 Mandatory reporting of death or significant complication as a result of any dental procedure. ~~((If a death or other life-threatening complication or permanent injury which may be a result of the administration of nitrous oxide, conscious sedation, deep sedation or general anesthesia, the dentist involved must submit a written report to the DQAC within thirty days of the incident.~~

~~The written report must include the following:~~

~~(1) Name, age, and address of the patient.~~

~~(2) Name of the dentist and other personnel present during the incident.~~

~~(3) Address of the facility or office where the incident took place.~~

~~(4) Description of the type of sedation or anesthetic being utilized at the time of the incident.~~

~~(5) Dosages, if any, of drugs administered to the patient.~~

~~(6) A narrative description of the incident including approximate times and evolution of symptoms.~~

~~(7) Additional information which the DQAC may require or request.)) All licensees engaged in the practice of dentistry must submit a report of any patient death or other life-threatening incident or complication, permanent injury or admission to a hospital that results in a stay at the hospital for more than twenty-four hours, which is or may be a result of a dental procedure caused by a dentist or dental treatment.~~

(1) The dentist involved must notify the department of health/DQAC, by telephone, e-mail or fax within seventy-two hours of discovery and must submit a complete written report to the DQAC within thirty days of the incident.

(2) When a patient comes into an office with an existing condition, and hospital admission is the result of that condition and not the dental procedure, it is not reportable.

(3) The written report must include the following:

(a) Name, age, and address of the patient.

(b) Name of the dentist and other personnel present during the incident.

(c) Address of the facility or office where the incident took place.

(d) Description of the type of sedation or anesthetic being utilized at the time of the incident.

(e) Dosages, if any, of drugs administered to the patient.

(f) A narrative description of the incident including approximate times and evolution of symptoms.

(g) Additional information which the DOAC may require or request.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 246-817-170 Applications—Permits—Renewals for the administration of conscious sedation with multiple oral or parenteral agents or general anesthesia (including deep sedation).
- WAC 246-817-175 Conscious sedation with parenteral or multiple oral agents—Education and training requirements—Application.
- WAC 246-817-180 General anesthesia (including deep sedation)—Education and training requirements.
- WAC 246-817-750 Conscious sedation with an oral agent.

WSR 09-04-050

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed January 30, 2009, 12:35 p.m., effective March 2, 2009]

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

Purpose: WAC 246-16-270 Mandatory reporting by employers of license[d] health care providers, additional mandatory reporting requirements were imposed in 2008 by 4SHB 1103, amending RCW 18.130.080. This rule adds those requirements to other mandatory reporting requirements already implemented in chapter 246-16 WAC.

Statutory Authority for Adoption: RCW 18.130.080.

Adopted under notice filed as WSR 08-20-120 on September 30, 2008.

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

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

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

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

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

Date Adopted: January 2, 2009.

Mary C. Selecky
Secretary

NEW SECTION

WAC 246-16-270 Mandatory reporting—Reports by employers of license holders. (1) Every license holder, corporation, organization, health care facility, and state and local governmental agency that employs a license holder shall report to the department of health when the employed license holder's services have been terminated or restricted based on a final determination or finding that the license holder:

(a) Has committed an act or acts that may constitute unprofessional conduct; or

(b) May not be able to practice his or her profession with reasonable skill and safety due to a mental or physical condition.

(2) Reports under this section must be submitted to the department of health as soon as possible but no later than twenty days after a final determination or finding is made. The report should contain the information described in WAC 246-16-220(2).

(3) Reports made by a hospital according to RCW 70.41.210 and reports by ambulatory surgical facilities according to RCW 70.230.120 meet the requirement of this section.

(4) If a license holder fails to submit a report required by this section, a civil penalty of up to five hundred dollars may be imposed and the disciplining authority may take action against the license holder for unprofessional conduct.

WSR 09-04-060

PERMANENT RULES

WASHINGTON STATE UNIVERSITY

[Filed February 2, 2009, 2:52 p.m., effective March 5, 2009]

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

Purpose: Rules are required to ensure compliance with the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended. The rules are updated to accommodate administrative and location changes and to allow for student requests to dispute and seek amendment to student education records.

Citation of Existing Rules Affected by this Order: Amending WAC 504-21-030, 504-21-040, 504-21-050, 504-21-060, and 504-21-080.

Statutory Authority for Adoption: RCW 28B.30.150.

Adopted under notice filed as WSR 08-22-089 on November 4, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 5, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 5, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: January 30, 2009.

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

AMENDATORY SECTION (Amending WSR 95-07-043, filed 3/8/95, effective 4/8/95)

WAC 504-21-030 Education records—Student's right to inspect. (1) A student has the right to inspect and review his or her education records. A list of the types of education records maintained by the university and the record locations may be obtained by the student (~~(at the office of student affairs or)~~) at the registrar's office.

(a) For purposes of this chapter the term "education records" means those records, files, documents and other materials which contain information directly related to a student.

(b) The term "education records" does not include:

(i) Records of instructional, supervisory and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute or the maker's administrator.

(ii) Records of the university police department which are maintained by the law enforcement unit of WSU that were created by the WSU law enforcement unit for the purposes of law enforcement.

(iii) Records made and maintained in the normal course of business which relate exclusively to the person's capacity as an employee and are not available for any other purposes. Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records and not excepted under this paragraph.

(iv) Records on a student which are created or maintained by a physician, psychiatrist, psychologist or other recognized professional or para-professional, acting in a professional or para-professional capacity, or assisting in that capacity and which are created, maintained or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment. Such records can be personally reviewed by a physician or other appropriate professional of the student's choice. In addition, health care information may be disclosed if authorized by state law.

(v) Records that contain information about an individual after he or she is no longer a student at that agency or institution.

(2) Recommendations, evaluations or comments concerning a student that are provided in confidence, either expressed or implied, as between the author and the recipient, shall be made available to the student, except as provided in this subsection.

(a) The student may specifically release his or her right to review where the information consists only of confidential letters and recommendations respecting:

(i) Admission to any educational institution, or

(ii) Employment application information and documents filed and maintained at the student's request at the (~~university office of career services and placement~~) career services office.

(iii) Receipt of an honor or honorary recognition.

(iv) Faculty evaluations and other education records placed in departmental files where the department serves in a placement or referral capacity.

(b) A student's waiver of his or her right of access to confidential statements is valid only if:

(i) The student, upon request, shall be notified of the names of all persons making confidential statements concerning him; and

(ii) Confidential statements shall be used solely for the purpose for which they were originally intended; and

(iii) Such waivers are not required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from the university.

(iv) The waiver is made in writing and signed by the student, regardless of age.

(c) Recommendations, evaluations or comments concerning a student that have been provided in confidence, either expressed or implied, as between the author and the recipient, prior to January 1, 1975, shall not be subject to release to the student. Such records shall remain confidential and shall be released only with the consent of the author of the specific document. Such records shall be used by the institution only for the purpose for which they were originally intended.

(3) Where requested records or data include information on more than one student, the student shall be entitled to receive or be informed of only that part of the record or data that pertains to the requesting student.

(4) Students have the right to obtain copies of their education records. Charges for the copies shall not exceed the cost normally charged by a Washington State University copy center (except in cases where charges have previously been approved for certain specified services, such as transcripts and grade sheets).

(5) The registrar is the official custodian of academic records and therefore is the only official who may issue a transcript of the student's official academic record.

(6) Student education records may be destroyed in accordance with a department's routine retention schedule where the departmental procedure has been approved by the university records officer. In no case will any record which is requested by a student for review in accordance with these

regulations be removed or destroyed prior to final disposition of the record request.

AMENDATORY SECTION (Amending WSR 95-07-043, filed 3/8/95, effective 4/8/95)

WAC 504-21-040 Requests and appeal procedures.

(1) A request by a student for review of information or a request for amendment shall be made in writing to the university employee or office having custody of the particular record. A request for amendment may be appropriate if the student believes the records contain information that is inaccurate, misleading, or in violation of his/her rights to privacy. Neither the student records officer nor the registration and records committee shall review any matter regarding the appropriateness of official academic grades. (University academic regulations 104, "academic complaint procedures," and 105, "administrative changes to final grades," should be followed in all cases involving grading disputes.)

(2) The person or office receiving a proper request for review ((of information must respond to a request for education records within a reasonable period of time, but in no case more than forty-five days after the request has been made. A university employee or office which is unable to comply with a student's request within the above-stated time period shall inform the student of that fact and the reasons therefor in writing)) or amendment of information must respond to the request within a reasonable period of time, but in cases where a student requests review, no more than forty-five days after the request has been made.

(3)(a) A student who believes his or her request has not been properly answered by a particular person or office should consult the appropriate dean or director having supervisory responsibility for the office.

(b) If a student remains dissatisfied after consulting with the appropriate dean or director, the student may then ((request a hearing before the university's student records committee. Following the hearing, the university's student records committee shall render its decision within a reasonable period of time)) appeal to the student records officer, who will review the appeal and may refer it to the university registration and records committee. All cases involving requests for amendment will be referred to the registration and records committee for hearing. In either case, the decision shall be rendered within a reasonable period of time. The decision ((of the university's student records committee)) shall be final, except as provided in WAC 504-21-080.

(c) ((In no case shall any request for review by a student be considered by the university's student records officer which has not been filed with that officer in writing within ninety days from the date of the initial request to the custodian of the record.)) Appeals must be filed with the student records officer within ninety days from the date of the initial request to the custodian of the record.

(d) ((The student records committee shall not review any matter regarding the appropriateness of official academic grades. (University Academic Regulation 104, "academic complaint procedure" should be followed in all cases involving grading disputes.))

(e)) Eligible students are hereby notified of their right to file a complaint with the Department of Education concerning any alleged failure of Washington State University to comply with the Family Educational Rights and Privacy Act of 1974, as amended.

AMENDATORY SECTION (Amending WSR 01-19-027, filed 9/13/01, effective 10/14/01)

WAC 504-21-050 Release of personally-identifiable records. (1) The university shall not permit access to or the release of education records or personally-identifiable information contained therein, other than "directory information," (as defined in ((paragraph 5)) subsection (5) of this section), without the written consent of the student to any party other than the following:

(a) ((University staff and faculty, including deans, department and program chairs and academic advisers, and faculty and students when officially appointed to a university senate or administrative committee, when the information is required for a legitimate educational interest within the performance of their responsibilities to the university, with the understanding that its use will be strictly limited to the performance of those responsibilities.)) School officials with a legitimate educational interest. A school official is a person employed by WSU in an administrative, supervisory, academic or research, or support staff position (including health staff and WSU police); a person or company with whom the university has contracted (such as an attorney, auditor, or collection agent); a person serving on the board of trustees; or a student serving on an official committee (such as a disciplinary or grievance committee, or assisting another school official in performing his or her tasks). A school official has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her educational responsibilities.

(b) Federal and state officials requiring access to education records in connection with the audit and evaluation of a federally- or state-supported education program or in connection with the enforcement of federal or state legal requirements which relate to such programs. In such cases the information required shall be protected by the federal or state official in a manner which will not permit the personal identification of students and their parents to other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation or enforcement of legal requirements.

(c) Persons or organizations, other than parents or legal guardians, providing to the student financial aid, or determining financial aid decisions concerning eligibility, amount, condition, and enforcement of terms of said aid.

(d) Organizations conducting studies for or on behalf of the university for purposes of developing, validating or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students by persons other than representatives of such organizations, and such information will be destroyed when no longer needed for the purposes for which it was provided.

(e) Education records may be used for legitimate academic research; provided that

(i) The procedures utilized and the reported findings do not violate the student's confidence;

(ii) Students' names will not be included in the study or in any way linked with the data;

(iii) Case histories and case records are sufficiently disguised to prevent identification of the individuals involved; and

(iv) The student's written permission is obtained where individual identification occurs.

(f) Accrediting organizations in order to carry out their accrediting functions.

(g) Any person or entity designated by judicial order or lawfully issued subpoena, upon condition that a reasonable attempt has been made to notify the student of all such orders or subpoenas in advance of the compliance therewith unless the subpoena is issued for a law enforcement purpose or is issued by a federal grand jury and the court or other issuing agency has ordered that the existence of the subpoena not be disclosed. Any university employee or office receiving a subpoena or judicial order for education records should immediately notify the WSU division of the office of the attorney general.

(h) Parents or legal guardians of a student who have established that student's status as their dependent according to Internal Revenue Code.

(i) An alleged victim of any crime of violence or non-forcible sexual offense, as they are defined in Appendix A to 34 CFR Part 99, shall be informed of the results of any disciplinary proceeding conducted by WSU against the alleged perpetrator of that crime with respect to that crime.

(j) To the office of the attorney general when disclosure is to comply with a judicial order or to provide legal advice.

(k) WSU may provide to parents or guardians of students under age twenty one information regarding violations of federal, state, or local laws or the university's conduct code where such violations concern the use or possession of alcohol or controlled substances and where WSU determines that those students have committed such violations.

(l) When either the student initiates legal action against WSU or when WSU initiates legal action against the student, WSU may disclose to the court any educational records of the student that are relevant to the legal action.

(m) Information may be disclosed in conformance with other exceptions to the prior written consent requirement of the Family Educational Rights and Privacy Act and implementing regulations found at 34 C.F.R. § 99. A copy of these regulations may be obtained from the Office of the Registrar.

(2) Where the consent of a student is obtained for the release of education records, it shall be in writing, signed and dated by the person giving such consent, and shall include:

(a) A specification of the records to be released,

(b) The reasons for such release, and

(c) The ~~((names))~~ identity of the parties to whom such records will be released unless the nature of the activity is such that advance identification of recipients is not possible such as employment assistance provided by the university office of career services and placement, in which case an

effort will be made to identify recipients of information as they become known.

(3) In cases where records are made available without student consent as permitted by ~~((WAC 504-21-050))~~ subsection (1)(b), (c), (d), (e), (f), ~~((i) and (j))~~ and (g) of this section (except in cases where the subpoena prohibits disclosure), subsection (1)(i) of this section and, when required by law, subsection (1)(m) of this section the university shall maintain a record which will indicate the parties which have requested or obtained access to a student's records maintained by the university and which will indicate the legitimate interest of the requesting party. ~~((Releases in accordance with WAC 504-21-050 (1)(a) need not be recorded.))~~

(4) Personally-identifiable education records released to third parties, with or without student consent, shall be accompanied by a ~~((printed))~~ written statement indicating that the information cannot be subsequently released in a personally-identifiable form to any other parties without obtaining consent of the student unless such disclosures are made pursuant to ~~((WAC 504-21-050))~~ subsection (1)(g), (h), (j), (k), or (l) of this section or the information released is directory information as defined in ~~((paragraph 5))~~ subsection (5) of this section.

(5) The term "directory information" used in ~~((WAC 504-21-050))~~ subsection (1) of this section is defined as student's name (including any former name), local and permanent addresses and telephone numbers, electronic mail address(es), major and minor fields of study, participation in officially-recognized activities in sports, weight and height of members of athletic teams, dates of attendance, enrollment status (e.g., undergraduate ~~((or))~~ or graduate; full time or part-time), grade level, degrees, status as graduate assistant and assignment, certificates, and awards received including the president's honor roll, and the most recent previous educational institution attended by the student. Students may request that the university not release directory information by filing a request ~~((with the registrar's office or))~~ on-line or with the office of payroll services.

(6) Information from education records may be released to appropriate persons in connection with an emergency if the knowledge of such information is necessary to protect the health or safety of a student or other person(s).

AMENDATORY SECTION (Amending Order 89-1, Resolution No. 3-31-89-16, filed 5/18/89, effective 7/1/89)

WAC 504-21-060 University records. All university employees or offices who have custody of education records will develop procedures in accord with WAC 504-21-010 through 504-21-060. Any supplementary regulations found necessary by departments will be filed with the ~~((student))~~ registration and records committee, which will be responsible for periodic review of policy and procedures.

No records shall be kept that reflect a student's political or ideological beliefs or associations.

AMENDATORY SECTION (Amending WSR 95-07-043, filed 3/8/95, effective 4/8/95)

WAC 504-21-080 Right of student to register objections. Any student who ~~((objects to the accuracy or truthful~~

ness of any information contained in any university education record that is related to him or her may, after processing an unsuccessful appeal pursuant to WAC 504-21-040, submit a written view)) unsuccessfully requests an amendment pursuant to WAC 504-21-040 may submit a written objection regarding his or her education records to the provost, who shall review the appeal and take necessary action which may include reconsideration by the student records officer or inclusion of the written objection or summary thereof in such education records; provided, however, no student has any right to post objections to academic grades and have the same appear on the student's academic record.

WSR 09-04-082
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed February 3, 2009, 11:41 a.m., effective March 6, 2009]

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

Purpose: To change outdated references throughout the chapter.

Citation of Existing Rules Affected by this Order: Amending chapter 392-122 WAC.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 09-01-091 on December 16, 2008.

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 3, 2009.

Randy I. Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

WAC 392-122-135 State special education program—Eligible special education students. Eligible special education students are those students:

(1) For the 1994-95 school year as defined in:

(a) WAC 392-171-381 (developmentally disabled preschool students);

(b) WAC 392-171-386 (seriously behaviorally disabled students);

(c) WAC 392-171-391 (communication disordered students);

(d) WAC 392-171-396 (orthopedically impaired students);

(e) WAC 392-171-401 (health impaired students);

(f) WAC 392-171-406 (specific learning disabled students);

(g) WAC 392-171-421 (mentally retarded students);

(h) WAC 392-171-431 (multidisability students);

(i) WAC 392-171-436 (deaf students);

(j) WAC 392-171-441 (hard of hearing students);

(k) WAC 392-171-446 (visually impaired students); and

(l) WAC 392-171-451 (deaf-blind students); and

(2) For the 1995-96 school year and thereafter:

(a) Meeting the definition of enrolled student in WAC 392-121-106, enrolled in a course of study pursuant to WAC 392-121-107 and who qualify and are receiving special education services pursuant to chapter 392-172A WAC; or

(b) Who are under six years of age, qualify as developmentally delayed pursuant to WAC ((~~392-172-114~~) 392-172A-01035 and are receiving special education services pursuant to chapter 392-172A WAC; or

(c) Who are under six years of age, qualify as communication disordered pursuant to WAC ((~~392-172-120~~) 392-172A-01035 and are receiving special education services pursuant to chapter 392-172A WAC.

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

WAC 392-122-140 State special education program—Home and/or hospital care. State special education program moneys shall be allocated to school districts for students eligible under WAC ((~~392-172-218~~) 392-172A-02100 temporarily requiring home and/or hospital care at the maximum rate provided annually by the superintendent of public instruction for the purpose of distributing home and/or hospital care allocations.

AMENDATORY SECTION (Amending WSR 05-15-126, filed 7/18/05, effective 8/18/05)

WAC 392-122-145 State special education program—Home and/or hospital care—Extended absences. Students eligible under WAC ((~~392-172-218~~) 392-172A-02100 temporarily requiring home and/or hospital care shall be counted as enrolled students pursuant to WAC 392-121-106 as follows:

(1) Students not deemed eligible special education students pursuant to WAC 392-122-135 whose absence from the regular attendance continues through two consecutive monthly enrollment report days shall be dropped from the rolls and shall not be counted as an enrolled student on the next monthly enrollment report day unless attendance has resumed. Such students shall only be eligible for home and/or hospital care allocations until attendance in the regular program is resumed.

(2) Students deemed eligible special education students pursuant to WAC 392-122-135 shall be reported as enrolled students for the duration of the home and/or hospital care.

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

WAC 392-122-166 State special education program allocation. The board of directors of a school district may request the superintendent of public instruction to pay a portion of the district's special education allocation to another school district or an educational service district. The request must be submitted on Form ~~((4324))~~ 1295 and must state the dollar amount of the transfer. The board can modify the dollar amount of the transfer by submitting another Form ~~((4324))~~ 1295 to the superintendent of public instruction. Unless the form requesting a transfer states a timeline for making the transfer, the superintendent of public instruction shall execute the transfer pursuant to the provisions of WAC 392-121-400.

AMENDATORY SECTION (Amending Order 98-09, filed 10/20/98, effective 11/20/98)

WAC 392-122-235 State institutional education program—Determination of average state institutional program certificated instructional staff salary for the purpose of apportionment. The determination of average institutional education program certificated instructional staff salary used in the institutional education allocation formula for the purposes of apportionment shall be the same as specified in WAC 392-121-299~~((:))~~; provided, that the words "state institutional education program" shall be substituted for "basic education" throughout that section.

AMENDATORY SECTION (Amending Order 2, filed 1/23/91, effective 2/23/91)

WAC 392-122-600 State learning assistance program—Applicable code provisions. The following sections of this chapter are applicable to the distribution of state moneys for the state learning assistance program:

- (1) WAC 392-122-600 through 392-122-610;
- (2) WAC 392-122-900~~((:—Provided, That allowable expenditures including indirect expenditures shall be determined pursuant to WAC 392-162-095))~~; and
- (3) WAC 392-122-905 through 392-122-910.

AMENDATORY SECTION (Amending Order 84-36, filed 10/2/84)

WAC 392-122-705 Formula for the distribution of state moneys for the state transitional bilingual program. (1) As used in this section the term "eligible student" shall mean those students defined under WAC 392-160-005~~((+))~~ (3) and 392-150-015.

(2) A district's entitlement for state moneys for the state transitional bilingual program shall be calculated as follows:

(a) Multiplying the number of eligible students by the per pupil allocation established in the State Appropriation Act for the state transitional bilingual program.

(b) The result of the calculation provided in (a) of this subsection is the district's entitlement subject to WAC 392-122-710 and its provision for enrollment adjustment.

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

WAC 392-122-710 Distribution of state moneys for the transitional bilingual program. The superintendent of public instruction shall apportion to districts for the state transitional bilingual program the amount calculated per district in WAC 392-122-705 according to the apportionment schedule provided in RCW 28A.510.250. Monthly payments to districts shall be adjusted during the year to reflect changes in the district's reported eligible students as reported on the P223, monthly report of school district enrollment form. For the purpose of transitional bilingual allocations, the district's eight-month average annual headcount enrollment of eligible students as defined in WAC 392-160-005 ~~((+e))~~ (3) and 392-160-015 shall be the average of such enrollment for the first school day of the second reporting month and the subsequent seven months.

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

WAC 392-122-805 Formula for distribution of state moneys for the state highly capable students education program. (1) As used in this section, the term "average annual full-time equivalent students" or AAFTE shall be defined as that term defined in WAC 392-121-133.

(2) A district's entitlement for state moneys for the state highly capable students education program shall be calculated as follows:

(a) Multiplying the AAFTE of the reporting district ~~((by one and one-half percent;~~

~~((b) Multiplying the number of students obtained in the above calculation))~~ by the per pupil allocation established in the State Operating Appropriations Act in effect at the time the apportionment is due; and

~~((+))~~ (b) The product is the district's entitlement subject to WAC 392-122-810 and its provision for enrollment adjustment.

AMENDATORY SECTION (Amending WSR 02-04-023, filed 1/24/02, effective 1/24/02)

WAC 392-122-900 General provision—Indirect cost limitations, carryover limitations and recoveries. Categorical apportionment moneys shall be expended for allowable categorical program costs. Indirect cost charges to categorical programs are limited as provided in this section. Categorical moneys may be carried over from one school district fiscal year to another only as provided in this section.

(1) The superintendent of public instruction shall recover categorical program allocations made pursuant to this chapter if not expended by the school district during the school year for allowable program costs.

(2) For the 2000-01 school year and thereafter, "allowable program costs" means direct program expenditures

((minus abatements, if applicable,)) plus allowable indirect program charges.

(a) Direct program expenditures are expenditures directly traceable to the program for the school year reported consistent with the *Accounting Manual for Public School Districts in the State of Washington* and instructions provided by the superintendent of public instruction including the *Administrative Budgeting, and Financial Reporting Handbook*.

(b) For the purposes of this section, special education program expenditures shall be reduced (abated) by revenues to account 7121 special education revenues from other districts.

(c) For special education, highly capable, and transitional bilingual, ((and traffic safety programs,)) allowable indirect program charges equal direct program expenditures times the percentage calculated from the school district's annual financial statements (Report F-196) for two school years prior as follows:

(i) Divide direct expenditures for program 97 district-wide support by;

(ii) Total general fund direct expenditures for all programs minus direct expenditures for program 97 districtwide support; and

(iii) Round to three decimal places.

(d) For the learning assistance program, allowable indirect program charges equal the direct program expenditures times the federal restricted indirect rate calculated by the superintendent of public instruction.

(e) For the institutional education program, allowable indirect program charges equal the state institutional education program allocation times the percentage allocated for indirect costs pursuant to the biennial operating appropriations act and the state funding formula.

(3) Commencing with the 1994-95 school year allocation, a school district may carry over from one school district fiscal year to the next up to ten percent of the state learning assistance program allocation. Carryover moneys shall be expended solely for allowable learning assistance program costs.

(4) Commencing with the 1997-98 school year allocation, a district may carry over from one school fiscal year to the next up to ten percent of state special education program allocation. Carryover moneys shall be expended solely for allowable state special education program costs.

(5) Commencing with the 1998-99 school year allocation, a district may carry over from one school district fiscal year to the next up to ten percent of the state institutional education program allocation. Carryover moneys shall be expended solely for allowable state institutional education program costs.

(6) The amount recovered pursuant to this section for special education, highly capable, bilingual, and learning assistance((, and traffic safety)) programs shall be determined as follows:

(a) Sum the state allocation for the categorical program for the school year and any carryover from the prior school year if applicable;

(b) Determine the district's allowable program costs for the school year pursuant to this section;

(c) If the result of (a) of this subsection exceeds the result of (b) of this subsection, the difference less any allowable carryover shall be recovered.

(7) The amount recovered pursuant to this section for the institutional education program shall be determined as follows:

(a) Sum the state allocation for the institutional education program for the school year excluding any amount provided for indirect costs, and any carryover from the prior school year if applicable;

(b) Determine the district's direct expenditures for the institutional education program as reported on Report F-196 or such other document filed pursuant to instructions provided by the superintendent of public instruction;

(c) If the amount of (a) of this subsection exceeds the amount of (b) of this subsection, the difference less any allowable carryover shall be recovered.

(8) This section applies to categorical program allocations to school districts, educational service districts and, in the case of institutional education programs, entities contracting to provide an institutional education program funded under this chapter.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-122-265	State institutional education program—Institutional program traffic safety allocation.
WAC 392-122-300	Traffic safety education—Applicable provisions.
WAC 392-122-301	Traffic safety education—Definition—Completing student.
WAC 392-122-302	Traffic safety education—Definition—Low-income student.
WAC 392-122-303	Traffic safety education—Low-income eligibility—Documentation and confidentiality.
WAC 392-122-304	Traffic safety education—Definition—Low-income tuition assistance.
WAC 392-122-320	Traffic safety education—Apportionment of state moneys.
WAC 392-122-321	Traffic safety education—School district reporting.
WAC 392-122-322	Traffic safety education—Recovery of moneys.

WSR 09-04-100
PERMANENT RULES
PUBLIC WORKS BOARD

[Filed February 4, 2009, 11:28 a.m., effective March 7, 2009]

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

Purpose: Make administrative changes to existing public works board rules.

Citation of Existing Rules Affected by this Order: Amending Title 399 WAC.

Statutory Authority for Adoption: RCW 43.155.040(4).

Adopted under notice filed as WSR 09-01-037 on December 9, 2008.

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 7, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, 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 4, 2009.

Marie Sullivan
 Director of
 Intergovernmental Relations

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

WAC 399-20-060 Office hours. Public records are available for inspection and copying ~~((during the department's normal office hours, which are))~~ from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through ~~((Friday))~~ Thursday, excluding legal holidays, or closure due to natural disaster, inclement weather, or local emergency.

AMENDATORY SECTION (Amending WSR 07-05-029, filed 2/13/07, effective 3/16/07)

WAC 399-30-031 Applications for drinking water state revolving funds and water system acquisition and rehabilitation program financial assistance. The board, the department of health, and the department of community, trade, and economic development jointly administer the drinking water state revolving fund and the water system acquisition and rehabilitation program, and follow the process described in chapter 246-296 WAC.

AMENDATORY SECTION (Amending WSR 07-05-029, filed 2/13/07, effective 3/16/07)

WAC 399-30-040 Application evaluation procedure and board deliberations—Construction and preconstruction

tion loan programs. (1) The board will consider and prioritize, or disapprove, all applications for financial assistance at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(2) Applications will be evaluated and prioritized in accordance with the following procedures:

(a) Staff will log in all applications as received.

(b) Staff will review all applications for compliance with the minimum qualification requirements of WAC 399-30-030(2). Jurisdictions whose applications do not meet the minimum qualification requirements will be notified in writing of the disqualification.

(c) Staff will perform an evaluation of all applications which meet the requirements of WAC 399-30-030(2). Applications will be scored according to ~~((the number of points awarded for responses provided in the statements of local management efforts and project need.~~

~~((i) Not less than sixty points, of a one hundred point total, will be assigned to responses to questions identified in the application as relating to local management effort.~~

~~((ii) The remaining forty points will be assigned to responses to questions identified in the application as relating to project need))~~ responses in the application developed and approved by the board.

(d) Staff will provide the board with evaluation and scoring of the applications. All application materials will be available to the board for their deliberations. The board will approve a ranked list of projects based on the information provided to them by the staff and the applications.

(e) The board may adjust the ranked list in consideration of the following factors:

(i) Geographical balance;

(ii) Economic distress;

(iii) Type of projects;

(iv) Type of jurisdiction;

(v) Past management practices of the applicant, including, but not limited to, late loan payments, loan defaults, audit findings, or inability to complete projects within the time allowed by loan agreement;

(vi) Other criteria that the board considers advisable.

(f) Staff will verify critical information on each project as required by the board.

(g) In order to ensure fairness to all jurisdictions with applications pending before the board, the board will not accept oral or written testimony from any applicant while deliberating loan priorities, other than specific responses to information requests initiated by the board as provided in (h) of this subsection.

(h) The board may consult with officials of jurisdictions having projects submitted for funding on any issue it wishes to address.

(3) Applicants will be notified in writing of board decisions.

AMENDATORY SECTION (Amending WSR 07-05-029, filed 2/13/07, effective 3/16/07)

WAC 399-30-042 Application evaluation procedure and board deliberations—Capital planning support. (1)

The board will consider and approve, or disapprove, all applications for capital planning support loans at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(2) Direct costs eligible for capital planning support are those costs directly attributable to: A systemic related plan, including capital facilities plans and capital improvement plans; comprehensive plans, environmental studies, including biological assessments or environmental assessments; or ~~((archeological))~~ archaeological and historic preservation activities.

(3) All applications will be evaluated in accordance with the following procedures:

(a) Staff will log in all applications as received.

(b) Staff will review all applications for compliance with the minimum qualification requirements of WAC 399-30-030(2). Jurisdictions whose applications do not meet the minimum requirements will be notified in writing of the disqualification.

(c) Staff will perform an evaluation of applications which meet the requirements of WAC 399-30-030(2) to determine if the application is consistent with the policies contained in the ~~((capital planning support))~~ loan application.

(d) Those applications found to be consistent with board policies may be recommended to the board for funding. All application materials will be available to the board for its deliberations. The board will approve a list of projects based on the information provided to it by the staff and the applications.

(e) The board may then adjust the list in consideration of the following factors:

(i) Geographical balance;

(ii) Economic distress;

(iii) Past management practices of the applicant, including, but not limited to, late loan payments, loan defaults, audit findings, or inability to complete projects within the time allowed by loan agreement;

(iv) Other criteria that the board considers advisable.

(f) Staff will verify critical information on each project as required by the board.

(g) The board may consult on any issue it wishes to address, with officials of jurisdictions having projects submitted for funding.

(4) Applicants will be notified in writing of board decisions.

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

WAC 399-30-045 Application evaluation procedure and board deliberations—Emergency loan program. This section implements RCW 43.155.060 and 43.155.065. The board may make low-interest or interest free loans to local governments for emergency public works projects. The emergency loan program is to financially assist eligible communities experiencing the loss of critical public works services or facilities due to an emergency, and that can demonstrate a substantial fiscal need.

(1) Eligible local governments. Applicants must meet the conditions as identified under WAC 399-30-030(2).

(2) Eligible uses of funds. Financial assistance received shall be used for the purpose of restoring the services and/or repair of the public works facilities involved in the emergency. Assistance provided may be used to help fund all or part of an emergency public works project less any reimbursement from any of the following:

(a) Federal disaster or emergency funds, including funds from the Federal Emergency Management Agency;

(b) State disaster or emergency funds;

(c) Insurance settlements; or

(d) Litigation.

Assisted local governments must reimburse the department any moneys received from the sources listed above. The local government is obligated to make reimbursement for four years after formal project closeout. Local governments eligible to receive moneys must use their best efforts to seek reimbursement in a timely manner.

(3) Availability of funds. Funding will be made available on a first-come first-served basis. Only those funds specifically appropriated by the legislature from the public works assistance account shall be used to make emergency loans. That amount shall not exceed five percent of the total amount appropriated from this account in any biennium.

(4) Application process. Local governments must apply on the form provided by the board. Applications will be processed in the order received.

(5) Board deliberations—Emergency loan applications.

(a) The board will consider and approve or disapprove all eligible applications for emergency financial assistance at regular or special meetings of the board. The applicant will be notified of meetings at which its application will be considered.

(b) All applications will be accepted~~((;))~~ and evaluated~~((; and prioritized))~~ in accordance with the following procedures:

(i) Applications will be accepted only when emergency funding is available.

(ii) Staff will review applications and verify that the applicant is eligible for assistance as set forth in RCW 43.155.070(1).

(iii) Staff will provide the board an evaluation of whether an emergency loan is needed based upon the information documented by the applicant and staff.

(iv) Site visits to the location of the emergency public works project will be carried out at the discretion of the board or staff.

(6) Loan terms. The board shall determine the term and interest rate(s) of emergency loans annually.

(7) Exceptions to public works trust fund policies and procedures. Except as provided in this chapter or specified in annual program guidelines, the emergency program shall follow all general administrative program policies as set for the public works trust fund.

AMENDATORY SECTION (Amending WSR 07-05-029, filed 2/13/07, effective 3/16/07)

WAC 399-30-060 Loan and financing guarantee ((contracts)) loan agreements for the construction loan program. (1) The board will only execute loan agreements or

otherwise financially obligate funds from the public works assistance account after the legislature approves the list and accompanying appropriation, except for preconstruction, planning, and emergency loans.

(2) After the legislature has appropriated funds from the public works assistance account for a specific list of public works projects, the construction loan funds will be disbursed to the applicant local government through a ~~((contract))~~ loan agreement. The ~~((contract))~~ loan agreement will offer terms and conditions as the board determines are reasonable, based on the following standards:

(a) The local government's financial participation funds must be from locally generated funding or federal or state shared revenues that can be allocated at the discretion of the local government.

(b) The interest rates, local share requirements and loan limits will be determined annually by the board.

(c) Loans must not exceed ~~((twenty))~~ thirty years, or the useful life of the improvements, whichever is shorter.

(3) The local government and the department must execute a final ~~((contract))~~ loan agreement before any funds are disbursed.

(4) The local government must submit for approval a scope of work, including such things as a budget and performance measures consistent with the application for financial assistance to the department within ninety days after the department offers a loan or financing guarantee.

(5) The local government must execute any loan or financing guarantee ~~((contracts))~~ loan agreements offered within ninety days after the department offers the ~~((contract))~~ loan agreement.

(6) The local government must begin work on a public works project prior to October 1 of the year in which the loan or financing guarantee is offered.

(7) The local government must complete work on the public works project within the time specified in the loan agreement, unless a written request for extension is approved by the board.

(8) The board or department will not reimburse local governments for any funds spent on public works projects financed through the public works assistance account before a ~~((contract))~~ planning, emergency or preconstruction loan agreement has been formally executed. ~~((Funds spent before the contract is executed may be used toward local participation requirements if they are for eligible activities under WAC 399-30-030 and are consistent with the executed loan agreement.))~~ The board or department may reimburse local governments for those construction loan costs incurred after September 1st of the year in which a construction loan was recommended for financing by the board, providing that the project is approved by law, the costs are eligible for reimbursement at the time of loan agreement execution, and there are funds available in the public works assistance account. These reimbursable costs, incurred before loan agreement execution, must be spent on eligible activities as defined by WAC 399-30-030, comply with executive order 05-05, and be consistent with the loan agreement as later executed. Any costs incurred before the execution of a construction loan agreement will not be reimbursed unless a loan agreement is executed.

AMENDATORY SECTION (Amending WSR 98-24-010, filed 11/19/98, effective 12/20/98)

WAC 399-30-065 Emergency loan and financing guarantee ~~((contracts))~~ loan agreements. (1) After the legislature has appropriated funds from the public works assistance account for emergency loans, the loan funds will be disbursed to the applicant local government pursuant to a ~~((contract))~~ loan agreement. The ~~((contract))~~ loan agreement will offer terms and conditions the board determines are reasonable, based on the following standards:

(a) The local government's financial participation funds must be from locally generated revenues or federal or state shared revenues that can be allocated at the discretion of the local government.

(b) Loans must not exceed twenty years, or the useful life of the improvements, whichever is shorter.

(2) The local government and the department must execute a final ~~((contract))~~ loan agreement before any funds are disbursed.

(3) The local government must complete a scope of work form for a loan or financing guarantee and return it to the department within ninety days after the department offers a loan or a financing guarantee ~~((contract))~~ loan agreement.

(4) The local government must execute any loan or financing guarantee ~~((contracts))~~ loan agreements offered within ninety days after the department offers the ~~((contract))~~ loan agreement.

(5) The local government must begin work on an emergency public works project within ninety days after the ~~((contract))~~ loan agreement is executed.

(6) The local government must complete work on an emergency public works project within twelve months after the ~~((contract))~~ loan agreement is executed, unless a written request for extension is approved by the board.

(7) The board or department will not reimburse local governments for any funds spent on emergency public works projects financed through the public works assistance account before a ~~((contract))~~ loan agreement has been formally executed. However, if the local government has formally declared an emergency, the board may approve reimbursement of eligible costs of correcting the emergency incurred after an emergency was declared.

Any unreimbursed eligible costs for the project may be used toward local participation requirements, if any.

(8) All public works projects must comply with the competitive bid requirement of RCW 43.155.060 to the extent feasible and practicable.

AMENDATORY SECTION (Amending WSR 07-05-029, filed 2/13/07, effective 3/16/07)

WAC 399-50-010 Definitions. (1) Unless another definition is given, words used in this chapter have the same meaning as in chapter 42.52 RCW, Ethics in public service.

(2) "Annual construction roster" means the prioritized list of projects recommended for funding, which is developed and submitted to the legislature before November 1 of each year under RCW 43.155.070(4).

(3) "Beneficial interest" means the right to enjoy profit, benefit, or advantage from a contract or loan agreement or

other property and also has the meaning given to it in Washington case law. Ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.

(4) "Project" means public works project as defined in RCW 43.155.020(6).

AMENDATORY SECTION (Amending WSR 00-11-021, filed 5/9/00, effective 6/9/00)

WAC 399-50-020 Interest in contracts or loan agreements, projects, or loans. (1) When a member of the public works board is beneficially interested, directly or indirectly, in a ~~((contract))~~ loan agreement, project, or loan that may be made by, through, or under the supervision of the board, in whole or in part, or when the member accepts, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in such ~~((contract))~~ loan agreement, project, or loan, the member shall:

(a) Recuse him or herself from board discussion regarding the specific ~~((contract))~~ loan agreement, project, or loan;

(b) Recuse him or herself from the board vote on the specific ~~((contract))~~ loan agreement, project, or loan; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific ~~((contract))~~ loan agreement, project, or loan.

(2) The prohibition against discussion set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3) Under subsection (1) of this section, "any other person" has a beneficial interest in a ~~((contract))~~ loan agreement, project, or loan when the other person bids, applies for, or otherwise seeks to be awarded the ~~((contract))~~ loan agreement, project, or loan.

Example 1

Board member Sam Jones is an engineering consultant. Jones performs consulting work on a regular basis for the Evergreen County public works department. The board is asked to approve an emergency public works loan for Evergreen County. Jones should recuse himself from voting on or discussing this action because he receives compensation from a "person" (Evergreen County) beneficially interested in the proposed loan.

Example 2

Board member Ima Kozy is the President and CEO of a firm that constructs roads and utilities. The board is asked to approve a list of loans for construction projects in various locations around the state. One of the projects is in the City of Destiny, where Ima's firm frequently responds to solicitation for bids. If Ima wants her firm to be able to bid on the Destiny project, she should recuse herself from voting on this list or discussing this action.

If Ima does vote to approve the list or participates in discussing it, she will be prohibited by RCW 42.52.030 from receiving a direct or indirect beneficial interest in the loan

~~((contract))~~ agreement to Destiny, or from accepting compensation from another person beneficially interested in the ~~((contract))~~ loan agreement. Thus, neither she nor her firm may bid on the project.

AMENDATORY SECTION (Amending WSR 00-11-021, filed 5/9/00, effective 6/9/00)

WAC 399-50-030 Interest in transactions. (1) When a member of the public works board either owns a beneficial interest in or is an officer, agent, employee or member of an entity or individual engaged in a transaction involving the board, the member shall:

(a) Recuse him or herself from board discussion regarding the specific transaction;

(b) Recuse him or herself from the board vote on the specific transaction; and

(c) Refrain from attempting to influence the remaining board members in their discussion and vote regarding the specific transaction.

(2) The prohibition against discussion and voting set forth in subsection (1)(a) and (c) of this section shall not prohibit the member of the board from using his or her general expertise to educate and provide general information on the subject area to the other members.

(3)(a) "Transaction involving the board" means a proceeding, application, submission, request for a ruling or other determination, ~~((contract))~~ loan agreement, project or proposed project, loan, claim, case, or other similar matter that the member in question believes, or has reason to believe:

(i) Is, or will be, the subject of board action; or

(ii) Is one to which the board is or will be a party; or

(iii) Is one in which the board has a direct and substantial proprietary interest.

(b) "Transaction involving the board" does not include the following: Preparation, consideration, or enactment of legislation, including appropriation of moneys in a budget, or the performance of legislative duties by a member; or a claim, case, lawsuit, or similar matter if the member did not participate in the underlying transaction involving the board that is the basis for the claim, case, or lawsuit. ~~((Rulemaking))~~ Rule making is not a "transaction involving the board."

(4) "Board action" means any action on the part of the board, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, ~~((contract))~~ loan agreement, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

Example 3

Board member Alice Lester is a director of the Starburst Sewer District. During presentation of the annual construction roster, the board is asked to consider adding projects to the roster based on various criteria developed by staff. The board's choice of criteria will determine which additional projects will be funded. A sewer improvement project for the Starburst Sewer District is among those that may be added to the roster, depending on which criteria are selected. Lester

should disclose her affiliation with Starburst and recuse herself from discussing on or voting on the criteria for funding additional projects, because she is an officer of an entity interested in a transaction before the board, specifically determination of funding criteria that will affect Starburst Sewer District.