

WSR 10-22-040
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed October 27, 2010, 12:56 p.m., effective November 27, 2010]

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

Purpose: The purpose of the chapter is to have uniform statewide standards for domestic violence shelters and supportive services funded by DSHS. These standards address issues such as adequate food, clothing, emergency housing, safety, security, and advocacy.

The proposed major changes to the chapter: New definitions and changes to existing definitions; adds new section that describes the model that must be used in providing the minimum services standards established by the proposed rule; describes the supportive services that must be provided by domestic violence agencies funded by DSHS; adds supportive services and resources for children/youth residing in emergency domestic violence shelter; describes requirements for an agency's crisis hotline; updates the requirements for cribs and bassinets, provision of food/clothing, and storing resident medications in the emergency domestic violence shelter.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-61A-0005, 388-61A-0010, 388-61A-0015, 388-61A-0020, 388-61A-0025, 388-61A-0030, 388-61A-0035, 388-61A-0040, 388-61A-0045, 388-61A-0050, 388-61A-0055, 388-61A-0060, 388-61A-0065, 388-61A-0070, 388-61A-0075, 388-61A-0080, 388-61A-0085, 388-61A-0090, 388-61A-0095, 388-61A-0100, 388-61A-0105, 388-61A-0110, 388-61A-0115, 388-61A-0120, 388-61A-0125, 388-61A-0130, 388-61A-0135, 388-61A-0140, 388-61A-0145, 388-61A-0146, 388-61A-0147, 388-61A-0148, 388-61A-0149, 388-61A-0150, 388-61A-0155, 388-61A-0160, 388-61A-0165, 388-61A-0170, 388-61A-0175, and 388-61A-0180.

Statutory Authority for Adoption: Chapter 70.123 RCW.

Adopted under notice filed as WSR 10-13-145 on June 23, 2010.

Changes Other than Editing from Proposed to Adopted Version: Written and oral testimony were provided requesting that WAC 388-61A-0280(5) be changed to avoid an unintended consequence of callers to the crisis hotline/helpline from receiving a busy signal if all incoming lines are in use. The change was made because it does not alter the intended meaning of WAC 388-61A-0280 and, indeed, strengthens the intent of this section.

Written comment requested that WAC 388-61A-0280(1) be clarified with respect to the area of coverage for distributing the domestic violence agency's crisis hotline/helpline telephone number. The change was made because it clarifies the department's intent for wide geographic distribution of the crisis hotline/helpline telephone number.

A final cost-benefit analysis is available by contacting Susan Hannibal, Program Manager, DSHS, 4045 Delridge Way S.W., Room 200, Seattle, WA 98106, phone (206) 923-4910, fax (206) 923-4899, e-mail hsus300@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 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 46, Amended 0, Repealed 40.

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 46, Amended 0, Repealed 40.

Date Adopted: October 27, 2010.

Susan N. Dreyfus
Secretary

BACKGROUND

NEW SECTION

WAC 388-61A-0200 What is the legal basis for the domestic violence shelter program? Chapter 70.123 RCW authorizes us to establish minimum standards for agencies that receive funding from the department of social and health services (DSHS) to provide domestic violence shelter and supportive services.

NEW SECTION

WAC 388-61A-0210 What is the purpose of having minimum standards for domestic violence shelters and supportive services? The purpose of these rules is to have uniform statewide standards for domestic violence shelters and supportive services funded by DSHS. Minimum standards are necessary to provide rules for agencies that contract with us to provide shelter and supportive services for domestic violence victims. These standards address issues such as food, clothing, emergency housing, safety, security, and advocacy.

NEW SECTION

WAC 388-61A-0220 What definitions apply to this chapter? "Advocacy" means that the client is involved with an advocate in individual or group sessions with a primary focus of safety planning, empowerment, and education of the client through reinforcement of the client's autonomy and self-determination. Advocacy also means speaking and acting for change or justice with, or on behalf of, another person or cause. Advocacy is survivor-centered and uses nonvictim blaming methods that include:

- Identifying barriers to, and strategies to enhance, safety, including safety planning.
- Clarifying and increasing awareness of the power and control associated with domestic violence and the options one may have to obtain resources while staying safe.

- Supporting independent decision-making based on the unique needs and circumstances of each individual.

"Advocate" means a trained staff person who works in a domestic violence agency and provides advocacy to clients.

"Child care" means the temporary care of a client's child or children by staff of the domestic violence agency at the agency's location or another location where the client is receiving confidential or individual services from the domestic violence agency or is participating in activities sponsored by the domestic violence agency, other than employment, and so long as the client remains on the premises.

"Children/Youth Activities" means activities other than children/youth advocacy, such as recreational and educational activities, and including child care as defined in this chapter.

"Children/Youth Advocacy" means an age-appropriate intervention service that strives to assist children/youth to express feelings about their exposure to domestic violence. It is an educational, rather than a therapeutic intervention, and is focused on providing education about domestic violence, safety planning, and developing or enhancing problem-solving skills. Advocacy can be provided on an individual basis and in group settings.

"Client" means a victim of domestic violence who is accessing services at a domestic violence agency. Client can also be referred to as a survivor, service recipient, or resident.

"Cohabitant" means a person who is or was married, in a state registered domestic partnership, or cohabiting with another person in an intimate or dating relationship at the present time or at some time in the past. Any person who has one or more children in common with another person, regardless of whether they have been married, were/are in a domestic partnership with each other, or have lived together at any time, must be treated as a cohabitant. Any person who is or was in a dating relationship with another person at the present or at some time in the past, regardless of whether they lived together at any time, must be treated as a cohabitant.

"Community education" refers to information that is provided in community settings about domestic violence and services related to victims of domestic violence. Community education activities include: training, presentations, outreach to specific communities or geographic areas, community events, and media events.

"Confidential communication" means all information, oral, written or nonverbal, that is transmitted between a victim of domestic violence and an employee or supervised volunteer of a domestic violence agency in the course of their relationship and in confidence by means which, so far as the victim is aware, does not disclose the information to a third person.

"Confidential information" includes, but is not limited to, any information, advice, notes, reports, statistical data, memoranda, working papers, records or the like, made or given during the relationship between a victim of domestic violence and a domestic violence agency, however maintained. Confidential information includes the name, address, telephone number, social security number, date of birth, nine-digit postal (ZIP) code, physical appearance of, case file or history of, and other information that would personally iden-

tify a victim of domestic violence who seeks or has received services from a domestic violence agency.

"Crisis hotline or helpline" means a designated telephone line of the domestic violence agency that operates twenty-four hours a day, three hundred sixty-five days a year. A hotline/helpline provides crisis intervention, safety planning, information, and referral services.

"Crisis intervention" means services provided to an individual in crisis to stabilize an individual's emotions, clarify issues, and provide support and assistance to help explore options for resolution of the individual's immediate crisis and needs.

"Department" means the department of social and health services (DSHS).

"Domestic violence" is a pattern of assaultive and coercive behaviors that an adult or adolescent uses to maintain power and control over their intimate partner. Abusive tactics may include, but are not limited to the following: physical abuse, sexual abuse, intimidating tactics, physical and/or psychological isolation of the victim, repeated attacks against the victim's competence, alternating use of indulgences, control of family funds and resources, stalking, and the use of children and systems to control the victim. The abuser's use of physical force against persons or property or the use of conduct that establishes credible threat of physical harm (i.e. terrorizing tactics) combined with other controlling tactics are key elements of domestic violence. The effect of the overall pattern of assaultive and coercive behavior is to increase the abuser's power and control in the relationship. It includes, but is not limited to, the categorization of offenses defined in RCW 10.99.020(3) when committed by one cohabitant against another.

"Domestic violence agency" means an agency that provides shelter and advocacy for domestic violence clients in a safe and supportive environment.

"Intimate partner violence" focuses on the most common form of domestic violence, which is between adult or adolescent intimate partners or cohabitants, rather than on violence between non-intimate adult or adolescent household members.

"Legal advocacy" means personal support and assistance with victims of domestic violence to ensure their interests are represented and their rights upheld within the civil and criminal justice systems, including administrative hearings. It includes educating and assisting victims in navigating the justice systems; assisting victims in evaluating advantages and disadvantages of participating in the legal processes; facilitating victims' access and participation in the legal systems; and promoting victims' choices and rights to individuals within the legal systems.

"Lodging unit" means one or more rooms used for a victim of domestic violence including rooms used for sleeping or sitting.

"Marginalized populations" includes, but is not limited to, populations that have been historically underserved and oppressed in society because of ethnicity, race, culture or language diversity, age, sexual orientation, or disability.

"Personally identifying information" includes, but is not limited to, first and last name, home or other physical address, telephone number, social security number, date of

birth, nine-digit postal (ZIP) code, physical appearance of, case file or history of, and other information that would personally identify a victim of domestic violence who seeks or has received services from a domestic violence agency, or such other information which, taken individually or together with other identifying information, could identify a particular individual.

"Program" means the DSHS domestic violence program.

"Resident" means a client of the domestic violence agency who is residing in a shelter as defined in this chapter.

"Safe home" means a shelter that has two or fewer lodging units and has a written working agreement with a domestic violence agency.

"Safety plan" is a process of thinking through with the victim how to increase safety for both the victim of domestic violence and any dependent children of the victim. Safety planning addresses both immediate and long term risks, barriers, or concerns regarding the victim and any dependent children. It is based on knowledge about the specific pattern of the domestic violence perpetrator's tactics and the protective factors of the victim and any dependent children. Safety planning can be done formally, informally, in writing or orally, or in any other conversational process between the victim and advocate.

"Secretary" means the DSHS secretary or the secretary's designee.

"Shelter" means a safe home or shelter home that provides temporary refuge and food and clothing offered on a twenty-four hour, seven-day-per-week basis to victims of domestic violence and their dependent children. Domestic violence agencies may use hotels and motels for victims who need safe shelter, but the domestic violence agency must also have a shelter home and/or safe home(s) that meet the requirements of this chapter.

"Shelter home" means a shelter that has three or more lodging units and is either a component of, or has a written working agreement with, a domestic violence agency.

"Staff" means persons who are paid or who volunteer to provide services to clients and are a part of a domestic violence agency.

"Support group" means interactive group sessions of two or more victims of domestic violence that is facilitated by trained staff on a regular basis. Participants share experiences, offer mutual support, and receive information and education around a specific topic of common interest. Support groups validate the experiences of victims, explore options, build on strengths, and respect participants' rights to make their own decisions. A shelter or house meeting where, for example, chores are discussed, and there is no advocacy provided, is not a support group.

"Victim" means a cohabitant who has been subjected to domestic violence.

"We, us and our" refers to the department of social and health services and its employees.

"You, I and your" refers to the domestic violence agency.

NEW SECTION

WAC 388-61A-0230 What service model must be used to provide the services required by these rules? Shelters and supportive services for victims of domestic violence are essential to provide protection to victims from further abuse and physical harm. Research demonstrates that access to supportive services that increase a survivor's knowledge of safety planning and awareness of community resources leads to increased safety and well being over time. Consequently, the model for providing services must incorporate the following practices:

(1) Services provided to victims must include access to safety, advocacy, information about options, and referrals to helping resources.

(2) Services that blame the victim for the abuse and do not hold the abuser accountable for the violence, are ineffective and will likely result in further harm to the victim, up to and including death. Therefore, minimum standards for the services and practices governed by these rules must use an empowerment model that:

(a) Promotes safety for all victims of intimate partner violence and their dependent children.

(b) Are survivor-centered and treat victims with dignity and respect.

(c) Builds on the strengths and resources of individuals and families, respecting their autonomy and self-determination.

(d) Supports the relationship between victims and their dependent children.

(e) Offers options and support for autonomous decision-making that is based on the needs and circumstances of each victim and their family.

(f) Assists individuals and families in accessing protection and services that are respectful and inclusive of cultural and community characteristics.

(g) Ensures agency accountability by involving victims in evaluating the services they receive from the domestic violence agency.

(h) Supports and engages in collaboration with other community agencies and systems for the purpose of developing a comprehensive response system for victims and their dependent children.

NEW SECTION

WAC 388-61A-0240 Is DSHS required to provide funding to any domestic violence agency that requests funding? (1) We are not obligated to disburse funds to all domestic violence agencies that comply with the minimum standards set forth in this chapter. The goal of this program is to provide funding and support for the statewide development, stability, and expansion of emergency shelter and supportive services for victims of domestic violence. Funding for this program is intended to be used to develop and maintain domestic violence agencies statewide that are:

(a) Focused on victim advocacy, safety, empowerment, maintaining confidentiality, and safety planning.

(b) Inclusive and responsive to the ethnic, cultural, racial and socioeconomic diversity of the state.

(c) Flexible and designed to meet the needs of domestic violence victims at the local level.

(2) In support of the program goal, if an agency applies to receive funding we will consider such things as:

- (a) Geographic location.
- (b) Population ratios.
- (c) Population need for services.

(d) An agency's experience in providing domestic violence services and its ability to provide services that comply with these minimum standards.

(e) The availability of other domestic violence agencies in a community and the level of collaboration between and among existing agencies.

(f) The amount of funding we have available to maintain stability and support for existing domestic violence agencies funded by DSHS.

NEW SECTION

WAC 388-61A-0250 What are the requirements for domestic violence agencies? In order for us to contract with an agency for domestic violence services, the agency must provide emergency shelter and supportive services to victims of domestic violence. The agency must comply with the:

- (1) Supportive service and administrative standards for domestic violence agencies; and
- (2) General facility standards for shelter homes and safe homes; and
- (3) Additional standards for shelter homes; or
- (4) Additional standards for safe homes.

SUPPORTIVE SERVICES AND ADMINISTRATIVE STANDARDS FOR DOMESTIC VIOLENCE AGENCIES

NEW SECTION

WAC 388-61A-0260 What supportive services must a domestic violence agency provide? (1) Domestic violence agencies must utilize a survivor-centered and empowerment service model as described in this chapter. Such a model:

- (a) Promotes safety for all victims and their dependent children.
- (b) Builds on the strengths and resources of individuals and families, respecting their autonomy and self-determination.
- (c) Supports the relationship between victims and their dependent children.
- (d) Offers options and support for autonomous decision-making based on the needs and circumstances of each victim and their family.
- (e) Assists individuals and families in accessing protection and services that are respectful of cultural and community characteristics.
- (f) Ensures agency accountability by involving victims in evaluating the services they receive from the domestic violence agency.

(2) The manner in which supportive services are provided by the domestic violence agency must be in alignment

with the empowerment service model described in this chapter, and must also:

- (a) Include a discussion of safety and options with each victim of domestic violence seeking assistance.
 - (b) Be respectful and respond to each client's life situation, and respect each person's right to self-determination.
 - (c) Be provided in a safe and supportive environment that offers the client the opportunity to examine the events that led to the need for domestic violence services.
 - (d) Be provided in a private setting for the comfort of the client and to protect confidentiality of conversations.
- (3) Domestic violence agencies that contract with us must provide the following supportive services:
- (a) Crisis hotline or helpline.
 - (b) Crisis intervention.
 - (c) Safety planning.
 - (d) Emergency domestic violence shelter.
 - (e) A day program or drop-in service for victims who have found other shelter but who have a need for supportive services.
 - (f) Individual advocacy including legal advocacy.
 - (g) Support groups.
 - (h) Child care assistance during individual advocacy sessions and support groups for the adult victim.
 - (i) Supportive services and resources for children/youth residing in emergency domestic violence shelter.
 - (j) Transportation assistance or access to transportation.
 - (k) Information and referral.
 - (l) Community education activities.
- (4) For clients residing in emergency domestic violence shelter you:
- (a) Must provide clients with access to a trained staff person twenty-four hours a day, three hundred sixty-five days a year.
 - (b) Must give clients the opportunity to receive and participate in supportive services during their stay in shelter.
 - (c) Cannot require that clients participate in supportive services as a condition of residing in the shelter.

NEW SECTION

WAC 388-61A-0270 What services and resources must be available to children/youth residing in emergency domestic violence shelter? (1) With the permission of a parent/guardian, children/youth must be offered the opportunity to receive and participate in the following age-appropriate supportive services during their shelter residency:

- (a) Orientation to the shelter.
 - (b) Information about domestic violence.
 - (c) Individual and/or group advocacy and support.
 - (d) Information and referral to other supportive services.
- (2) The domestic violence agency must provide a safe and secure play area for children/youth residing in the emergency domestic violence shelter.
- (3) The domestic violence agency must provide information to the client about resources for indoor and outdoor recreational activities in the community for children/youth residing in emergency shelter, such as outings to parks, playgrounds, movies, libraries, sports activities, youth clubs and other similar activities.

NEW SECTION

WAC 388-61A-0280 What are the requirements for the crisis hotline or helpline? (1) You must provide a crisis hotline/helpline telephone number to access services of the domestic violence agency. The telephone number must be listed in the local telephone book, and identified as the crisis hotline/helpline telephone number of the domestic violence agency. The crisis hotline/helpline telephone number must also be widely distributed throughout the service area covered by the domestic violence agency.

(2) The crisis hotline/helpline service must comply with the following minimum requirements:

(a) It must operate twenty-four hours a day, three hundred sixty-five days a year.

(b) It must be a dedicated telephone line that serves as the crisis hotline or helpline.

(c) Staff that answer the hotline/helpline must be trained in, and familiar with, all referral and intake practices of the domestic violence agency.

(d) In most cases, callers to the hotline/helpline must be able to speak, within fifteen minutes, to a trained staff person from whom the caller can obtain services, including access to emergency shelter.

(e) Staff must have access to TTY or similar technology, and they must be trained on its use.

(f) Safety must be addressed in every call.

(3) You must have written procedures that address the following:

(a) How crisis hotline staff will meet the needs of non-English speaking and hearing impaired callers.

(b) Steps that must be taken when a caller requests emergency shelter.

(c) If you use an answering service, or any other similar system, how you will provide training to the staff of the answering service, and how you will monitor the services provided to your agency.

(4) If you use a call-forwarding system for your domestic violence agency's hotline/helpline, answering service, or any other similar system, you must guarantee that the caller's first contact is supportive.

(5) You may use an answering machine, voice mail, or similar recording device as a back-up means of responding to calls to your agency's crisis hotline/helpline. However, these devices cannot be used as your agency's primary method of answering crisis hotline/helpline calls. Messages left on your agency's answering machine, voice mail, or similar recording device must be returned within the timeframe described in subsection (2)(d) of this section.

NEW SECTION

WAC 388-61A-0290 What are the requirements for accessing emergency domestic violence shelter? Domestic violence agencies must meet the following requirements in providing emergency domestic violence shelter:

(1) Your agency must have written procedures regarding your shelter intake process.

(2) You must have a staff person available twenty-four hours a day, three hundred sixty-five days a year, who is able to assess requests for emergency domestic violence shelter

and arrange for immediate intake into your shelter or a hotel/motel.

(3) Where an individual is eligible for emergency domestic violence shelter:

(a) A staff person must be present to admit a service recipient into the shelter home.

(b) Reasonable efforts must be made by the domestic violence agency to have a staff person present to admit a service recipient into a safe home or hotel/motel.

(4) Referrals to other services or domestic violence agencies must be provided to an individual when:

(a) Your shelter home or safe home(s) are full.

(b) A client residing in shelter must be transferred to another domestic violence agency for reasons of safety of the client.

(c) The person seeking shelter is ineligible for your services.

(d) An inappropriate referral was made to your domestic violence agency.

(e) The person seeking shelter has problems that require services of another agency or agencies before receiving domestic violence services.

NEW SECTION

WAC 388-61A-0300 What information must be in a client's file? (1) You must have a written file for clients who are served by your domestic violence agency. Client files must:

(a) Include an intake that clearly documents each client's eligibility for domestic violence services.

(b) Be brief in documenting the services provided to the client.

(c) Document only sufficient information to identify the service provided, and must not include any references to service recipient feelings, emotional or psychological assessments, diagnoses, or similar subjective observations or judgments. Documentation must not include any direct quotes from the client.

(d) Include copies of all required releases and client notices.

(2) Where supportive services are provided to child/youth of clients, the domestic violence agency must:

(a) Maintain separate documentation for each child/youth that receives supportive services. Written documentation must not be included in the file of the parent/guardian.

(b) Be brief in documenting the supportive services provided to the child/youth.

(c) Document only sufficient information to identify the service provided, and must not include any references to the child/youth's feelings, emotional or psychological assessments, diagnoses, or similar subjective observations or judgments. Documentation must not include any direct quotes from the child/youth.

NEW SECTION

WAC 388-61A-0310 What information must the domestic violence agency keep confidential? (1) Agents, employees, and volunteers of a domestic violence agency must maintain the confidentiality of all personally identifying

information, confidential communications, and all confidential information as defined in this chapter. Information that individually or together with other information could identify a particular victim of domestic violence must also be kept confidential.

(2) Any reports, records, working papers, or other documentation, including electronic files that are maintained by the domestic violence agency and information provided to the domestic violence agency on behalf of the client, must be kept confidential. Any information considered privileged by statute, rule, regulation or policy that is shared with the domestic violence agency on behalf of the client must not be divulged without a valid written waiver of the privilege that is based on informed consent, or as otherwise required by law.

(3) You must comply with the provisions of this section regarding confidential communications concerning clients regardless of when the client received the services of the domestic violence agency.

NEW SECTION

WAC 388-61A-0320 What information can be disclosed? (1) You can disclose confidential information only when:

(a) The client provides informed, written consent to the waiver of confidentiality that relates only to the client or the client's dependent children.

(b) Failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the client or other person.

(c) Disclosure is required under chapter 26.44 RCW, Abuse of Children.

(d) Release of information is otherwise required by law or court order, or following in-camera review pursuant to RCW 70.123.075, with the following additional requirements:

(i) The domestic violence agency must make reasonable attempts to provide notice to the person affected by the disclosure of the information.

(ii) If personally identifying information is or will be disclosed, the domestic violence agency must take steps necessary to protect the privacy and safety of the persons affected by the disclosure of information.

(2) Any release of information subject to any of the exceptions set forth above must be limited to the minimum necessary to meet the requirement of the exception, and such release does not void the client's right to confidentiality and privilege on any other confidential communication between the client and the domestic violence agency.

(3) In the case of an unemancipated minor, the minor and the parent or guardian must provide the written consent. Consent for release may not be given by a parent who has abused the minor or the minor's other parent. In the case of a disabled adult who has been appointed a guardian, the guardian must consent to release unless the guardian is the abuser of the disabled adult.

(4) To comply with federal, state, tribal, or territorial reporting, evaluation, or data collection requirements, a domestic violence agency may disclose aggregated nonper-

sonally identifying data about services provided to their clients and nonpersonally identifying demographic information.

(5) A copy of the disclosed information must be provided to the client, if requested by the client.

NEW SECTION

WAC 388-61A-0330 What information must be included in a written waiver of confidentiality? (1) To be valid, a written waiver of confidentiality must:

(a) Be voluntary.

(b) Relate only to the client or the client's dependent children.

(c) Clearly describe the scope and any limitations of the information to be released.

(d) Include an expiration date for the release.

(e) Inform the client that consent can be withdrawn at any time whether it is made orally or in writing.

(2) If the written waiver of confidentiality does not include an expiration date, it must expire ninety days after the date it was signed.

NEW SECTION

WAC 388-61A-0340 What information must be provided to clients about their right to confidentiality? (1)

You must provide each client with a written "notice of rights" at the time of initial and any subsequent intake into the domestic violence agency. At a minimum, the notice of rights must inform clients of the following:

(a) The client's right to privacy and confidentiality of the information shared with the domestic violence agency.

(b) Exceptions to confidentiality as described in this chapter.

(c) That if the client signs a written waiver of confidentiality that allows their information to be shared with others, the client does not give up their right to have that information protected under other statutes, rules or laws.

(d) That the client has the right to withdraw a written waiver of confidentiality at any time.

(e) That the domestic violence agency will not condition the provision of services to the client based on a requirement that the client sign one or more releases of confidential information.

(2) Information on the "notice of rights" must be explained to the client at the time of intake into the domestic violence agency and then again, at the time the client is considering whether to sign a written waiver of confidentiality.

NEW SECTION

WAC 388-61A-0350 What type of training is required for staff of the domestic violence agency? Initial and continuing education training of domestic violence agency staff is critically important. Advocates and advocate supervisors must be able to demonstrate an understanding of the nature and scope of domestic violence as defined by this chapter, as well as the historical and societal attitudes in which domestic violence is rooted. Training must be current and relevant to the provision of empowerment-based advocacy. In furtherance of these goals, domestic violence agency

staff must meet the following minimum training requirements.

Initial Training For Staff Providing Supportive Services and Staff Supervisors

(1) A minimum of twenty hours of initial basic training that covers the following topics and skills:

- (a) Theory and implementation of empowerment-based advocacy.
- (b) The history of domestic violence.
- (c) Active listening skills.
- (d) Legal, medical, social service and systems advocacy.
- (e) Confidentiality and ethics.
- (f) Safety planning skills and barriers to safety.
- (g) Planning, clarifying issues and options, and crisis intervention.
- (h) Providing services and advocacy to individuals from marginalized populations.
- (i) Policies and procedures of the domestic violence agency.

Continuing Education Training For Staff Providing Supportive Services and Staff Supervisors

(2) Based on their date of hire with the domestic violence agency, staff providing supportive services and staff supervisors must obtain an annual minimum of thirty hours of continuing education training beginning in their second year with the domestic violence agency, and in every year thereafter. Continuing education training must include:

- (a) A minimum of fifteen hours of training on advocacy that is directly related to serving victims of domestic violence and their children.
- (b) A minimum of five hours of training on providing services and advocacy to individuals from marginalized populations.
- (3) Not more than ten hours of the thirty hours of continuing education training can be obtained from video, audio, or similar self-study methods.

Training for Staff Not Providing Supportive Services

(4) Domestic violence agency staff who do not provide supportive services to clients or their dependent children are not required to obtain initial and continuing education training as described in this section. Examples of staff that are included in this category are shelter housekeeping staff, individuals providing child care assistance as defined in this chapter, and bookkeeping and accounting staff. It is recommended, however, that staff who may come into contact with clients of the domestic violence agency and their dependent children, but who do not provide supportive services, receive training on the following:

- (a) Confidentiality.
- (b) Relevant policies and procedures of the domestic violence agency.
- (c) Mandated reporting of child abuse/neglect as required by chapter 26.44 RCW, Abuse of Children.

NEW SECTION

WAC 388-61A-0360 How should training be documented? Initial and continuing education training received by staff and supervisors of staff providing supportive services

must be recorded in a training log. At a minimum the log must include:

- (1) Date(s) of training.
- (2) Title or subject matter of the training.
- (3) Individual or organization that provided the training.
- (4) Number of training hours received.
- (5) Training method (e.g. in-person, video, audio, self-study, or other method).
- (6) For continuing education training, whether the training was on advocacy or serving individuals from marginalized populations.

NEW SECTION

WAC 388-61A-0370 Must supervisors of domestic violence agency staff have specific experience and training? Supervisors of staff providing supportive services to domestic violence clients must have the following minimum experience and training requirements prior to being hired as a supervisor.

- (1) At least two years of experience providing advocacy to victims of domestic violence within a domestic violence agency.
- (2) A minimum of fifty hours of training on domestic violence issues and advocacy within three years prior to being hired as a supervisor.

NEW SECTION

WAC 388-61A-0380 What written policies or procedures do you need to have? The domestic violence agency must have written policies or procedures that cover the following issues:

- (1) Procedures for the emergency shelter intake process, including that victims in immediate danger or immediate risk of harm will receive first priority for shelter.
- (2) Confidentiality and protection of client records and communication.
- (3) Nondiscrimination relating to staff, clients, and provision of services.
- (4) The provision of bilingual and interpreter services to clients.
- (5) Procedures for responding to calls on the crisis hotline/helpline from non-English speaking and hearing impaired callers.
- (6) If you use an answering service, or any other similar system to answer your crisis hotline/helpline calls, procedures for providing training to the staff of the answering service, and how you will monitor the services provided to your agency.
- (7) Procedures for responding to subpoenas and warrants.
- (8) Reporting of child abuse as legally mandated.
- (9) Client access to their files.
- (10) Grievance procedure for clients.
- (11) Emergency procedures for fire, disaster, first aid, medical and police intervention.
- (12) Procedures and periods for records retention.
- (13) Accounting procedures.
- (14) Personnel policies and procedures that include the following:

(a) Recruitment for staff and volunteers - agencies must recruit, to the extent feasible, persons who are former victims of domestic violence to work as paid or volunteer staff.

(b) Hiring.

(c) Promotion and termination of staff.

(d) Performance evaluation.

(e) Grievance procedure for staff.

(f) Maintenance of personnel and training files, to include job descriptions for paid staff and volunteers.

GENERAL FACILITY STANDARDS FOR SHELTER HOMES AND SAFE HOMES

NEW SECTION

WAC 388-61A-0390 What safety requirements are shelters required to meet? You must keep your equipment and the physical structures in the shelter, including furniture and appliances, safe and clean for the clients you serve. You must:

(1) Maintain the shelter, premises, equipment, and supplies in a clean, safe and sanitary condition, free of hazards, and in good repair.

(2) Provide guard or handrails, as necessary, for stairways, porches and balconies.

(3) Maintain swimming pools, wading pools, bathtubs, hot tubs, spas, and bathing beaches in a safe manner and in such a way that does not present a health hazard, safety problem, or nuisance.

(4) Have a method for securing all windows, doors, and other building accesses to prevent the entry of intruders.

(5) Make sure all window screens can be secured to prevent children from falling from window openings.

(6) Make sure that clients residing in shelter are able to immediately enter the shelter if they do not have the ability to independently access the facility with their own key, keycard, door code, or other device.

(7) Provide adequate lighting of exterior areas to ensure the safety of clients residing in shelter and staff during the night.

(8) Provide a way for staff to enter any area occupied by clients should there be an emergency.

(9) Secure all unused refrigerators and freezers accessible to children in such a way that prevents them from climbing in and becoming trapped.

NEW SECTION

WAC 388-61A-0400 What are the requirements for bedrooms? You must provide a bed in good condition, with a clean and comfortable mattress.

NEW SECTION

WAC 388-61A-0410 What are requirements for cribs or bassinets? If the shelter provides cribs or bassinets, the shelter must comply with each of these requirements:

(1) Cribs and bassinets must have a clean, firm mattress covered with waterproof material that is easily sanitized.

(2) Crib mattresses must fit snugly to prevent the infant from being caught between the mattress and crib side rails.

(3) Cribs must be assembled correctly, and not have any missing, loose, or broken hardware or slats. There must not be any missing, loose, broken or improperly installed screws, brackets or other hardware on the crib or mattress support.

(4) Soft objects and loose bedding, including bumper pads, cannot be used in cribs and bassinets.

(5) Cribs must be made of wood, metal, or approved plastic with secure latching devices.

(6) Cribs must have no more than two and three-eighths inches of space between vertical slats so an infant's body cannot fit through the slats. There must not be any missing or cracked slats.

(7) Cribs must not have corner posts over one-sixteenth inch high so a child's clothing cannot catch.

(8) Crib headboards and footboards must not have any cutouts that would result in a child's head getting trapped.

(9) For mesh-sided cribs and playpens:

(a) Mesh must not have any tears, holes or loose threads.

(b) Mesh must be securely attached to the top rail and floor plate.

(c) Top rail covers must not have any tears or holes.

NEW SECTION

WAC 388-61A-0420 What kind of diaper changing area must I provide? You must provide a sanitary diaper changing area. In addition, you must develop and post in view of the changing area, hygienic procedures for handling and storing diapers and sanitizing the changing area.

NEW SECTION

WAC 388-61A-0430 What are kitchen requirements? The following are the minimum general requirements for kitchen facilities:

(1) A sink for washing dishes.

(2) A refrigerator or other storage equipment capable of maintaining a consistent temperature of forty-five degrees Fahrenheit or lower.

(3) A range or stove.

(4) Covered garbage container.

(5) Eating and cooking utensils that are clean and in good repair.

(6) Counter surfaces that are clean and resistant to moisture.

NEW SECTION

WAC 388-61A-0440 What are the requirements for providing food to clients residing in shelter? (1) Your domestic violence agency must provide food and beverages for the basic sustenance of clients residing in shelter, unless other resources are immediately available.

(2) You must store food and beverages, including infant formula, at the shelter to provide to clients residing in shelter when other resources are not immediately available, and for shelter residents who are unable to safely access other food resources.

(3) Milk and infant formula must be available at all times for children residing in the shelter.

(4) You must purchase and provide only food and beverages that are of safe quality to clients residing in shelter. Storage, preparation, and serving techniques must ensure that nutrients are retained and spoilage is prevented.

(5) Food and beverages prepared for clients residing in shelter must be prepared, served and stored safely and in a sanitary manner.

(6) Food must be available to prepare school lunches, if lunch is not otherwise available to the children of shelter residents.

(7) Clients residing in shelter must be provided, or have immediate access to, food that is in accordance with their religious or cultural beliefs and personal practices.

NEW SECTION

WAC 388-61A-0450 What are the requirements for providing clothing to clients residing in shelter? (1) If an adult or child comes into shelter without adequate clothing, you must assist them with accessing clean, well-fitting clothing appropriate to the season, and the individual's age, gender and particular needs.

(2) Clothing that you provide must be clean and have been stored in a sanitary manner.

(3) Clothing that is provided to an individual becomes that person's personal property and must not be shared or retrieved from the client when they leave the shelter.

NEW SECTION

WAC 388-61A-0460 What personal hygiene items do I need to provide to clients residing in shelter? All clients residing in shelter must be provided with personal hygiene products during their residency, such as soap, hair care products, toothbrush and paste, and deodorant. Particular attention must be paid to providing items for individuals that have special needs because of their ethnicity, disability, or medical condition.

NEW SECTION

WAC 388-61A-0470 What are the requirements for toilets, sinks, and bathing facilities? You must meet these requirements for toilets, sinks, and bathing facilities.

(1) You must provide at least one indoor flush-type toilet, one nearby sink for hand washing, and a bathtub or shower facility. These facilities must be located within the shelter building premises.

(2) You must comply with all of the following requirements for toilet and bathing facilities:

(a) Toilet and bathing facilities must allow for privacy of shelter residents.

(b) Toilets, urinals, and hand washing sinks must be the appropriate height for the children served, or have a safe and easily cleaned step stool or platform that is water resistant.

(c) Facilities for hand washing and bathing must be provided with hot and cold running water. Hot water must not exceed one hundred and twenty degrees Fahrenheit.

(d) Potty chairs and toilet training equipment for toddlers must be regularly maintained, disinfected, and kept in a sani-

tary condition. When in use, you must put potty chairs on washable, water resistant surfaces.

(e) You must provide soap and clean washcloths and towels, disposable towels or other hand-drying devices to shelter residents.

NEW SECTION

WAC 388-61A-0480 What types of linen do I need to provide to clients? (1) You must provide the following to clients residing in shelter:

(a) Bed linen, towels and washcloths that are clean and in good repair. After use by a client, bed linen, towels and washcloths must be laundered prior to use by another client.

(b) A clean liner for a sleeping bag unless the bag is cleaned between uses by different clients.

(2) Clients residing in shelter must be provided with changes of clean bed linen, towels and washcloths upon their request.

NEW SECTION

WAC 388-61A-0490 What are the requirements for laundry facilities? The requirements for laundry facilities at your shelter include the following:

(1) You must provide adequate laundry and drying equipment, or make other arrangements for getting laundry done on a regular basis. Laundry facilities in the shelter must be provided free to shelter residents.

(2) You must handle and store laundry in a sanitary manner.

NEW SECTION

WAC 388-61A-0500 Are there requirements for drinking water? Water supplies that are used for human consumption must be from a water system that has been approved by the local health authority or department as safe for human consumption. This refers to both public water systems and individual systems.

NEW SECTION

WAC 388-61A-0510 What are the requirements for sewage and liquid wastes? You must discharge sewage and liquid wastes into a public sewer system or septic system that has been approved by the local health authority or department.

NEW SECTION

WAC 388-61A-0520 What kind of heating system is required? (1) Rooms used by clients in a shelter must be equipped with a safe and adequate source of heat that can keep the room at a healthful temperature during the time the room is occupied.

(2) The use of gas or oil-fired space heaters is prohibited.

NEW SECTION

WAC 388-61A-0530 How must I ventilate the shelter? You must ensure that your shelter is ventilated for the health and comfort of the clients residing in shelter, by meeting the following requirements:

(1) A mechanical exhaust to the outside must ventilate toilets and bathrooms that do not have windows opening to the outside.

(2) Bedrooms and communal living areas must have a window or opening to the outdoors that can be locked or secured from the inside.

(3) Gas or oil-fired water heaters and forced-air systems must be safely vented to the outside.

NEW SECTION

WAC 388-61A-0540 How much lighting is required in the shelter? You must locate light fixtures and provide lighting that promotes good visibility and comfort for clients residing in shelter.

NEW SECTION

WAC 388-61A-0550 Are there any requirements about pets in the shelter? Pets are prohibited from the kitchen during food preparation.

NEW SECTION

WAC 388-61A-0560 What first-aid supplies must I approve? You must keep first-aid supplies on hand and accessible to clients residing in shelter for immediate use. First-aid supplies must include at a minimum the following: First-aid instruction booklet, band-aids, sterile gauze, adhesive tape, antibiotic ointment single use packets, antiseptic wipe single use packets, hydrocortisone ointment single use packets, roller bandage, thermometer (non-mercury/non-glass), and non-latex gloves. In instances where an adult or child has ingested a potentially poisonous chemical or substance, you must call the Washington Poison Center for further instruction.

NEW SECTION

WAC 388-61A-0570 What are the requirements for storing medications? (1) Clients residing in shelter must be provided with a means to safely and securely store, and have direct and immediate access to, their medications such as individual lock boxes, lockers with a key or combination lock, or a similar type of secure storage.

(2) All medications, including pet medications and herbal remedies, must be stored in a way that is inaccessible to children.

NEW SECTION

WAC 388-61A-0580 What measures must I take for pest control? You must make reasonable attempts to keep the shelter free from pests, such as rodents, flies, cockroaches, fleas and other insects.

NEW SECTION

WAC 388-61A-0590 What are the requirements for labeling and storing chemicals and toxic materials? (1) Containers of chemical cleaning agents and other toxic materials must:

(a) Be clearly labeled with the contents.

(b) Bear the manufacturer's instructions and precautions for use.

(2) You must store the following items in a place that is not accessible to children:

(a) Chemical cleaning supplies.

(b) Toxic substances.

(c) Poisons.

(d) Aerosols.

(e) Items with warning labels.

(3) You must store chemical cleaning supplies, toxic substances, and poisons separately from food items, clothing, and bedding in order to prevent contamination.

NEW SECTION

WAC 388-61A-0600 Where do I keep firearms and other dangerous weapons? (1) You must keep firearms and other dangerous weapons in a locked storage container, gun safe, or another storage area made of strong, unbreakable material. Stored firearms must be unloaded.

(2) If the storage cabinet has a glass or another breakable front, you must secure the firearms with a locked cable or chain placed through the trigger guards.

(3) You must store ammunition in a place that is separate from the firearms or locked in a gun safe.

(4) You must allow access to firearms, weapons and ammunition only to authorized persons.

ADDITIONAL STANDARDS FOR SHELTER HOMESNEW SECTION

WAC 388-61A-0620 What are the additional standards for shelter homes? Shelter homes must meet the following additional standards in order for a domestic violence agency to contract with us:

(1) Shelter homes must provide at least one toilet, sink, and bathing facility for each fifteen clients or fraction of this number. The floors of all toilet and bathing facilities must be resistant to moisture.

(2) You must have at least one telephone at the shelter for incoming and outgoing calls. Next to the telephone in shelter homes you must post in English and other languages predominantly served by the domestic violence agency:

(a) Emergency telephone numbers.

(b) Instructions on how shelter residents can access domestic violence agency staff.

(3) In shelter homes all bathrooms, toilet rooms, laundry rooms, and janitor closets containing wet mops and brushes must have natural or mechanical ventilation in order to prevent objectionable odors and condensation.

(4) When staff serve food to clients in shelter homes, the staff must prepare the food in compliance with chapter 246-215 WAC, Temporary food service establishment.

(5) Shelter homes must request an annual fire and life safety inspection from their local fire department or fire marshal. The domestic violence agency must maintain documentation of the request as well as any report issued as a result of the inspection. Any violations noted by the inspector must be immediately corrected by the domestic violence agency.

(6) Shelter homes must meet the following requirements for bedrooms:

(a) Bedrooms must have a minimum ceiling height of seven and one-half feet.

(b) Bedrooms must provide at least fifty square feet of usable floor area per bed.

(c) Floor area where the ceiling height is less than five feet cannot be considered as usable floor area.

(7) When clients are residing in a shelter home at least one domestic violence agency staff member must be present or on-call to go to the shelter home twenty-four-hours a day, seven-days-per-week.

(8) When a shelter home is not a component of a domestic violence agency, the shelter home and domestic violence agency must have a written working agreement before the shelter home receives clients from the domestic violence agency. At a minimum, the written working agreement must include:

(a) Confirmation that the domestic violence agency has inspected the shelter home and that the shelter home complies with the general facility and additional standards for shelter homes.

(b) How supportive services will be provided to clients residing in shelter, and who will provide the supportive services.

(c) Verification that the staff providing supportive services, and staff supervisors, meet the training and experience requirements outlined in this rule.

ADDITIONAL STANDARDS FOR SAFE HOMES

NEW SECTION

WAC 388-61A-0630 What are the additional standards for safe homes? Safe homes must meet the following additional standards in order for a domestic violence agency to contract with us:

(1) A prospective safe home must complete a written application to a domestic violence agency. The domestic violence agency must approve the application and provide training to the safe home staff before the home may receive clients.

(2) The domestic violence agency must maintain a written record of all safe homes. The record must include:

(a) The name and address of the person operating the safe home or an identification code for the safe home.

(b) A written safe home application.

(c) Documentation that the safe home complies with the general facility and additional standards for safe homes.

(d) Verification that safe home staff received initial basic training as outlined in this WAC by the domestic violence agency.

(3) You must have at least one telephone at the safe home for incoming and outgoing calls. You must provide the following information to clients residing in a safe home:

(a) Emergency telephone numbers.

(b) Instructions on how clients can access domestic violence agency staff.

(4) When clients are residing in a safe home at least one domestic violence agency staff member must be on-call to go to the safe home twenty-four hours a day, three hundred sixty-five days a year.

(5) Safe homes must comply with the following general fire safety requirements:

(a) Every room used by children in the safe home must have easy entry and exit, including one of these features:

(i) Two separate doors.

(ii) One door leading directly to the outside, or a window that opens to the outside and is large enough for emergency escape or rescue.

(b) Every occupied area must have access to at least one exit that does not pass through rooms or spaces that can be locked or blocked from the opposite side.

(c) No space may be lived in by a client that is accessible only by a ladder, folding stairs, or a trap door.

(d) Every bathroom door used by clients must be designed to permit the opening of the locked door from the outside.

(e) Every closet door latch must be designed to be opened from the inside.

(f) Escape and exit routes must be kept clear and must not be blocked by appliances, furniture, or other heavy objects.

(g) Flammable, combustible, or poisonous material must be stored away from exits and away from areas that are accessible to children.

(h) Open-flame devices and fireplaces, heating and cooking appliances, and products capable of igniting clothing must not be left unattended or used incorrectly.

(i) Fireplaces, wood stoves and other heating systems that have a surface hot enough to cause harm must have gates or protectors around them when in use.

(j) Multilevel dwellings must have a means of escape from an upper floor. If a fire ladder is needed to escape from an upper story window, it must be stored in a location that is easily accessible to the clients who may need it.

(k) You must place a smoke detector in good working condition in each bedroom or in areas close to where children sleep, such as a hallway. If the smoke detector is mounted on the wall, it must be twelve inches from the ceiling and a corner.

(l) If questions arise concerning fire danger, the local fire protection authority must be consulted.

COMPLIANCE WITH STANDARDS

NEW SECTION

WAC 388-61A-0640 Will DSHS do an evaluation of the domestic violence agency? (1) To measure compliance with our requirements we will conduct a biennial evaluation

of each agency under contract with us to provide domestic violence services.

(2) We will inspect a random number of safe homes during on-site evaluations of domestic violence agencies to measure compliance with our requirements.

(3) If a lodging unit is occupied at the time of an on-site evaluation, the domestic violence agency must give the client an opportunity to leave the unit prior to the arrival of the evaluator.

NEW SECTION

WAC 388-61A-0650 What will happen if I am out of compliance with the minimum standards or my contracts? (1) If we find that the domestic violence agency is out of compliance with the standards specified in this chapter or the terms of the DSHS contract, we will give you written notice of the deficiencies. You must correct the deficiencies according to a plan of correction we approve.

(2) We may suspend or revoke the funding of a domestic violence agency if it is out of compliance with this chapter or the DSHS contract.

NEW SECTION

WAC 388-61A-0660 What will happen if there is a complaint to DSHS about the domestic violence agency? (1) If we receive a complaint that your domestic violence agency is out of compliance with this chapter or the DSHS contract, we will notify you and we will initiate an investigation.

(2) If the investigation requires that we be on-site at your domestic violence agency, you must give clients residing in lodging units an opportunity to leave the unit during the inspection.

(3) If we find that the domestic violence agency is out of compliance with the standards specified in this chapter or the terms of the DSHS contract, we will give you written notice of the deficiencies. You must correct the deficiencies according to a plan of correction we approve.

(4) We may suspend or revoke the funding of a domestic violence agency if it is out of compliance with this chapter or the DSHS contract.

NEW SECTION

WAC 388-61A-0670 Can DSHS waive any of the minimum standards of this chapter? Under certain conditions we may waive some of the rules contained in this chapter.

(1) To request a waiver you must submit a written request that:

(a) Clearly describes the minimum standards(s) for which the waiver is requested.

(b) Describes why the domestic violence agency is unable to meet the requirements of this chapter without the waiver.

(c) Demonstrates that granting of the waiver will not jeopardize the safety or health of clients.

(d) Shows that the absence of granting the waiver will have a detrimental effect on the provision of services.

(2) If the written waiver request proposes any substitutions of procedures, materials, service, or equipment from those specified in this chapter, the substitutions must be at least equivalent to those required.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-61A-0005	What is the legal basis for the domestic violence shelter program?
WAC 388-61A-0010	What is the purpose of having minimum standards for domestic violence shelters and services?
WAC 388-61A-0015	Is DSHS required to provide funding to any domestic violence service that requests funding?
WAC 388-61A-0020	What are the facility and service requirements for domestic violence services?
WAC 388-61A-0025	What definitions apply to domestic violence shelters and services?
WAC 388-61A-0030	What safety requirements is the shelter required to meet?
WAC 388-61A-0035	What are the general requirements for bedrooms?
WAC 388-61A-0040	What kind of diaper changing area must I provide?
WAC 388-61A-0045	What are the kitchen requirements?
WAC 388-61A-0050	Are there any restrictions on food preparation?
WAC 388-61A-0055	What are the requirements for providing food and clothing to shelter residents?
WAC 388-61A-0060	What are the requirements for toilets, sinks, and bathing facilities?
WAC 388-61A-0065	What types of linen do I need to provide to clients?
WAC 388-61A-0070	What are the requirements for laundry facilities?
WAC 388-61A-0075	Are there requirements for drinking water?
WAC 388-61A-0080	What are the requirements for sewage and liquid wastes?

WAC 388-61A-0085	What kind of heating system is required?	WAC 388-61A-0160	What written policies and procedures do you need to have?
WAC 388-61A-0090	How must I ventilate the shelter?	WAC 388-61A-0165	Will DSHS do an evaluation of the domestic violence service?
WAC 388-61A-0095	How much lighting is required in the shelter?	WAC 388-61A-0170	What will happen if I am out of compliance with my contract?
WAC 388-61A-0100	Are there any requirements about pets in the shelter?	WAC 388-61A-0175	What will happen if there is a complaint to DSHS about the domestic violence service?
WAC 388-61A-0105	What first-aid supplies must I provide?	WAC 388-61A-0180	Can DSHS waive any of the minimum standards of this chapter?
WAC 388-61A-0110	What are the requirements for storing medications?		
WAC 388-61A-0115	What measures must I take for pest control?		
WAC 388-61A-0120	What are the requirements for labeling and storing chemicals and toxic materials?		
WAC 388-61A-0125	Where do I keep firearms and other dangerous weapons?		
WAC 388-61A-0130	What are the additional requirements for a safe home?		
WAC 388-61A-0135	What are the additional requirements for a shelter home?		
WAC 388-61A-0140	What supportive services am I required to provide to clients?		
WAC 388-61A-0145	What is advocacy-based counseling?		
WAC 388-61A-0146	What information must the domestic violence service keep confidential?		
WAC 388-61A-0147	What information can be disclosed?		
WAC 388-61A-0148	What information needs to be included in a written waiver of confidentiality?		
WAC 388-61A-0149	What information must be provided to clients about their right to confidentiality?		
WAC 388-61A-0150	What type of training is required for staff of the domestic violence service?		
WAC 388-61A-0155	Must supervisors of domestic violence service staff have specific experience and training?		

WSR 10-22-088
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed November 1, 2010, 1:04 p.m., effective December 2, 2010]

Effective Date of Rule: Thirty-one days after filing.
Purpose: The division of developmental disabilities (DDD) is amending chapter 388-845 WAC, DDD home and community based waivers to add a fifth waiver, known as the children's intensive in-home behavioral supports (CIIBS). These rules are necessary to implement the CIIBS waiver and incorporate changes reflected in the waivers submitted to the federal Centers for Medicare and Medicaid Services under 1915 (c) of the Social Security Act and implement section 205 (1)(i), chapter 329, Laws of 2008.

Citation of Existing Rules Affected by this Order: Amending WAC 388-845-0001, 388-845-0015, 388-845-0020, 388-845-0030, 388-845-0041, 388-845-0045, 388-845-0050, 388-845-0055, 388-845-0065, 388-845-0100, 388-845-0111, 388-845-0120, 388-845-0200, 388-845-0500, 388-845-0505, 388-845-0900, 388-845-0910, 388-845-1000, 388-845-1015, 388-845-1110, 388-845-1150, 388-845-1200, 388-845-1300, 388-845-1400, 388-845-1600, 388-845-1605, 388-845-1620, 388-845-1650, 388-845-1700, 388-845-1800, 388-845-1900, 388-845-2000, 388-845-2005, 388-845-2100, 388-845-2200, 388-845-3000, 388-845-3085, and 388-845-4005.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120, chapter 194, Laws of 2009, and section 205 (1)(i), chapter 329, Laws of 2008.

Other Authority: Title 71A RCW.
Adopted under notice filed as WSR 10-09-100 on April 21, 2010.

Changes Other than Editing from Proposed to Adopted Version: **WAC 388-845-0415 What is assistive technology?** Assistive technology consists of items, equipment, or product systems used to increase, maintain, or improve functional capabilities of waiver participants, as well as services

to directly assist the participant and caregivers to select, acquire, and use the technology. Assistive technology is available in the CIIBS waiver, and includes the following:

(1) The evaluation of the needs of the waiver participant, including a functional evaluation of the child ~~in~~ with respect to the child's customary environments such as home, school, and community;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;

(3) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for the participant and/or if appropriate, the child's family; and

(6) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise ~~substantially~~ substantially involved in the ~~major assistive technology related~~ major assistive technology related life functions of children with disabilities.

WAC 388-845-0425 Are there limits to the assistive technology I can receive? (1) Providers of assistive technology services must be certified, registered or licensed therapists as required by law and contracted with DDD for the therapy they are providing.

(2) Vendors of assistive technology must maintain a business license required by law and be contracted with DDD to provide this service.

(3) Assistive technology may be authorized as a waiver service ~~only after you have accessed what is available to you under medicaid~~ by obtaining an initial denial of funding or information showing that the technology is not covered by Medicaid or private insurance, including EPSDT per WAC 388-534-0100, and any other private health insurance plan.

(4) The department does not pay for ~~technology determined by DSHS to be experimental;~~ experimental technology.

(5) ~~The department and the treating professional determine the need for the technology.~~ The department required your treating professional's written recommendation regarding your need for the technology. This recommendation must take into account that:

(i) the treating professional has personal knowledge of and experience with the requested and alternative technology; and

(ii) the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(6) ~~The department reserves the right to require a second opinion from a department selected provider~~ The department may require a written second opinion from a department selected professional that meets the same criteria in (5) above.

(7) The department will require evidence that you have accessed your ~~full~~ full benefits through medicaid and private insurance before authorizing this waiver service.

WAC 388-845-0506 Who is a qualified provider of behavior management and consultation for the children's intensive in-home behavioral supports (CIIBS) waiver?

Under the CIIBS waiver, providers of behavior management and consultation must be contracted with DDD to provide CIIBS intensive services as one of the following four provider types:

(1) ~~Behavior specialist~~ Master's or PhD level behavior specialist, licensed or certified/registered to provide behavioral assessment, intervention, and training;

(2) Behavior technician, licensed or certified/registered to provide behavioral intervention and training, following the lead of the behavior specialist;

(3) Certified music therapist; and/or

(4) Certified recreation therapist.

Providers of behavior management and consultation per WAC 388-845-0505 may be utilized to provide counseling and/or therapy services to augment the work of the CIIBS intensive service provider types.

WAC 388-845-1015 Are there limits to the extended state plan services I can receive? (1) Additional therapy may be authorized as a waiver service only after you have accessed what is available to you under medicaid and any other private health insurance plan;

(2) The department does not pay for treatment determined by DSHS to be experimental;

(3) The department and the treating professional determine the need for and amount of service you can receive:

(a) The department reserves the right to require a second opinion from a ~~department selected~~ department selected provider.

(b) The department will require evidence that you have accessed your ~~full~~ full benefits through medicaid, including early and periodic screening, diagnosis, and treatment (EPSDT) for children under the age of twenty-one per WAC 388-534-0100, and private insurance by obtaining an initial denial of funding or information showing that the technology is not covered by Medicaid or private insurance before authorizing this waiver service.

(4) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

WAC 388-845-1180 Are there limitations to the nurse delegation services that I receive? The following limitations apply to receipt of nurse delegation services:

(1) ~~The department and the treating professional determine the need for and amount of service~~ Delegating nurse's written recommendation regarding your need for the service. This recommendation must take into account that the nurse has recently examined you, reviewed your medical records, and conducted a nursing assessment.

(2) ~~The department reserves the right to require a second opinion by a department selected provider~~ The department may require a written second opinion from a department selected nurse delegator that meets the same criteria in (1) above.-

(3) The following tasks must not be delegated:

(a) Injections, other than insulin;

(b) Central lines;

(c) Sterile procedures; and

(d) Tasks that require nursing judgment.

WAC 388-845-2170 Are there limitations on my receipt of therapeutic equipment and supplies? The following limitations apply to your receipt of therapeutic equipment and supplies under the CIIBS waiver:

(1) Therapeutic equipment and supplies may be authorized as a waiver service only after you have accessed what is available to you under medicaid including EPSDT per WAC 388-534-0100, and any private health insurance plan. The department will require evidence that you have accessed your full benefits through medicaid, EPSDT, and private insurance before authorizing this waiver service.

~~(2) The department does not pay for equipment and supplies determined by DSHS to be experimental. The department does not pay for experimental equipment and supplies.~~

~~(3) The department and the treating professional determine the need for the equipment and supplies. The department requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.~~

~~(4) The department reserves the right to require a second opinion from a department selected provider. The department may require a written second opinion from a department selected professional that meets the same criteria in (3) above.~~

WAC 388-845-2270 Are there limitations to my receipt of vehicle modification services? The following limitations apply to your receipt of vehicle modifications under the CIIBS waiver:

(1) Prior approval by the regional administrator or designee is required.

(2) Vehicle modifications are excluded if they are of general utility without direct medical or remedial benefit to the individual.

(3) Vehicle modifications must be the most cost effective modification based upon a comparison of contractor bids as determined by DDD.

(4) Modifications will only be approved for a vehicle that serves as the participant's primary means of transportation and is owned by the family.

~~(5) The department reserves the right to require a second opinion from a department selected provider. The department requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.~~

~~(6) The department may require a second opinion from a department selected provider that meets the same criteria as (5) above.~~

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 18, Amended 38, 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 18, Amended 38, Repealed 0.

Date Adopted: November 1, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0001 Definitions. "ADSA" means the aging and disability services administration, an administration within the department of social and health services.

"Aggregate services" means a combination of services subject to the dollar limitations in the Basic and Basic Plus waivers.

"CARE" means the comprehensive assessment and reporting evaluation.

"Client or person" means a person who has a developmental disability as defined in RCW 71A.10.020(3) and has been determined eligible to receive services by the division under chapter 71A.16 RCW.

"DDD" means the division of developmental disabilities, a division within the aging and disability services administration of the department of social and health services.

"DDD assessment" refers to the standardized assessment tool as defined in chapter 388-828 WAC, used by DDD to measure the support needs of persons with developmental disabilities.

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

"EPSDT" means early and periodic screening, diagnosis, and treatment, Medicaid's child health component providing a mandatory and comprehensive set of benefits and services for children up to age twenty one as defined in WAC 388-534-0100.

"Employment/day program services" means community access, person-to-person, prevocational services or supported employment services subject to the dollar limitations in the Basic and Basic Plus waivers.

"Evidence based treatment" means the use of physical, mental and behavioral health interventions for which systematic, empirical research has provided evidence of statistically significant effectiveness as treatments for specific conditions. Alternate terms with the same meaning are evidence-based practice (EBP) and empirically-supported treatment (EST).

"Family" means relatives who live in the same home with the eligible client. Relatives include spouse(=) or registered domestic partner; natural, adoptive or step parent(=); grandparent(=); ((~~brother~~; ~~sister~~; ~~stepbrother~~; ~~stepsister~~)) child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your relatives live.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

"HCBS waivers" means home and community based services waivers.

"Home" means (~~your~~) present or intended place of residence.

"ICF/MR" means an intermediate care facility for the mentally retarded.

"Individual support plan (ISP)" is a document that authorizes and identifies the DDD paid services to meet a client's assessed needs.

"Integrated settings" mean typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

"Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his/her living expenses.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDD planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDD when the client does not have a legal guardian and the client is requesting or receiving DDD services.

~~("Plan of care (POC)" means the primary tool DDD uses to determine and document your needs and to identify services to meet those needs until the DDD assessment is administered and the individual support plan is developed.)~~

"Providers" means an individual or agency who meets the provider qualifications and is contracted with ADSA to provide services to you.

"Respite assessment" means an algorithm within the DDD assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the Basic, Basic Plus, Children's Intensive In-Home Behavioral Support, or Core waiver.

"SSI" means Supplemental Security Income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means ~~((state supplementary payment, a benefit administered by the department intended to augment an individual's SSI))~~ a state-paid cash assistance program for certain clients of the division of developmental disabilities.

"State funded services" means services that are funded entirely with state dollars.

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0015 What HCBS waivers are provided by the division of developmental disabilities

(DDD)? DDD provides services through (~~four~~) five HCBS waivers:

- (1) Basic waiver;
- (2) Basic Plus waiver;
- (3) (~~(CORE))~~ Core waiver; (~~and~~)
- (4) Community Protection waiver; and
- (5) Children's Intensive In-Home Behavioral Support waiver (CIIBS).

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0020 When were (~~these four~~) the HCBS waivers effective? (~~The four DDD HCBS~~) Basic, Basic Plus, Core and Community Protection waivers were effective April 1, 2004. Children's Intensive In-Home Behavioral Support waiver was effective May 1, 2009.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? You meet criteria for DDD HCBS waiver-funded services if you meet all of the following:

(1) You have been determined eligible for DDD services per RCW 71A.10.020(3).

(2) You have been determined to meet ICF/MR level of care per WAC 388-845-0070, 388-828-3060 and 388-828-3080.

(3) You meet disability criteria established in the Social Security Act.

(4) You meet financial eligibility requirements as defined in WAC 388-515-1510.

(5) You choose to receive services in the community rather than in an ICF/MR facility.

(6) You have a need for waiver services as identified in your plan of care or individual support plan.

(7) You are not residing in hospital, jail, prison, nursing facility, ICF/MR, or other institution.

(8) Additionally, for the Children's Intensive In-Home Behavioral Support (CIIBS) waiver-funded services:

(a) You are age eight or older and under the age of eighteen for initial enrollment and under age twenty-one for continued enrollment;

(b) You have been determined to meet CIIBS program eligibility per chapter 388-828 WAC prior to initial enrollment only;

(c) You live with your family; and

(d) Your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s), have signed the participation agreement.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0041 What is DDD's responsibility to provide my services under the DDD HCBS waivers administered by DDD? If you are enrolled in an HCBS waiver administered by DDD, DDD must meet your assessed needs for health and welfare.

(1) DDD must address your assessed health and welfare needs in your ((~~plan of care or the~~) individual support plan, as specified in WAC 388-845-3055.

(2) You have access to DDD paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and 388-845-0115.

(3) DDD will provide waiver services you need and qualify for within your waiver.

(4) DDD will not deny or limit your waiver services based on a lack of funding.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDD determine who will be enrolled? When there is capacity on a waiver and available funding for new waiver participants, DDD may enroll people from the statewide data base in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their identified health and welfare needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDD may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDD has determined to be in immediate risk of ICF/MR admission due to unmet health and welfare needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC ((~~388-845-0060(9))~~) 388-845-0060 (1)(i).

(3) For the Basic waiver only, DDD may consider persons who need the waiver services available in the Basic waiver to maintain them in their family's home or in their own home.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0050 How do I request to be enrolled in a waiver? (1) You can contact DDD and request to be enrolled in a waiver or to enroll in a different waiver at any time.

(2) If you are assessed as meeting ICF/MR level of care as defined in WAC 388-845-0070 and chapter 388-828 WAC, your request for waiver enrollment will be documented by DDD in a statewide data base.

(3) For the Children's Intensive In-Home Behavioral Support (CIIBS) waiver only, if you are assessed as meeting both ICF/MR level of care and CIIBS eligibility as defined in WAC 388-845-0030 and chapter 388-828 WAC, your

request for waiver enrollment will be documented by DDD in a statewide database.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0055 How do I remain eligible for the waiver? Once you are enrolled in a DDD HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030((-)), and:

(1) ((~~DDD~~)) You complete((s)) a reassessment with DDD at least once every twelve months to determine if you continue to meet all of these eligibility requirements; and

(2) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC 388-513-1320 (3)(b), or your health and welfare needs require monthly monitoring, which will be documented in your client record; and

(3) ((~~Your~~)) You complete an in-person DDD assessment/reassessment interview ((~~must be~~)) administered ((~~in person and~~)) in your home((-See)) per WAC 388-828-1520.

(4) In addition, for the Children's Intensive In-Home Behavioral Supports waiver, you must:

(a) Be under age twenty-one;

(b) Live with your family; and

(c) Have an annual participation agreement signed by your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0065 What happens if I am terminated or choose to disenroll from a waiver? If you are terminated from a waiver or choose to disenroll from a waiver, DDD will notify you.

(1) DDD cannot guarantee continuation of your current services, including medicaid eligibility.

(2) Your eligibility for nonwaiver state-only funded DDD services is based upon availability of funding and program eligibility for a particular service.

(3) If you are terminated from the CIIBS waiver due to turning age twenty-one, DDD will assist with transition planning at least twelve months prior to your twenty-first birthday.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0100 What determines which waiver I am assigned to? If there is capacity, DDD will assign you to the waiver with the minimum service package necessary to meet your health and welfare needs, based on its evaluation of your DDD assessment as described in chapter 388-828 WAC and the following criteria:

(1) For the Basic waiver:

(a) You must live with your family or in your own home;

(b) Your family/caregiver's ability to continue caring for you can be maintained with the addition of services provided in the Basic waiver; and

(c) You do not need out-of-home residential services.

(2) For the Basic Plus waiver, your health and welfare needs exceed the amount allowed in the Basic waiver or require a service that is not contained in the Basic waiver; and

(a) You are at high risk of out-of-home placement or loss of your current living situation; or

(b) You require out-of-home placement and your health and welfare needs can be met in an adult family home or adult residential care facility.

(3) For the Core waiver:

(a) You are at immediate risk of out-of-home placement; and/or

(b) You have an identified health and welfare need for residential services that cannot be met by the Basic Plus waiver.

(4) For the Community Protection waiver, refer to WAC 388-845-0105 and chapter 388-831 WAC.

(5) For the Children's Intensive In-Home Behavioral Support waiver, you:

(a) Are age eight or older and under age eighteen;

(b) Live with your family;

(c) Are assessed at high or severe risk of out of home placement due to challenging behavior per chapter 388-828 WAC; and

(d) You have a signed participation agreement from your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0111 Are there limitations regarding who can provide services? The following limitations apply to providers for waiver services:

(1) Your spouse (~~(cannot)~~) must not be your paid provider for any waiver service.

(2) If you are under age eighteen, your natural, step, or adoptive parent (~~(cannot)~~) must not be your paid provider for any waiver service.

(3) If you are age eighteen or older, your natural, step, or adoptive parent (~~(cannot)~~) must not be your paid provider for any waiver service with the exception of:

(a) Personal care;

(b) Transportation to and from a waiver service;

(c) Residential habilitation services per WAC 388-845-1510 if your parent is certified as a residential agency per chapter 388-101 WAC; or

(d) Respite care if you and the parent who provides the respite care live in separate homes.

(4) If you receive CIIBS waiver services, your legal representative or family member per WAC 388-845-0001 must not be your paid provider for any waiver service with the exception of:

(a) Personal care;

(b) Transportation to and from a waiver service; and

(c) Respite per WAC 388-845-1605 through 388-845-1620.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0120 Will I continue to receive state supplementary payments (SSP) if I am on the waiver? Your participation in one of the ((new)) DDD HCBS waivers does not affect your continued receipt of state supplemental payment from DDD.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0200 What waiver services are available to me? Each of the ((four)) DDD HCBS waivers has a different scope of service and your ((plan of care or)) individual support plan defines the waiver services available to you.

NEW SECTION

WAC 388-845-0225 Children's intensive in-home behavioral support (CIIBS) waiver services.

CIIBS Waiver	Services	Yearly Limit
	<ul style="list-style-type: none"> • Behavior management and consultation • Staff/family consultation and training • Environmental accessibility adaptations • Occupational therapy • Physical therapy • Sexual deviancy evaluation • Nurse delegation • Specialized medical equipment / supplies • Specialized psychiatric services • Speech, hearing and language services • Transportation • Assistive technology • Therapeutic equipment and supplies • Specialized nutrition and clothing • Vehicle modifications 	Determined by the individual support plan. Total cost of waiver services cannot exceed the average cost of \$4,000 per month per participant.
	Personal care	Limits determined by the DDD assessment. Costs are included in the total average cost of \$4000 per

CIIBS Waiver	Services	Yearly Limit
		month per participant for all waiver services.
	Respite care	Limits determined by the DDD assessment. Costs are included in the total average cost of \$4000 per month per participant for all waiver services.

NEW SECTION

WAC 388-845-0415 What is assistive technology?

Assistive technology consists of items, equipment, or product systems used to increase, maintain, or improve functional capabilities of waiver participants, as well as services to directly assist the participant and caregivers to select, acquire, and use the technology. Assistive technology is available in the CIIBS waiver, and includes the following:

- (1) The evaluation of the needs of the waiver participant, including a functional evaluation of the child in the child's customary environment;
- (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices;
- (3) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;
- (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
- (5) Training or technical assistance for the participant and/or if appropriate, the child's family; and
- (6) Training or technical assistance for professionals, including individuals providing education and rehabilitation services, employers, or other individuals who provide services to, employ, or are otherwise involved in the assistive technology related life functions of children with disabilities.

NEW SECTION

WAC 388-845-0420 Who is a qualified provider of assistive technology? The provider of assistive technology must be an assistive technology vendor contracted with DDD or one of the following professionals contracted with DDD and duly licensed, registered or certified to provide this service:

- (1) Occupational therapist;
- (2) Physical therapist;
- (3) Speech and language pathologist;
- (4) Certified music therapist;
- (5) Certified recreation therapist; or
- (6) Audiologist.

NEW SECTION

WAC 388-845-0425 Are there limits to the assistive technology I can receive? (1) Providers of assistive technology services must be certified, registered or licensed therapists as required by law and contracted with DDD for the therapy they are providing.

(2) Vendors of assistive technology must maintain a business license required by law and be contracted with DDD to provide this service.

(3) Assistive technology may be authorized as a waiver service by obtaining an initial denial of funding or information showing that the technology is not covered by medicaid or private insurance.

(4) The department does not pay for experimental technology.

(5) The department requires your treating professional's written recommendation regarding your need for the technology. This recommendation must take into account that:

- (a) The treating professional has personal knowledge of and experience with the requested and alternative technology; and
- (b) The treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(6) The department may require a written second opinion from a department selected professional that meets the same criteria in subsection (5) above.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0500 What is behavior management and consultation? (1) Behavior management and consultation may be provided to persons on any of the ~~((four))~~ DDD HCBS waivers and includes the development and implementation of programs designed to support waiver participants using:

- (a) Strategies for effectively relating to caregivers and other people in the waiver participant's life; and
- (b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling, development and implementation of a positive behavior support plan).

(2) Behavior management and consultation may also be provided as a mental health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

NEW SECTION

WAC 388-845-0501 What is included in behavior management and consultation for the children's intensive in-home behavioral support (CIIBS) waiver? (1) In addition to the definition in WAC 388-845-0500, behavior management and consultation in the CIIBS waiver must include the following characteristics:

- (a) Treatment must be evidence based, driven by individual outcome data, and consistent with DDD's positive behavior support guidelines as outlined in contract;

(b) The following written components will be developed in partnership with the child and family by a behavior specialist as defined in WAC 388-845-0506:

- (i) Functional behavioral assessment; and
 - (ii) Positive behavior support plan based on functional behavioral assessment.
- (c) Treatment goals must be objective and measurable. The goals must relate to an increase in skill development and a resulting decrease in challenging behaviors that impede quality of life for the child and family; and
- (d) Behavioral support strategies will be individualized and coordinated across all environments, such as home, school, and community, in order to promote a consistent approach among all involved persons.

(2) Behavior management and consultation in the CIIBS waiver may also include the following components:

(a) Positive behavior support plans may be implemented by a behavioral technician as defined in WAC 388-845-0506 and include 1:1 behavior interventions and skill development activity.

(b) Positive behavior support plans may include recommendations by a music and/or recreation therapist, as defined in WAC 388-845-0506.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0505 Who is a qualified provider of behavior management and consultation? Under the Basic, Basic Plus, Core, and Community Protection waivers, the provider of behavior management and consultation must be one of the following professionals contracted with DDD and duly licensed, registered or certified to provide this service:

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);
- (9) Physician assistant working under the supervision of a psychiatrist;
- (10) ~~((Registered counselor))~~ Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW; or
- (11) Polygrapher.

NEW SECTION

WAC 388-845-0506 Who is a qualified provider of behavior management and consultation for the children's intensive in-home behavioral supports (CIIBS) waiver?

(1) Under the CIIBS waiver, providers of behavior management and consultation must be contracted with DDD to provide CIIBS intensive services as one of the following four provider types:

(a) Master's or PhD level behavior specialist, licensed or certified/registered to provide behavioral assessment, intervention, and training;

(b) Behavior technician, licensed or certified/registered to provide behavioral intervention and training, following the lead of the behavior specialist;

(c) Certified music therapist; and/or

(d) Certified recreation therapist.

(2) Providers of behavior management and consultation per WAC 388-845-0505 may be utilized to provide counseling and/or therapy services to augment the work of the CIIBS intensive service provider types.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0900 What are environmental accessibility adaptations? (1) Environmental accessibility adaptations are available in all of the DDD HCBS waivers and provide the physical adaptations to the home required by the individual's plan of care or individual support plan needed to:

(a) Ensure the health, welfare and safety of the individual; or

(b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home.

(2) Environmental accessibility adaptations may include the installation of ramps and grab bars, widening of doorways, modification of bathroom facilities, or installing specialized electrical and/or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

(3) For the CIIBS waiver only, adaptations include repairs to the home necessary due to property destruction caused by the participant's behavior.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-0910 What limitations apply to environmental accessibility adaptations? The following service limitations apply to environmental accessibility adaptations:

(1) Environmental accessibility adaptations require prior approval by the DDD regional administrator or designee.

(2) With the exception of damage repairs under the CIIBS waiver, environmental accessibility adaptations or improvements to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc.

(3) Environmental accessibility adaptations cannot add to the total square footage of the home.

(4) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

(5) Damage repairs under the CIIBS waiver are subject to the following restrictions:

(a) Limited to the cost of restoration to the original condition.

(b) Repairs to personal property and normal wear and tear are excluded.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1000 What are extended state plan services? Extended state plan services refer to physical therapy; occupational therapy; and speech, hearing and language services available to you under medicaid without regard to your waiver status. They are "extended" services when the waiver pays for more services than is provided under the state medicaid plan. These services are available under all ~~((four))~~ DDD HCBS waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1015 Are there limits to the extended state plan services I can receive? (1) Additional therapy may be authorized as a waiver service only after you have accessed what is available to you under medicaid and any other private health insurance plan;

(2) The department does not pay for treatment determined by DSHS to be experimental;

(3) The department and the treating professional determine the need for and amount of service you can receive:

(a) The department ~~((reserves the right to))~~ may require a second opinion from a ~~((department-selected))~~ department selected provider.

(b) The department will require evidence that you have accessed your full benefits through medicaid ~~((and private insurance))~~

(4) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1110 What are the limits of mental health crisis diversion bed services? (1) Mental health crisis diversion bed services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a mental health professional and/or DDD.

(2) These services are available in ~~((all four HCBS))~~ the Basic, Basic Plus, Core, and Community Protection waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

(3) The costs of mental health crisis diversion bed services do not count toward the dollar limits for aggregate services in the Basic and Basic Plus waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1150 What are mental health stabilization services? Mental health stabilization services assist persons who are experiencing a mental health crisis. These services are available in ~~((all four))~~ the Basic, Basic Plus, Core, and Community Protection waivers to adults determined by mental health professionals or DDD to be at risk of

institutionalization in a psychiatric hospital without one of more of the following services:

(1) Behavior management and consultation;

~~((2))~~ ~~((Skilled nursing services;))~~

~~((3))~~ Specialized psychiatric services; or

~~((4))~~ (3) Mental health crisis diversion bed services.

NEW SECTION

WAC 388-845-1170 What is nurse delegation? (1) Nurse delegation services are services in compliance with WAC 246-840-910 through 246-840-970 by a registered nurse to provide training and nursing management for nursing assistants who perform delegated nursing tasks.

(2) Delegated nursing tasks include, but are not limited to, administration of noninjectable medications except for insulin, blood glucose testing, and tube feedings.

(3) Services include the initial visit, care planning, competency testing of the nursing assistant, consent of the client, additional instruction and supervisory visits.

(4) Clients who receive nurse delegation services must be considered "stable and predictable" by the delegated nurse.

NEW SECTION

WAC 388-845-1175 Who is a qualified provider of nurse delegation? Providers of nurse delegation are registered nurses contracted with DDD to provide this service or employed by a nursing agency contracted with DDD to provide this service.

NEW SECTION

WAC 388-845-1180 Are there limitations to the nurse delegation services that I receive? The following limitations apply to receipt of nurse delegation services:

(1) The department requires the delegating nurse's written recommendation regarding your need for the service. This recommendation must take into account that the nurse has recently examined you, reviewed your medical records, and conducted a nursing assessment.

(2) The department may require a written second opinion from a department selected nurse delegator that meets the same criteria in subsection (1) of this section.

(3) The following tasks must not be delegated:

(a) Injections, other than insulin;

(b) Central lines;

(c) Sterile procedures; and

(d) Tasks that require nursing judgment.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1200 What are "person-to-person" services? (1) "Person-to-person" services are intended to assist you to achieve the outcome of gainful employment in an integrated setting through a combination of services, which may include:

(a) Development and implementation of self-directed employment services;

(b) Development of a person centered employment plan;
 (c) Preparation of an individualized budget; and
 (d) Support to work and volunteer in the community, and/or access the generic community resources needed to achieve integration and employment.

(2) These services may be provided in addition to community access, prevocational services, or supported employment.

(3) These services are available in ~~((all four HCBS))~~ the Basic, Basic Plus, Core and Community Protection waivers.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-1300 What are personal care services? Personal care services as defined in WAC 388-106-0010 are the provision of assistance with personal care tasks. These services are available in the Basic, Basic Plus, CIIBS and ~~((CORE))~~ Core waivers.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1400 What are prevocational services? (1) Prevocational services occur in a segregated setting and are designed to prepare you for gainful employment in an integrated setting through training and skill development.

(2) Prevocational services are available in ~~((all four HCBS))~~ the Basic, Basic Plus, Core and Community Protection waivers.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1600 What is respite care? Respite care is short-term intermittent relief for persons normally providing care for waiver individuals. This service is available in the Basic, Basic Plus, CIIBS, and ~~((CORE))~~ Core waivers.

AMENDATORY SECTION (Amending WSR 08-03-109, filed 1/22/08, effective 2/22/08)

WAC 388-845-1605 Who is eligible to receive respite care? You are eligible to receive respite care if you are in the Basic, Basic Plus, CIIBS or ~~((CORE))~~ Core waiver and:

(1) You live in a private home and no one living with you is paid to ~~((be your caregiver))~~ provide personal care services to you;

(2) You are age eighteen or older and live with a paid ((caregiver)) personal care provider who is your natural, step or adoptive parent; or

(3) You are under the age of eighteen and live with your natural, step or adoptive parent and your paid personal care provider also lives with you; or

(4) You live with a caregiver who is paid by DDD to provide ~~((care to you and is))~~ supports as:

(a) A contracted companion home provider; or

(b) A licensed children's foster home provider.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1620 Are there limits to the respite care I can receive? The following limitations apply to the respite care you can receive:

(1) The DDD assessment will determine how much respite you can receive per chapter 388-828 WAC.

(2) Prior approval by the DDD regional administrator or designee is required:

(a) To exceed fourteen days of respite care per month; or

(b) To pay for more than eight hours in a twenty-four hour period of time for respite care in any setting other than your home or place of residence. This limitation does not prohibit your respite care provider from taking you into the community, per WAC 388-845-1610(2).

(3) Respite cannot replace:

(a) Daycare while your parent or guardian is at work; and/or

(b) Personal care hours available to you. When determining your unmet need, DDD will first consider the personal care hours available to you.

(4) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;

(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

(5) Your caregiver ~~((will not be paid to))~~ may not provide DDD services for you or other persons ((at the same time you receive respite services)) during your respite care hours.

(6) If your personal care provider is your parent, your parent provider will not be paid to provide respite services to any client in the same month that you receive respite services.

(7) DDD ~~((cannot))~~ may not pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

(8) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the Basic Plus waiver, skilled nursing services are limited to the dollar limits of your aggregate services per WAC 388-845-0210.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-1650 What are sexual deviancy evaluations? (1) Sexual deviancy evaluations:

(a) Are professional evaluations that assess the person's needs and the person's level of risk of sexual offending or sexual recidivism;

(b) Determine the need for psychological, medical or therapeutic services; and

(c) Provide treatment recommendations to mitigate any assessed risk.

(2) Sexual deviancy evaluations are available in all ~~((four))~~ DDD HCBS waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1700 What is skilled nursing? (1) Skilled nursing is continuous, intermittent, or part time nursing services. These services are available in the Basic Plus, ~~((CORE))~~ Core, and Community Protection waivers.

(2) Services include nurse delegation services, per WAC 388-845-1170, provided by a registered nurse, including the initial visit, follow-up instruction, and/or supervisory visits.

~~((3) These services are available in all four HCBS waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.))~~

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-1800 What are specialized medical equipment and supplies? (1) Specialized medical equipment and supplies are durable and nondurable medical equipment not available through medicaid or the state plan which enables individuals to:

(a) Increase their abilities to perform their activities of daily living; or

(b) Perceive, control or communicate with the environment in which they live.

(2) Durable and nondurable medical equipment are defined in WAC 388-543-1000 and 388-543-2800 respectively.

(3) Also included are items necessary for life support; and ancillary supplies and equipment necessary to the proper functioning of the equipment and supplies described in subsection (1) above.

(4) Specialized medical equipment and supplies are available in all ~~((four))~~ DDD HCBS waivers.

NEW SECTION

WAC 388-845-1840 What is specialized nutrition and specialized clothing? (1) Specialized nutrition is available to you in the CIIBS waiver and is defined as:

(a) Assessment, intervention, and monitoring services from a certified dietitian; and/or

(b) Specially prepared food, or purchase of particular types of food, needed to sustain you in the family home. Specialized nutrition is in addition to meals a parent would provide and specific to your medical condition or diagnosis.

(2) Specialized clothing is available to you in the CIIBS waiver and defined as nonrestrictive clothing adapted to the participant's individual needs and related to his/her disability. Specialized clothing can include weighted clothing, clothing designed for tactile defensiveness, specialized footwear, or reinforced clothing.

NEW SECTION

WAC 388-845-1845 Who are qualified providers of specialized nutrition and specialized clothing? (1) Providers of specialized nutrition are:

(a) Certified dietitians contracted with DDD to provide this service or employed by an agency contracted with DDD to provide this service; and

(b) Specialized nutrition vendors contracted with DDD to provide this service.

(2) Providers of specialized clothing are specialized clothing vendors contracted with DDD to provide this service.

NEW SECTION

WAC 388-845-1850 Are there limitations to my receipt of specialized nutrition and specialized clothing?

(1) The following limitations apply to your receipt of specialized nutrition services:

(a) Services may be authorized as a waiver service only after you have accessed what is available to you under medicaid including EPSDT per WAC 388-534-0100, and any private health insurance plan;

(b) Services must be evidence based;

(c) Services must be ordered by a physician licensed to practice in the state of Washington;

(d) Specialized diets must be periodically monitored by a certified dietitian;

(e) Specialized nutrition products will not constitute a full nutritional regime unless an enteral diet is the primary source of nutrition;

(f) Department coverage of specialized nutrition products is limited to costs that are over and above inherent family food costs;

(g) DDD reserves the right to require a second opinion by a department selected provider; and

(h) Prior approval by regional administrator or designee is required.

(2) The following limitations apply to your receipt of specialized clothing:

(a) Services may be authorized as a waiver service only after you have accessed what is available to you under medicaid, EPSDT per WAC 388-534-0100, and any private health insurance plan;

(b) Specialized clothing must be recommended by an appropriate health professional, such as an OT, behavior therapist, or podiatrist;

(c) DDD reserves the right to require a second opinion by a department-selected provider; and

(d) Prior approval by regional administrator or designee is required.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1900 What are specialized psychiatric services? (1) Specialized psychiatric services are specific to the individual needs of persons with developmental disabilities who are experiencing mental health symptoms. These services are available in all ~~((four))~~ DDD HCBS waivers.

(2) Service may be any of the following:

- (a) Psychiatric evaluation,
- (b) Medication evaluation and monitoring,
- (c) Psychiatric consultation.

(3) These services are also available as a mental health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-2000 What is staff/family consultation and training? (1) Staff/family consultation and training is professional assistance to families or direct service providers to help them better meet the needs of the waiver person. This service is available in all ~~((four))~~ DDD HCBS waivers.

(2) Consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of the waiver participant as outlined in the individual's plan of care or individual support plan, including:

- (a) Health and medication monitoring;
- (b) Positioning and transfer;
- (c) Basic and advanced instructional techniques;
- (d) Positive behavior support; ~~((and))~~
- (e) Augmentative communication systems;
- (f) Diet and nutritional guidance;
- (g) Disability information and education;
- (h) Strategies for effectively and therapeutically interacting with the participant;

(i) Environmental consultation; and

(j) For the CIIBS waiver only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-2005 Who is a qualified provider of staff/family consultation and training? To provide staff/family consultation and training, a provider must be one of the following licensed, registered or certified professionals and be contracted with DDD:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech/language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American sign language instructor;
- (13) Nutritionist;
- (14) ~~((Registered counselor))~~ Counselors registered or certified in accordance with the requirements of chapter 18.19 RCW;

(15) Certified dietician; ~~((or))~~

(16) Recreation therapist certified by the National Council for Therapeutic Recreation; or

(17) Providers listed in WAC 388-845-0506 and contracted with DDD to provide CIIBS intensive services.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

WAC 388-845-2100 What are supported employment services? Supported employment services provide you with intensive ongoing support if you need individualized assistance to gain and/or maintain employment. These services are tailored to your individual needs, interests, abilities, and promote your career development. These services are provided in individual or group settings and are available in ~~((all four HCBS))~~ the Basic, Basic Plus, Core and Community Protection waivers.

(1) Individual supported employment services include activities needed to sustain minimum wage pay or higher. These services are conducted in integrated business environments and include the following:

- (a) Creation of work opportunities through job development;
- (b) On-the-job training;
- (c) Training for your supervisor and/or peer workers to enable them to serve as natural supports to you on the job;
- (d) Modification of your work site tasks;
- (e) Employment retention and follow along support; and
- (f) Development of career and promotional opportunities.

(2) Group supported employment services are a step on your pathway toward gainful employment in an integrated setting and include:

- (a) The activities outlined in individual supported employment services;
- (b) Daily supervision by a qualified employment provider; and
- (c) Groupings of no more than eight workers with disabilities.

NEW SECTION

WAC 388-845-2160 What is therapeutic equipment and supplies? (1) Therapeutic equipment and supplies are only available in the CIIBS waiver.

(2) Therapeutic equipment and supplies are equipment and supplies that are incorporated in a behavioral support plan or other therapeutic plan, designed by an appropriate professional, such as a sensory integration or communication therapy plan, and necessary in order to fully implement the therapy or intervention.

(3) Included are items such as a weighted blanket, supplies that assist to calm or redirect the child to a constructive activity, or a vestibular swing.

NEW SECTION

WAC 388-845-2165 Who are qualified providers of therapeutic equipment and supplies? Providers of therapeutic equipment and supplies are therapeutic equipment and supply vendors contracted with DDD to provide this service.

NEW SECTION

WAC 388-845-2170 Are there limitations on my receipt of therapeutic equipment and supplies? The following limitations apply to your receipt of therapeutic equipment and supplies under the CIIBS waiver:

(1) Therapeutic equipment and supplies may be authorized as a waiver service only after you have accessed what is available to you under medicaid including EPSDT per WAC 388-534-0100, and any private health insurance plan. The department will require evidence that you have accessed your full benefits through medicaid, EPSDT, and private insurance before authorizing this waiver service.

(2) The department does not pay for experimental equipment and supplies.

(3) The department requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(4) The department may require a written second opinion from a department selected professional that meets the same criteria in subsection (3) of this section.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-2200 What are transportation services? Transportation services provide reimbursement to a provider when the transportation is required and specified in the waiver plan of care or individual support plan. This service is available in all ~~((four))~~ DDD HCBS waivers if the cost and responsibility for transportation is not already included in your provider's contract and payment.

(1) Transportation provides you access to waiver services, specified by your plan of care or individual support plan.

(2) Whenever possible, you must use family, neighbors, friends, or community agencies that can provide this service without charge.

NEW SECTION

WAC 388-845-2260 What are vehicle modifications? This service is only available in the CIIBS waiver. Vehicle modifications are adaptations or alterations to a vehicle required in order to accommodate the unique needs of the individual, enable full integration into the community, and ensure the health, welfare, and safety of the individual and/or family members.

NEW SECTION

WAC 388-845-2265 Who are providers of vehicle modifications? Providers of vehicle modifications are:

(1) Vehicle service providers contracted with DDD to provide this service; or

(2) Vehicle adaptive equipment vendors contracted with DDD to provide this service.

NEW SECTION

WAC 388-845-2270 Are there limitations to my receipt of vehicle modification services? The following limitations apply to your receipt of vehicle modifications under the CIIBS waiver:

(1) Prior approval by the regional administrator or designee is required.

(2) Vehicle modifications are excluded if they are of general utility without direct medical or remedial benefit to the individual.

(3) Vehicle modifications must be the most cost effective modification based upon a comparison of contractor bids as determined by DDD.

(4) Modifications will only be approved for a vehicle that serves as the participant's primary means of transportation and is owned by the family.

(5) The department requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

(6) The department may require a second opinion from a department selected provider that meets the same criteria as subsection (5) of this section.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-3000 What is the process for determining the services I need? Your service needs are determined through the DDD assessment and the service planning process as defined in chapter 388-828 WAC. Only identified health and welfare needs will be authorized for payment in the ISP.

(1) You receive an initial and annual assessment of your needs using a department-approved form.

(a) You meet the eligibility requirements for ICF/MR level of care.

(b) The "comprehensive assessment reporting evaluation (CARE)" tool will determine your eligibility and amount of personal care services.

(c) If you are in the Basic, Basic Plus, CIIBS, or ~~((CORE))~~ Core waiver, the DDD assessment will determine the amount of respite care available to you.

(2) From the assessment, DDD develops your waiver plan of care or individual support plan (ISP) with you and/or your legal representative and others who are involved in your life such as your parent or guardian, advocate and service providers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3085 What if my needs exceed what can be provided under the CIIBS, ~~((CORE))~~ Core or Community Protection waiver? (1) If you are on the CIIBS, ~~((CORE))~~ Core or Community Protection waiver and your assessed need for services exceeds the scope of services provided under your waiver, DDD will make the following efforts to meet your health and welfare needs:

- (a) Identify more available natural supports;
 - (b) Initiate an exception to rule to access available non-waiver services not included in the CIIBS, ((CORE)) Core or Community Protection waiver other than natural supports;
 - (c) Offer you the opportunity to apply for an alternate waiver that has the services you need, subject to WAC 388-845-0045;
 - (d) Offer you placement in an ICF/MR.
- (2) If none of the above options is successful in meeting your health and welfare needs, DDD may terminate your waiver eligibility.
- (3) If you are terminated from a waiver, you will remain eligible for nonwaiver DDD services but access to state-only funded DDD services is limited by availability of funding.

AMENDATORY SECTION (Amending WSR 07-20-050, filed 9/26/07, effective 10/27/07)

WAC 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver? (1) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited to the decision that you are not eligible to have your request documented in a statewide data base (~~because~~) due to the following:

(a) You do not need ICF/MR level of care per WAC 388-845-0070, 388-828-8040 and 388-828-8060; or

(b) You requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520.

(2) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited to the following:

(a) DDD's decision that the services contained in a different waiver are not necessary to meet your health and welfare needs and that the services available on your current waiver can meet your health and welfare needs; or

(b) DDD's decision that you are not eligible to have your request documented in a statewide database because you requested enrollment in the CIIBS waiver and do not meet CIIBS eligibility per WAC 388-828-8500 through 388-828-8520.

(3) If DDD determines that the services offered in a different waiver are necessary to meet your health and welfare needs, but there is not capacity on the different waiver, you do not have the right to appeal any denial of enrollment on a different waiver when DDD determines there is not capacity to enroll you on a different waiver.

WSR 10-23-001

PERMANENT RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed November 3, 2010, 2:35 p.m., effective December 4, 2010]

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

Purpose: WAC 246-817-701 Administration of anesthetic agents for dental procedures and 246-817-722 Defibrillator. The adopted rules removed the twenty-four hour on-

call availability and the defibrillator (AED) requirement for dental offices only performing local anesthetic (not sedation). The adopted rule also modifies the current AED requirement for dental offices performing sedation by allowing an office to share access to an AED with another business.

Citation of Existing Rules Affected by this Order: Amending WAC 246-817-701 and 246-817-722.

Statutory Authority for Adoption: RCW 18.32.640 and 18.32.0365.

Adopted under notice filed as WSR 10-16-118 on August 2, 2010.

A final cost-benefit analysis is available by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4893, fax (360) 236-2901, e-mail jennifer.santiago@doh.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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: September 17, 2010.

Andrew A. Vorono, D.D.S.
Chair

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-701 Administration of anesthetic agents for dental procedures. The purpose of WAC 246-817-701 through 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 246-320-010 and ambulatory surgical facilities as defined in WAC 246-310-010, pursuant to the DQAC authority in RCW 18.32.640.

(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, excluding those procedures using only local anesthetic.

(3) The dental assistant and expanded function dental auxiliary may not administer any general or local anesthetic, including intravenous sedation.

AMENDATORY SECTION (Amending WSR 09-04-042, filed 1/30/09, effective 3/2/09)

WAC 246-817-722 Defibrillator. ~~(1)~~ Every dental office in the state of Washington that administers ~~((anesthetic))~~ minimal, moderate, or deep sedation, or general anesthesia, as defined in WAC 246-817-710, must have an ~~((automatic))~~ automated external defibrillator (AED) or defibrillator.

~~(2)~~ The dentist and staff must ~~((be prepared))~~ have access to ((use this equipment)) the AED or defibrillator in an emergency, and it must be available and in reach within sixty seconds.

~~(3)~~ A dental office may share a single AED or defibrillator with adjacent businesses if it meets the requirements in this section.

**WSR 10-23-003
PERMANENT RULES
PUGET SOUND
CLEAN AIR AGENCY**

[Filed November 3, 2010, 4:03 p.m., effective January 1, 2011]

Effective Date of Rule: January 1, 2011.

Purpose: To update the agency's agricultural burning permit fee structure. There is also a minor housekeeping change that covers a statutory reference update.

Citation of Existing Rules Affected by this Order: Amending Regulation I, Section 8.05.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 10-19-122 on September 21, 2010.

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: October 28, 2010.

Craig Kenworthy
Executive Director

AMENDATORY SECTION

REGULATION I SECTION 8.05 AGRICULTURAL BURNING PERMITS

(a) **Applicability.** This section applies to burning permits related to agricultural operations. The definitions and requirements contained in chapter 173-430 WAC also apply

to this section; provided that if there is a conflict between this section and chapter 173-430 WAC, this section governs.

(b) **General Requirements.** Agricultural burning will be permitted if the following requirements are met:

(1) The natural vegetation being burned is generated from the property of the commercial agricultural operation; and

(2) Burning is necessary for crop propagation or rotation, disease or pest control; and

(3) Burning is a best management practice as established by the Agricultural Burning Practices and Research Task Force (established in ~~((RCW 70.94.650))~~ RCW 70.94.6528 as referenced in ~~((WAC 173-430-050))~~ chapter 173-430 WAC); or the burning practice is approved in writing by the Washington State Cooperative Extension Service or the Washington State Department of Agriculture; or the burning is conducted by a governmental entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards; and ((-))

(4) The proposed burning will not cause a violation of any Agency regulation.

(c) **Permit Applications.** Agricultural burning permits shall be approved by the Agency prior to burning.

(1) The permit application shall be submitted on forms provided by the Agency and shall include:

~~((+))~~ (A) A copy of the applicant's most recent year's Schedule F (as filed with the Internal Revenue Service);

~~((2))~~ (B) A written review by the local fire district or fire marshal indicating their endorsement that local requirements have been met; and

~~((3))~~ (C) A ~~((non-refundable))~~ permit fee as required below:

~~((A))~~ For burning up to 10 acres (or equivalent), the fee is \$25.00 (\$12.50 for local administration and \$12.50 for the research fund);

~~((B))~~ For burning over 10 acres, the fee is \$2.25 per acre (\$1.25 for local administration, \$.50 for the research fund, and \$.50 for Ecology administration.);

<u>Burn Type</u>	<u>Minimal Fee</u>	<u>Variable Fee</u>
<u>(i) Field Burning of vegetative residue on an area of land used in an agricultural operation. (does not include pile burning)</u>	<u>\$30 for the first 10 acres. (\$15 each for the Agency and Ecology administration.)</u>	<u>\$3 for each additional acre. (\$1.25 each per acre for the Agency and Ecology administration, and \$.50 per acre for the research fund.)</u>
<u>(ii) Spot Burning of an unforeseen and unpredicted small area where burning is reasonably necessary and no practical alternative to burning exists.</u>	<u>\$30 for 10 acres or less. (\$15 each for the Agency and Ecology administration.)</u>	<u>None.</u>

<u>Burn Type</u>	<u>Minimal Fee</u>	<u>Variable Fee</u>
<u>(iii) Pile Burning of stacked vegetative residue from an agricultural operation.</u>	<u>\$80 for the first 100 tons. (\$16 each for the Agency administration and the research fund, and \$48 for Ecology administration.)</u>	<u>\$.50 for each additional ton. (\$.10 each per ton for the Agency administration and the research fund, and \$.30 per ton for Ecology administration.)</u>

(2) Any refunds of the variable fee portion of a permit fee are issued in accordance with chapter 173-430 WAC.

(d) Permit Action and Content.

(1) The Agency will act on a complete application within 7 days of receipt.

(2) All agricultural burning permits shall contain conditions that are necessary to minimize emissions.

(3) All permits shall expire 12 months from date of issuance.

~~(e) Permit Denial. ((No permit shall be issued if the Agency determines that the proposed burning will cause a nuisance.))~~ (e) **Permit Denial.** All denials shall become final within 15 days unless the applicant petitions the Control Officer for reconsideration, stating the reasons for reconsideration. The Control Officer shall then consider the petition and shall within 30 days issue a permit or notify the applicant in writing of the reason(s) for denial. (For more information on the appeal process, see Section 3.17 of this regulation.)

WSR 10-23-026

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 10-291—Filed November 8, 2010, 8:53 a.m., effective December 9, 2010]

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

Purpose: Amends WAC 232-36-051, which was filed on June 23, 2010, as part of WSR 10-13-182, and contains an erroneous subsection reference. Also repeals two rules, WAC 232-12-086 and 232-12-423, that were replaced by WACs filed on June 23, 2010, as part of WSR 10-13-182.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-12-086 and 232-12-423; and amending WAC 232-36-051.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.36.030.

Adopted under notice filed as WSR 10-19-143 on September 22, 2010.

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 2.

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

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

Date Adopted: November 5, 2010.

Miranda Wecker, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 10-156, filed 6/23/10, effective 7/24/10)

WAC 232-36-051 Killing wildlife causing private property damage. The fish and wildlife commission is authorized to classify wildlife as game, as endangered or protected species, or as a predatory bird consistent with RCW 77.08.010 and 77.12.020. The commission is also authorized, pursuant to RCW 77.36.030, to establish the limitations and conditions on killing or trapping wildlife that is causing property damage.

The conditions for killing wildlife vary, based primarily on the classification of the wildlife species, the imminent nature of the threat to damage private property, the type of private property damage, and the preventive and nonlethal methods employed by the person prior to the damage event. Additional conditions defined by the department may also be important, depending on individual situations. Killing wildlife to address private property damage is subject to all other state and federal laws including, but not limited to, Titles 77 RCW and 232 WAC.

(1) Killing wildlife causing damage to a commercial crop or commercial livestock.

(a) It is permissible to kill unclassified wildlife, predatory birds, and big game animals that are in the act of damaging commercial crops or livestock, under the following conditions:

(i) Predatory birds (defined in RCW 77.08.010(39)) and unclassified wildlife that are in the act of damaging commercial crops or livestock may be killed with the express permission of the owner at any time on private property, to protect commercial crops or livestock.

(ii) An owner with a valid, written damage prevention agreement with the department may kill an individual (one) big game animal while it is in the act of damaging commercial crops.

(iii) An individual (one) big game animal may be killed during the physical act of attacking livestock or pets.

(iv) Multiple big game animals may be killed while they are in the act of damaging commercial crops or livestock if the owner is issued a kill permit by the department.

(v) A damage prevention agreement or kill permit must include: An approved checklist of the reasonable preventative and nonlethal means that must be employed prior to lethal removal; a description of the properties where lethal removal is allowed; the species and sex of the animal that may be killed; the terms of the agreement/permit; the dates

when lethal removal is authorized; who may kill the animal(s); and other conditions developed within department procedural documents.

(b) It is unlawful to kill protected species (as defined in WAC 232-12-011) or endangered species (as defined in WAC 232-12-014) unless authorized by commission rule or with a permit from the department, with the following additional requirements:

(i) Federally listed threatened or endangered species will require federal permits or federal authority, in addition to a state permit.

(ii) All migratory birds are federally protected and may require a federal permit or federal authority, in addition to a state permit.

(2) Killing wildlife causing damage or killing wildlife to prevent private property damage.

(a) Predatory birds (as defined in RCW 77.08.010(39)), unclassified wildlife, and eastern gray squirrels may be killed with the express permission of the property owner at any time, to prevent private property damage on private real property.

(b) Subject to subsection ((~~7~~)) (6) of this section, the following list of wildlife species may be killed with the express permission of the owner, when causing damage to private property: Raccoon, fox, bobcat, beaver, muskrat, mink, river otter, weasel, hare, and cottontail rabbits.

(c) The department may make agreements with landowners to prevent private property damage by wildlife. The agreements may include special hunting season permits such as: Landowner damage prevention permits, spring black bear hunting permits, permits issued through the landowner hunting permit program, kill permits, and Master Hunter permits.

(d) Landowners are encouraged to allow general season hunters during established hunting seasons on their property to help minimize damage potential and concerns.

(3) Wildlife control operators may assist property owners under the conditions of their permit, as established in WAC 232-36-060 and 232-36-065.

(4) Tribal members may assist property owners under the conditions of valid comanagement agreements between tribes and the department. Tribes must be in compliance with the agreements including, but not limited to, adhering to reporting requirements and harvest restrictions.

(5) Hunting licenses and tags are not required to kill wildlife under this section, unless the killing is pursuant to subsections (2)(c) and (d) of this section. Tribal members operating under subsection (4) of this section are required to meet tribal hunting license, tag, and permit requirements.

(6) Except as specifically provided in a permit from the department or a rule of the commission, people taking wildlife under this rule are subject to the laws and rules of the state including, but not limited to, those found in Titles 77 RCW and 220 and 232 WAC.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 232-12-086	Director or his designee is empowered to issue nuisance
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WAC 232-12-423

wildlife control operator certifications to control nuisance or problem wildlife.

Public hunting defined and access contracts.

WSR 10-23-028
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed November 8, 2010, 9:58 a.m., effective December 9, 2010]

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

Purpose: Technical corrections to WAC 181-78A-261 based on legislative requirements to permit nonhigher education organizations to provide educator preparation programs.

Citation of Existing Rules Affected by this Order: Amending x [WAC 181-78A-261].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 10-14-007 on June 24, 2010.

Changes Other than Editing from Proposed to Adopted Version: The change responds to legislation that allows non-higher education providers to be approved. Technical changes only.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: November 8, 2010.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 09-20-100, filed 10/7/09, effective 11/7/09)

WAC 181-78A-261 Approval standard—((Unit)) Program resources and governance ((and resources)). Building on the mission to prepare educators who demonstrate a positive impact on student learning, the unit has the leadership, authority, budget, personnel, facilities, and

resources, including information technology resources, for the preparation of candidates to meet state standards. The following evidence shall be evaluated to determine whether each preparation program is in compliance with the resources program approval standard of WAC 181-78A-220(3):

~~((Unit))~~ Program leadership, authority and budget

(1) A separate administrative unit is responsible for the composition and organization of the preparation program.

(a) An officially designated administrator is responsible for the management of operations and resources for the preparation program.

(b) ~~((The unit receives sufficient))~~ Budgetary allocations ((at least proportional to other institutional units)) are sufficient for the program to assure that candidates meet state standards.

Personnel

(2) The ~~((unit))~~ program has adequate personnel to promote teaching and learning.

(a) Workload policies allow ~~((faculty))~~ program personnel to ~~((be actively engaged in teaching, scholarship, assessment, advisement, service, and collaborative work with P-12 schools))~~ effectively perform their assigned responsibilities within the program.

(b) Specific ~~((staff and/or faculty in the unit))~~ program personnel are assigned the responsibility of advising applicants for certification and endorsements and for maintaining certification records.

(c) The ~~((unit))~~ program has adequate ~~((clinical faculty, site))~~ field supervisors(±) and other support personnel(± part-time faculty, and/or graduate teaching assistants)).

Faculty qualifications and professional practices

(3) Faculty are qualified and exemplify professional practices.

(a) Faculty are qualified for their assignments by virtue of education, experience and current understanding of research and best practices.

(b) Faculty exemplify professional practices in teaching. ~~((Faculty exemplify professional practices in scholarship.~~

~~(d) Faculty exemplify professional practices in service.))~~

Faculty performance and professional development

(4) The ~~((unit))~~ program systematically and comprehensively evaluates faculty performance and supports professional development.

(a) The faculty evaluate their own effectiveness in ~~((teaching, scholarship, and service))~~ achieving program goals.

(b) The ~~((unit))~~ program evaluates faculty effectiveness in teaching and learning.

(c) The ~~((unit))~~ program provides opportunity for faculty to engage in professional development.

~~((Unit))~~ Program facilities and resources

(5) The ~~((unit is provided))~~ program has adequate facilities and resources to promote teaching and learning.

(a) The ~~((unit is provided))~~ program has the necessary classrooms, lab space, office space, and/or other facilities.

(b) The ~~((unit is provided))~~ program has technology, library, curricular, and electronic information resources.

(c) The facilities support faculty and candidate use of technology.

WSR 10-23-032

PERMANENT RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Docket UE-100865, General Order R-561—Filed November 9, 2010, 10:01 a.m., effective December 10, 2010]

In the matter of amending WAC 480-100-405, 480-100-415, 480-100-425 and 480-100-435, relating to rule making to implement revisions to greenhouse gases emissions performance statute - RCW 80.80.060.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 10-18-092, filed with the code reviser on September 1, 2010. The commission brings this proceeding pursuant to RCW 80.01.040, 80.04.160, and 80.08.060(8).

2 STATEMENT OF COMPLIANCE: This proceeding complies with the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The commission adopts this rule on the date this order is entered.

4 CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE: RCW 34.05.325(6) requires the commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the commission's reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including appendices, as its concise explanatory statement. Together, these documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This order amends the following sections of the Washington Administrative Code: WAC 480-100-405 Electrical company generation resource compliance with the greenhouse gas emissions performance standard, 480-100-415 Electrical company applications for commission determination outside of a general rate case of electric generation resource compliance with greenhouse gas emissions performance standard, 480-100-425 Electrical company applications for exemption from the greenhouse gas emissions performance standard, and 480-100-435 Electrical company deferral of costs associated with long-term financial commitments—Notice and reporting.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on June 23, 2010, at WSR 10-13-161. The statement advised interested persons that the commission was considering development of proposed rules to implement statutory changes in RCW 80.80.010, 80.80.040, and 80.80.060 enacted in the state of Washington's 2009 regular legislative session. The commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all regulated electric companies and the commission's list of utility attorneys. The commission posted the relevant rule-making information on its internet web site at <http://www.utc.wa.gov/100865>. The notice included discussion draft rules prepared by staff. The notice solicited comments from stakeholders on the discussion draft rules. Pursuant to the notice, the commission received written comments from Puget Sound Energy, Inc., Avista Corporation, PacifiCorp, the Public Counsel Section of the Washington Office of the Attorney General, and the Northwest Energy Coalition.

8 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) on September 1, 2010, at WSR 10-18-092. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 10-18-092 at 1:30 p.m., Wednesday, October 27, 2010, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

9 WRITTEN COMMENTS: The commission received written comments on the notice of proposed rule making from PacifiCorp, in which the company stated it had no further comments on the proposal. Summaries of all written comments and commission responses are contained in Appendix A following, and made part of, this order.

10 RULE-MAKING HEARING: The commission considered the proposed rules for adoption at a rule-making hearing on Wednesday, October 27, 2010, before Chairman Jeffrey D. Goltz, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. No interested person made oral comments.

11 SUGGESTIONS FOR CHANGE THAT ARE REJECTED/ACCEPTED: Written comments at the preproposal, or CR-101, stage suggested certain changes to the draft rules. The suggested changes and the commission's reason for rejecting or accepting the suggested changes are included in Appendix A. No person suggested changes to the proposed rules published at WSR 10-18-092.

12 COMMISSION ACTION: After considering all of the information regarding this proposal, the commission finds and concludes that it should amend and adopt the rules as proposed in the CR-102 at WSR 10-18-092.

13 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that WAC 480-100-405, 480-100-415, 480-100-425, and 480-100-435 should be amended to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

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 4, Repealed 0.

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

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

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

ORDER

14 THE COMMISSION ORDERS:

15 The commission amends WAC 480-100-405, 480-100-415, 480-100-425, and 480-100-435 to read as set forth in Appendix B, as rules of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

16 This order and the rules set out below, after being recorded in the register of the Washington utilities and transportation commission, shall be forwarded to the code reviser for filing pursuant to chapters 80.01, 34.05 RCW and 1-21 WAC.

DATED at Olympia, Washington, November 9, 2010.

Washington State Utilities and Transportation Commission

Jeffrey D. Goltz, Chairman
Patrick J. Oshie, Commissioner
Philip B. Jones, Commissioner

**Appendix A
(Comment Summary Matrix)**

**UE-100865 GHG Rulemaking chapter 80.80 RCW
October 26, 2010**

Section	Commenter	Comments	Staff Response
CR-102 Comments			
Chapter 480-100 WAC, General comments.			

Section	Commenter	Comments	Staff Response
<p>In response to the proposed revised rules provided in the CR-102, only one letter was received from PacifiCorp. It stated that it had no comments, however, it reserved its right to provide further comments in the future if the need arises.</p>			
<p>CR-101 Comments</p>			
<p>WAC 480-100-405 Electrical company generation resource compliance with the greenhouse gas emissions performance standard.</p>			
480-100-405	Pacific Power (PacifiCorp or Company)	<p>PacifiCorp proposes to move the staff proposed wording regarding long-term financial commitments with Bonneville power administration from WAC 480-100-405 (2)(d), which are the definitions for the chapter, to WAC 480-100-405(1). The proposed relocation of the proposed wording includes changing the wording from "definition" to "chapter" and replaces "include" to apply [it] to make it consist [consistent] with its placement within the rule.</p>	<p>Staff agrees. Staff [agrees] that there may be confusion of the term "long-term financial commitment" if there exists two definitions one in statute and one in the related WAC. Staff will adopt the proposed wording and relocation in the rule.</p>
480-100-405	PacifiCorp	<p>PacifiCorp states that the proposed change in WAC 480-100-405 (2)(g) raises a significant question as to the commission's ability to regulate facilities located outside the state. The company asks for the commission to provide an opportunity in this proceeding for the parties to discuss how the commission interprets its extraterritorial authority.</p>	<p>Staff disagrees. The commission is not regulating facilities outside Washington state. The commission is only regulating the power acquisition choices of the regulated company, whether the power comes from in-state or out-of-state. Plus, the rule only reflects the exact language of the statute. Staff believes the proposed meeting would not be productive.</p>
<p>WAC 480-100-415 Electrical company applications for commission determination outside of a general rate case of electric generation resource compliance with greenhouse gas emissions performance standard.</p>			
480-100-415 480-100-415(1)	PacifiCorp NW Energy Coalition	<p>PacifiCorp suggests that the wording in WAC 480-100-415 (3)(a)(iii) and (b)(iii) that requires applicants to provide "[s]uch other information as is available concerning..." be changed. The wording, they argue, is "...vague and potentially unachievable." The company says that it "...may not be aware of all available emissions characteristics...."</p> <p>The NW Energy Coalition believes that the proposed wording in WAC 480-100-415(1) confines the twelve percent from unspecified sources limitation to filings before the commission outside of a general rate case (GRC). They recommend either inclusion of the language in the definition of "long-term financial commitment" or by adding an additional provision clarifying that no long-term financial commitment would be considered within the context of a GRC if it includes more than twelve percent unspecified sources.</p>	<p>Staff agrees. The company cannot provide information that it does not know about or that is unavailable to it. Staff proposes changing the language to "such other information as is available to or in the possession of the electrical company."</p> <p>Staff disagrees. The examination of the rule by the NW Energy Coalition takes too broad of a perspective. The rule addresses filings of non-GRC applications. The proposed change merely adds the additional restriction provided in HB 2129. Staff believes the rule certainly could be broadened to include GRC applications but staff believes (1) it would widen the scope of the rule making beyond its original intent and (2) it is not necessary to effectively implement the twelve percent rule in a GRC.</p>

Section	Commenter	Comments	Staff Response
WAC 480-100-425 Electrical company applications for exemption from the greenhouse gas emissions performance standard.			
480-100-425	PSE	PSE recommended that the commission provide some guidance to utilities regarding the criteria that will be considered in establishing "extraordinary cost impacts on utility ratepayers" as used in WAC 480-100-425. At several points in their comments, PSE suggested language which would set a definite number to the threshold "extraordinary cost impacts." Specifically, PSE proposed adopting the following language into commission regulations, "Extraordinary cost impacts on utility ratepayers means that the average bill of all utility customers will increase by 20% or more on average."	Staff disagrees. The wording extraordinary cost impacts on utility ratepayers is from the legislative language in RCW 80.80.060(4). Without direct guidance from the legislature the commission must base its understanding of the term on the facts and circumstances of the case before it and cannot arbitrarily select a definition e.g., twenty percent of average bill.

**Appendix B
(Adopted Rules)**

AMENDATORY SECTION (Amending Docket UE-080111, General Order R-553, filed 11/14/08, effective 12/15/08)

WAC 480-100-405 Electrical company generation resource compliance with the greenhouse ((gases)) gas emissions performance standard. (1) No electrical company may enter into a long-term financial commitment after June 30, 2008, for the supply of baseload generation unless such generation complies with the greenhouse ((gases)) gas emissions performance standard. Electrical companies bear the burden to prove compliance with the greenhouse ((gases)) gas emissions performance standard under the requirements of WAC 480-100-415 or as part of a general rate case. For electrical companies that fail to carry their burden of proof, the commission may disallow recovery of some or all costs in rates, impose penalties, or take such other action as is consistent with law. Electrical companies seeking to prove compliance with the greenhouse ((gases)) gas emissions standard as part of a general rate case must submit all of the information specified in WAC 480-100-415. This chapter does not apply to any long-term financial commitment with the Bonneville power administration.

(2) The following definitions apply for purposes of this section, WAC 480-100-415, 480-100-425, and 480-100-435:

(a) "Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent.

(b) "Electricity from unspecified sources" means electricity that is to be delivered in Washington pursuant to a long-term financial commitment entered into by an electrical company and whose sources or origins of generation and expected average annual deliveries cannot be ascertained with reasonable certainty.

(c) "Greenhouse ((gases)) gas emissions performance standard" means the standard established in RCW 80.80.040,

WAC 173-407-120 and 173-407-130, and the verification and measurement procedures contained in WAC 173-407-140, 173-407-230, and 173-407-300.

(d) "Long-term financial commitment" means either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or a new or renewed contract for baseload electric generation with a term of five or more years for provision of retail power or wholesale power to end-use customers in this state.

(e) "New ownership interest" means a change in the ownership structure of a baseload power plant or a cogeneration facility or the electrical generation portion of a cogeneration facility affecting at least:

(i) Five percent of the market value of the power plant or cogeneration facility; or

(ii) Five percent of the electrical output of the power plant or cogeneration facility.

The above thresholds apply to each unit within a multi-unit generation facility. A direct or indirect change in ownership of an electrical company does not constitute a new ownership interest in baseload electric generation.

(f) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt hours.

(g) "Power plant" means a facility for the generation of electricity that is permitted as a single plant by ~~((the energy facility site evaluation council or a local jurisdiction))~~ a jurisdiction inside or outside the state.

(h) "State" means the state of Washington.

(i) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility or unit. Upgrade does not include:

(i) Routine or necessary maintenance;

(ii) Installation of emission control equipment;

(iii) Installation, replacement, or modification of equipment that improves the heat rate of the facility; or

(iv) Installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity.

AMENDATORY SECTION (Amending Docket UE-080111, General Order R-553, filed 11/14/08, effective 12/15/08)

WAC 480-100-415 Electrical company applications for commission determination outside of a general rate case of electric generation resource compliance with greenhouse ((gases)) gas emissions performance standard. (1) ~~((An))~~ Any electrical company may apply for a determination by the commission outside of a general rate case of whether an electric generation resource it proposes to acquire as a long-term financial commitment complies with the greenhouse ((gases)) gas emissions performance standard, including whether the resource is baseload electric generation ~~((, whether the company has a need for the resource, and whether the proposed resource is appropriate to meet that need. Such an application must include the following information:~~

~~((a))~~ The electrical company's most recent integrated resource plan filed under WAC 480-100-238 and a description of how the proposed electric generation resource meets the resource need, resource investment strategies and other factors identified in the integrated resource plan).

~~((b))~~ (2) If an electrical company submits an application under this subsection regarding a long-term financial commitment with multiple power plants, each power plant will be considered individually in determining:

(a) Annualized plant capacity factor;

(b) Net emissions;

(c) Compliance with RCW 80.80.040(1) except as provided in RCW 80.80.040 (3) through (5).

(3) Any request under this subsection must include the following information:

(a) If the proposed electric generation resource is a specific power plant located in the state:

(i) The plant technology, design, fuel and fuel consumption;

(ii) Any site certificate or other permits necessary for operation of the power plant, including, ~~((for power plants located in Washington,))~~ any determination made by the department of ecology, local air authority or the energy facility site evaluation council regarding compliance with the greenhouse ((gases)) gas emissions performance standard;

(iii) Such other information as is available to or in the possession of the electrical company concerning ~~((the))~~ exhaust emissions ~~((characteristics of the))~~ including total annual pounds of greenhouse gas from each power plant ~~((; and~~

~~((iv))~~ The expected cost of the power generation to be acquired from the plant).

(b) If the proposed electric generation resource is a specific power plant located outside the state:

(i) The plant technology, design, fuel and fuel consumption;

(ii) Any site certificate or other permits necessary for operation of the power plant;

(iii) Such other information as is available to or in the possession of the electrical company concerning exhaust emissions characteristics of the plant including total annual pounds of greenhouse gas from each power plant;

(iv) Documentation of emissions verifications and measurement procedures which show consistency with the state's emissions performance standard.

(c) If the proposed electric generation resource is a power purchase contract including contracts for delivery of electricity from unspecified sources:

(i) The proposed contract;

(ii) The technology, location, design, fuel and fuel consumption of any power plant, or plants, identified in the contract as the source of the contracted power deliveries, including such information as is knowable regarding the proportionate share each power source, or type of plant, will contribute to deliveries on an annual basis over the life of the contract;

(iii) Such other information as is available to or in the possession of the electrical company concerning the exhaust emissions characteristics of the plant(s) supporting contracted power deliveries ~~((; and))~~ including total annual pounds of greenhouse gas from each power plant.

(iv) A calculation of the percent of electricity delivered under the power purchase contract from unspecified resources.

~~((iv))~~ (v) The contract term ~~((and expected cost of the power to be acquired through the))~~ of the power purchase agreement.

~~((2))~~ (4) The commission ~~((will))~~ may consider ~~((the))~~ an application filed under this section pursuant to chapter 34.05 RCW (Part IV) following the procedures established in chapter 480-07 WAC ~~((The schedule for a proceeding under this subsection will take into account both:~~

~~((a))~~ The needs of the parties to the proposed resource acquisition or power purchase agreement for timely decisions that allow transactions to be completed; and

~~((b))~~ The procedural rights to be provided to parties in chapter 34.05 RCW (Part IV), including intervention, discovery, briefing, and hearing.

~~((3))~~ The commission), but the commission will not decide in ~~((a proceeding))~~ any application under this section, issues involving the actual costs to construct and operate the selected resource, cost recovery, or other issues reserved by the commission for decision in a general rate case or other proceeding authorized by the commission for recovery of the resource or contract costs.

AMENDATORY SECTION (Amending Docket UE-080111, General Order R-553, filed 11/14/08, effective 12/15/08)

WAC 480-100-425 Electrical company applications for exemption from the greenhouse gas emissions performance standard. (1) An electrical company may apply to the commission for a case-by-case exemption from the green-

house (~~(gases)~~) gas emissions performance standard to address:

- (a) Unanticipated electric system reliability needs; or
- (b) Extraordinary cost impacts on utility ratepayers; or
- (c) Catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(2) An electrical company's application under subsection (1)(a) of this section must include:

- (a) A description of the electric system reliability needs including an explanation of why these needs were not anticipated, and why they cannot be addressed with other baseload electric generation that complies with the greenhouse (~~(gases)~~) gas performance standard.

- (b) The estimated duration of the exemption necessary to address the reliability need.

- (c) A description of any long-term financial commitment the company proposes to enter into to address the reliability need including all of the information specified in WAC 480-100-415.

(3) An application under subsection (1)(b) of this section must include:

- (a) Identification of the long-term financial commitment that will result in extraordinary costs to ratepayers.

- (b) Criteria used by the applicant to judge cost as extraordinary.

- (c) A description of the extraordinary cost including:

- (i) Total system, jurisdictional and per-customer cost impact.

- (ii) Company proposed alternatives, if any, to address the extraordinary costs.

- (iii) The estimated duration of the exemption necessary to address the extraordinary cost impact.

(4) An electrical company's application under subsection (1)(~~(b)~~) (c) of this section must include:

- (a) A description of the catastrophic event or threat of significant financial harm and an explanation of why the circumstances from which the event or harm arose were not foreseen including:

- (i) An explanation of why the circumstances cannot be addressed with baseload generation that complies with the greenhouse (~~(gases)~~) gas performance standard;

- (ii) What the anticipated negative financial impact would be to the company if such exemption were denied;

- (b) The estimated duration of the exemption necessary to address the catastrophic event or threat of significant financial harm.

- (c) A description of any long-term financial commitment the company proposes to enter into to address the catastrophic event or threat of significant financial harm including all of the information specified in WAC 480-100-415.

(~~(4)~~) (5) An electrical company may propose recovery of costs associated with an application under this rule as part of a general rate case.

AMENDATORY SECTION (Amending Docket UE-080111, General Order R-553, filed 11/14/08, effective 12/15/08)

WAC 480-100-435 Electrical company deferral of costs associated with long-term financial commitments—

Notice and reporting. (1) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with a long-term financial commitment for:

- (a) Baseload electric generation(~~(-including)~~); or

- (b) An eligible renewable resource as defined in RCW 19.285.030 that the electrical company owns or has entered a power purchase agreement for a term of five or more years.

- (2) Deferred costs may include operating and maintenance costs, depreciation, taxes, and cost of invested capital.

(~~(2)~~) (3) An electrical company deferring costs under subsection (1) of this section must:

- (a) Notify the commission within ten business days of its intent to defer such costs; and

- (b) File quarterly with the commission a report documenting the balances of costs deferred in a form specified by the commission.

(~~(3)~~) (4) The deferral begins with the date on which the power plant begins commercial operation or the effective date of the power purchase agreement and continues for a period not to exceed twenty-four months; provided that if during such period the company files a general rate case or other proceeding for the recovery of such costs, deferral ends on the effective date of the final decision by the commission in such proceeding. Creation of such a deferral account does not by itself determine the actual costs of the long-term financial commitment, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding authorized by the commission for recovery of these costs.

WSR 10-23-035

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 9, 2010, 2:20 p.m., effective December 10, 2010]

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

Purpose: The department is amending WAC 458-20-240 (Rule 240) and adopting new WAC 458-20-240A (Rule 240A) to explain the eligibility requirements and application procedure for the manufacturer's new employee tax. Rule 240 is amended to recognize HB 3014 (chapter 16, Laws of 2010 1st sp. sess.). This legislation amended the definition of a "manufacturer" and "research and development" for purposes of the new employee tax credits. Rule 240 is also being amended to recognize E2SHB 1597 (chapter 26, Laws of 2010), which clarified that applications that are not approved by the department cannot be disclosed. Rule 240 will now apply only to those applications filed after June 30, 2010.

The department incorporated the information contained in the previous Rule 240 into a new Rule 240A. Rule 240A retains the information necessary for those applications that were filed prior to July 1, 2010. The information incorporated into Rule 240A is necessary until the statute of limitation period for assessments and non claim period for refunds has run.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-240 (Rule 240) Manufacturer's new employee tax credits—Applications filed after June 30, 2010.

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

Other Authority: RCW 82.08.0293 and 82.12.0293.

Adopted under notice filed as WSR 10-17-096 on August 17, 2010.

Changes Other than Editing from Proposed to Adopted Version:

- Rule 240, subsection (9) - to recognize the current language of RCW 82.62.050(1): This report must be filed with the department by ~~((January 31st of the year following the calendar year for which credit was approved by the department))~~ the last day of the month immediately following the end of the four consecutive full calendar quarter period for which a credit is earned.
- Rule 240A, subsection (6)(b) - to recognize provisions of E2SHB 1597 (chapter 26, Laws of 2010). ~~((Information contained in))~~ Applications, reports, or any other information received by the department in connection with this tax credit program ((is)), except applications not approved by the department are not confidential and ((is)) are subject to disclosure.

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 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 1, Amended 1, Repealed 0.

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

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

Date Adopted: November 9, 2010.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-01-079, filed 12/10/04, effective 1/10/05)

WAC 458-20-240 Manufacturer's new employee tax credits—Applications filed after June 30, 2010. (1) Introduction. Chapter 82.62 RCW provides business and occupation (B&O) tax credits to certain persons engaged in manufacturing and research and development activities. These credits are intended to stimulate the economy by creating employment opportunities in specific rural counties and community empowerment zones of this state. The credits are as much as \$4,000 per qualified employment position. This rule explains the eligibility requirements and application procedures for this program. It is important to note that an application for the tax credits must be submitted to the department of revenue before the actual hiring of qualified employment positions. See subsection (6) of this rule for additional information regarding this application requirement. This tax credit program is a companion to the tax deferral program under

chapter 82.60 RCW; however, the eligible geographic areas in the two programs are not identical.

The department of employment security and the department of ~~((community, trade, and economic development))~~ commerce administer programs for rural counties and job training. These agencies should be contacted directly for information concerning those programs.

(2) **Who is eligible for these tax credits?** Subject to certain qualifications, an applicant (person applying for a tax credit under chapter 82.62 RCW) who is engaged in an eligible business project is entitled to the tax credits provided by chapter 82.62 RCW.

(a) **What is an eligible business project?** An "eligible business project" means manufacturing, commercial testing, or research and development activities conducted by an applicant in an eligible area at a specific facility, subject to the restriction noted in the following paragraph. An "eligible business project" does not include any portion of a business project undertaken by a light and power business or any portion of a business project creating employment positions outside an eligible area.

To be considered an "eligible business project," the applicant's number of average full-time qualified employment positions at the specific facility must be at least fifteen percent greater in the calendar year for which credit is being sought than the number of positions at the same facility in the immediately preceding calendar year. Subsection (4) of this rule explains how to determine whether this threshold is satisfied.

(b) **What is an eligible area?** As noted above, the facility must be located in an eligible area to be considered an eligible business project. An "eligible area" is:

(i) A rural county, which is a county with fewer than one hundred persons per square mile or ~~((, on and after April 1, 2004))~~, a county smaller than two hundred twenty-five square miles, as determined annually by the office of financial management and published by the department of revenue effective for the period of July 1st through June 30th (see RCW ~~((82.62.010(3)))~~ 82.14.370); or

(ii) A community empowerment zone (CEZ). CEZ means an area meeting the requirements of RCW 43.31C.020 and officially designated by the director of the department of ~~((community, trade, and economic development))~~ commerce.

(iii) **How to determine whether an area is an eligible area.** Rural county designation information can be obtained from the office of financial management internet web site at www.ofm.wa.gov/popden/rural.htm. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet web site at www.dor.wa.gov.

(c) **What are manufacturing and research and development activities?** Manufacturing or research and development activities must be conducted at the facility to be considered an eligible business project.

(i) **Manufacturing.** "Manufacturing" has the meaning given in RCW 82.04.120. In addition, for the purposes of chapter 82.62 RCW "manufacturing" also includes ~~((com-~~

puter programming, the production of computer software, other computer-related services, and)) the activities performed by research and development laboratories and commercial testing laboratories.

(ii) **Research and development.** "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. "Commercial sales" does not include sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

~~((iii) **Computer-related services.** "Computer-related services," for the purposes of chapter 82.62 RCW's definition of "manufacturing," are services that are connected with or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. "Computer-related services" includes the manufacture of hardware such as chips, keyboards, monitors, and any other hardware, and the components of these items. "Computer-related services" also includes creating operating systems and software that will be copied and sold as canned software. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services. "Computer-related services" does not include services such as information services.))~~

(3) **What are the hiring requirements?** The average full-time qualified employment positions at the specific facility during the calendar year for which credits are claimed must be at least fifteen percent greater than the average full-time qualified employment positions at the same facility for the preceding calendar year.

(a) **What is a qualified employment position?** A "qualified employment position" means a position filled by a permanent full-time employee employed at an eligible business project for twelve consecutive months. Once a full-time position is established and filled it will continue to qualify for twelve consecutive periods so long as any person fills the position. The position is considered "filled" even during periods of vacancy, provided these periods do not exceed thirty consecutive days and the employer is training or actively recruiting a replacement employee.

(b) **What is a "permanent full-time employee"?** A "permanent full-time employee" is a position that is filled by an employee who satisfies any one of the following minimum thresholds:

(i) Works thirty-five hours per week for fifty-two consecutive weeks;

(ii) Works four hundred fifty-five hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works one thousand eight hundred twenty hours, excluding overtime, during a period of twelve consecutive months.

(c) **"Permanent full-time employee" - Seasonal operations.** For applicants that regularly operate on a seasonal basis only and that employ more than fifty percent of their employees for less than a full twelve month continuous

period, a "permanent full-time employee" is a permanent full-time employee as described above or an equivalent in full time equivalent (FTE) work hours.

(4) **How to determine if the fifteen percent employment increase requirement is met.** Qualification for tax credits depends upon whether the applicant hires enough new positions to meet the fifteen percent average increase requirement.

(a) **Determining the fifteen percent increase.** To determine the projected number of permanent full-time qualified employment positions necessary to satisfy the fifteen percent employment increase requirement:

(i) Determine the average number of permanent full-time qualified employment positions that existed at the facility during the calendar year prior to the year in which tax credit is being claimed.

(ii) Multiply the average number of full-time positions from subsection (i) by .15 or fifteen percent. The resulting number equals the number of positions that must be filled to meet the fifteen percent increase. Numbers are rounded up to the nearest whole number at point five (.5).

(b) **When does hiring have to occur?** All hiring increases must occur during the calendar year for which credits are being sought for purposes of meeting the fifteen percent threshold test. Positions hired in a calendar year prior to making an application are not eligible for a credit but the positions are used to calculate whether the fifteen percent threshold has been met.

(c) **The department will assist applicants to determine their hiring requirements.** Accompanying the tax credit application is a worksheet to assist the applicant in determining if the fifteen percent qualified employment threshold is satisfied. Based upon the information provided in the application, the department will advise applicants of their minimum number of hiring needs for which credits are being sought.

(d) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ABC Company anticipates increasing employment during the 2001 calendar year at a manufacturing facility by an average of 15 full-time qualified employment positions for a total of 113 positions. The average number of full-time qualified employment positions during the 2000 calendar year was 98. To qualify for the tax credit program the minimum average number of full-time qualified employment positions required for the 2001 calendar year is $98 \times .15 = 14.7$ (rounding up to 15 positions). Therefore, ABC Company's plan to hire 15 full-time qualified employment positions for 2001 meets the 15% employment increase requirement.

(ii) ABC anticipates increasing employment at this same manufacturing facility by an average of 15 additional full-time qualified employment positions during the 2002 calendar year to a total of 128 positions. To qualify for the tax credit program the minimum average number of full-time qualified employment positions required for the 2002 calendar year is 17 ($113 \times .15 = 16.95$, rounding up to 17). There-

fore, ABC Company's plan to hire 15 full-time qualified employment positions for 2002 does not meet the 15% employment increase requirement.

(5) **Restriction against displacing existing jobs within Washington.** The law provides that no recipient may use tax credits approved under this program to decertify a union or to displace existing jobs in any community of the state. Thus, the average expected increase of employment positions at the specific facility for which application is made must reflect a gross increase in the applicant's employment of persons at all locations in this state. Transfers of personnel from existing positions outside of an eligible area to new positions at the specific facility within an eligible area will not be allowed for purposes of approving tax credits. Also, layoffs or terminations of employment by the recipient at other locations in Washington but outside an eligible area for the purpose of hiring new positions within an eligible area will result in the withdrawal of any credits taken or approved.

(6) **Application procedures.** A taxpayer must file an application with and obtain approval from the department of revenue to receive tax credits under this program. A separate application must be submitted for each calendar year for which credits are claimed. RCW 82.62.020 requires that application for the tax credits be made prior to the actual hiring of qualified employment positions. Applications failing to satisfy this statutory requirement will be disapproved.

(a) **How to obtain and file applications.** Application forms will be provided by the department upon request either by calling 360-902-7175 or via the department's internet web site at www.dor.wa.gov under forms. The completed application may be sent by fax to 360-586-0527 or mailed to the following address:

State of Washington
Department of Revenue
Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476

The U.S. Post Office postmark or fax date will be used as the date of application.

(b) **Confidentiality.** ~~(Information contained in)~~ Applications, reports, or any other information received by the department in connection with this tax credit program ~~((is))~~, except applications not approved by the department are not confidential and ((is)) are subject to disclosure. All other taxpayer information is subject to the confidentiality provisions in RCW 82.32.330.

(c) **Department to act upon application within sixty days.** The department will determine if the applicant qualifies for tax credits on the basis of the information provided in the application and will approve or disapprove the application within sixty days. If approved, the department will issue a credit approval notice containing the dollar amount of tax credits available for use and the procedures for taking the credit. If disapproved, the department will notify the applicant in writing of the specific reasons for disapproval. The applicant may seek administrative review of the department's disapproval of an application by filing a petition for review with the department. The petition must be filed within thirty days from the date of notice of the disallowance pursuant to

the provisions of WAC 458-20-100, Appeals, small claims and settlements.

(d) **No adjustment of credit after approval.** After an application is approved and tax credits are granted, no upward adjustment or amendments of the application will be made for that calendar year.

(7) **How much is the tax credit?** The amount of tax credit is based on the number of and the wages and benefits paid to qualified employment positions created.

(a) **How much tax credit may I claim for each qualified employment position?** The amount of tax credit that may be claimed for each position created is as follows:

(i) Two thousand dollars for each qualified employment position that pays forty thousand dollars or less in wages and benefits annually and is employed in an eligible business project; and

(ii) Four thousand dollars for each qualified employment position that pays more than forty thousand dollars in wages and benefits annually and is employed in an eligible business project.

(b) **What qualifies as wages and benefits?** For the purposes of chapter 82.62 RCW, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, bonus, or otherwise. "Benefits" means compensation not paid as wages and includes Social Security, retirement, health care, life insurance, industrial insurance, unemployment compensation, vacation, holiday, sick leave, military leave, and jury duty. "Benefits" does not include any amount reported as wages.

(8) **How to claim approved credits.** The recipients must take the tax credits approved under this program on their regular combined excise tax return for their regular assigned tax reporting period. These tax credits may not exceed the B&O tax liability. The amount of credit taken should be entered into the "credit" section of the return form, with a copy of the credit approval notice issued to the recipient attached to the return.

(a) **When can credits be used?** The credits may be used as soon as hiring of the projected qualified employment positions begins or may accrue until they are most beneficial for the recipient's use. For example, if a recipient has been approved for \$12,000 of tax credits based upon projections to hire five new positions, that recipient may use \$2,000 or \$4,000 of tax credit at the time it hires each new employee, depending on the wage/benefit level of the position filled.

(b) **No refunds for unused credits.** No tax refunds will be made for any tax credits which exceed tax liability during the life of this program. If tax credits derived from qualified hiring exceed the recipients' business and occupation tax liability in any one calendar year under this program, they may be carried forward to the next calendar year(s), until used.

(9) ~~((Annual))~~ **Report to be filed by recipient.** A recipient of tax credits under this program must complete and submit ~~((an annual))~~ a report of employment activities to substantiate that he or she has complied with the hiring and retention requirements for approved credits. RCW 82.62.050. This report must be filed with the department by ~~((January 31st of the year following the calendar year for which credit was approved by the department))~~ the last day of the month immediately following the end of the four consecutive full

calendar quarter period for which a credit is earned. Based upon this report the department will verify that the recipient is entitled to the tax credits approved by the department when the application was reviewed. The completed (~~annual~~) report may be sent by fax to 360-586-0527 or mailed to the following address:

State of Washington
Department of Revenue
Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476

The U.S. Post Office postmark or fax date will be used as the date of filing.

(a) **Verification of (~~annual~~) report.** The department will use the same report the recipient provides to the department of employment security, which is known as the quarterly employment security report, to verify the recipient's eligibility for tax credits. The recipient must maintain copies of the quarterly employment report for the year prior to the year for which credits are claimed, the year credits are claimed, and for the four quarters following the hiring of persons to fill the qualified employment positions. (The recipient does not have to forward copies of the quarterly employment report to the department each quarter.) The department may use other wage information provided to the department by the department of employment security. The taxpayer must provide additional information to the department, as the department finds necessary to calculate and verify wage eligibility.

(b) **Failure to file report.** The law provides that if any recipient fails to submit a report or submits an inadequate report, the department may declare the amount of taxes for which credit has been used to be immediately due and payable. An inadequate report is one which fails to provide information necessary to confirm that the requisite number of employment positions has been created and maintained for twelve consecutive months.

(10) **What if the required number of positions is not created?** The law provides that if the department finds that a recipient is not eligible for tax credits for any reason, other than failure to create the required number of qualified employment positions, the amount of taxes for which any credit has been used will be immediately due. No interest or penalty will be assessed in such cases. However, if the department finds that a recipient has failed to create the specified number of qualified employment positions, the department will assess interest, but not penalties, on the taxes against which the credit has been used. This interest on the assessment is mandatory and will be assessed at the statutory rate under RCW 82.32.050, retroactively to the date the tax credit was used. The interest will accrue until the taxes for which the credit was used are fully repaid. RCW 82.32.050. The interest rates under RCW 82.32.050 can be obtained from the department's internet web site at www.dor.wa.gov or by calling the department's information center at 1-800-647-7706.

(11) **Program thresholds.** The department cannot approve any credits that will cause the total credits approved to exceed seven million five hundred thousand dollars in any fiscal year. RCW 82.62.030. A "fiscal year" is the twelve-

month period of July 1st through June 30th. If all or part of an application for credit is disallowed due to cap limitations, the disallowed portion will be carried over for approval the next fiscal year. However, the applicant's carryover into the next fiscal year is only permitted if the total credits approved for the next fiscal year does not exceed the cap for that fiscal year as of the date on which the department has disallowed the application.

NEW SECTION

WAC 458-20-240A Manufacturer's new employee tax credits—Applications filed prior to July 1, 2010. (1)

Introduction. Chapter 82.62 RCW provides business and occupation (B&O) tax credits to certain persons engaged in manufacturing and research and development activities. These credits are intended to stimulate the economy by creating employment opportunities in specific rural counties and community empowerment zones of this state. The credits are as much as \$4,000 per qualified employment position. This rule explains the eligibility requirements and application procedures for this program. It is important to note that an application for the tax credits must be submitted to the department of revenue before the actual hiring of qualified employment positions. See subsection (6) of this rule for additional information regarding this application requirement. This tax credit program is a companion to the tax deferral program under chapter 82.60 RCW; however, the eligible geographic areas in the two programs are not identical.

The department of employment security and the department of commerce administer programs for rural counties and job training. These agencies should be contacted directly for information concerning those programs.

(2) **Who is eligible for these tax credits?** Subject to certain qualifications, an applicant (person applying for a tax credit under chapter 82.62 RCW) who is engaged in an eligible business project is entitled to the tax credits provided by chapter 82.62 RCW.

(a) **What is an eligible business project?** An "eligible business project" means manufacturing, commercial testing, or research and development activities conducted by an applicant in an eligible area at a specific facility, subject to the restriction noted in the following paragraph. An "eligible business project" does not include any portion of a business project undertaken by a light and power business or any portion of a business project creating employment positions outside an eligible area.

To be considered an "eligible business project," the applicant's number of average full-time qualified employment positions at the specific facility must be at least fifteen percent greater in the calendar year for which credit is being sought than the number of positions at the same facility in the immediately preceding calendar year. Subsection (4) of this rule explains how to determine whether this threshold is satisfied.

(b) **What is an eligible area?** As noted above, the facility must be located in an eligible area to be considered an eligible business project. An "eligible area" is:

(i) A rural county, which is a county with fewer than one hundred persons per square mile or, on and after April 1,

2004, a county smaller than two hundred twenty-five square miles, as determined annually by the office of financial management and published by the department of revenue effective for the period of July 1st through June 30th (see RCW 82.62.010(3)); or

(ii) A community empowerment zone (CEZ). CEZ means an area meeting the requirements of RCW 43.31C.020 and officially designated by the director of the department of commerce.

(iii) **How to determine whether an area is an eligible area.** Rural county designation information can be obtained from the office of financial management internet web site at www.ofm.wa.gov/popden/rural.htm. The department has instituted a geographic information system (GIS) to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet web site at www.dor.wa.gov.

(c) **What are manufacturing and research and development activities?** Manufacturing or research and development activities must be conducted at the facility to be considered an eligible business project.

(i) **Manufacturing.** "Manufacturing" has the meaning given in RCW 82.04.120. In addition, for the purposes of chapter 82.62 RCW "manufacturing" also includes computer programming, the production of computer software, other computer-related services, but only when the computer-related services are performed by a manufacturer as defined under RCW 82.04.110 and contribute to the production of a new, different, or useful substance or article of tangible personal property for sale; and the activities performed by research and development laboratories and commercial testing laboratories. (Chapter 16, Laws of 2010.)

(ii) **Research and development.** "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. "Commercial sales" does not include sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(iii) **Computer-related services.** "Computer-related services" for the purposes of chapter 82.62 RCW, the definition of "manufacturing" means services that are connected with or interact directly in the manufacture of computer hardware or software or the programming of the manufactured hardware. "Computer-related services" includes the manufacture of hardware such as chips, keyboards, monitors, and any other hardware, and the components of these items. "Computer-related services" also includes creating operating systems and software that will be copied and sold as canned software. The activities performed by the manufacturer to test, correct, revise, or upgrade software or hardware before they are approved for sale to the consumer are considered computer-related services. "Computer-related services" does not include services such as information services.

(3) **What are the hiring requirements?** The average full-time qualified employment positions at the specific facility during the calendar year for which credits are claimed must be at least fifteen percent greater than the average full-

time qualified employment positions at the same facility for the preceding calendar year.

(a) **What is a qualified employment position?** A "qualified employment position" means a position filled by a permanent full-time employee employed at an eligible business project for twelve consecutive months. Once a full-time position is established and filled it will continue to qualify for twelve consecutive periods so long as any person fills the position. The position is considered "filled" even during periods of vacancy, provided these periods do not exceed thirty consecutive days and the employer is training or actively recruiting a replacement employee.

(b) **What is a "permanent full-time employee"?** A "permanent full-time employee" is a position that is filled by an employee who satisfies any one of the following minimum thresholds:

(i) Works thirty-five hours per week for fifty-two consecutive weeks;

(ii) Works four hundred fifty-five hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works one thousand eight hundred twenty hours, excluding overtime, during a period of twelve consecutive months.

(c) **"Permanent full-time employee" - Seasonal operations.** For applicants that regularly operate on a seasonal basis only and that employ more than fifty percent of their employees for less than a full twelve month continuous period, a "permanent full-time employee" is a permanent full-time employee as described above or an equivalent in full-time equivalent (FTE) work hours.

(4) **How to determine if the fifteen percent employment increase requirement is met.** Qualification for tax credits depends upon whether the applicant hires enough new positions to meet the fifteen percent average increase requirement.

(a) **Determining the fifteen percent increase.** To determine the projected number of permanent full-time qualified employment positions necessary to satisfy the fifteen percent employment increase requirement:

(i) Determine the average number of permanent full-time qualified employment positions that existed at the facility during the calendar year prior to the year in which tax credit is being claimed.

(ii) Multiply the average number of full-time positions from subsection (i) by .15 or fifteen percent. The resulting number equals the number of positions that must be filled to meet the fifteen percent increase. Numbers are rounded up to the nearest whole number at point five (.5).

(b) **When does hiring have to occur?** All hiring increases must occur during the calendar year for which credits are being sought for purposes of meeting the fifteen percent threshold test. Positions hired in a calendar year prior to making an application are not eligible for a credit but the positions are used to calculate whether the fifteen percent threshold has been met.

(c) **The department will assist applicants to determine their hiring requirements.** Accompanying the tax credit application is a worksheet to assist the applicant in determining if the fifteen percent qualified employment threshold is satisfied. Based upon the information provided in

the application, the department will advise applicants of their minimum number of hiring needs for which credits are being sought.

(d) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ABC Company anticipates increasing employment during the 2001 calendar year at a manufacturing facility by an average of 15 full-time qualified employment positions for a total of 113 positions. The average number of full-time qualified employment positions during the 2000 calendar year was 98. To qualify for the tax credit program the minimum average number of full-time qualified employment positions required for the 2001 calendar year is $98 \times .15 = 14.7$ (rounding up to 15 positions). Therefore, ABC Company's plan to hire 15 full-time qualified employment positions for 2001 meets the 15% employment increase requirement.

(ii) ABC anticipates increasing employment at this same manufacturing facility by an average of 15 additional full-time qualified employment positions during the 2002 calendar year to a total of 128 positions. To qualify for the tax credit program the minimum average number of full-time qualified employment positions required for the 2002 calendar year is $17 (113 \times .15 = 16.95, \text{ rounding up to } 17)$. Therefore, ABC Company's plan to hire 15 full-time qualified employment positions for 2002 does not meet the 15% employment increase requirement.

(5) **Restriction against displacing existing jobs within Washington.** The law provides that no recipient may use tax credits approved under this program to decertify a union or to displace existing jobs in any community of the state. Thus, the average expected increase of employment positions at the specific facility for which application is made must reflect a gross increase in the applicant's employment of persons at all locations in this state. Transfers of personnel from existing positions outside of an eligible area to new positions at the specific facility within an eligible area will not be allowed for purposes of approving tax credits. Also, layoffs or terminations of employment by the recipient at other locations in Washington but outside an eligible area for the purpose of hiring new positions within an eligible area will result in the withdrawal of any credits taken or approved.

(6) **Application procedures.** A taxpayer must file an application with and obtain approval from the department of revenue to receive tax credits under this program. A separate application must be submitted for each calendar year for which credits are claimed. RCW 82.62.020 requires that application for the tax credits be made prior to the actual hiring of qualified employment positions. Applications failing to satisfy this statutory requirement will be disapproved.

(a) **How to obtain and file applications.** Application forms will be provided by the department upon request either by calling 360-902-7175 or via the department's internet web site at www.dor.wa.gov under forms. The completed application may be sent by fax to 360-586-0527 or mailed to the following address:

State of Washington
Department of Revenue
Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476

The U.S. Post Office postmark or fax date will be used as the date of application.

(b) **Confidentiality.** Applications, reports, or any other information received by the department in connection with this tax credit program, except applications not approved by the department, are not confidential and are subject to disclosure. All other taxpayer information is subject to the confidentiality provisions in RCW 82.32.330.

(c) **Department to act upon application within sixty days.** The department will determine if the applicant qualifies for tax credits on the basis of the information provided in the application and will approve or disapprove the application within sixty days. If approved, the department will issue a credit approval notice containing the dollar amount of tax credits available for use and the procedures for taking the credit. If disapproved, the department will notify the applicant in writing of the specific reasons for disapproval. The applicant may seek administrative review of the department's disapproval of an application by filing a petition for review with the department. The petition must be filed within thirty days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100, Appeals, small claims and settlements.

(d) **No adjustment of credit after approval.** After an application is approved and tax credits are granted, no upward adjustment or amendments of the application will be made for that calendar year.

(7) **How much is the tax credit?** The amount of tax credit is based on the number of and the wages and benefits paid to qualified employment positions created.

(a) **How much tax credit may I claim for each qualified employment position?** The amount of tax credit that may be claimed for each position created is as follows:

(i) Two thousand dollars for each qualified employment position that pays forty thousand dollars or less in wages and benefits annually and is employed in an eligible business project; and

(ii) Four thousand dollars for each qualified employment position that pays more than forty thousand dollars in wages and benefits annually and is employed in an eligible business project.

(b) **What qualifies as wages and benefits?** For the purposes of chapter 82.62 RCW, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, bonus, or otherwise. "Benefits" means compensation not paid as wages and includes Social Security, retirement, health care, life insurance, industrial insurance, unemployment compensation, vacation, holiday, sick leave, military leave, and jury duty. "Benefits" does not include any amount reported as wages.

(8) **How to claim approved credits.** The recipients must take the tax credits approved under this program on their regular combined excise tax return for their regular assigned tax reporting period. These tax credits may not exceed the B&O tax liability. The amount of credit taken

should be entered into the "credit" section of the return form, with a copy of the credit approval notice issued to the recipient attached to the return.

(a) **When can credits be used?** The credits may be used as soon as hiring of the projected qualified employment positions begins or may accrue until they are most beneficial for the recipient's use. For example, if a recipient has been approved for \$12,000 of tax credits based upon projections to hire five new positions, that recipient may use \$2,000 or \$4,000 of tax credit at the time it hires each new employee, depending on the wage/benefit level of the position filled.

(b) **No refunds for unused credits.** No tax refunds will be made for any tax credits which exceed tax liability during the life of this program. If tax credits derived from qualified hiring exceed the recipients' business and occupation tax liability in any one calendar year under this program, they may be carried forward to the next calendar year(s), until used.

(9) **Annual report to be filed by recipient.** A recipient of tax credits under this program must complete and submit an annual report of employment activities to substantiate that he or she has complied with the hiring and retention requirements for approved credits. RCW 82.62.050. This report must be filed with the department by January 31st of the year following the calendar year for which credit was approved by the department. Based upon this report the department will verify that the recipient is entitled to the tax credits approved by the department when the application was reviewed. The completed annual report may be sent by fax to 360-586-0527 or mailed to the following address:

State of Washington
Department of Revenue
Taxpayer Account Administration
P.O. Box 47476
Olympia, WA 98504-7476

The U.S. Post Office postmark or fax date will be used as the date of filing.

(a) **Verification of annual report.** The department will use the same report the recipient provides to the department of employment security, which is known as the quarterly employment security report, to verify the recipient's eligibility for tax credits. The recipient must maintain copies of the quarterly employment report for the year prior to the year for which credits are claimed, the year credits are claimed, and for the four quarters following the hiring of persons to fill the qualified employment positions. (The recipient does not have to forward copies of the quarterly employment report to the department each quarter.) The department may use other wage information provided to the department by the department of employment security. The taxpayer must provide additional information to the department, as the department finds necessary to calculate and verify wage eligibility.

(b) **Failure to file report.** The law provides that if any recipient fails to submit a report or submits an inadequate report, the department may declare the amount of taxes for which credit has been used to be immediately due and payable. An inadequate report is one which fails to provide information necessary to confirm that the requisite number of employment positions has been created and maintained for twelve consecutive months.

(10) **What if the required number of positions is not created?** The law provides that if the department finds that a recipient is not eligible for tax credits for any reason, other than failure to create the required number of qualified employment positions, the amount of taxes for which any credit has been used will be immediately due. No interest or penalty will be assessed in such cases. However, if the department finds that a recipient has failed to create the specified number of qualified employment positions, the department will assess interest, but not penalties, on the taxes against which the credit has been used. This interest on the assessment is mandatory and will be assessed at the statutory rate under RCW 82.32.050, retroactively to the date the tax credit was used. The interest will accrue until the taxes for which the credit was used are fully repaid. RCW 82.32.050. The interest rates under RCW 82.32.050 can be obtained from the department's internet web site at www.dor.wa.gov or by calling the department's information center at 1-800-647-7706.

(11) **Program thresholds.** The department cannot approve any credits that will cause the total credits approved to exceed seven million five hundred thousand dollars in any fiscal year. RCW 82.62.030. A "fiscal year" is the twelve-month period of July 1st through June 30th. If all or part of an application for credit is disallowed due to cap limitations, the disallowed portion will be carried over for approval the next fiscal year. However, the applicant's carryover into the next fiscal year is only permitted if the total credits approved for the next fiscal year does not exceed the cap for that fiscal year as of the date on which the department has disallowed the application.

WSR 10-23-039

PERMANENT RULES

UNIVERSITY OF WASHINGTON

[Filed November 10, 2010, 9:03 a.m., effective December 11, 2010]

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

Purpose: Housekeeping amendments to Title 478 WAC rules are needed for the following reasons:

- To correct punctuation errors in WAC 478-108-010.
- To update contact information in WAC 478-108-020, 478-160-085, 478-160-110, 478-160-125, 478-160-130, 478-160-140, 478-160-175, 478-160-320, and 478-324-130.
- To clarify the meaning of a rule without changing its effect in WAC 478-120-020, 478-120-030, 478-120-050, 478-120-065, 478-120-085, 478-120-095, 478-120-145, 478-138-060, 478-160-085, 478-160-110, 478-160-125, 478-160-130, 478-160-140, 478-160-320, 478-324-045, and 478-324-140.
- To update job titles in WAC 478-120-025, 478-120-030, 478-120-050, 478-120-065, 478-120-075, 478-120-085, 478-120-095, 478-120-140, 478-120-145, 478-138-030, and 478-160-231.

It should also be noted that several sections contain more than one type of housekeeping correction.

Citation of Existing Rules Affected by this Order: Amending 478-108-010, 478-108-020, 478-120-020, 478-120-025, 478-120-030, 478-120-050, 478-120-065, 478-120-075, 478-120-085, 478-120-095, 478-120-140, 478-120-145, 478-138-030, 478-138-060, 478-160-085, 478-160-110, 478-160-125, 478-160-130, 478-160-140, 478-160-175, 478-160-231, 478-160-320, 478-324-045, 478-324-130, and 478-324-140.

Statutory Authority for Adoption: RCW 28B.20.130.

Other Authority: University of Washington Board of Regents Standing Orders, Chapter 1, Section 2.

Adopted under notice filed as WSR 10-17-125 on August 18, 2010.

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 25, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 25, Repealed 0.

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

Date Adopted: November 9, 2010.

Rebecca Goodwin Deardorff
Director of Rules Coordination

AMENDATORY SECTION (Amending WSR 09-08-016, filed 3/23/09, effective 4/23/09)

WAC 478-108-010 Matters subject to brief adjudication. This rule is adopted in accordance with RCW 34.05.479 through 34.05.494, the provisions of which are hereby adopted. Brief adjudicative procedures shall be used in all matters related to:

- (1) Appeals from residency classifications under RCW 28B.15.013 as established in chapter 478-160 WAC;
- (2) Appeals from traffic(=) and parking violations, and skateboard impoundment, as provided for in chapters 478-116, 478-117 and 478-118 WAC;
- (3) Challenges to contents of educational records as provided for in chapter 478-140 WAC;
- (4) Proceedings under the animal control policy as detailed in chapter 478-128 WAC;
- (5) Requests for reconsideration of admission decisions as provided for in chapter 478-160 WAC;
- (6) Appeals of library charges as provided in chapter 478-168 WAC;
- (7) Reviews of denials of public records requests as provided in chapter 478-276 WAC;
- (8) Federal financial aid appeals as provided for by federal law; and
- (9) Collection of outstanding debts owed by students or employees.

AMENDATORY SECTION (Amending WSR 06-13-021, filed 6/13/06, effective 7/14/06)

WAC 478-108-020 Application for adjudicative proceeding. An application for an adjudicative proceeding shall be in writing. The application shall include the signature of the applicant, the nature of the matter for which an adjudicative proceeding is sought, and an explanation of the facts involved. Application forms are available at the following address:

University of Washington
Rules Coordination Office
(~~4046 12th Ave. N.E.~~)
Room 448 Gerberding Hall
Box 351210
Seattle, WA (~~(98105)~~) 98195-1210

(~~for internal campus mail use: Box 355509~~) or by e-mail (~~rules@u.washington.edu~~) at rules@uw.edu). An application for an adjudicative proceeding should be submitted to the above address within twenty days of the agency action giving rise to the application, unless otherwise provided for by statute or rule.

AMENDATORY SECTION (Amending WSR 07-23-068, filed 11/19/07, effective 12/20/07)

WAC 478-120-020 Standards of conduct. (1) The university is a public institution having special responsibility for providing instruction in higher education, for advancing knowledge through scholarship and research, and for providing related services to the community. As a center of learning, the university also has the obligation to maintain conditions conducive to freedom of inquiry and expression to the maximum degree compatible with the orderly conduct of its functions. For these purposes, the university is governed by the rules, regulations, procedures, policies, and standards of conduct that safeguard its functions and protect the rights and freedoms of all members of the academic community.

(2) Admission to the university carries with it the presumption that students will conduct themselves as responsible members of the academic community. As a condition of enrollment, all students assume responsibility to observe standards of conduct that will contribute to the pursuit of academic goals and to the welfare of the academic community. That responsibility includes, but is not limited to:

- (a) Practicing high standards of academic and professional honesty and integrity;
- (b) Respecting the rights, privileges, and property of other members of the academic community and visitors to the campus, and refraining from any conduct that would interfere with university functions or endanger the health, welfare, or safety of other persons;
- (c) Complying with the rules, regulations, procedures, policies, standards of conduct, and orders of the university and its schools, colleges, and departments.

(3) Specific instances of misconduct include, but are not limited to:

- (a) Conduct that intentionally and substantially obstructs or disrupts teaching or freedom of movement or other lawful activities on university premises or in connection with any

university-sponsored event or activity and is not constitutionally and/or legally protected;

(b) Physical abuse of any person, or conduct intended to threaten imminent bodily harm or to endanger the health or safety of any person on university premises;

(c) Conduct on university premises constituting a sexual offense, whether forcible or nonforcible, such as rape, sexual assault, or sexual harassment;

(d) Malicious damage to or malicious misuse of university property, or the property of any person where such property is located on university premises;

(e) Refusal to comply with any lawful order to leave university premises or any portion thereof;

(f) Possession or use of firearms, explosives, dangerous chemicals or other dangerous weapons or instrumentalities on university premises, except for authorized university purposes, unless prior written approval has been obtained from the university chief of police, or any other person designated by the president of the university (see WAC 478-124-020 (2)(e)) (legal defense sprays are not covered by this section);

(g) Unlawful possession, use, distribution, or manufacturer of alcohol or controlled substances (as defined in chapter 69.50 RCW) on university premises or during university-sponsored activities;

(h) Intentionally inciting others to engage immediately in any unlawful activity, which incitement leads directly to such conduct on university premises;

(i) Hazing, or conspiracy to engage in hazing, which includes:

(i) Any method of initiation into a student organization or living group, or any pastime or amusement engaged in with respect to such an organization or living group, that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending the university; and

(ii) Conduct associated with initiation into a student organization or living group, or any pastime or amusement engaged in with respect to an organization or living group not amounting to a violation of (i)(i) of this subsection, but including such conduct as humiliation by ritual act and sleep deprivation. Consent is no defense to hazing. Hazing does not include customary athletic events or other similar contests or competitions;

(j) Falsely reporting a violation of the student conduct code.

(4) Disciplinary action may be taken in accord with this chapter regardless of whether that conduct also involves an alleged or proven violation of law.

(5) An instructor has the authority to exclude a student from any class session in which the student is disorderly or disruptive. If the student persists in the disorderly or disruptive conduct, the instructor should report the matter to the dean of the school or college, or, at the University of Washington Bothell and Tacoma campuses, to the dean or director of the program in which the student is enrolled. (See WAC 478-120-030(3).)

(6) Nothing herein shall be construed to deny students their legally and/or constitutionally protected rights.

AMENDATORY SECTION (Amending WSR 07-23-068, filed 11/19/07, effective 12/20/07)

WAC 478-120-025 Off-campus conduct. The university shall have the authority to hold students accountable under the student conduct code for certain off-campus behavior (i.e., behavior that does not occur on university premises or in the context of a university-sponsored event or activity) that directly affects a university interest, in accordance with the provisions of the section.

(1) A student may be subject to disciplinary proceedings under the student conduct code if:

(a) The university is made aware that a court of competent jurisdiction has determined that such student has engaged in intentional unlawful conduct off-campus that involves the physical harm or abuse, or a direct threat of the physical harm or abuse, of any person, including but not limited to homicide, assault, kidnapping, armed robbery, arson, rape or sexual assault, criminal harassment, criminal stalking or the unlawful possession, use, storage or manufacture of weapons or destructive devices; and

(b) The university determines that a significant university interest is affected.

(2) A student may also be subject to disciplinary proceedings under the student conduct code if the university is made aware that the student has engaged in off-campus conduct that involves the physical harm or abuse, or the direct threat of physical harm or abuse, of another university student, or a university faculty or staff member. Disciplinary proceedings may be initiated under this section regardless of whether or not the incident is subject to criminal or civil proceedings.

(3) In furtherance of the university's interest in maintaining a positive relationship with its surrounding community, the university shall also have the authority to hold students accountable under the student conduct code for conduct within the "North of 45th" residential community immediately adjacent to the Seattle campus (bounded by NE 45th Street on the south, 15th Ave NE on the west, 22nd Ave NE and north of 54th Street, Ravenna Ave NE on the east and Ravenna Park on the north and including all residences located on either side of each of the aforementioned streets) as follows:

(a) A student may be subject to disciplinary proceedings under the code if the university is made aware that the student has been cited by the Seattle police or the university police for, and is determined to have committed, a violation of any state statute or city of Seattle municipal ordinance prohibiting misconduct that has a direct and significant quality-of-life impact on community residents, including but not limited to, creating a public nuisance due to noise, theft, intentional destruction of property, urinating in public, or criminal trespass.

(b) A first violation under (a) of this subsection will not subject the student to disciplinary sanctions under WAC 478-120-040 if the student voluntarily meets with a representative of the office of the vice-president and vice-provost for student life to receive information and counseling regarding his or her responsibilities as a university community member and as a resident in the area. A second violation will not be subject to disciplinary sanctions if the student involved agrees to

participate, in good faith, in a mediation with the person or persons affected by the misconduct under a mediation protocol established by the office of the vice-president and vice-provost for student life.

(4) Nothing herein shall be construed as being intended to protect any person or class of persons from injury or harm, or construed to deny students their legally and/or constitutionally protected rights.

AMENDATORY SECTION (Amending WSR 07-23-068, filed 11/19/07, effective 12/20/07)

WAC 478-120-030 General procedures for disciplinary sanctions. (1) This section describes the general process under the student conduct code for enforcing the university's rules, regulations, procedures, policies, standards of conduct, and orders. The specific procedures to be used at each step of the process are described in the following sections of this chapter. In all situations, whether handled formally or informally, basic standards of fairness will be observed in the determination of:

- (a) The truth or falsity of the charges against the student;
- (b) Whether the alleged misconduct violates this code; and if so,
- (c) The sanctions to be imposed, if any.

The criteria for judging student misconduct shall include, but not be limited to, the standards of conduct as stated in WAC 478-120-020 and 478-120-025. Informal hearings shall use the procedures in chapter 34.05 RCW governing brief adjudicative proceedings. Formal hearings conducted by the faculty appeal board shall follow the procedures required by chapter 34.05 RCW for formal adjudicative proceedings. Informal settlements may be conducted under the authority of RCW 34.05.060.

(2) Persons who believe that a violation of the student conduct code has been committed should contact the vice-president and vice-provost for student life at the University of Washington Seattle campus, or the chancellor of the University of Washington Bothell or Tacoma campuses, whichever is appropriate.

(3) Only the vice-president and vice-provost for student life, the dean of the school or college at the University of Washington Seattle or, at the University of Washington Bothell and Tacoma campuses, the dean or director of the program in which a student is enrolled or the chancellors of the University of Washington Bothell and Tacoma campuses, may initiate disciplinary proceedings against a student under this code of conduct. (See WAC 478-120-050.) The deans, the vice-president and vice-provost for student life, or the chancellors of the University of Washington Bothell and Tacoma campuses may delegate the authority to initiate disciplinary proceedings consistent with this chapter to members of their staffs and to students. They may also establish student or student-faculty hearing bodies to advise or to act for them in disciplinary matters. The person initiating a disciplinary proceeding shall be referred to as the initiating officer.

(4) The initiating officer will begin a disciplinary proceeding by holding, or directing a member of his or her staff to hold, an informal hearing with the student charged with misconduct. Based on this informal disciplinary hearing, the

initiating officer may choose to exonerate the student, dismiss the action, impose an appropriate sanction, and/or refer the matter to the appropriate university disciplinary committee. (See WAC 478-120-065.) If the initiating officer identifies a potential or existing exceptional circumstance, as defined in WAC 478-120-100 (3)(b)(i),

"Exceptional circumstances exist when:

- (A) The sanction of dismissal has been recommended; or
 - (B) The student has been charged with hazing; or
 - (C) The sanction of restitution (in excess of three hundred dollars) has been recommended; or
 - (D) Suspension has been recommended,"
- the matter shall be referred directly to the faculty appeal board. (See WAC 478-120-100.)

(5) Students have the right to appeal any sanction imposed at an informal hearing to the appropriate university disciplinary committee, except that when such sanction identifies an existing or potential exceptional circumstance as defined in WAC 478-120-100 (3)(b)(i), the matter shall be referred directly to the faculty appeal board.

(6) Any decisions of the university disciplinary committees may be appealed to the faculty appeal board. All decisions of the university disciplinary committees identifying existing or potential exceptional circumstances as defined in WAC 478-120-100 (3)(b)(i) shall be referred directly to the faculty appeal board. In addition, the university disciplinary committees may, at any time, at their discretion, refer a matter directly to the faculty appeal board. The faculty appeal board performs distinct functions. In most cases, the faculty appeal board conducts an administrative review. In certain cases (defined in WAC 478-120-100(3)), the faculty appeal board conducts a formal hearing.

(7) Any decision based on a formal hearing conducted by the faculty appeal board may be appealed to the president of the university or the president's delegate for a final review. All orders of dismissal shall be reviewed by the president or the president's delegate. Orders entered by the president or the president's delegate are final. (See WAC 478-120-125.)

(8) The president or delegate, or chancellors or their delegates, may take emergency disciplinary action when a student's conduct threatens the health, welfare, or safety of the university community or members thereof. (See WAC 478-120-140.)

(9) When questions of mental or physical health are raised in conduct cases, the dean, the vice-president and vice-provost for student life, the chancellors of the University of Washington Bothell and Tacoma campuses or their delegates, the university disciplinary committees, or the faculty appeal board may request the student to appear for examination before two physician-consultants designated by the dean of the school of medicine. The physician-consultants may call upon the student health center for any other professional assistance they deem necessary. After examining the student and/or consulting with the student's personal physician, the physician-consultants shall make a recommendation to the dean, the vice-president and vice-provost for student life, the chancellor of the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates, the appropriate university disciplinary committee, or the faculty appeal board as to whether the case should be han-

dled as a disciplinary matter or as a case for medical or other treatment. Any decision made based upon the recommendation of the physician-consultants may be appealed in accordance with the provisions of this chapter.

(10) The following persons conducting proceedings under this chapter shall have the authority to issue protective orders and subpoenas: Deans, or at the University of Washington Bothell and Tacoma campuses, the dean or director of the program in which the student is enrolled, the vice-president and vice-provost for student life, the chancellors of the University of Washington Bothell and Tacoma campuses, or the chairs of their respective university disciplinary committees, the chair of the faculty appeal board, and the president or his or her delegate.

(11) In a case involving an alleged sexual offense, the accuser and the accused are entitled to the same opportunities to have others present during a disciplinary hearing and they shall both be informed of the outcome of such disciplinary proceeding.

(12) Any final order resulting from a disciplinary proceeding shall become a part of the student's disciplinary record, unless the student is exonerated. (See WAC 478-120-145.)

(13) In accord with the Family Educational Rights and Privacy Act and pursuant to RCW 34.05.250, all hearings conducted under this chapter generally will be held in closed session out of respect for the privacy of all the students involved. However, the students involved may waive in writing this requirement and request a hearing in open session, and the initiating or presiding officer shall conduct the hearing in a room that will accommodate a reasonable number of observers. The initiating or presiding officer may exclude from the hearing room any persons who are disruptive of the proceedings and may limit the number who may attend the hearing in order to afford safety and comfort to the participants and orderliness to the proceedings.

AMENDATORY SECTION (Amending WSR 07-23-068, filed 11/19/07, effective 12/20/07)

WAC 478-120-050 Jurisdiction. (1) The vice-president and vice-provost for student life, the chancellors of the University of Washington Bothell and Tacoma campuses, or their delegates, may initiate any disciplinary action related to violations of any of the university's rules, regulations, procedures, policies, standards of conduct, or orders. Jurisdiction in such cases may be transferred to the dean of the school or college, or at the University of Washington Bothell and Tacoma campuses, to the dean or director of the program in which the student is enrolled if the alleged misconduct bears upon the student's fitness to continue in the school or college.

(2) Additionally, the dean of each college or school, including the graduate school, or the dean's delegate, or the dean or director((s)) of programs in which the student is enrolled on the University of Washington Bothell or Tacoma campuses may initiate any disciplinary action:

(a) Related to violations of university rules, regulations, procedures, policies, standards of conduct, and orders which pertain to that particular campus, college or school, or at the

University of Washington Bothell and Tacoma campuses, the program in which the student is enrolled; and

(b) Related to violations of rules, procedures, policies, and standards of conduct of that particular campus, college or school, or at the University of Washington Bothell and Tacoma campuses, the program in which the student is enrolled. The student academic grievance procedure is a separate procedure and is set forth in the *University Handbook* (graduate school students should also refer to Graduate School Memorandum No. 33). Violations involving academic misconduct should be reported to the dean of the appropriate school or college, or dean or program director at the University of Washington Bothell or Tacoma campuses.

(3) Other departments of the university have proceedings separate and distinct from the student conduct code. For example:

(a) Campus traffic regulations are under the general jurisdiction of the police department at the University of Washington Seattle campus and under the jurisdiction of public safety officers at the University of Washington Bothell and Tacoma campuses. (See chapters 478-116, 478-117 and 478-118 WAC.)

(b) The library fines appeals committee has the authority to consider appeals of library charges. (See chapter 478-168 WAC.)

AMENDATORY SECTION (Amending WSR 07-23-068, filed 11/19/07, effective 12/20/07)

WAC 478-120-065 Informal disciplinary hearings.

(1) A dean, the vice-president and vice-provost for student life, or, at the University of Washington Bothell and Tacoma campuses, the chancellors or the dean or director of the program in which the student is enrolled, or their delegates, may initiate a disciplinary proceeding by conducting, or directing a member of his or her staff to conduct, an informal hearing with the student accused of misconduct. This informal disciplinary hearing may be nothing more than a face-to-face meeting between the initiating officer or staff person and the student, and no special notice of the meeting is required. The purpose of this informal disciplinary hearing is to provide an opportunity for the student to respond to allegations of misconduct before disciplinary action is taken, and the student waives any rights to an informal hearing by his or her failure to attend.

(2) During an informal disciplinary hearing, the student must be provided with the following information:

(a) The alleged misconduct and the reasons for the university's belief that the student engaged in the misconduct;

(b) The specific section(s) of the student conduct code allegedly violated; and

(c) The possible sanctions that may be imposed.

(3) Based on the findings of an informal hearing, the initiating officer shall enter in writing one of the following orders:

(a) An order exonerating the student or dismissing the disciplinary proceeding if it appears that there has been no misconduct;

(b) An initial order imposing a disciplinary sanction;

(c) An order referring the matter to the appropriate university disciplinary committee; or

(d) An order referring the matter directly to the faculty appeal board because exceptional circumstances as defined in WAC 478-120-100 (3)(b)(i) may exist.

(4)(a) If the order imposes a sanction and exceptional circumstances as defined in WAC 478-120-100 (3)(b)(i) exist, the matter shall be referred directly to the faculty appeal board and the student shall be informed that he or she has the right to request a formal hearing according to the procedures set forth in WAC 478-120-075(3).

(b) If the order imposes a sanction but exceptional circumstances do not exist, then the student must be informed that he or she has twenty-one calendar days from the date of the order (or twenty-five calendar days from the date of the mailing of the initial order) to request a hearing before the appropriate university disciplinary committee. If the student chooses not to appeal, the order becomes the final order.

(5) Within ten days of the conclusion of the hearing and any associated investigations, the student shall be provided with a written order which shall include a statement of the decision, the reasons for the decision, and information about appealing the decision. No unfavorable action may be taken against the student until the student has been given such notice and information. In a case involving an alleged sexual offense, both the accuser and the accused shall be informed of the outcome of that hearing. In a case where the student is a minor, the disciplinary sanctions imposed may be reported to the student's parents or legal guardian at the discretion of the initiating officer.

(6) A student may request a hearing by the appropriate university disciplinary committee at any time during these informal proceedings. If such a request is made, the matter shall be referred to the appropriate university disciplinary committee.

(7) The official record of this informal hearing shall consist of all documents prepared or considered by the dean, the vice-president and vice-provost for student life, or, at the University of Washington Bothell and Tacoma campuses, the chancellors, or the dean or director of the program in which the student is enrolled, or their delegates, with regard to the dispute at hand.

AMENDATORY SECTION (Amending WSR 07-23-068, filed 11/19/07, effective 12/20/07)

WAC 478-120-075 Appeals. Any initial order may be appealed by timely submission of a written petition to the appropriate body. An order only referring a matter from one hearing body to another, not determining the matter on its merits, is not an initial order.

(1) If a student does not appeal to the appropriate body within twenty-one days of the initial order (or within twenty-five calendar days of the date when the university mailed the initial order to the student), the right to appeal is waived and the order becomes final.

(a) All initial orders shall be hand delivered or delivered by mail.

(b) Any student involved in a disciplinary hearing is required to provide his or her current and accurate address to

the office of the vice-president and vice-provost for student life or the office of the chancellor for the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates.

(2) All petitions for appeal must be made in writing to the appropriate authority (the appropriate chair of one of the university disciplinary committees (Seattle, Bothell or Tacoma), the chair of the faculty appeal board, or the president). The petition must state the reasons for the appeal and indicate points of disagreement with the initial order.

(3) If a student wishes to request a formal hearing before the faculty appeal board, the student's written petition for appeal must also state that a formal hearing is being requested and must identify the specific exceptional circumstances (as defined in WAC 478-120-100 (3)(b)(i)) warranting such a hearing. When conducting administrative reviews of informal hearings, the faculty appeal board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal disciplinary hearing.

(4) After conducting the appropriate review, the appeal body or the president may sustain, reduce, or vacate the sanction imposed by the initial order, except if that review is in the form of a formal hearing before the faculty appeal board, that board may increase any sanction.

(5) Only the president or the president's delegate may issue a final order of dismissal.

(6) Sanctions, if any, will be imposed only after an order becomes final, except for actions taken under WAC 478-120-140.

AMENDATORY SECTION (Amending WSR 07-23-068, filed 11/19/07, effective 12/20/07)

WAC 478-120-085 The university disciplinary committees. Each University of Washington campus shall have its own university disciplinary committee. The university disciplinary committees shall consist of a nonvoting chair, three voting faculty members, and three voting student members. The committees shall be maintained for the purpose of providing hearings for disciplinary actions that have been initiated by the deans or, at the University of Washington Bothell and Tacoma campuses, the dean or director of the program in which a student is enrolled, the vice-president and vice-provost for student life at the University of Washington Seattle campus, the chancellors of the University of Washington Bothell and Tacoma campuses, or their delegates.

(1) The president of the University of Washington Seattle campus and the chancellors of the University of Washington Bothell and Tacoma campuses shall designate a member of the faculty or administration to serve as chair of each respective university disciplinary committee for a term of one year. All chairs may be reappointed for consecutive terms.

(a) The chairs shall ensure that all procedural safeguards and guidelines are followed. Accordingly, the chairs shall decide all procedural questions that arise in relation to hearings, including rulings on evidence (as defined in WAC 478-120-095(3)) and challenges to the impartiality of committee members. The chairs shall have the discretion to regulate all aspects of the proceedings.

(b) The chairs shall take whatever steps are necessary to ensure that hearings are conducted in a safe and orderly manner.

(2) The three voting faculty members of each university disciplinary committee shall be selected at random from the faculty senate at the University of Washington Seattle, or at the University of Washington Bothell and Tacoma campuses, their respective faculty assembly or organization to serve one-year terms. Voting faculty members may not be reappointed to consecutive terms.

(a) Panels of eligible faculty members shall be randomly selected to serve on the committees in the order in which they were selected, except that at the University of Washington Seattle each faculty member of the committees must represent a different faculty senate group.

(b) Faculty members must have been members of the faculty for at least one year and hold the position of assistant professor or higher in order to be eligible to serve as voting members of the university disciplinary committees.

(3) The three voting student members of the university disciplinary committees shall be selected at random from each student body to serve one-year terms. Student members of the committees may not be reappointed.

(a) Panels of eligible students shall be selected randomly from the entire full-time student body to serve as committee members or alternates in the order in which they were selected, except that at the University of Washington Seattle one member must be a professional or graduate student and the other two members must represent different undergraduate classes.

(b) To be eligible to serve on the university disciplinary committees, students must be full-time and in good standing with the university.

(4) In addition to the chairs, a quorum shall be two faculty members and two student members. The chairs shall select alternates from the panels of eligible faculty or students as needed to produce a quorum.

(5) Committee members may be disqualified from a particular hearing for bias, prejudice, conflict of interest, or any other reason which may prevent him or her from serving as an impartial judge of the matter before the committees.

(a) Committee members may excuse themselves for any of the causes set forth in this section by submitting a written statement to the appropriate committee chair stating facts and reasons for the disqualification.

(b) A student before any of the university disciplinary committees may challenge the impartiality of a committee member by written petition. The appropriate chair shall determine whether to grant the petition and excuse the committee member from the case, and shall state the facts and reasons for that determination in writing.

(c) Any person who has been delegated the authority to initiate disciplinary proceedings is disqualified from serving as a member of the university disciplinary committees.

(6) The appropriate chair may relieve a member of his or her university disciplinary committee from serving on that committee for a particular case, for a specific period of time, or for the rest of the year after the member submits a written request to the chair.

(7) Members of the university disciplinary committees shall begin their terms on the first day of classes of winter quarter. Those terms shall expire on the first day of classes of the next winter quarter, except that cases in process shall be continued until a decision is reached. The new panels of committee members shall be identified by the outgoing chairs, or by the person designated by the appropriate chair, through random procedures established by the chair.

AMENDATORY SECTION (Amending WSR 07-23-068, filed 11/19/07, effective 12/20/07)

WAC 478-120-095 Hearings before the university disciplinary committees. The purpose of a hearing before a university disciplinary committee is to provide all parties with an opportunity to present evidence and argument before disciplinary sanctions are imposed on a student. Based on the evidence presented at this hearing, the committee shall determine whether the student has engaged in the alleged misconduct. If there is a finding of misconduct, the committee shall then determine the appropriate sanction to be imposed.

(1) When a hearing is scheduled before a university disciplinary committee, the chair of the appropriate committee shall provide the student with written notice of the following information:

- (a) The time and place of the hearing;
- (b) The allegations of misconduct against the student;
- (c) A list of all witnesses who may be called to testify;
- (d) A description of all documentary and real evidence to be presented at the hearing, including a copy of his or her disciplinary file; and
- (e) The sanctions that may be imposed at the hearing if the allegations of misconduct are found to be true.

(2) The chair of each committee shall adhere to the following procedures at all disciplinary hearings:

(a) The student shall be provided with a reasonable opportunity (at least seven days) to gather evidence, contact witnesses, and prepare a defense for the hearing.

(b) The student may be accompanied by an advisor of the student's choice.

(c) The student is entitled to hear all testimony and examine all evidence that is presented at the hearing. In response, the student may present evidence and witnesses on his or her own behalf and may ask questions of any other witnesses.

(d) No student shall be compelled to give self-incriminating evidence.

(3) Evidence shall be admissible at the hearing if it is the type of evidence that reasonably prudent members of the university community would rely upon in the conduct of their affairs.

(4) The initiating officer (the appropriate dean, or at the University of Washington Bothell and Tacoma campuses, dean or director of the program in which the student is enrolled, the vice-president and vice-provost for student life, the chancellors of the University of Washington Bothell and Tacoma campuses, or their delegates) must prove by a preponderance of the evidence presented at the hearing that the student has engaged in the alleged misconduct. The commit-

tee shall base its factual determination solely on the evidence presented at the hearing.

(a) Decisions of the university disciplinary committee will be made based on a simple majority vote of the committees.

(b) If a university disciplinary committee cannot reach a decision by simple majority vote, an order shall be entered referring the matter to the faculty appeal board. Where exceptional circumstances exist, the student shall be notified of the right to request a formal hearing. Otherwise, the faculty appeal board shall conduct an administrative review as provided under WAC 478-120-100 (1) and (2).

(5) If at any time after a matter has been referred to a university disciplinary committee the appropriate chair determines that the matter should properly be before the faculty appeal board, the chair may refer the matter to the faculty appeal board and shall provide the student with written notice of the referral and of the opportunity to request a formal hearing if exceptional circumstances exist. (See WAC 478-120-100 (3)(b)(i).)

(6) If the committee determines that the student has violated the university's rules, regulations, procedures, policies, standards of conduct, or orders, it shall then determine the appropriate sanction to be imposed. When determining the appropriate sanction, the committee shall review the evidence presented at the hearing and the student's past record of conduct at the university.

(7) The chair of the appropriate university disciplinary committee shall provide the student with a written statement of the committee's decision within ten days of the conclusion of the hearing. This written statement shall include the committee's factual findings, the conclusions that have been drawn from those findings, the reasons for those conclusions, and the sanctions, if any, to be imposed. If sanctions are imposed, the student must also be informed of the appropriate procedures for appealing the committee's decision to the faculty appeal board. In a case involving an alleged sexual offense, both the accuser and the accused shall be informed of the outcome of the hearing. In a case where the student is a minor, the written statement of the committee's decision may be reported to the student's parents or legal guardian at the discretion of the chair of the appropriate university disciplinary committee.

(8) This written statement of the committee's decision shall be the committee's initial order. If the student chooses not to appeal, the initial order of the appropriate university disciplinary committee becomes the final order at the end of the appeal period set forth in WAC 478-120-075(1), except that orders of dismissal shall be referred to the president.

(9) The student may choose to present evidence to the chair of the appropriate university disciplinary committee rather than at a hearing before the full committee. The student's waiver of the right to a hearing before a university disciplinary committee must be submitted in writing to the chair of the appropriate committee. The chair will submit the student's evidence and arguments to the full committee and the committee will make its decision based on the chair's report.

(10) All proceedings of the committees will be conducted with reasonable dispatch and be terminated as soon as

possible, consistent with fairness to all parties involved. The chair shall have the discretion to continue the hearing.

(11) An adequate summary of the proceedings will be kept. Such a summary shall include all documents that were considered by the appropriate committee and may include a tape recording of the testimony and any other documents related to the hearing.

(12) A report of a university disciplinary committee shall, upon written request and release by the student or students involved, and subject to the requirements of the Family Educational Rights and Privacy Act, be made available to members of the university community through the vice-president and vice-provost for student life, or the office of the chancellor at the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates.

AMENDATORY SECTION (Amending WSR 07-23-068, filed 11/19/07, effective 12/20/07)

WAC 478-120-140 Emergency authority of the president and chancellors of the university. If a student's conduct represents a threat to the health, safety, or welfare of the university or any member of the university community, the president or the president's delegate, or the chancellors of the University of Washington Bothell and Tacoma campuses or their delegates, may suspend that student from participation in any or all university functions or privileges.

(1) In such an emergency situation, the president or chancellors, or their delegates, shall issue a written order to be served upon the student describing the terms of the emergency suspension and the reasons for imposing the suspension. The order shall be effective immediately.

(2) The president or delegate, or chancellors or their delegates, shall then refer the matter to the vice-president and vice-provost for student life at the University of Washington Seattle campus or the appropriate campus official at the University of Washington Bothell or Tacoma campuses, whichever is appropriate, who shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

AMENDATORY SECTION (Amending WSR 07-23-068, filed 11/19/07, effective 12/20/07)

WAC 478-120-145 Recording and maintenance of records. (1) The vice-president and vice-provost for student life at the University of Washington Seattle campus or the chancellors of the University of Washington Bothell and Tacoma campuses, or their delegates, shall keep records of all disciplinary actions reported to their respective offices. Disciplinary records shall be kept separate from academic records, and transcripts of a student's academic record shall contain no notation of any disciplinary action.

(2) The dean of a college or school at the University of Washington Seattle, or the dean or director of the program in which the student is enrolled at the University of Washington Bothell and Tacoma campuses initiating disciplinary action shall report in writing to the office of the vice-president and vice-provost for student life, or the office of the chancellor for the University of Washington Bothell or Tacoma cam-

puses, whichever is appropriate, or their delegates, all cases in which disciplinary action is taken. The dean at the University of Washington Seattle shall also inform the registrar of any action affecting a student's official standing in the university. The office of the vice-president and vice-provost for student life, or the office of the chancellor for the University of Washington Bothell or Tacoma campuses, shall notify the dean of the college or school or director of the program in which the student is enrolled of any disciplinary action it takes and also shall notify the registrar or campus officer of student affairs of any action affecting a student's official standing in the university.

(3) Disciplinary records of students not exonerated shall be maintained by the vice-president and vice-provost for student life, or the chancellor at the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates, and the registrar for seven years after disciplinary action has been taken and/or after the administrative purpose has been served.

(4) Disciplinary records of exonerated students shall not be maintained.

(5) Notwithstanding any other provision of this section, the vice-president and vice-provost for student life, or the chancellor at the University of Washington Bothell or Tacoma campuses, whichever is appropriate, or their delegates, at their discretion, upon written request by the student, may expunge the student's disciplinary record.

(6) Records and information regarding student disciplinary proceedings are subject to the provisions of the Family Educational Rights and Privacy Act and supporting regulations (20 U.S.C. 1232g), and to chapter 478-140 WAC.

AMENDATORY SECTION (Amending WSR 92-14-060, filed 6/26/92, effective 7/27/92)

WAC 478-138-030 Use of university stadium boat moorage facilities—Stadium boat moorage facilities—Area defined. (1)(a) The stadium boat moorage facilities shall consist of those docks and floats located on Lake Washington in Union Bay which provide water access to the University of Washington shoreline on home football game days, or for other special events as determined by the university.

(b) The stadium boat moorage facilities shall also include such other specified areas along or adjacent to the university shoreline, as designated by the ~~((executive))~~ senior vice-president for finance and facilities, that provide access to the university shoreline on home football game days, or for other special events as determined by the university. The activities for which these additional stadium boat moorage facilities may be used include, but are not limited to: Moorage of water related vessels; and loading, unloading, or transporting passengers to and from water related vessels. All other uses of the university shoreline shall be under the authority of the ~~((executive))~~ senior vice-president for finance and facilities.

(c) Use of the university shoreline and moorage facilities for waterfront activities not designated for that area, or otherwise not in compliance with this chapter will subject the violators to arrest under provisions of RCW 9A.52.080 (Crimi-

nal trespass in the second degree), City of Seattle 12A.08.040 (Criminal trespass), or other applicable law.

(2) In the event the university permits a non-university vessel use of the stadium boat moorage facilities for moorage, loading and unloading passengers, shuttling passengers to and from anchored vessels, or other related activities, the university does not assume responsibility for nor guarantee the expertise or training of the vessels' pilots or that such vessels are maintained in a safe condition or are adequately equipped with life vests and other safety devices as required by the United States Coast Guard and the Washington state utilities and transportation commission.

The ~~((executive))~~ senior vice-president for finance and facilities shall have the authority to establish such conditions as are necessary or appropriate to protect the university from liability in connection with the use of the stadium boat moorage facilities.

AMENDATORY SECTION (Amending WSR 03-12-007, filed 5/22/03, effective 6/22/03)

WAC 478-138-060 Schedule of fees. Fees for stadium boat moorage and the effective date thereof shall be established by the director of intercollegiate athletics ~~((with approval of the special assistant to the president))~~. The approved fee schedule shall be published on the intercollegiate athletics web site.

AMENDATORY SECTION (Amending WSR 03-12-007, filed 5/22/03, effective 6/22/03)

WAC 478-160-085 Application ~~((forms))~~ to graduate school. Prospective applicants to the graduate school may obtain information about degree programs and the online application process on the graduate school web site or by an e-mail request to uwgrad@u.washington.edu (for U.S. citizens, permanent residents and immigrants) or to ~~((intl-grad@u.washington.edu))~~ gradvisa@u.washington.edu for international applicants. ~~((Secondarily, an "Application for admission to the graduate school" form is available upon request by writing to the graduate program adviser of the department in which the applicant expects to engage in a program of study or by writing to))~~

Questions may be directed to uwgrad@u.washington.edu, or the graduate school at the following address:

University of Washington
Office of Graduate Admissions
301 Loew Hall
P.O. Box 84808
Seattle, WA 98124-6108

AMENDATORY SECTION (Amending WSR 98-10-048, filed 4/29/98, effective 5/30/98)

WAC 478-160-110 Admission to the school of law—On-line application ~~((forms))~~. Applicants to the first-year class and applicants for admission with advanced standing may ~~((obtain application forms by contacting the following office))~~ apply to the University of Washington school of law

through the on-line application process on the school of law web site (www.law.washington.edu).

Questions may be directed to lawadm@uw.edu or to the school of law at the following address:

University of Washington School of Law
 ((Director)) Office of Admissions and Financial Aid
 ((Condon Hall
 1100 N.E. Campus Parkway))
 William H. Gates Hall
 Box 353020
 Seattle, WA ((98105-6617)) 98195-3020

((for internal campus mail use: Box 354600.)) The deadline for filing an application is determined by the University of Washington school of law and can be obtained from the web site or the address above.

AMENDATORY SECTION (Amending WSR 02-06-021, filed 2/25/02, effective 3/28/02)

WAC 478-160-125 Admission to the school of medicine. The University of Washington school of medicine publishes complete information regarding its policies, procedures, and programs ((which)) on the school of medicine web site. Information may also be obtained by contacting the following office:

University of Washington School of Medicine
 ((Committee on Admissions))
 Office of ((the Dean)) Admissions
 A-300 Health Sciences Center
 Box 356340
 Seattle, WA 98195-6340

((or)) The office of admissions can also be reached by phone((:)) (206-543-7212) or e-mail (askuwsom@uw.edu). The web site address is www.uwmedicine.org/admissions.

AMENDATORY SECTION (Amending WSR 02-06-021, filed 2/25/02, effective 3/28/02)

WAC 478-160-130 First-year admission to the school of medicine—Application ((forms)). The school of medicine is a participant in the American Medical College Application Service Program (AMCAS). Applications can be found at((:— www.aamc.org/students/amecas/start/htm. For those without access to the Web, write to:

Association of American Medical Colleges
 Section for Student Services
 2501 M Street, NW Lbby-26
 Washington, DC 20037-1300))
www.aamc.org/students/amcas.

The deadline for filing an application is determined by the University of Washington school of medicine and can be obtained from the web site or by contacting the following office:

University of Washington School of Medicine
 ((Committee on Admissions))
 Office of ((the Dean)) Admissions
 A-300 Health Sciences Center

Box 356340
 Seattle, WA 98195-6340

((or)) The office of admissions can also be reached by phone((:)) (206-543-7212) or e-mail (askuwsom@uw.edu). The web address is www.uwmedicine.org/admissions. Applicants are encouraged to file applications twelve months prior to desired date of entry.

AMENDATORY SECTION (Amending WSR 02-06-021, filed 2/25/02, effective 3/28/02)

WAC 478-160-140 Application for transfer to the school of medicine. ((Application for transfer to the school of medicine may be obtained by writing to the following address:)) The University of Washington school of medicine does not accept applications from students who request to transfer from other medical schools unless the students are residents of Wyoming, Alaska, Montana, or Idaho, and there is a funded position open in the respective state's contract due to student attrition. For more information regarding the transfer policy, contact:

University of Washington School of Medicine
 ((Committee on Admissions))
 Office of ((the Dean)) Admissions
 A-300 Health Sciences Center
 Box 356340
 Seattle, WA 98195-6340

The ((deadline for filing an application is determined by the University of Washington school of medicine and can be obtained from the address above, or)) office of admissions can also be reached by phone((:)) (206-543-7212) or by e-mail (askuwsom@uw.edu).

AMENDATORY SECTION (Amending WSR 02-06-021, filed 2/25/02, effective 3/28/02)

WAC 478-160-175 Credit definitions. Credit courses are offered either for resident credit or for extension credit.

(1) Most courses offered through University of Washington extension are offered for resident credit, and grades earned in such courses are transcribed as resident credit and are included in the student's resident cumulative grade-point average.

(2) Courses offered through correspondence study, and some other courses, are offered for extension credit. These credits and grades are not included in the resident grade-point average, and students may apply only ninety such university credits toward an undergraduate degree. Extension credit courses are identified by an "X" prefix when listed in catalog material.

Additional information concerning credit courses may be obtained by contacting the following office:

University of Washington
 ((Extension)) Educational Outreach
 ((5001 25th Ave. N.E.))
 Box 359492
 Seattle, WA ((98105-4190)) 98195-9492

~~((for internal campus mail use: Box 354221,))~~ or phone(~~(206-543-2300)~~) 206-685-6308, or visit the web site at www.pce.uw.edu.

AMENDATORY SECTION (Amending WSR 92-12-011, filed 5/22/92, effective 6/22/92)

WAC 478-160-231 Residence classification review committee. The residence classification review committee shall be composed of four persons appointed by the vice-president and vice-provost for student ~~((affairs))~~ life, each for a term of one academic year.

AMENDATORY SECTION (Amending WSR 97-14-004, filed 6/19/97, effective 7/20/97)

WAC 478-160-320 Special instructional programs offered summer quarter. In recognition of the special needs of students who can attend the university only in the summer, a number of institutes, workshops, and special programs are offered each summer quarter. Because the nature and content of the programs vary from year to year, interested persons are invited to contact the following address:

University of Washington
Summer Quarter Office
~~((5001 25th Ave. N.E.))~~
Box 359485
Seattle, WA ~~((98105-4190))~~ 98195-9485

~~((for internal campus mail use: Box 354226))~~ or phone 206-685-7542, or visit the web site at www.summer.washington.edu ~~((to obtain a copy of the Summer Quarter Bulletin and Time Schedule)).~~

AMENDATORY SECTION (Amending WSR 03-12-007, filed 5/22/03, effective 6/22/03)

WAC 478-324-045 SEPA advisory committee responsibility. (1) The responsible official shall consult with the committee as follows:

- (a) After completion of an environmental checklist but before threshold determination.
- (b) Prior to the responsible official's reconsideration of the threshold determination if substantive comments have been received regarding the DNS.
- (c) Prior to the responsible official issuing a mitigated DNS.
- (d) Prior to the issuance of a scoping notice.
- (e) Prior to the publication of any draft EIS.
- (f) Prior to the publication of any final EIS.

(2) Committee review of scoping notice, DNS, and mitigated DNS may occur without a formal meeting.

(3) The university shall give the committee notice of public hearings on the environmental impact of a proposal.

(4) The committee's recommendations shall be advisory and shall not relieve the responsible officials of their responsibilities as established by these procedures.

AMENDATORY SECTION (Amending WSR 00-04-039, filed 1/25/00, effective 2/25/00)

WAC 478-324-130 Establishment of SEPA information center. (1) The University of Washington ~~((Visitors Information Center))~~ office of public records and open public meetings shall serve as the university's SEPA information center.

(2) The following documents shall be maintained at the SEPA information center:

(a) Copies of all SEPA public information registers for a period of one year from the date of publication.

(b) Copies of all environmental checklists, determinations of nonsignificance and determinations of significance for a period of one year from the date of issue.

(c) Copies of all current scoping and public hearing notices.

(d) Copies of all draft and final ~~((EIS's))~~ EISs for a period of three years after the date of publication, except that technical appendices need not be maintained at the SEPA information center if adequate notice is provided regarding where on campus such appendices are located.

(e) Copies of all draft and final ~~((EIS's))~~ EISs which have been incorporated by reference shall be maintained at the SEPA information center for the same time period as the underlying document is maintained.

(f) A current list of individuals designated as responsible officials for university compliance with SEPA.

(g) A current membership list of the SEPA advisory committee.

(h) Copies of agendas and minutes of the SEPA advisory committee for a period of one year after the date of issue.

(3) The documents at the SEPA information center shall be available for public inspection and copies thereof shall be provided upon request. A fee to cover the actual cost of printing/copying may be charged for copies.

AMENDATORY SECTION (Amending WSR 03-12-007, filed 5/22/03, effective 6/22/03)

WAC 478-324-140 Additional methods of public notice. The university shall provide public notice of scoping, DNS with comment period, public hearings scheduled in accordance with these procedures and availability of draft and final ~~((EIS's))~~ EISs by(~~(=~~

~~(1) Posting a notice on or near the proposed site (for project EIS's).~~

~~(2) Providing notice in such form as a press release or advertisement in a legal newspaper of general circulation in the area where the property which is the subject of the action is located (e.g., Daily Journal of Commerce).~~

~~(3))~~ providing notice in such form as a press release or advertisement in the on-line University Week ~~((and))~~, University of Washington Daily ~~((If the University Week and/or the University of Washington Daily is not in publication, then notice shall instead be published in a))~~, and/or in another legal newspaper of general circulation in the area where the property which is the subject of the action is located (e.g., The Seattle Times or ((The Seattle Post-Intelligencer)) Tacoma News Tribune).

WSR 10-23-040
PERMANENT RULES
DEPARTMENT OF PERSONNEL

[Filed November 10, 2010, 9:22 a.m., effective December 13, 2010]

Effective Date of Rule: December 13, 2010.

Purpose: These changes are a result of the passage of ESSB 6503. This bill requires immediate action to reduce expenditures during the 2009-2011 fiscal biennium. It is the intent of this bill that state agencies of the legislative branch, judicial branch, and executive branch, including institutions of higher education, shall achieve a reduction in government operating expenses as provided in the bill. For some state employers this means implementing temporary layoffs. There are provisions in the bill which require us to make changes to the current temporary layoff rules in order to implement temporary layoffs as described in the bill.

WAC 357-01-174 Full-time employee, 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave? [not including in this filing], 357-31-435 Must employees use their own leave before using shared leave?, 357-31-190 When can an employee start to use accrued vacation leave?, 357-46-066 What is the notice requirement to temporarily layoff an employee?, 357-46-067 What is an employee's status during temporary layoff?, 357-58-553 What is the notice requirement to temporarily layoff a WMS employee?, 357-58-554 What is a WMS employee's status during temporary layoff?, 357-31-010 Which employees qualify for holiday compensation?, 357-31-020 For general government part-time employees, how is holiday compensation prorated?, 357-31-025 How many hours are higher education employees compensation for on a holiday? [not including in this filing], 357-31-115 How many hours of sick leave does an employee earn each month? [not including in this filing], 357-31-120 Do employees accrue sick leave if they have taken leave without pay during the month?, 357-31-125 For general government part-time employees, how is leave accrual prorated?, 357-31-170 At what rate do part-time employees accrue vacation leave? [not including in this filing], 357-31-175 Do employees accrue vacation leave if they have taken leave without pay during the month?, 357-31-180 When an employee has taken leave without pay during the month is the employee's rate of accrual adjusted for leave without pay?, 357-31-230 When can an employee use accrued compensatory time? [not including in this filing], 357-31-355 How does leave without pay affect the duration of an employee's probationary period, trial service period or transition review period? [not including in this filing], 35-31-567 When must an employer grant the use of recognition leave? [not including in this filing], 357-46-069 How is an employee's temporary layoff day determined when an employee works a night shift schedule which begins one calendar day and ends on the next?, 357-58-556 How is a WMS employee's temporary layoff day determined when an employee works a night shift schedule which begins one calendar day and ends on the next?, and 357-52-012 Does an employee who has been temporarily laid off under chapter 32, Laws of 2010 have the right to appeal the temporary lay-off?

Citation of Existing Rules Affected by this Order: Amending WAC 357-01-174, 357-31-390 [not included in

this filing], 357-31-435, 357-31-190, 357-46-066, 357-46-067, 357-58-553, 357-58-554, 357-31-010, 357-31-020, 357-31-025 [not included in this filing], 357-31-115 [not included in this filing], 357-31-120, 357-31-125, 357-31-170 [not included in this filing], 357-31-175, 357-31-180, 357-31-230 [not included in this filing], 357-31-355 [not included in this filing], and 357-31-567 [not included in this filing].

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 10-20-176 on October 6, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 20, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 20, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 20, Repealed 0.

Date Adopted: November 10, 2010.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-12-093, filed 5/27/05, effective 7/1/05)

WAC 357-01-174 Full-time employee. An employee who is scheduled to work:

- Forty hours in one workweek;
- For hospital personnel assigned to a fourteen-day schedule, eighty hours over a fourteen-day period; or
- For law enforcement positions, one hundred sixty hours in the twenty-eight-day work period.

For the purpose of this definition, time spent on temporary layoff will count towards the hourly requirement.

AMENDATORY SECTION (Amending WSR 09-03-013, filed 1/9/09, effective 2/13/09)

WAC 357-31-010 Which employees qualify for holiday compensation? (1) Full-time general government employees who work full monthly schedules qualify for holiday compensation if they are employed before the holiday and are in pay status:

(a) For at least eighty nonovertime hours during the month of the holiday; or

(b) For the entire work shift preceding the holiday.

(c) Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time higher education employees and cyclic year position employees who work full monthly schedules

qualify for holiday compensation if they are in pay status for the entire work shift preceding the holiday.

(3) Cyclic year position employees scheduled to work less than full monthly schedules throughout their work year qualify for holiday compensation if they work or are in pay status on their last regularly scheduled working day before the holiday(s) in that month.

(4) Part-time general government employees who are in pay status during the month of the holiday qualify for holiday pay on a pro rata basis in accordance with WAC 357-31-020, except that part-time employees hired during the month of the holiday will not receive compensation for holidays that occur prior to their hire date.

(5) Part-time higher education employees who satisfy the requirements of subsection (1) of this section are entitled to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule.

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-020 For general government part-time employees, how is holiday compensation ((pro-rated) prorated)? Compensation for holidays (including personal holiday) for part-time general government employees will be proportionate to the number of hours in pay status in the month to that required for full-time employment, excluding all holiday hours. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this section.

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-120 Do employees accrue sick leave if they have taken leave without pay during the month? (1) Full-time general government employees who are in pay status for less than eighty nonovertime hours in a month do not earn a monthly accrual of sick leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time and part-time higher education employees who have more than ten working days of leave without pay in a month do not earn a monthly accrual of sick leave.

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-125 For general government part-time employees, how is leave accrual pro rated? Vacation and sick leave accruals for part-time general government employees will be proportionate to the number of hours in pay status in the month to that required for full-time employment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this section.

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-180 When an employee has taken leave without pay during the month is the employee's rate of

accrual adjusted for the leave without pay? Leave without pay taken for military leave of absence without pay, for temporary layoff as provided in WAC 357-46-063, or for scheduled mandatory periods of leave without pay for employees in cyclic year positions do not affect the rate at which employees accrue vacation leave. For all other periods of leave without pay, the following applies:

(1) When a general government employee takes leave without pay which exceeds fifteen consecutive calendar days, the employee's anniversary date and unbroken service date are adjusted in accordance with WAC 357-31-345. These adjustments affect the rate at which an employee accrues vacation leave.

(2) When a higher education employee takes more than ten working days of leave without pay, that month does not qualify as a month of employment under WAC 357-31-165.

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-175 Do employees accrue vacation leave if they have taken leave without pay during the month? (1) Full-time general government employees who are in pay status for less than eighty nonovertime hours in a month do not earn a monthly accrual of vacation leave. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

(2) Full-time and part-time higher education employees who have more than ten working days of leave without pay in a month do not earn a monthly accrual of vacation leave.

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-190 When can an employee start to use accrued vacation leave? An employee (part-time or full-time) must complete six months of continuous state employment before ((he/she)) they can use vacation leave. The only exception to the six-month requirement is that during the 2009-2011 fiscal biennium if an employee's monthly full-time equivalent base salary is two thousand five hundred dollars or less and the employee's office or institution enacts a temporary layoff as described in chapter 32, Laws of 2010, the employee can use accrued vacation leave.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-435 Must employees use their own leave before using shared leave? Employees who qualify for shared leave under WAC 357-31-390 (1)(a) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, sick leave, and vacation leave that they have accrued before using shared leave. Employees who qualify under WAC 357-31-390 (1)(b) must first use all of their compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 before using shared leave. Employees who qualify under WAC 357-31-390 (1)(c) and (d) must first use all com-

pensatory time, recognition leave as described in WAC 357-31-565, personal holiday, and vacation leave that they have accrued before using shared leave. Employees who qualify for shared leave under WAC 357-31-390 (1)(e) must first use all compensatory time, recognition leave as described in WAC 357-31-565, and vacation leave that they have accrued before using shared leave.

AMENDATORY SECTION (Amending WSR 05-12-074, filed 5/27/05, effective 7/1/05)

WAC 357-46-066 What is the notice requirement to temporarily layoff an employee? An employer must provide the employee seven calendar days' notice of temporary layoff. The temporary layoff notice must inform the employee of ~~((his/her))~~ their status during temporary layoff and the expected duration of the temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-46-067 What is an employee's status during temporary layoff? (1) The following applies during a temporary layoff:

(a) An employee's anniversary ~~((date))~~, seniority, ~~((or))~~ and unbroken service dates ~~((is))~~ are not adjusted for periods of time spent on temporary layoff;

(b) ~~((An employee continues to accrue vacation and sick leave in accordance with chapter 357-31 WAC))~~ An employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff; ~~((and))~~

(c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff; and

(d) The duration of an employee's probationary period or trial service period shall not be extended for periods of time spent on temporary layoff.

(2) An employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for ~~((his/her))~~ their vacation leave balance; and

(c) Use of ~~((his/her))~~ their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds.

(3) If the temporary layoff was not due to lack of funds, an employer may allow an employee to use accrued vacation leave in lieu of temporary layoff.

NEW SECTION

WAC 357-46-069 How is an employee's temporary layoff day determined when an employee works a night shift schedule which begins one calendar day and ends on the next? For employees working a shift which begins on one calendar day and ends on the next, the twenty-four hour period during which the temporary layoff occurs must be

determined by the employer to start either at the start of the shift that begins on the day of temporary layoff, or the start of the shift that precedes the day of temporary layoff. For example:

The employer has determined that July 12th will be a temporary layoff day. The employee's regular work schedule is 6:00 p.m. to 3:00 a.m. Sunday through Thursday. The employer must determine if the employee's temporary layoff will occur for the shift which begins at 6:00 p.m. on July 11th or the shift that begins at 6:00 p.m. on July 12th.

NEW SECTION

WAC 357-58-556 How is a WMS employee's temporary layoff day determined when an employee works a night shift schedule which begins one calendar day and ends on the next? For WMS employees working a shift which begins on one calendar day and ends on the next, the twenty-four hour period during which the temporary layoff occurs must be determined by the employer to start either at the start of the shift that begins on the day of temporary layoff, or the start of the shift that precedes the day of temporary layoff. For example:

The employer has determined that July 12th will be a temporary layoff day. The employee's regular work schedule is 6:00 p.m. to 3:00 a.m. Sunday through Thursday. The employer must determine if the employee's temporary layoff will occur for the shift which begins at 6:00 p.m. on July 11th or the shift that begins at 6:00 p.m. on July 12th.

NEW SECTION

WAC 357-52-012 Does an employee who has been temporarily laid off under chapter 32, Laws of 2010 have the right to appeal the temporary layoff? An employee who has been temporarily laid off under chapter 32, Laws of 2010 does not have the right to appeal the temporary layoff.

AMENDATORY SECTION (Amending WSR 06-07-048, filed 3/9/06, effective 4/10/06)

WAC 357-58-553 What is the notice requirement to temporarily layoff a WMS employee? An employer must provide the WMS employee seven calendar days' notice of temporary layoff. The temporary layoff notice must inform the WMS employee of ~~((his/her))~~ their status during temporary layoff and the expected duration of the temporary layoff. Notice of temporary layoff may be provided by using alternative methods as described in WAC 357-04-105.

AMENDATORY SECTION (Amending WSR 09-17-060, filed 8/13/09, effective 9/16/09)

WAC 357-58-554 What is a WMS employee's status during temporary layoff? (1) The following applies during a temporary layoff:

(a) ~~((A WMS))~~ An employee's anniversary date, seniority, or unbroken service date is not adjusted for periods of time spent on temporary layoff;

(b) ~~((A WMS employee continues to accrue vacation and sick leave in accordance with chapter 357-31 WAC))~~ An

employee's vacation and sick leave accruals will not be impacted by periods of time spent on temporary layoff;
(~~and~~)

(c) An employee's holiday compensation will not be impacted by periods of time spent on temporary layoff; and

(d) The duration of an employee's review period shall not be extended for periods of time spent on temporary layoff.

(2) A WMS employee who is temporarily laid off is not entitled to:

(a) Layoff rights, including the ability to bump any other position or be placed on the employer's internal or statewide layoff list;

(b) Payment for (~~his/her~~) their vacation leave balance; and

(c) Use of (~~his/her~~) their accrued vacation leave for hours the employee is not scheduled to work if the temporary layoff was due to lack of funds.

(3) If the temporary layoff was not due to lack of funds, an employer may allow a WMS employee to use accrued vacation leave in lieu of temporary layoff.

WSR 10-23-041

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed November 10, 2010, 9:23 a.m., effective December 13, 2010]

Effective Date of Rule: December 13, 2010.

Purpose: This proposal clarifies that if an employee is not yet enlisted in the military, they should be allowed to use paid miscellaneous leave for a physical examination to determine physical fitness. If the employee is already in the military, they would use paid military leave for this purpose. If an enlisted employee has no military leave available, they should be allowed to use paid miscellaneous leave.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-325 and 357-31-360.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 10-20-175 on October 6, 2010.

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

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

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

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

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

Date Adopted: November 10, 2010.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 09-03-014, filed 1/9/09, effective 2/13/09)

WAC 357-31-325 Must an employer grant leave with pay for other miscellaneous reasons such as to take a state examination? Leave with pay **must** be granted to an employee:

(1) To allow an employee to receive assessment from the employee assistance program; (~~or~~)

(2) When an employee is scheduled to take an examination or participate in an interview for a position with a state employer during scheduled work hours; or

(3) When an employee is required to appear during working hours for a physical examination to determine physical fitness for military service.

(a) Employers may limit the number of occurrences or the total amount of paid leave that will be granted to an employee to participate in an interview or take an examination during scheduled work hours.

(b) Employers may deny an employee's request to participate in an interview or take an examination during scheduled work hours based upon operational necessity.

AMENDATORY SECTION (Amending WSR 10-11-075, filed 5/14/10, effective 6/15/10)

WAC 357-31-360 Must employees who have been ordered to required military duty, training, (~~or~~) drills, or required to appear for a physical examination be granted paid military leave? (1) Employees must be granted military leave with pay not to exceed twenty-one working days during each year, beginning October 1st and ending the following September 30th, in order to report for required military duty, training duty in the Washington National Guard or the Army, Navy, Air Force, Coast Guard, or Marine Corps reserves of the United States or any organized reserve or armed forces of the United States, or to report for drills including those in the National Guard under Title 10 U.S.C., or state active status. The employee is charged military leave only for the days that they are scheduled to work.

(2) Military leave with pay is in addition to any vacation and sick leave to which an employee is entitled and does not reduce benefits, performance ratings, privileges, or pay.

(3) During paid military leave, the employee must receive the normal base salary.

(4) Employees required to appear during working hours for a physical examination to determine physical fitness for military service must receive full pay for the time required to complete the examination.

Employees who are not yet in the military may use paid miscellaneous leave for this purpose. Employees who are already in the military may use paid military leave as described in this section. An employee who is currently in the military may use paid miscellaneous leave for this purpose if they do not have paid military leave available.

WSR 10-23-042
PERMANENT RULES
DEPARTMENT OF PERSONNEL

[Filed November 10, 2010, 9:23 a.m., effective December 13, 2010]

Effective Date of Rule: December 13, 2010.

Purpose: This proposal adds language which references the fifteen calendar days notice requirement found in WAC 357-13-070. We are also proposing adding a new subsection (4) which explains the effective date of a reallocation downward when the reallocation is a result of a director's review or of a personnel resources board order.

Citation of Existing Rules Affected by this Order: Amending WAC 357-13-085.

Statutory Authority for Adoption: Chapter 41.06 RCW. Adopted under notice filed as WSR 10-20-174 on October 6, 2010.

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

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

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

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

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

Date Adopted: November 10, 2010.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-01-201, filed 12/21/04, effective 7/1/05)

WAC 357-13-085 How is the effective date of a reallocation determined? The effective date of a reallocation is determined as follows:

(1) The effective date of a reallocation resulting from the director's implementation or revisions to the classification plan is the effective date of the director's action.

(2) The effective date of an employer-initiated reallocation is determined by the employer. Notice of a reallocation to a class with a lower salary range maximum must be provided in accordance with WAC 357-13-070.

(3) The effective date of a reallocation resulting from an employee request for a position review is the date the request was filed with the employer unless the result of the position review is a reallocation to a class with a lower salary range maximum. Notice of reallocation to a class with a lower salary range maximum must be provided in accordance with WAC 357-13-070.

(4) The effective date of a reallocation to a class with a lower salary range maximum resulting from a director's review determination to reallocate to a lower classification than the employer's determination is thirty calendar days

from the date of the director's determination unless the review determination is appealed to the personnel resources board. The effective date of a reallocation to a class with a lower salary range maximum resulting from a board order to reallocate to a lower classification than the employer's determination is thirty calendar days from the date of the board's order.

WSR 10-23-043
PERMANENT RULES
DEPARTMENT OF PERSONNEL

[Filed November 10, 2010, 9:24 a.m., effective December 13, 2010]

Effective Date of Rule: December 13, 2010.

Purpose: In December 2009 Eva Santos, director, department of personnel (DOP), brought together a team of human resource professionals from twelve state agencies and charged them with developing and recommending a uniform, enterprise-wide process for the inclusion and band placement of WMS positions. The ultimate goal is to improve accountability, transparency, and consistency of the WMS as a whole.

The team began its work in December 2009 and sent their final recommendations which included draft rules to DOP in February 2010. DOP staff used the team's recommended draft rules as a starting point. We discussed the first draft at the September 15, 2010, rules meeting and had an open comment period through September 30, 2010. Changes were made based on comments received.

Citation of Existing Rules Affected by this Order: Repealing WAC 357-58-545 and 357-58-030.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 10-20-173 on October 6, 2010.

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 0, Repealed 2.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 0, Repealed 2.

Date Adopted: November 10, 2010.

Eva N. Santos
Director

NEW SECTION

WAC 357-58-027 Must agencies maintain position descriptions for each WMS position? Agencies must maintain a current position description for each WMS position.

NEW SECTION

WAC 357-58-028 Must a standard form be used to describe each WMS position? A standard form developed by the director, or an alternate form approved by the director, must be used for each WMS position description.

NEW SECTION

WAC 357-58-032 What is the requirement for agencies to develop procedures which address determining inclusion in WMS and evaluating positions for placement within the management bands? (1) Each agency must develop a WMS inclusion and evaluation procedure consistent with this chapter and guidelines established by the department.

(2) The inclusion and evaluation procedure must be approved by the director.

(3) The procedure must include processes for requesting and determining inclusion and evaluating and re-evaluating positions for placement within management bands. The procedure must require, at a minimum:

(a) Appointment of a human resource professional as the agency's WMS coordinator who serves as the single point of contact for the department regarding WMS issues.

(b) Use of a form prescribed by the director or an alternate form approved by the director for requests to establish or re-evaluate WMS positions.

(c) Approval of the request for inclusion or evaluation by the position's agency head or designee.

(d) Inclusion determination and position evaluation must be performed by a committee of three or more people, which must include:

- i. The agency's WMS coordinator;
- ii. A manager from the agency who has comprehensive knowledge of the agency's business; and
- iii. A management representative from another agency or human resource professional from another agency.

(e) Only those who have successfully completed training may participate on a WMS committee. The training must satisfy the core curriculum as defined by the department.

NEW SECTION

WAC 357-58-565 What mechanism must be used to report WMS inclusion and evaluation activities? (1) Agencies must submit their WMS activity reports to the department and make them available as prescribed by the department.

(2) A roll-up of all agencies' WMS activities will be made available to agencies.

NEW SECTION

WAC 357-58-546 What is the department's authority to review actions taken by an agency under chapter 357-58 or to audit an agency's WMS processes? (1) Under the authority of RCW 41.06.130 and 41.06.500, the director of the department of personnel retains the right to review:

(a) Any action taken by an agency under chapter 357-58 WAC; and

(b) An agency's administration of the WMS program.

(2) An agency's compliance with WMS procedures and rules will be audited. Audit requirements will be prescribed by the department.

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

REPEALER

The following chapters of the Washington Administrative Code are repealed:

WAC 357-58-545 Does the director of the department of personnel have the rights to review an agency's administration of WMS?

WAC 357-58-030 Who determines if a position is included in the WMS?

Reviser's note: The repealer section above appears as filed by the agency pursuant to RCW 34.08.040; however, the reference to chapters is probably intended to be sections.

WSR 10-23-049**PERMANENT RULES****DEPARTMENT OF ECOLOGY**

[Order 10-05—Filed November 10, 2010, 11:31 a.m., effective December 11, 2010]

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

Purpose: The department of ecology is amending chapter 173-430 WAC, Agricultural burning. This rule adopts the fees as determined by the agricultural burning practices and research task force (task force) based on the new fee structure established in RCW 70.94.6528. For pile burning, the rule changes fees to a per ton basis from a per acre fee. For field burning, the rule increases the fee. Field burning fees remain on a per acre basis. Additionally, it adopts a process for adjusting the fees within the caps in the future. Finally, this rule making includes some minor changes for consistency with the authorizing statute [statute] and the findings in the *Rasmussen v. Ecology* court case.

The legislature authorizes ongoing agricultural burning fee increases until the fee reaches the \$3.75 cap per acre for field burning and \$1.00 per ton for pile burning. According to statute, the task force determines fees within these caps.

SSB 6556 (2010) introduced a per-ton fee for pile burns to replace the per-acre fee. The volume of piled material burned exceeds the volume of crop residue from a field of the same size. So, this fee structure provides a closer link to the amount of the fee and the quantity of material burned. *Rasmussen v. Ecology* requires ecology to remove language it found as outside of ecology's regulatory authority.

Citation of Existing Rules Affected by this Order: Amending chapter 173-430 WAC.

Statutory Authority for Adoption: Chapter 70, Laws of 2010 (SSB 6556) authorizes ongoing fee increases until the fee reaches the cap, RCW 70.94.6528.

Other Authority: *Ted Rasmussen Farms, LLC v. State of Washington, Department of Ecology*, Docket # 22989-1-III.

Adopted under notice filed as WSR 10-15-071 on July 16, 2010.

A final cost-benefit analysis is available by contacting Kasia Patora, Department of Ecology, P.O. Box 46700 [47600], Lacey, WA 98504-7600, phone (360) 407-6184, fax (360) 407-6989, e-mail Kasia.Patora@ecy.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 2, Amended 1, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 10, Repealed 0.

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

Date Adopted: November 10, 2010.

Ted Sturdevant
Director

AMENDATORY SECTION (Amending Order 04-10, filed 7/26/06, effective 8/26/06)

WAC 173-430-010 Purpose of the regulation. Chapter 70.94 RCW, the Washington Clean Air Act, declares it is the intent of the state to protect public health and it is the policy of the state that the responsibilities and costs of protecting the air resource and operating state and local air pollution control programs be shared as equitably as possible among all sources whose emissions cause air pollution. Some of the sources whose emissions contribute to air pollution in the state include industrial sources (large and small), mobile sources such as vehicles, and area sources such as woodstoves, general outdoor burning, and agricultural burning. A variety of strategies to control and reduce the impact of emissions are described throughout chapter 70.94 RCW, including controls on emissions created from agricultural burning. The act intends that public health be protected and also allows for agricultural burning that is reasonably necessary. The act also requires that burning be restricted and regulated to address the potentially competing goals of both limiting air pollution and allowing agricultural burning. Chapter 70.94 RCW authorizes the Washington state department of ecology (ecology) and local air authorities to implement the provisions of that act related to agricultural burning. This rule establishes control(~~(s)~~) strategies for agricultural burning in the state (~~(in order)~~) to minimize adverse health and the (~~(environment)~~) environmental effects from agricultural burning in accord with the most reasonable procedures to follow in safeguarding life and property under all circumstances or is reasonably necessary to carry out the enterprise or both. (~~(The control)~~) These strategies include:

(1) Establishing a permit program with minimum state-wide requirements and specific burn authorizations.

(2) Providing for implementation of a research program to explore and identify economical and practical alternatives to agricultural burning.

(3) Encouraging and developing economically feasible alternative methods to agricultural burning.

(4) Limiting the scope of the rule to agricultural burning and distinguishing between agricultural burning and other types of burning.

(5) Providing for local administration of the permitting program through delegation.

(6) Assessing air quality within a region and incorporating this data into an evaluation tailored to emissions from agricultural burning.

(7) Making use of metering as a component of the agricultural burning permit program. Metering is a technique of limiting emissions from agricultural burning at specific times and places by taking into account potential emission rates, forecasted weather (dispersion), and current and projected air quality.

(8) Using improved and proven technology in evaluating the conditions under which burning is authorized, including those related to meteorology, emissions, and air pollution.

(9) Providing for education and communication.

AMENDATORY SECTION (Amending Order 04-10, filed 7/26/06, effective 8/26/06)

WAC 173-430-020 General applicability and conditions. (1) This regulation applies to burning related to agricultural activities. It does not apply to silvicultural burning or (~~(other)~~) outdoor burning (~~(f)~~). For these requirements refer to:

• Chapter 173-425 WAC(~~(h)~~) for outdoor burning.

• Chapter 332-24 WAC for silvicultural burning.

(2) Burning of organic debris related to agricultural activities is allowed when it is reasonably necessary to carry out the enterprise. Agricultural burning is reasonably necessary to carry out the enterprise when it meets the criteria of the best management practices and no practical alternative is reasonably available (~~((RCW 70.94.650))~~).

(3) Anyone conducting burning related to agricultural activities must comply with local fire safety laws and (~~((regulations))~~) rules, and burn when wind takes the smoke away from roads, homes, population centers, or other public areas.

(4) Burning related to agricultural activities must not occur during an air pollution episode or any stage of impaired air quality. Definitions of air pollution episode and impaired air quality are found in WAC 173-430-030.

(5) Burning of organic debris related to agricultural activities requires a permit and fee, except for agricultural burning that is incidental to commercial agricultural activities (RCW (~~((70.94.745))~~) 70.94.6524). An agricultural operation must still notify the local fire department within the area and not burn during an air pollution episode or any stage of impaired air quality. The specific types of burning that qualify as exceptions to the permit requirement are:

(a) Orchard prunings. An orchard pruning is a routine and periodic operation to remove overly vigorous or nonfruiting tree limbs or branches to improve fruit quality, ~~((facilitate))~~ assist with tree canopy training and improve the management of plant and disease, and pest infestations;

(b) Organic debris along fencelines. A fenceline or fencerow is the area bordering a commercial agricultural field that is or would be unworkable by equipment used to cultivate the adjacent field;

(c) Organic debris along or in irrigation or drainage ditches. An irrigation or drainage ditch is a waterway which predictably carries water (not necessarily continuously) and is unworkable by equipment used to cultivate the adjacent field;

(d) Organic debris blown by wind. The primary example is tumbleweeds.

AMENDATORY SECTION (Amending Order 04-10, filed 7/26/06, effective 8/26/06)

WAC 173-430-030 Definition of terms. The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the meanings of the following words and phrases used in this chapter are listed below.

(1) **Agricultural burning:** Means the burning of vegetative debris from an agricultural operation necessary for disease or pest control, necessary for crop propagation ~~((and))~~ or crop rotation, or where identified as a best management practice by the agricultural burning practices and research task force established in RCW ~~((70.94.650))~~ 70.94.6528(6) or other authoritative source on agricultural practices. Propane flaming for the purpose of vegetative debris removal is considered commercial agricultural burning.

(2) **Agricultural operation:** Means a farmer who can substantiate that the operation is commercial agriculture by showing the most recent year's IRS schedule F form or its corporate equivalent. It also includes burning conducted by irrigation district or drainage district personnel as part of water system management.

(3) ~~((Ag task force: Means the agricultural burning practices and research task force.~~

(4)) **Air pollution episode:** Means a period when a forecast, alert, warning, or emergency air pollution stage is declared as described in RCW 70.94.715.

~~((5))~~ (4) **Best management practice:** Means the criteria established by the agricultural burning practices and research task force ~~((Ag))~~ task force).

~~((6))~~ (5) **Certify:** Means to declare in writing, based on belief after reasonable inquiry, that the statements and information provided are true, accurate, and complete.

~~((7) Department: Means the department of ecology.~~

(8)) (6) **Ecology:** Means the Washington state department of ecology.

(7) **Farmer:** Means any person engaged in the business of growing or producing for sale any agricultural product upon their own lands, or upon the land in which they have a present right of possession, any agricultural product. Farmer

does not mean persons growing or producing ~~((such))~~ products primarily for their own consumption.

(8) **Field burning:** Agricultural burning of vegetative residue on an area of land used in an agricultural operation. Field burning does not include pile burning.

(9) **Impaired air quality:** Means ~~((a first or second stage))~~ an impaired air quality condition declared by ecology or a local air authority with jurisdiction in accordance with RCW ~~((70.94.715, 70.94.775, and))~~ 70.94.473.

~~((a) A first stage of impaired air quality is reached when: (i) Fine particulates are at an ambient level of thirty-five micrograms per cubic meter measured on a twenty-four-hour average; and~~

~~(ii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below thirty-five micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level.~~

~~(b) A second stage of impaired air quality is reached when:~~

~~(i) A first stage of impaired air quality has been in force and not been sufficient to reduce the increasing fine particle pollution trend;~~

~~(ii) Fine particulates are at an ambient level of sixty micrograms per cubic meter measured on a twenty-four-hour average; and~~

~~(iii) Forecasted meteorological conditions are not expected to allow levels of fine particulates to decline below sixty micrograms per cubic meter for a period of forty-eight hours or more from the time that the fine particulates are measured at the trigger level.)~~

(10) **Outdoor burning:** Means all forms of burning except those listed as exempt in WAC 173-425-020.

(11) **Permitting authority:** Means ecology or its delegate or a local air authority with jurisdiction or its delegate. Conservation districts, counties, fire districts, or fire protection agencies may receive delegation for all or portions of the agricultural burning permit program as identified in a delegation agreement. The permitting authority will issue agricultural burning permits for a given locale.

(12) **Pile burning:** Agricultural burning of stacked vegetative residue from an agricultural operation. Burning of windrows does not qualify as pile burning.

(13) **Silvicultural burning:** Means burning on any land the department of natural resources protects per RCW 70.94.-030(13), ~~((70.94.660))~~ 70.94.6534, ~~((70.94.690))~~ 70.94.-6540, and ~~((pursuant to))~~ under chapter 76.04 RCW.

(14) **Spot burn:** Agricultural burning of an unforeseen and unpredicted small area where burning is reasonably necessary and no practical alternative to burning exists. Examples of spot burns include small weed patches, spots of heavy residue, equipment plugs, and harrow dumps. Burning of windrows does not qualify as a spot burn.

(15) **Task force:** Means the agricultural burning practices and research task force.

AMENDATORY SECTION (Amending Order 04-10, filed 7/26/06, effective 8/26/06)

WAC 173-430-040 Agricultural burning requirements. (1) Agricultural burning is allowed when it is reasonably necessary to carry out the enterprise. A farmer can show it is reasonably necessary when it meets the criteria of the best management practices and no practical alternative is reasonably available. In certain circumstances, ecology may certify an alternative to burning. Where the certified alternative is reasonably available, burning is not allowed. Certified alternatives are described in WAC 173-430-045.

(2) For allowed agricultural burning, ~~((the department or))~~ ecology or local air authorities with jurisdiction will make daily or specific fire burn calls (during times of anticipated burning) and use metering when necessary to minimize the potential for adverse air quality impacts. Metering is a technique of limiting emission from burning at specific times and places by taking into account potential emission rates, forecasted weather (dispersion), and current and projected air quality. The burn decision process will consider: The potential number of burns and their expected size(s) and duration(s); recent and current ambient concentrations of pollutants; other potential emissions sources; and evaluations and judgments about how foreseeable meteorological conditions will affect concentrations of pollutants in the air sheds.

(a) For the purposes of this section: The smoke management index is a set of conditions that guide the production of certain reports as described in (c) of this subsection and evaluations as described in (d) of this subsection. The smoke management index is not an air quality standard as defined in RCW 70.94.030(4) and further identified in RCW 70.94.331. The smoke management index is not an emission standard as defined in RCW 70.94.030(9) and further identified in RCW 70.94.331. The smoke management index is not an air pollution episode as described in RCW 70.94.710.

(b) Ecology and local air authorities making daily or specific fire burn calls in areas where PM2.5 concentrations are regularly monitored will follow the procedures in (c) of this subsection ~~((at the time of))~~ when making the burn decision whenever either of the following smoke management index conditions exist:

(i) A most recent daily average (twenty-four-hour) PM2.5 concentration was equal to or greater than 16 micrograms per cubic meter. This is based on the division between the "good" and "moderate" classifications of the 2009 U.S. Environmental Protection Agency's Air Quality Index (AQI) for (twenty-four hours average PM2.5) particulate matter ~~((based on the National Ambient Air Quality Standard of 65 micrograms per cubic meter))~~.

(ii) A two-hour rolling average PM2.5 concentration, during the most recent twenty-four to thirty hours was equal to or greater than the regional seasonal average PM2.5 concentration plus 15 micrograms per cubic meter.

(c) In authorizing additional burning, a determination will be documented explaining that the decision to allow additional burning is not expected to result in a further significant deterioration of air quality. The determination will be entered on a standard form noting the date, time, the location of the additional burning, the size of the burn(s), and a brief explanation of the opinion as to why the additional burning is

not expected to result in a further, significant reduction of air quality. The purpose of the determination and recordkeeping requirements of this section is to enhance agency and public understanding of the effectiveness of the daily burn and metering decision-making process, and to improve its application over time. A notice of ~~((such))~~ the determinations will be made by ecology or a local air authority with jurisdiction at the time the daily burn decision is communicated. Ecology or a local air authority with jurisdiction will also periodically make the determination forms conveniently available to the public.

(d) Following a determination described in (c) of this subsection and a deterioration of air quality to levels equal to or greater than a two-hour rolling average concentration of the regional seasonal average PM2.5 concentration plus 25 micrograms per cubic meter in the specific area during the twenty hours following such determination, ecology or the local air authority with jurisdiction will evaluate the deterioration and document any findings and opinions regarding why the deterioration occurred. Ecology or the local air authority with jurisdiction will make evaluations under this subsection conveniently available to the public.

(e) Ecology or a local air authority with jurisdiction may evaluate emission dispersion impacts in the regular course of business. In addition, ecology or the local air authority with jurisdiction will produce an annual report summarizing determinations and evaluations ~~((pursuant to))~~ under the smoke management index.

(f) ~~((Pursuant to))~~ Under RCW 70.94.473 and ~~((70.94.775))~~ 70.94.6512, no burning ~~((shall be))~~ is authorized when an air quality alert, warning, emergency or impaired air quality condition has been issued.

(g) For purposes of protecting public health (not eliminating agricultural burning), if an area exceeds or threatens to exceed unhealthy air pollution levels, the permitting authority may limit the number of acres, on a pro rata basis as provided by RCW ~~((70.94.656 and))~~ 70.94.6532 or by RCW ~~((70.94.650))~~ 70.94.6528.

(3) Except as described in WAC 173-430-020(5), all agricultural burning requires a permit.

(a) Ecology or local air authorities with jurisdiction will provide agricultural burning application forms for agricultural burning.

(b) To qualify for an agricultural burning permit the farmer must be an agricultural operation or government entity with specific agricultural burning needs, such as irrigation districts, drainage districts, and weed control boards.

(c) Application information. A farmer must fill out the information requested on a permit application, pay the permitting fee, and submit it to the permitting authority for review and approval ~~((prior to))~~ before burning.

(i) The application must describe the reason for burning and include at least the following information: Name and address of the person or corporation responsible for the burn, the specific location (county; legal description: Section, township, range, block and unit number), the crop type, the type or size of the burn, driving directions to the burn, specific reason for the burn, the target date for burning, a map, signature of the responsible party, and any additional information required by the permitting authority. Each permitting

authority may require additional information on the application.

(ii) All applications must comply with other state or local ~~((regulations))~~ rules.

(d) The permitting authority must evaluate the application, and approve the permit ~~((prior to))~~ before burning.

(e) Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out ~~((such))~~ the burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

(f) Ecology or its delegate, or a local air authority with jurisdiction, or its delegate must approve or deny the permit in part or in whole based on information in the application.

(g) Ecology and its delegate or a local air ~~((agency))~~ authority with jurisdiction or its delegate may issue permits for appropriate agricultural burning activities in nonattainment areas, maintenance areas, and urban growth areas as described in RCW ~~((70.94.743))~~ 70.94.6514.

(4) All agricultural burning permits require a fee. ~~((Maximum fee level is set by statute at two dollars and fifty cents per acre (RCW 70.94.650(2)) and is established by the agricultural burning practices and research task force (RCW 70.94.650(4)). The fee is the greater of a minimum fee level or a variable fee level.~~

~~((a) Minimum fee levels:~~

~~((i) Twenty-five dollars per calendar year per agricultural operation based on burning up to ten acres or equivalent;~~

~~((ii) Fifty dollars for orchard tear-out burning per calendar year per agricultural operation based on burning debris from up to twenty acres or equivalent.~~

~~((b) The variable fee level (based on the acreage or equivalent):~~

~~((i) Through the calendar year 2007, the fee is two dollars per acre.~~

~~((ii) Beginning in calendar year 2008, the fee is two dollars and twenty-five cents per acre.~~

~~((e) Permit fee uses. The permit fee is used to off-set the cost of administering and enforcing the agricultural burning permit program. There are three components: Local administration, research, and ecology administration.~~

~~((i) Local permitting program administration. The permitting authority may set the fee as an amount per agricultural operation per calendar year, a set amount per fire, or a set rate no greater than one dollar and twenty-five cents per acre burned. The permitting authority must establish this portion of the fee by an appropriate, public process such as a local rule, ordinance, or resolution. In areas of the state where the department has not delegated permitting authority, this portion of the fee shall be one dollar and twenty-five cents per acre burned.~~

~~((ii) Ecology administration. This portion of the fee shall be used to off-set the statewide administrative, education, and oversight costs of the department for the agricultural burning program.~~

~~((iii) Research fund. The agricultural burning applied research portion of the fee shall be no greater than one dollar per acre burned. The amount assessed may be less than one dollar per acre burned as periodically determined by the agricultural burning practices and research task force based on applied research needs, regional needs and the research fund budget. The agricultural burning practices and research task force may also establish discounted assessment rates based on the use of best management practices.~~

~~((iv) The chart below shows the permit fee break-out per category:~~

Fee Level	Section	Local Administration	Research	Ecology Administration
\$25.00	WAC 173-430-040- (4)(a)(i)	\$12.50	\$12.50	0-
\$50.00	WAC 173-430-040- (4)(a)(ii)	\$12.50	\$12.50	\$25.00
2006 - \$2.00 per acre	WAC 173-430-040- (4)(b)(i)	Up to \$1.25 per acre	50 cents per acre	25 cents per acre
2007 - \$2.00 per acre	WAC 173-430-040- (4)(b)(i)	Up to \$1.25 per acre	25 cents per acre	50 cents per acre
2008 and beyond - \$2.25 per acre	WAC 173-430-040- (4)(b)(ii)	Up to \$1.25 per acre	50 cents per acre	50 cents per acre

~~((d) A farmer must pay the fee when submitting the application. Refunds are allowed for portions not burned provided the adjusted fee after subtracting refunds is no less than twenty-five dollars.~~

~~((e) The agricultural burning practices and research task force may set acreage equivalents, for nonfield style agricultural burning practices, based on the amount of emissions relative to typical field burning emissions. Any acreage equivalents, established by rule, shall be used in determining fees. For agricultural burning conducted by irrigation or drainage~~

~~districts, each mile of ditch (including banks) burned is calculated on an equivalent acreage basis.)) The applicant must include the fee when submitting the application. The permitting authority will charge fees as described under WAC 173-430-041.~~

~~((5) All agricultural burning permits must include conditions intended to minimize air pollution.~~

~~((a) A farmer must comply with the conditions on the agricultural burning permit.~~

(b) Permits must be conditioned to minimize emissions and impacts insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions. When necessary as determined by ecology or the local air authorities to ensure compliance with the act, permit conditions will include at least one of the following:

- The use of a daily burn decision(:);
- Permit specific decisions ((and/or));
- Metering.

(c) The permitting authority must:

(i) Act on a complete application (as determined by the ~~((agency))~~ permitting authority) within seven days of receipt.

~~((i) The permitting authority must)~~ (ii) Evaluate the application and approve or deny all or part of it.

~~((ii) The permitting authority must)~~ (iii) Evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

~~((iii))~~ (iv) If the permitting authority denies the application (~~(is denied)~~, ~~((the))~~ they must state the reason (~~(must be stated)~~) for the denial.

(6) ~~((Additional requirements for burning of field and turf grasses grown for seed.~~

The department of ecology will proceed with the process to certify alternatives to burning as identified in RCW 70.94.656(3). In addition to the certification process, ecology is also limiting the number of acres allowed to be burned as specified in RCW 70.94.656(4).

~~(a) Beginning in 1997 and until approved alternatives become available, each farmer shall be limited to burning no more than one-third of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.~~

~~Without regard to any previous burn permit history, in 1996, each farmer shall be limited to burning the greater of:~~

~~(i) Two-thirds of the number of acres the farmer burned under a valid permit issued in 1995; or~~

~~(ii) Two-thirds of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.~~

~~(b) Exemptions to the requirements for burning of field and turf grasses grown for seed ((a) of this subsection). A farmer may request an exemption for extraordinary circumstances, such as property where a portion(s) of the field is oddly shaped or where the slope is extremely steep. This provision does not apply to WAC 173-430-045 Alternatives to burning field and/or turf grasses grown for seed. Under this subsection, relief from the acreage/emissions reduction requirements of (a) of this subsection shall be limited to no more than five percent of the acreage in production on May 1, 1996, and is also subject to the following provisions:~~

~~(i) The exemption request must be certified by an agronomic professional;~~

~~(ii) The farmer must be able to show full compliance with the emissions reductions in (a) of this subsection for the acreage not exempted; and~~

~~(iii) The farmer must be in full compliance with permit requirements for other crops under WAC 173-430-040.~~

~~(c) Measurement for emission reduction for grass seed field and turf grass. Ecology will use acres as the basis for determining emission reductions as provided by RCW~~

~~70.94.656, until another method(s) is shown to be better and meets with the intent of RCW 70.94.656(4). Ecology will investigate alternate methods, as they become available. If ecology finds that an alternate method is appropriate and meets the criteria, it may certify this method using an administrative order.~~

~~(d) The department of ecology or local air authority may provide for trading of permits using the method described in this subsection. This trading system uses a straight transfer of acres, a transfer requiring mandatory compensation, or a combination of both. If ecology or the local air authority finds that emissions resulting from trading are creating a health impact, as defined by ecology or the local air authority, the trading system, once created, may be dissolved. This provision does not apply to WAC 173-430-045 Alternatives to burning field and/or turf grasses grown for seed.~~

~~(i) Ecology or the local air authority may develop a system that allows the trading of permits by:~~

~~(A) Adding a signed transfer line to the written permit that provides for a signature for the current holder of the permit;~~

~~(B) Providing a tracking system that identifies the current holder of the permit, that identifies when the permit was last used to allow burning of acreage, and that allows the name of the holder to be changed if the transfer line is signed by the current holder;~~

~~(C) Requiring that the new holder of the permit must turn in the permit with the signed transfer line at least sixty days before the new holder plans to burn; and~~

~~(D) Assuring that the permits are used only once in a calendar year.~~

~~(ii) By signing the transfer line on the permit the permit holder must indicate that he or she understands that the acres transferred may no longer be burned, that a permit for the acres transferred will not be issued to the signing permit holder in future years, and that the acres being transferred were not already burned during the calendar year during which the transfer takes place.~~

~~(iii) Ecology and the local air authorities may add restrictions to the transfer of permits closer to areas with higher population densities.~~

~~(iv) Only permits for acreage which has not yet been burned may be transferred or traded. The seller of the permit is responsible for permanently reducing the acreage burned by the amount of acreage transferred from January 1 of the year during which the transaction takes place.~~

~~(v) Acreage that is exempted under (c) of this subsection is not eligible for the trading system.~~

~~(vi) The authorities are encouraged to work together to use the same system and to allow trading between authority jurisdictions so as to allow the grass seed growers to adjust to the two-thirds overall reduction in acres permitted for burning as easily as possible.~~

~~(e) Alternate open burning practices for field and turf grass grown for seed. Ecology acknowledges that there may be practices that involve some burning, but which produce emissions quantifiably below those of open field burning. If ecology finds that a practice involves open burning and still substantially reduces emissions below open field burning, ecology may certify the alternate burning practice(s) by~~

administrative order. Any certified practice may be used to satisfy the acreage/emissions reduction requirements of (a) of this subsection provided:

(i) The acreage application of the practice is adjusted to reflect effectiveness in reducing emissions so as to meet or exceed the emissions reduction required by (a) of this subsection; and

(ii) In no case shall the emission reduction requirement for the field and turf grass grown for seed be less than that required in (a) of this subsection.

(7)) Other laws. A farmer must obtain any local permits, licenses, or other approvals required by any other laws, ((regulations)) **rules**, or ordinances. The farmer must also honor other agreements entered into with any federal, state, or local agency.

NEW SECTION

WAC 173-430-041 Agricultural burning fees. (1) RCW 70.94.6528 provides the following maximum fees for agricultural burning:

Field burning	\$3.75 per acre
Pile burning	\$1.00 per ton

(2) RCW 70.94.6528(5) authorizes the agricultural burning practices and research task force (task force) to determine the level of the fee.

(a) **2011 fee schedule.** Fees starting in the calendar year 2011 are found in subsection (5) of this section.

(b) **Establishing new fee schedules.** Ecology and the task force will examine the fee schedule using the process in WAC 173-430-042.

(3) **Calculating the fee.** The fee consists of a minimum fee plus any applicable variable fee.

(a) **Minimum fee.** The minimum fee includes burning of the base number of acres or tons published in the fee schedule.

(b) **Variable fee.** Field burning and pile burning permits allowing the farmer to burn more acres or tons than the base included in the minimum fee require an additional per acre or per ton fee.

(c) The following table shows which types of burning have a variable fee.

Type of Burning	Variable Fee
Field Burning	Fee applied for each additional acre.
Spot Burning	None - Spot burn permits must not exceed the base amount of acres published in the fee schedule.
Pile Burning	Fee applied for each additional ton.

(4) **Fee components.** The permit fee helps off-set the cost of administering and enforcing the agricultural burning permit program. The fee consists of three components:

- Permitting program administration;
- Smoke management administration; and

- Research.

(a) **Permitting program administration.** The permitting authority may set the fee as an amount no more than the amount published in the fee schedule.

(i) The local air authority or delegated permitting authority must establish this portion of the fee by an appropriate, public process such as a local rule, ordinance, or resolution.

(ii) In areas of the state where ecology has permitting authority and has not delegated that authority, ecology will charge the following for local permitting program administration:

(A) Starting in 2011, the amount listed in subsection (6) of this section.

(B) For subsequent fee changes, the amount published in the fee schedule. Ecology will publish the fee schedule using the process in WAC 173-430-042.

(b) **Smoke management administration.** This portion of the fee will:

(i) Help off-set the statewide or regionwide costs of the agricultural burning program.

(ii) Help fund the education and smoke management activities of ecology or the local air authority.

(c) **Research fund.** The task force will determine the research portion of the fee based on applied research needs, regional needs, and the research fund budget.

(5) **Permit fee schedule.** Table 1 shows the permit fee schedule, starting in the calendar year 2011. This fee schedule will remain in place until ecology and the task force adjust it using the process in WAC 173-430-042. Please see <http://www.ecy.wa.gov>, contact ecology, or contact your local air authority for the most current fee schedule or fee distribution.

**Table 1
Agricultural Burning Fee Schedule, Starting Calendar Year 2011**

Fee	Minimum Fee	Variable Fee
Field Burning	\$30 for the first 10 acres	\$3.00 for each additional acre
Spot Burning	\$30 for 10 acres or less	None
Pile Burning	\$80 for the first 100 tons	\$0.50 for each additional ton

(6) **Permit fee distribution.** Table 2 shows the permit fee distribution, starting in the calendar year 2011. This distribution will remain in place until ecology and the task force adjust it using the process in WAC 173-430-042. Please see <http://www.ecy.wa.gov>, contact ecology, or contact your local air authority for the most current fee schedule or fee distribution.

**Table 2
Agricultural Burning Fee Distribution**

Fee	Permitting Authority Administration	Research	Smoke Management
Field Burning Minimum Fee	\$15.00	\$0	\$15.00
Field Burning Variable Fee	\$1.25 per acre	\$0.50 per acre	\$1.25 per acre
Spot Burning Fee	\$15.00	\$0	\$15.00
Pile Burning Minimum Fee	\$16.00	\$16.00	\$48.00
Pile Burning Variable Fee	\$0.10 per ton	\$0.10 per ton	\$0.30 per ton

(7) **Refunds.** The farmer may receive a refund. The farmer may only receive a refund for the portion of the variable fee paid for the acres or tons not burned.

(a) The permitting authority may keep the minimum fee as reimbursement for the costs of processing the permit application.

(b) The permitting authority will not issue refunds of less than twenty-five dollars due to the cost of processing refunds.

NEW SECTION

WAC 173-430-042 Adjusting agricultural burning fees. (1) RCW 70.94.6528 provides the following maximum fees for agricultural burning:

Field burning	\$3.75 per acre
Pile burning	\$1.00 per ton

(2) RCW 70.94.6528(5) authorizes the agricultural burning practices and research task force (task force) to determine the level of the fee.

(3) **Process for adjusting the fee schedule for agricultural burning.** The process for adjusting the fee schedule requires the following two steps:

- The task force must determine the fee schedule using the process established in subsection (4) of this section;
- If the task force decides to adjust the fee schedule, ecology will finalize the new fee schedule through the process established in subsection (6) of this section.

(4) **Task force process to determine agricultural burning fees.** The task force may examine the agricultural burning fee schedule once a year using the process outlined in this section. However, the task force must examine the agricultural burning fee schedule at least every two years. The task force process for examining the agricultural burning fee schedule must include the following:

(a) Ecology will submit, to the task force, a summary of the costs of the permit and smoke management programs before the first task force meeting of the year.

(b) The agenda for the first task force meeting of the year must include examining the current fee schedule.

(c) Ecology will notify stakeholders and permit holders of time, date, location, and agenda for the task force meeting.

(d) Based on the information provided by ecology, under (a) of this subsection, the task force will decide if they need to adjust the agricultural burning fee schedule.

(e) If the task force decides to adjust the agricultural burning fee schedule, they must determine the new fee schedule at a regularly scheduled meeting.

(5) **Examining the fee schedule more frequently.** The task force may examine the agricultural burning fee schedule more frequently than every two years, if all of the following occur:

(a) The task force determines the fee schedule during one of their regularly scheduled meetings.

(b) Ecology finalizes the fee schedule using the process in subsection (6) of this section.

(6) **Ecology process to finalize fees set by the task force.** After the task force determines a new fee schedule, ecology will:

(a) Post the proposed fee schedule on the agency web site for public review and comment.

(b) Publish a notice of a public hearing.

(i) The notice will include all of the following:

- Time;
- Date;
- Location;
- Last day ecology will accept written comments.

(ii) At a minimum, ecology will publish the notice in the following locations:

(A) *Washington State Register*.

(B) Ecology web site.

(c) Hold a public hearing at least twenty days after completing the actions in (a) and (b) of this subsection.

(d) Accept written comments on the proposed fee schedule. Ecology must receive comments by the time and date specified in the hearing notice, or a later time and date established at the hearing.

(e) Consider comments received and provide a written response to comments to the task force and anyone who commented.

(f) Ecology will finalize the fee schedule by December 1st of the calendar year before it becomes effective.

(g) Ecology will publish the fee schedule by:

(i) Notifying stakeholders and permit holders of the new fees.

(ii) Posting a response to comments on the ecology web site.

(7) **Effective date of the new fee schedule.** The new fee schedule becomes effective January 1st of the calendar year after it is finalized.

NEW SECTION

WAC 173-430-044 Additional requirements for burning field or turf grasses grown for seed. Ecology will proceed with the process to certify alternatives to burning as identified in RCW 70.94.6532(3). In addition to the certifica-

tion process, ecology is also limiting the number of acres allowed to be burned as specified in RCW 70.94.6532(4).

(1) Beginning in 1997 and until approved alternatives become available, each farmer is limited to burning no more than one-third of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.

Without regard to any previous burn permit history, in 1996, each farmer shall be limited to burning the greater of:

(a) Two-thirds of the number of acres the farmer burned under a valid permit issued in 1995; or

(b) Two-thirds of the number of acres in grass seed production on May 1, 1996. "In production" means planted, growing and under the control of the farmer.

(2) Exemptions to the requirements for burning of field and turf grasses grown for seed (subsection (1) of this section). A farmer may request an exemption for extraordinary circumstances, such as property where a portion(s) of the field is oddly shaped or where the slope is extremely steep. This provision does not apply to WAC 173-430-045, Alternatives to burning field or turf grasses grown for seed. Under this subsection, relief from the acreage/emissions reduction requirements of subsection (1) of this section is limited to no more than five percent of the acreage in production on May 1, 1996, and is also subject to the following provisions:

(a) The exemption request must be certified by an agronomic professional;

(b) The farmer must be able to show full compliance with the emissions reductions in subsection (1) of this section for the acreage not exempted; and

(c) The farmer must be in full compliance with permit requirements for other crops under WAC 173-430-040.

(3) Measurement for emission reduction for grass seed field and turf grass. Ecology will use acres as the basis for determining emission reductions as provided by RCW 70.94.6532, until another method(s) is shown to be better and meets with the intent of RCW 70.94.6532(4). Ecology will investigate alternate methods, as they become available. If ecology finds that an alternate method is appropriate and meets the criteria, it may certify this method using an administrative order.

(4) Ecology or the local air authority may provide for trading of permits using the method described in this subsection. This trading system uses a straight transfer of acres, a transfer requiring mandatory compensation, or a combination of both. If ecology or the local air authority finds that emissions resulting from trading are creating a health impact, as defined by ecology or the local air authority, the trading system, once created, may be dissolved. This provision does not apply to WAC 173-430-045, Alternatives to burning field or turf grasses grown for seed.

(a) Ecology or the local air authority may develop a system that allows the trading of permits by:

(i) Adding a signed transfer line to the written permit that provides for a signature for the current holder of the permit;

(ii) Providing a tracking system that identifies the current holder of the permit, that identifies when the permit was last used to allow burning of acreage, and that allows the name of the holder to be changed if the transfer line is signed by the current holder;

(iii) Requiring that the new holder of the permit must turn in the permit with the signed transfer line at least sixty days before the new holder plans to burn; and

(iv) Assuring that the permits are used only once in a calendar year.

(b) By signing the transfer line on the permit the permit holder must indicate that he or she understands that the acres transferred may no longer be burned, that a permit for the acres transferred will not be issued to the signing permit holder in future years, and that the acres being transferred were not already burned during the calendar year during which the transfer takes place.

(c) Ecology and the local air authorities may add restrictions to the transfer of permits closer to areas with higher population densities.

(d) Only permits for acreage which has not yet been burned may be transferred or traded. The seller of the permit is responsible for permanently reducing the acreage burned by the amount of acreage transferred from January 1st of the year during which the transaction takes place.

(e) Acreage that is exempted under subsection (5) of this section is not eligible for the trading system.

(f) The authorities are encouraged to work together to use the same system and to allow trading between authority jurisdictions so as to allow the grass seed growers to adjust to the two-thirds overall reduction in acres permitted for burning as easily as possible.

(5) Alternate open burning practices for field and turf grass grown for seed. Ecology acknowledges that there may be practices that involve some burning, but which produce emissions quantifiably below those of open field burning. If ecology finds that a practice involves open burning and still substantially reduces emissions below open field burning, ecology may certify the alternate burning practice(s) by administrative order. Any certified practice may be used to satisfy the acreage/emissions reduction requirements of subsection (1) of this section provided:

(a) The acreage application of the practice is adjusted to reflect effectiveness in reducing emissions so as to meet or exceed the emissions reduction required by subsection (1) of this section; and

(b) In no case will the emission reduction requirement for the field and turf grass grown for seed be less than that required in subsection (1) of this section.

AMENDATORY SECTION (Amending Order 97-45, filed 5/26/98, effective 6/26/98)

WAC 173-430-045 Alternatives to burning field ((and)or turf grasses grown for seed. (1) When is open burning of field and turf grasses grown for seed prohibited?

The Washington Clean Air Act prohibits open burning of field and turf grasses grown for seed whenever ecology has concluded, through a process spelled out in the act, that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to open burning, and that alternate is reasonably available.

(2) Has ecology certified practical alternatives to open burning of field or turf grasses grown for seed?

Yes. Ecology concludes that mechanical residue management constitutes a practical alternate agricultural practice to the open burning of field ~~((and/))~~ or turf grasses grown for seed. Mechanical residue management means removing, including arranging for removal of, the residue using non-thermal, mechanical techniques including, but not limited to: Tilling, swathing, chopping, baling, flailing, mowing, raking, and other substantially similar nonthermal, mechanical techniques. Ecology further concludes that mechanical residue management is practical throughout all phases of seed production including:

- (a) When the field is planted (establishment);
 - (b) When the field is producing seed (harvest years);
 - (c) When the field is prepared for replanting (tear-out).
- (3) Are the alternatives to open burning that have been certified by ecology reasonably available?

Ecology concludes that mechanical residue management is reasonably available throughout the state wherever baling can be used. Baling is the process of gathering the residue and moving it off the field. Typically, a machine known as a "baler" is used to gather and bundle residue that is already cut.

Based on this conclusion, the open burning of field ~~((and/))~~ or turf grasses grown for seed is prohibited except as described in subsection (4) of this section. This rule does not require the use of any particular practice or technique. A farmer may use any alternate practice that does not involve field burning.

(4) Under what circumstances may open burning of field or turf grasses grown for seed be allowed?

(a) Where a farmer establishes that mechanical residue management is not reasonably available on specific portions of a field under specific production conditions due to slope. In a request for a waiver, a farmer must certify in writing to ecology or local air authority the following:

(i) Baling is not reasonably available due to slope. A farmer must explain why baling is not reasonably available, referring to specific facts supporting this belief. Unacceptable facts include, but are not limited to, general statements about burning as a tool for the routine control of weed and disease, for seed propagation purposes, or as a less costly alternative to mechanical residue management. A farmer may use statements from three separate businesses providing baling services as part of their commercial operation to support the belief that baling is not reasonably available due to slope. In the statements, the businesses must certify that they are independent from the farmer and have no financial interest in the farmer's operation;

(ii) Current harvest practices have not diminished the ability to use mechanical residue management;

(iii) ~~((Field production is after the first harvest season and prior to the fourth harvest season;~~

~~((iv)))~~ The ground or portions of the field have not been burned three years in a row in the three years preceding the request for a waiver;

~~((v)))~~ ~~((iv))~~ The ground or portions of the field will remain, without replanting, in grass production at least through the next harvest season following burning;

~~((vi)))~~ ~~((v))~~ Residue from any neighboring fields or portions of fields under the control of the farmer will be removed

~~((prior to))~~ before burning and reasonable precautions will be taken to prevent fire from spreading to areas where burning is not allowed; and

~~((vii)))~~ ~~((vi))~~ Adjustments in field rotations and locations cannot be made at any time during the rotational cycle and could not have been made when planted to allow the use of mechanical residue management techniques.

(b) Where a farmer establishes that extreme conditions exist. Ecology or a local air authority, at their discretion, may grant a request for a waiver for extreme conditions. The farmer must certify in writing the following:

(i) Why mechanical residue management is not reasonably available, referring to specific facts supporting this belief. Unacceptable facts include, but are not limited to, general statements about burning as a tool for the routine control of weed and disease, for seed propagation purposes, or as a less costly alternative to mechanical residue management;

(ii) He/she did not cause or create the condition to purposefully avoid using mechanical residue management techniques;

(iii) ~~((Field production is after the first harvest season and prior to the fourth harvest season;~~

~~((iv)))~~ The ground or portions of the field have not been burned three years in a row in the three years preceding the request for a waiver;

~~((v)))~~ ~~((iv))~~ The field will remain, without replanting, in grass production at least through the next harvest season following burning;

~~((vi)))~~ ~~((v))~~ Residue from any neighboring fields or portions of fields under the control of the farmer will be removed prior to burning and that reasonable precautions will be taken to prevent fire from spreading to areas where burning is not allowed; and

~~((vii)))~~ ~~((vi))~~ Adjustments in field rotations and locations cannot be made at any time during the rotational cycle, and could not have been made when planted to allow the use of mechanical residue management techniques.

(c) Where a farmer demonstrates to ecology or local air authority that his/her small agricultural operation is eligible for mitigation.

For 1998 only, ecology or a local air authority may allow burning on a small agricultural operation. A small agricultural operation owner has a gross 1997 revenue from all agricultural operations of less than \$300,000. A farmer must show information of sufficient quantity and quality to ecology or a local air authority to establish gross revenue from agricultural operations. A small farm owner may burn current acreage up to 25% of 1997 acreage burned under a valid permit. Fields taken out of production after the 1997 harvest season and in 1998 cannot be counted in the determination of 1997 acreage burned for the purpose of eligible burn acreage.

(d) Where a request for a waiver is approved under (a), (b), and (c) of this subsection, the following additional limitations also apply:

Total burn acreage must not exceed 1/3 of a farmer's acreage in production on May 1, 1996. Permits issued ~~((pursuant to))~~ under (a), (b), or (c) of this subsection are not eligible for the permit trading program identified in WAC 173-430-040.

(5) What is the process for a farmer to request a waiver for circumstances described in subsection (4) of this section?

(a) A farmer submits a request for a waiver.

Sixty days (~~(prior to)~~) before the planned burn date, a farmer must submit in writing a request to ecology or a local air authority. In the request, the farmer must identify the circumstances and meet the specific requirements of subsection (4)(a), (b), (~~and~~) or (c) of this section. Ecology or the local air authority may require the request to be submitted on a form or in a format provided by ecology or the local air authority.

(b) Ecology or local air authority evaluates the request for a waiver.

Upon receiving a request for a waiver, ecology or the local air authority will determine if the necessary documents and information provided is complete enough to evaluate the request. If incomplete, ecology or local air authority will advise the farmer and suspend further evaluation until the request for a waiver is complete. The documents and information identified as necessary to complete the request must be delivered to ecology or the local air authority at least thirty days (~~(prior to)~~) before burning. Once a request for a waiver is deemed complete, ecology or the local air authority will evaluate the request and decide whether the burning waiver is appropriate. As part of the evaluation, ecology or the local air may conduct an on-site inspection.

If ecology or local air authority denies a request for a waiver, the reasons will be provided to the farmer in writing. If approved, ecology or the local air authority will notify the farmer by convenient means. Ecology will also notify the appropriate delegated authority.

(c) The farmer applies for an agricultural burning permit.

If ecology or local air authority approves a request for a waiver, the farmer must complete a permit application and pay the fee as described in WAC 173-430-040. A delegated authority must receive written authorization from ecology that a waiver has been approved (~~(prior to)~~) before processing a permit application.

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-050 Best management practices. (1) The ((Ag)) task force must identify best management practices for agricultural burning that are economically feasible and socially acceptable. Practical (~~(alternative)~~) alternative production methods and controls which would reduce or eliminate agricultural burning must be used when reasonably available.

(2) The ((Ag)) task force may establish an agricultural burning general best management practice and crop-specific best management practices as appropriate. The ((Ag)) task force will work in conjunction with conservation districts and extension agents or other local entities in developing best management practices. The ((Ag)) task force may review and approve crop-specific best management practices which have been developed or recommended by an individual or group.

(3) Approved best management practices information will be available from permitting authorities. The ((Ag)) task force, as it deems necessary, will hold public workshops on

best management practices that have changed or are new and will periodically review the best management practices starting three years after approval.

(4) The ((Ag)) task force will clarify best management practices and make interpretative decisions as needed, considering all authoritative sources on the subject.

(a) An individual or group may request a best management practice clarification from the task force.

(b) The chair of the ((Ag)) task force may direct the questioned practice to a subgroup of task force members, provided that agricultural, research, and regulatory interests are included and all task force members are notified, or may direct it to the whole ((Ag)) task force.

(5) The ((Ag)) task force will (~~(modify)~~) change best management practices as necessary to incorporate the latest research.

AMENDATORY SECTION (Amending Order 04-10, filed 7/26/06, effective 8/26/06)

WAC 173-430-060 Research into alternatives to agricultural burning. (1) (~~The department shall~~) Ecology will administer the research portion of the permit fee to carry out the recommendations of the ((Ag)) task force. In carrying out the recommendations, (~~the department~~) ecology may conduct, cause to be conducted, or approve of a study or studies to explore and test economical and practical alternative practices to agricultural burning. To conduct (~~(any such)~~) the study, (~~the department~~) ecology may contract with public or private entities. Any approved study (~~(shall)~~) must provide for the identification of (~~(such)~~) the alternatives as soon as possible.

(2) No less than every two years, the ((Ag)) task force will review research needs and submitted proposals and make its recommendations to (~~the department~~) ecology.

AMENDATORY SECTION (Amending Order 04-10, filed 7/26/06, effective 8/26/06)

WAC 173-430-070 General agricultural burning permit conditions and criteria. Permit decisions including the issuance, denial, or conditioning must be based on consideration of air quality conditions in the area affected by the proposed burning, the time of year, meteorological conditions, the size and duration of the proposed burning activity, the type and amount of vegetative material to be burned, the applicant's need to carry out (~~(such)~~) the burning, existence of extreme burning conditions, risk of escape onto property owned by another, and the public's interest in the environment.

(1) Permits must include the following general conditions:

(a) Do not burn at night unless it is specified as a best management practice;

(b) Comply with all fire safety (~~(regulations)~~) rules of the local fire protection agency including any no-burn directives it may issue;

(c) Call the local air authority burning information line (if there is one) before lighting the fire;

(d) Burn only during times specified by the permitting authority;

(e) Burn when wind takes the smoke away from roads, homes, population centers, or other public areas, to the greatest extent possible;

(f) Do not burn when adverse meteorological conditions exist;

(g) Burn only natural vegetation;

(h) Do not burn or add fuel during any stage of an air pollution episode or local air quality burning ban;

(i) Attend the fire at all times;

(j) Submit a postburn report to the permitting authority.

(2) If the permitting authority determines a specific situation will cause a nuisance under chapter 173-400 WAC or RCW 70.94.640, agricultural burning will not be allowed.

AMENDATORY SECTION (Amending Order 04-10, filed 7/26/06, effective 8/26/06)

WAC 173-430-080 Responsibilities of a permitting authority. (1) The permitting authority is ecology or its delegate or a local air authority with jurisdiction or its delegate. The permitting authority must establish and administer an agricultural burning permit system. The minimum responsibilities are described in this section.

(2) The permitting authority must act on a complete application (as determined by ecology or a local air authority with jurisdiction) within seven days of receipt.

(a) Local air authorities are required to use application templates and permit templates supplied by ecology. Ecology delegated authorities are required to use applications and permits supplied by ecology.

(b) A map ~~((is required to))~~ must accompany all permit applications.

(i) The map must accurately depict the topography of the area where the requested burn would take place and include roads, and landmarks ~~((,-ete))~~.

(ii) The map must accurately show affected acreage to be burned.

(iii) The map must show the position of the field within each section the field occupies, down to the 1/4 - 1/4 section. All four border lines of each section ~~((shall))~~ must be outlined with the section number, township, and range clearly marked.

(c) The permitting authority must evaluate the application and approve or deny all or part of it.

(d) The permitting authority must evaluate the application to determine if the requested burning is within the general or crop-specific best management practices.

(e) If the application is denied, the reason must be stated.

(3) Permitting authorities must issue permits where appropriate on complete applications. Delegated permitting authorities may issue permits when agreed to as part of the delegation order.

(4) Permitting authorities must determine day-to-day burning restrictions near populated areas and arrange for dissemination of the results. Delegated permitting authorities must arrange for assisting in dissemination of results.

(5) The permitting authority or its delegate is responsible for responding to agricultural burning complaints.

(6) The permitting authority must collect the fee, determine the local administration portion of the fee, and issue refunds.

(a) Permitting authorities must issue a permit fee refund for permitted acres not burned on confirmation by the permitting authority. The refund request deadline must be included on the permits.

(b) Local air authorities and delegated permitting authorities must formally adopt the local administration portion of the fee through rule, regulation, ordinance, or resolution.

(7) Delegated permitting authorities must provide ecology with copies of all permits and supporting documentation and transfer the research and ~~((ecology administration))~~ smoke management administration portion of the fee to ~~((the department))~~ ecology.

(a) Local air authorities and delegated permitting authorities must transfer funds twice a year by July 15 and January 15.

(b) Local air authorities and delegated permitting authorities must provide ecology copies of all permits, applications with supporting documentation, maps, and postburn reports. All spring (January-June) permits need to be provided by July 15th and all fall (July-December) permits by January 15th.

(c) ~~((The department))~~ Ecology must deposit all agricultural burning permit fees in the air pollution control account. Permitting authorities may deduct the local administration portion before forwarding the remainder to ~~((the department))~~ ecology.

(8) The permitting authority must coordinate compliance. Violations are subject to the remedies of chapter 70.94 RCW, Washington Clean Air Act.

(9) The permitting authority or its delegate must require a postburn report for all permits.

(10) The permitting authority or its delegate must ~~((utilize))~~ use the web-based data base for issuing all agricultural burning permits.

(a) Local air authorities and its delegates must make arrangements with ecology to enter information into the web-based data base.

(b) Ecology-delegated permitting authorities must attend a minimum of one data base training per calendar year or as provided by ecology.

AMENDATORY SECTION (Amending Order 04-10, filed 7/26/06, effective 8/26/06)

WAC 173-430-090 Receiving delegation—Counties, conservation districts, and fire protection agencies. (1) The permitting authority is ecology or its delegate or a local air authority with jurisdiction or its delegate. The permitting authority is responsible for administering the agricultural burning permit program. The agricultural burning permit program may be delegated to conservation districts, counties, or fire protection agencies.

(2) When ecology or a local air authority with jurisdiction finds that a county, fire protection agency or conservation district is capable of administering the permit program and desires to do so, it may delegate by administrative order the administration ~~((and/))~~ or enforcement authority of the program, or both. The delegated permitting authority must, at a minimum, meet all of the following criteria:

(a) Demonstrating that the responsibilities listed under permitting authority responsibilities section can be fulfilled;

(b) Employing, contracting with, or otherwise accessing someone educated and trained in agronomics;

(c) Providing a copy of the ordinance adopting the local administration portion of the fee;

(d) Providing a copy of agreements between counties, fire districts, and conservation districts when more than one agency will have responsibilities for the agricultural burning program; and

(e) Agreeing to periodic audits and performance reviews.

(3) Delegation may be withdrawn if ~~((the department))~~ ecology or the local air authority with jurisdiction finds that the agricultural burning program is not effectively being administered ~~((and/))~~ or enforced. Before withdrawing delegation, the delegated agency ~~((shall))~~ must be given a written statement of the deficiencies in the program and a compliance schedule to correct program deficiencies. If the delegated agency fails to correct the deficiencies according to the compliance schedule, then ~~((the department))~~ ecology or the local air authority may withdraw delegation.

(4) Permitting authorities must work through agreement with counties (if the county is not the permitting authority) and cities to provide convenient methods for evaluating applications, issuing permits and granting permission to burn.

Once a delegation order has been issued, ecology or the local air authority with jurisdiction must approve of any changes to the agreement ~~((prior to))~~ before implementation.

AMENDATORY SECTION (Amending Order 94-17, filed 1/17/95, effective 2/17/95)

WAC 173-430-100 Severability. The provisions of this regulation are severable. If any provision is held invalid, the application of ~~((such))~~ the provision to other circumstances and the remainder of the regulation will not be affected.

WSR 10-23-051
PERMANENT RULES
OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2009-19—Filed November 10, 2010, 2:34 p.m., effective December 11, 2010]

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

Purpose: This new rule eliminates a conflict with RCW 48.165.050 and helps standardize the deadlines for health carrier responses to preauthorization for medical services requests.

Citation of Existing Rules Affected by this Order: Amending WAC 284-43-410.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.520.

Adopted under notice filed as WSR 10-13-143 on June 23, 2010.

Changes Other than Editing from Proposed to Adopted Version: Subsections (6)(b)(ii) and (v), a clear distinction is made in subsections (6)(b)(ii) and (iv), between the review deadline for concurrent care review requests that are also

urgent care situations (twenty-four hours) and the review deadline for concurrent care review requests that involve nonurgent situations (five calendar days). The clarification results in deadlines that more closely reflect the deadlines in the federal Department of Labor regulations made applicable to health insurers by the PPACA. The five calendar day deadline for nonurgent preservice review requests is more favorable to consumers than the fifteen day deadline in the federal regulations.

Subsections (6)(b)(iii) and (iv), the amendments to WAC 284-43-410 change the deadline for carriers to respond to urgent care review requests to twenty-four hours from the forty-eight hour deadline included in the CR-102 published text. This change will apply to claims filed on or after July 1, 2011, which is when a twenty-four hour deadline for urgent care claims will be applied to insurers under the new federal regulations dealing with claims processes and appeals. This change is made to ensure the state rule has deadlines that are equal to, or more favorable to the consumer, than the deadlines adopted in the new federal regulations.

Subsection (6)(c)(ii), language is added to clarify that in situations involving urgent care review requests, carriers may provide notice of an adverse determination to providers and covered persons by phone, provided that they also provide a written or electronic notice that meets federal Department of Labor standards within three days of the oral notification. This provision is identical to an adverse determination notice requirement in the federal Department of Labor regulations.

A final cost-benefit analysis is available by contacting Kacy Scott, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail kacys@oic.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 1, Repealed 0.

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

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

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

Date Adopted: November 10, 2010.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending Matter No. R 2000-02, filed 1/9/01, effective 7/1/01)

WAC 284-43-410 Utilization review—Generally. (1) These definitions apply to this section:

(a) "Concurrent care review request" means any request for an extension of a previously authorized inpatient stay or a

previously authorized ongoing outpatient service, e.g., physical therapy, home health, etc.

(b) "Immediate review request" means any request for approval of an intervention, care or treatment where passage of time without treatment would, in the judgment of the provider, result in an imminent emergency room visit or hospital admission and deterioration of the patient's health status. Examples of situations that do not qualify under an immediate review request include, but are not limited to, situations where:

(i) The requested service was prescheduled, was not an emergency when scheduled, and there has been no change in the patient's condition;

(ii) The requested service is experimental or in a clinical trial;

(iii) The request is for the convenience of the patient's schedule or physician's schedule; and

(iv) The results of the requested service are not likely to lead to an immediate change in the patient's treatment.

(c) "Nonurgent preservice review request" means any request for approval of care or treatment where the request is made in advance of the patient obtaining medical care or services and is not an urgent care request.

(d) "Postservice review request" means any request for approval of care or treatment that has already been received by the patient.

(e) "Urgent care review request" means any request for approval of care or treatment where the passage of time could seriously jeopardize the life or health of the patient, seriously jeopardize the patient's ability to regain maximum function, or, in the opinion of a physician with knowledge of the patient's medical condition, would subject the patient to severe pain that cannot be adequately managed without the care or treatment that is the subject of the request.

(2) Each carrier ~~((shall))~~ **must** maintain a documented utilization review program description and written clinical review criteria based on reasonable medical evidence. The program must include a method for reviewing and updating criteria. Carriers ~~((shall))~~ **must** make clinical review criteria available upon request to participating providers. A carrier need not use medical evidence or standards in its utilization review of religious nonmedical treatment or religious non-medical nursing care.

~~((2))~~ (3) The utilization review program ~~((shall))~~ **must** meet accepted national certification standards such as those used by the National Committee for Quality Assurance except as otherwise required by this chapter and ~~((shall))~~ **must** have staff who are properly qualified, trained, supervised, and supported by explicit written clinical review criteria and review procedures.

~~((3))~~ (4) Each carrier when conducting utilization review ~~((shall))~~ **must**:

(a) Accept information from any reasonably reliable source that will assist in the certification process;

(b) Collect only the information necessary to certify the admission, procedure or treatment, length of stay, or frequency or duration of services;

(c) Not routinely require providers or facilities to numerically code diagnoses or procedures to be considered for certification, but may request such codes, if available;

(d) Not routinely request copies of medical records on all patients reviewed;

(e) Require only the section(s) of the medical record during prospective review or concurrent review necessary in that specific case to certify medical necessity or appropriateness of the admission or extension of stay, frequency or duration of service;

(f) For prospective and concurrent review, base review determinations solely on the medical information obtained by the carrier at the time of the review determination;

(g) For retrospective review, base review determinations solely on the medical information available to the attending physician or order provider at the time the health service was provided;

(h) Not retrospectively deny coverage for emergency and nonemergency care that had prior authorization under the plan's written policies at the time the care was rendered unless the prior authorization was based upon a material misrepresentation by the provider;

(i) Not retrospectively deny coverage or payment for care based upon standards or protocols not communicated to the provider or facility within a sufficient time period for the provider or facility to modify care in accordance with such standard or protocol; and

(j) Reverse its certification determination only when information provided to the carrier is materially different from that which was reasonably available at the time of the original determination.

~~((4))~~ (5) Each carrier ~~((shall))~~ **must** reimburse reasonable costs of medical record duplication for reviews.

~~((5))~~ (6) Each carrier ~~((shall))~~ **must** have written procedures to assure that reviews and second opinions are conducted in a timely manner.

(a) Review ~~((determinations must be made within two business days of receipt of the necessary information on a proposed admission or service requiring a review determination))~~ **time frames must be appropriate to the severity of the patient condition and the urgency of the need for treatment, as documented in the review request.**

(b) ~~((The frequency of reviews for the extension of initial determinations must be based upon the severity or complexity of the patient's condition or on necessary treatment and discharge planning activity.))~~ **If the review request from the provider is not accompanied by all necessary information, the carrier must tell the provider what additional information is needed and the deadline for its submission. Upon the sooner of the receipt of all necessary information or the expiration of the deadline for providing information, the time frames for carrier review determination and notification must be no less favorable than federal Department of Labor standards, as follows:**

(i) For immediate request situations, within one business day when the lack of treatment may result in an emergency visit or emergency admission;

(ii) For concurrent review requests that are also urgent care review requests, as soon as possible, taking into account the medical exigencies, and no later than twenty-four hours, provided that the request is made at least twenty-four hours prior to the expiration of previously approved period of time or number of treatments;

(iii) For urgent care review requests received before July 1, 2011, within forty-eight hours;

(iv) For urgent care review requests received on or after July 1, 2011, within twenty-four hours;

(v) For nonurgent preservice review requests, including nonurgent concurrent review requests, within five calendar days; or

(vi) For postservice review requests, within thirty calendar days.

~~(c) ((Retrospective review determinations must be completed within thirty days of receipt of the necessary information.~~

~~(d))~~ Notification of the determination ~~((shall))~~ must be provided as follows:

(i) Information about whether a request was approved or denied must be made available to the attending physician ((or), ordering provider ((or), facility, and ((to the)) covered person ((within two days of the determination and shall be provided within one day of concurrent review determination)). Carriers must at a minimum make the information available on their web site or from their call center.

(ii) Whenever there is an adverse determination the carrier must notify the ordering provider or facility and the covered person. The carrier must inform the parties in advance whether it will provide notification by phone, mail, fax, or other means. For an adverse determination involving an urgent care review request, the carrier may initially provide notice by phone, provided that a written or electronic notification meeting United States Department of Labor standards is furnished within three days of the oral notification.

(d) As appropriate to the type of request, notification ((shall)) must include the number of extended days, the next anticipated review point, the new total number of days or services approved, and the date of admission or onset of services.

~~((6))~~ (e) The frequency of reviews for the extension of initial determinations must be based on the severity or complexity of the patient's condition or on necessary treatment and discharge planning activity.

(7) No carrier may penalize or threaten a provider or facility with a reduction in future payment or termination of participating provider or participating facility status because the provider or facility disputes the carrier's determination with respect to coverage or payment for health care service.

WSR 10-23-057

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 10, 2010, 5:00 p.m., effective December 11, 2010]

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

Purpose: Rule 24002 explains the sales and use tax deferral program for certain manufacturing or research and development investment projects that was provided by chapter 82.61 RCW. This rule was repealed because the information is no longer needed. Chapter 82.61 RCW was repealed in 2006.

Citation of Existing Rules Affected by this Order: Repealing WAC 458-20-24002 (Rule 24002) Sales and use

tax deferral—New manufacturing and research/development facilities.

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

Adopted under notice filed as WSR 10-18-041 on August 25, 2010.

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

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

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

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

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

Date Adopted: November 10, 2010.

Alan R. Lynn
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 458-20-24002

Sales and use tax deferral—
New manufacturing and
research/development facilities.

WSR 10-23-058

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed November 12, 2010, 7:59 a.m., effective December 13, 2010]

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

Purpose: Rule 104 explains how the business and occupation (B&O) tax credit for small businesses, commonly referred to as the small business credit (SBC), is calculated. It also explains the public utility tax (PUT) income exemption for public utilities.

The rule was amended to recognize the provisions of section 1102, chapter 23, Laws of 2010 1st sp. sess. (2ESSB 6143). This legislation increased the small business B&O tax credit to a maximum of \$70 per month, but only for taxpayers whose B&O taxable amounts from activities taxable under RCW 82.04.255 (real estate brokers), RCW 82.04.290 (2)(a) (service and other activities), and RCW 82.04.285 (contests of chance) add up to fifty percent or greater of the total of all B&O taxable amounts reported on the return.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-104 (Rule 104) Small business tax relief based on income of business.

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

Adopted under notice filed as WSR 10-18-069 on August 30, 2010.

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 0, Repealed 0.

Date Adopted: November 12, 2010.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-09-050, filed 4/15/10, effective 5/16/10)

WAC 458-20-104 Small business tax relief based on income of business. (1) **Introduction.** This rule explains the business and occupation (B&O) tax credit for small businesses provided by RCW 82.04.4451. This credit is commonly referred to as the small business B&O tax credit or small business credit (SBC). The amount of small business B&O tax credit available on a tax return can increase or decrease, depending on the reporting frequency of the account and the net B&O tax liability for that return. This rule also explains the public utility tax income exemption provided by RCW 82.16.040. The public utility tax exemption is a fixed amount, or threshold, based on the reporting frequency assigned to the account. Readers should refer to WAC 458-20-22801 (Tax reporting frequency—Forms) for an explanation of how the department of revenue (department) assigns a particular reporting frequency to each account. Readers may also want to refer to WAC 458-20-101 for an explanation of Washington's tax registration and tax reporting requirements.

This rule provides examples that identify a number of facts and then state a conclusion regarding the applicability of the income exemption for the public utility tax or small business B&O tax credit. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **The public utility tax income exemption.** Persons subject to public utility tax (PUT) are exempt from payment of this tax for any reporting period in which the gross taxable amount reported under the combined total of all public utility tax classifications does not equal or exceed the maximum exemption for the assigned reporting period. Per RCW 82.16.040, the public utility tax exemption amounts are:

for taxpayers reporting monthly	\$2,000 per month
for taxpayers reporting quarterly	\$6,000 per quarter
for taxpayers reporting annually	\$24,000 per annum

(a) **What if the taxable income equals or exceeds the maximum exemption?** If the taxable income for a reporting period equals or exceeds the maximum exemption, tax must be remitted on the full taxable amount.

(b) **How does the exemption apply if a business does not operate for the entire tax reporting period?** The public utility tax maximum exemptions apply to the entire tax reporting period, even though the business may not have operated during the entire period.

(c) **Do taxable amounts for B&O tax or other taxes affect this exemption?** The public utility tax exemption is not affected by taxable amounts reported in the B&O tax section or any of the other tax sections of the tax return.

(d) **Example(-) - How is the public utility tax exemption applied?** Taxpayer registers with the department and is assigned a quarterly tax reporting frequency. Taxpayer begins business activities on February 1st. During the two months of the first quarter that the taxpayer is in business, taxpayer's public utility gross income is seven thousand dollars. After deductions provided by chapter 82.16 RCW (Public utility tax) are computed, the total taxable amount is five thousand dollars. In this case, the taxpayer does not owe any public utility tax because the taxable amount of five thousand dollars is less than the six thousand dollar exemption threshold for quarterly taxpayers. The fact that the taxpayer was in business during only two months out of the three months in the quarter has no effect on the threshold amount. However, if there were no deductions available to the taxpayer, the taxable amount would have been seven thousand dollars. The public utility tax would then have been due on the full taxable amount of seven thousand dollars.

(3) **The small business B&O tax credit.** Persons subject to the B&O tax may be eligible to claim a small business B&O tax credit against the amount of B&O tax otherwise due. The small business B&O tax credit operates completely independent of the public utility tax exemption described above in subsection (2) of this rule. RCW 82.04.4451 authorizes the department to create a tax credit table for use by all taxpayers when determining the amount of their small business B&O tax credit. Taxpayers must use the tax credit table to determine the appropriate amount of their small business B&O tax credit. A tax credit table for each of the monthly, quarterly, and annual reporting frequencies ~~((is provided in subsection (7) of this rule.))~~ can be found on the department's internet site at <http://dor.wa.gov>; or by contacting:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478
800-647-7706

The statute provides that taxpayers who use the tables will not owe any more tax than if they used the statutory credit formula to determine the amount of the credit.

Effective May 1, 2010, section 1102, chapter 23, Laws of 2010 1st sp. sess. amended RCW 82.04.4451. Prior to that amendment the small business credit was calculated at a maximum of thirty-five dollars multiplied by the number of months in the reporting period for all eligible taxpayers. As a result of the amendment, taxpayers who report at least fifty percent (i.e., fifty percent or greater) of their total B&O taxable amount under RCW 82.04.255 (real estate brokers), RCW 82.04.290 (2)(a) (service and other activities), and RCW 82.04.285 (contests of chance) have their maximum credit increased to seventy dollars multiplied by the number of months in the reporting period. (Just a few examples of businesses that generally have taxable amounts to report under RCW 82.04.290 (2)(a) are for-profit hospitals, for-profit research and development, accountants, attorneys, dentists, janitors, and landscape architects. Please see WAC 458-20-224, Service and other business activities for information and more examples of who should report under the service and other classification of the B&O tax.)

(a) **How is the credit applied if a business does not operate during the entire tax reporting period?** The small business B&O tax credit applies to the entire reporting period, even though the business may not have been operating during the entire period.

(b) **Can a husband and wife or partners in a state registered domestic partnership both take the credit?** Spouses or state registered domestic partners operating distinct and separate businesses are each eligible for the small business B&O tax credit. For both spouses or both domestic partners to qualify, each must have a separate tax reporting number and file his or her own business tax returns.

(c) **How do I determine the amount of the credit?** Taxpayers eligible for the small business B&O tax credit must follow the steps outlined in subsection (5) of this rule to determine the amount of credit available. Taxpayers who have other B&O tax credits to apply on a tax return, in addition to the small business B&O tax credit, may use the multiple B&O tax credit worksheet in subsection (4) of this rule before determining the amount of small business B&O tax credit available. ((Subsection (7) of this rule contains the tax credit tables that correspond with the monthly, quarterly, and annual reporting frequencies.))

(d) **Can I carryover the small business B&O tax credit to future tax reporting periods?** Use of the small business B&O tax credit may not result in a B&O tax liability of less than zero, and thus there will be no unused credit.

(e) **Do I have to report and pay retail sales tax even if I do not owe any B&O tax?** Persons making retail sales must collect and pay all applicable retail sales taxes even if B&O tax is not due. There is no comparable retail sales tax exemption.

(4) **Multiple business and occupation tax credit worksheet.** The small business B&O tax credit should be computed after claiming any other B&O tax credits available under Title 82 RCW (Excise taxes). Examples of other B&O tax credits to be taken before computing the small business B&O tax credit include the multiple activities tax credit, high technology credit, commute trip reduction credit, pollution control credit, and cogeneration fee credit. The following multiple B&O tax credit worksheet describes the process taxpayers must follow to apply credits in the appropriate order. Refer to subsection (6) of this rule for an example illustrating the use of the multiple B&O tax credit worksheet.

MULTIPLE B&O TAX CREDIT WORKSHEET

1. Determine the total Business and Occupation (B&O) tax due from the B&O section of your excise tax return. \$ _____
2. Add together the credit amounts taken for:
 - Multiple Activities Tax Credit from Schedule C (if applicable). \$ _____
 - (Add any other B&O tax credits from Title 82 RCW that will be applied to this return period.) + \$ _____
 - Total (Enter 0 if none of these credits are being taken.) \$ _____
3. Subtract line 2 from line 1. This is the total B&O tax allowable for the Small Business Credit. \$ _____
4. Find the specific tax credit table (Table 1 or Table 2) appropriate for the business activities and B&O taxable amounts on your excise tax return. Next, find the tax credit table which matches the reporting frequency assigned to the account((, then find the total B&O tax due amount which includes your figure from item 3, above)). Then find the range of amounts which includes your total B&O tax due (see line three above).
5. Read across to the next column. This is the amount of the Small Business Credit to be used on the excise tax return. \$ _____

(5) **Using the tax credit table to determine your small business B&O tax credit.** The following steps explain how to use the small business B&O tax credit table:

(a) **Step one.** Determine the total B&O tax amount due from the excise tax return. This amount will normally be the

total of the tax amounts due calculated for each classification in the B&O tax section of the excise tax return. However, if additional B&O tax credits will be taken on the return, refer to subsection (4) of this rule and the multiple B&O tax credit worksheet before going to step two.

(b) **Step two.** Find the B&O taxable amounts on the return reported under RCW 82.04.255 (real estate brokers), RCW 82.04.290 (2)(a) (service and other activities), and RCW 82.04.285 (contests of chance) then add them together. Divide that sum result by the total amount of all B&O taxable amounts reported on the return. If the result indicates less than fifty percent of the total of all B&O taxable amounts came from activities reported under RCW 82.04.255, 82.04.290 (2)(a), and 82.04.285 combined, use Table 1 of the small business B&O tax credit table. If the result indicates fifty percent or greater of the total of all B&O taxable amounts came from activities reported under RCW 82.04.255, 82.04.290 (2)(a), and 82.04.285 combined, use Table 2 of the small business B&O tax credit table.

(c) **Step three.** Find the small business B&O tax credit table that matches the assigned reporting frequency ((i.e., the monthly table shown in subsection (7)(b) of this rule, the quarterly table in subsection (7)(c) of this rule, or the annual table in subsection (7)(d) of this rule)), monthly, quarterly, or annual.

((e)) (d) **Step ((three)) four.** Find the "If Your Total Business and Occupation Tax is" column of the tax credit table and come down the column until you find the range of amounts which includes the total B&O tax due figure obtained from the excise tax return or multiple B&O tax credit worksheet.

((e)) (e) **Step ((four)) five.** Read across to the "Your Small Business Credit is" column. The figure shown is the amount of the small business B&O tax credit that can be claimed on the "Small Business B&O Tax Credit" line in the "Credits" section of the excise tax return.

(6) Examples - Using the "Multiple B&O Tax Credit Worksheet" and the tax credit tables.

(a) **Using the "Multiple B&O Tax Credit Worksheet."** Assume that ABC reports quarterly. This quarter, ABC reports one hundred ninety dollars under the wholesaling classification and seventy dollars under the manufacturing classification for a total B&O tax liability of two hundred sixty dollars. ABC completes Schedule C, and determines it is entitled to a multiple activities tax credit (MATC) of seventy dollars. Using the multiple B&O tax credit worksheet, ABC enters two hundred sixty dollars on line one, enters seventy dollars on line two, and enters one hundred ninety dollars on line three (line two subtracted from line one). Line three, one hundred ninety dollars is the total B&O tax. ABC will use this amount to determine whether it is eligible for a small business B&O tax credit.

((7) **Tax credit tables.** Corresponding tax credit tables for the monthly, quarterly, and annual reporting frequencies appear below. Taxpayers must use the tax credit table that corresponds to their assigned reporting frequency to determine the correct amount of small business B&O tax credit available.

(a) **Example illustrating the use of the small business B&O tax credit tables.** The facts are the same as in the previous example in subsection (6) of this rule. After completing the multiple B&O tax credit worksheet, ABC has one hundred ninety dollars of B&O tax liability left for potential application of the small business B&O tax credit. ABC refers to the quarterly small business B&O tax credit table, which is

located below in subsection (7)(e) of this rule, and finds the "If Your Total Business and Occupation Tax is" column. Following down that column, ABC finds the tax range of one hundred eighty six to one hundred ninety one dollars and comes over to the "Your Small Business Credit is" column, which shows that a credit in the amount of twenty-five dollars is available. Before calculating the total amount due for the tax return, ABC enters its small business B&O tax credit of twenty-five dollars in the "Credits" section.

(b) **Monthly filers.** Persons assigned a monthly reporting frequency must use the following table to determine if they are eligible for a small business B&O tax credit:

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At Least	But Less Than	
\$0	\$36	The Amount of Business and Occupation Tax Due
\$36	\$41	\$35
\$41	\$46	\$30
\$46	\$51	\$25
\$51	\$56	\$20
\$56	\$61	\$15
\$61	\$66	\$10
\$66	\$71	\$5
\$71	or more	\$0

(e) **Quarterly filers.** Persons assigned a quarterly reporting frequency must use the following table to determine if they are eligible for a small business B&O tax credit:

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At least	But Less Than	
\$0	\$106	The Amount of Business and Occupation Tax Due
\$106	\$111	\$105
\$111	\$116	\$100
\$116	\$121	\$95
\$121	\$126	\$90
\$126	\$131	\$85
\$131	\$136	\$80
\$136	\$141	\$75
\$141	\$146	\$70
\$146	\$151	\$65
\$151	\$156	\$60
\$156	\$161	\$55
\$161	\$166	\$50
\$166	\$171	\$45
\$171	\$176	\$40
\$176	\$181	\$35
\$181	\$186	\$30

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At least	But Less Than	
\$186	\$191	\$25
\$191	\$196	\$20
\$196	\$201	\$15
\$201	\$206	\$10
\$206	\$211	\$5
\$211	or more	\$0

(d) **Annual filers.** Persons assigned an annual reporting frequency must use the following table to determine if they are eligible for a small business B&O tax credit.

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At Least	But Less Than	
\$0	\$421	The Amount of Business and Occupation Tax Due
\$421	\$426	\$420
\$426	\$431	\$415
\$431	\$436	\$410
\$436	\$441	\$405
\$441	\$446	\$400
\$446	\$451	\$395
\$451	\$456	\$390
\$456	\$461	\$385
\$461	\$466	\$380
\$466	\$471	\$375
\$471	\$476	\$370
\$476	\$481	\$365
\$481	\$486	\$360
\$486	\$491	\$355
\$491	\$496	\$350
\$496	\$501	\$345
\$501	\$506	\$340
\$506	\$511	\$335
\$511	\$516	\$330
\$516	\$521	\$325
\$521	\$526	\$320
\$526	\$531	\$315
\$531	\$536	\$310
\$536	\$541	\$305
\$541	\$546	\$300
\$546	\$551	\$295
\$551	\$556	\$290
\$556	\$561	\$285
\$561	\$566	\$280

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At Least	But Less Than	
\$566	\$571	\$275
\$571	\$576	\$270
\$576	\$581	\$265
\$581	\$586	\$260
\$586	\$591	\$255
\$591	\$596	\$250
\$596	\$601	\$245
\$601	\$606	\$240
\$606	\$611	\$235
\$611	\$616	\$230
\$616	\$621	\$225
\$621	\$626	\$220
\$626	\$631	\$215
\$631	\$636	\$210
\$636	\$641	\$205
\$641	\$646	\$200
\$646	\$651	\$195
\$651	\$656	\$190
\$656	\$661	\$185
\$661	\$666	\$180
\$666	\$671	\$175
\$671	\$676	\$170
\$676	\$681	\$165
\$681	\$686	\$160
\$686	\$691	\$155
\$691	\$696	\$150
\$696	\$701	\$145
\$701	\$706	\$140
\$706	\$711	\$135
\$711	\$716	\$130
\$716	\$721	\$125
\$721	\$726	\$120
\$726	\$731	\$115
\$731	\$736	\$110
\$736	\$741	\$105
\$741	\$746	\$100
\$746	\$751	\$95
\$751	\$756	\$90
\$756	\$761	\$85
\$761	\$766	\$80
\$766	\$771	\$75
\$771	\$776	\$70
\$776	\$781	\$65
\$781	\$786	\$60

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At Least	But Less Than	
\$786	\$791	\$55
\$791	\$796	\$50
\$796	\$801	\$45
\$801	\$806	\$40
\$806	\$811	\$35
\$811	\$816	\$30
\$816	\$821	\$25
\$821	\$826	\$20
\$826	\$831	\$15
\$831	\$836	\$10
\$836	\$841	\$5
\$841	or more	\$0)

(b) Using the small business B&O tax credit tables. Assume the facts are the same as in the previous example in subsection (6)(a) of this rule. After completing the multiple B&O tax credit worksheet, ABC has one hundred ninety dollars of B&O tax liability left for potential application of the small business B&O tax credit. ABC does not have any business activity taxable under RCW 82.04.255 (real estate brokers), RCW 82.04.290 (2)(a) (service and other activities), and RCW 82.04.285 (contests of chance), so the ratio of those combined taxable amounts compared to the total of all B&O taxable amounts on the return is not fifty percent or greater. ABC will refer to Table 1 of the quarterly small business B&O tax credit table to find the "If Your Total Business and Occupation Tax is" column. Following down that column, ABC finds the tax range of one hundred eighty-six to one hundred ninety-one dollars and comes over to the "Your Small Business Credit is" column on the right, which shows that a credit in the amount of twenty-five dollars is available. Before calculating the total amount of tax due for the return, ABC enters its small business B&O tax credit of twenty-five dollars in the "Credits" section.

**WSR 10-23-059
PERMANENT RULES
DEPARTMENT OF REVENUE**

[Filed November 12, 2010, 8:00 a.m., effective December 13, 2010]

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

Purpose: Rule 210 explains the method for making refunds pursuant to chapter 84.69 RCW and the basis for determining interest on refunds. The rule was amended to recognize section 9 of E2SHB 1208 (chapter 350, Laws of 2009). This legislation:

- Removed the authority of the county legislative authority to act on its own motion to order refunds; and
- Changed the due date for refund claims from within three years of payment to within three years from the date the tax was due.

Citation of Existing Rules Affected by this Order: Amending WAC 458-18-210 (Rule 210) Refunds—Procedure—Interest.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.36.865.

Adopted under notice filed as WSR 10-18-073 on August 31, 2010.

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 0, Repealed 0.

Date Adopted: November 12, 2010.

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-01-176, filed 12/23/97, effective 1/1/98)

WAC 458-18-210 Refunds—Procedure—Interest. (1) Refunds provided for by chapter 84.69 RCW are made by ~~((one of))~~ the following ~~((two))~~ method~~((s))~~: ~~(((a) The county legislative authority acts upon its own motion and orders a refund; or~~

~~((b)))~~ The taxpayer must file~~((s))~~ a claim for refund with the county. This claim ~~((shall))~~ must:

~~(((i)))~~ (a) Be verified by the person who paid the tax, his guardian, executor or administrator; and

~~(((ii)))~~ (b) Be filed within three years after the due date of the payment sought to be refunded ~~((was made))~~; and

~~(((iii)))~~ (c) State the statutory ground upon which the refund is claimed.

(2) All claims for refunds must be certified as correct by the county assessor and treasurer and not be refunded until so ordered by the county legislative authority.

(3) For all refunds, the rate of interest is set out in WAC 458-18-220. The rate of interest is based upon the date the taxes were paid.

(4) Except as provided in subsections (5) and (6) of this section, the interest shall accrue from the time the taxes were paid until the refund is made.

(5) Refunds on a state, county or district-wide basis shall not commence to accrue interest until six months following the date of the final order of the court.

(6) Refunds may be made without interest within sixty days after the date of payment if:

(a) Paid more than once; or

(b) The amount paid exceeds the amount due on the property as shown on the tax roll.

WSR 10-23-060
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed November 12, 2010, 8:00 a.m., effective December 13, 2010]

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

Purpose: Rule 110 explains the procedures property owners must follow to apply for and renew real and personal property tax exemptions and leasehold excise tax exemptions.

Rule 110 was amended to:

- Recognize section 305 of E2SHB 1597 (chapter 106, Laws of 2010), which adds property of hospitals established under chapter 36.62 RCW to the property tax exemption for "hospitals";
- Recognize sections 301, 303, and 304 of SB 5468 (chapter 111, Laws of 2007), which:
 - o Adds property of hospitals established under chapter 36.62 RCW to the property tax exemption for hospitals,
 - o Allows electronic filing,
 - o Replaces affidavits with certifying statements,
 - o Removes application and renewal fees, and
 - o Makes physical inspection of exempt premises discretionary with the department;
- Remove obsolete language and references.

Citation of Existing Rules Affected by this Order: Amending WAC 458-16-110 (Rule 110) Applications—Who must file, initial applications, annual declarations, appeals, filing fees, penalties, and refunds.

Statutory Authority for Adoption: RCW 84.08.010, 84.08.070, and 84.36.865.

Adopted under notice filed as WSR 10-18-075 on August 31, 2010.

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 0, Repealed 0.

Date Adopted: November 12, 2010.

Alan R. Lynn
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-02-009, filed 12/20/01, effective 1/20/02)

WAC 458-16-110 Applications—Who must file, initial applications, annual declarations, appeals, filing fees, penalties, and refunds. (1) **Introduction.** This rule explains

the procedures property owners must follow to apply for and renew all real and personal property exemptions or leasehold excise tax exemptions under chapter 84.36 RCW for which the taxpayer must apply in order to receive. It also specifies the ~~((fee that must be submitted with each initial application or renewal declaration for exemption, as well as the))~~ late filing penalty that is due whenever an application or renewal declaration is received after the filing deadline.

(2) **Application required.** All foreign national governments, cemeteries, nongovernmental nonprofit corporations, organizations, or associations, soil and water conservation districts, a hospital established under chapter 36.62 RCW and a public hospital district established under chapter 70.44 RCW seeking a property tax exemption or a leasehold excise tax exemption under chapter 84.36 RCW must submit an application for exemption and supporting documentation to the state department of revenue (department). Unless otherwise exempted by law, no real or personal property or leasehold interest is exempt from taxation until an application is submitted and an exemption is granted.

(3) **Where to obtain application and annual renewal declaration forms.** Applications for exemption may be obtained from any county assessor's office, the department's property tax division, or on the internet at ~~((http://dor.wa.gov/index.asp))~~ http://dor.wa.gov under Property Tax, "Forms." Annual renewal declaration forms are mailed by the department to all entities receiving a property tax or leasehold excise tax exemption except for certain cemeteries, military housing providers and tribal governments. If such a form is not received in the mail, an annual renewal declaration may be obtained from the department's property tax division ~~((or an application form may be obtained and adapted for use as an annual renewal declaration))~~.

(4) **Initial application, filing deadlines, and other requirements.** In general, initial applications for exemption must be filed with the department on or before March 31st to exempt the property from taxes due in the following year. However, an initial application may be filed after March 31st if the property is acquired or converted to an exempt use after that date, if the property may qualify for an exemption under chapter 84.36 RCW. In this situation, the application must be submitted within sixty days of acquisition or conversion of the property to an exempt use. If an initial application is not received within this sixty day period, the late filing penalty described in subsection (12) of this rule is imposed.

~~((a))~~ The following requirements apply to all initial applications:

~~((i))~~ ~~A filing fee of thirty-five dollars must be submitted with each application for exemption. The department will not process any application unless this fee is paid;~~

~~((ii))~~ (a) The application must be made on a form prescribed by the department and signed by the applicant or the applicant's authorized agent;

~~((iii))~~ (b) One application can be submitted for all real property that is contiguous and part of a homogeneous unit. If exemption is sought for multiple parcels of real property, which are not contiguous nor part of a homogeneous unit, a separate application for each parcel must be submitted. However, multiple applications are not required for church property with a noncontiguous parsonage or convent.

~~((A))~~ (i) "Contiguous property" means real property adjoining other real property, all of which is under the control of a single applicant even though the properties may be separated by public roads, railroads, rights of way, or waterways.

~~((B))~~ (ii) "Homogeneous unit" means the property is controlled by a single applicant and the operation and use of the property is integrated with and directly related to the exempt activity of the applicant.

(5) **Documentation a nonprofit organization must submit with its application for exemption.** Unless the following information was previously submitted to the department and it is still current, in addition to the application for exemption, a nonprofit organization, corporation, or association must also submit:

(a) Copies of the articles of incorporation or association, constitution, or other establishing documents, as well as all current amendments to these documents, showing nonprofit status;

(b) A copy of the bylaws of the nonprofit entity, if requested by the department;

(c) A copy of any current letter issued by the Internal Revenue Service that exempts the applicant from federal income taxes. This letter is not usually, but may be, required if the nonprofit entity applying for an exemption is part of a larger organization, association, or corporation, like a church or the Boy Scouts of America, that was issued a group 501 (c)(3) exemption ruling by or is otherwise exempt from filing with the Internal Revenue Service; and

(d) The information required in subsection (6) of this rule.

(6) **Other documentation a nonprofit entity, foreign national government, hospital established under chapter 36.62 RCW, hospital owned and operated by a public hospital district, or soil and water conservation district must submit with its initial application for exemption.** In addition to the initial application for exemption, a nonprofit entity, foreign national government, and public hospital district established under chapter 70.44 RCW, or soil and water conservation district must submit the following information regarding the real or personal property for which exemption is sought, unless it was previously submitted to the department and it is still current:

(a) An accurate description of the real and personal property;

(b) An accurate map identifying by dimension the use or proposed use of all real property that shows buildings, building sites, parking areas, landscaping, vacant areas, and if requested by the department, floor plans of the buildings. The map will be used to determine whether the property is entitled to a total or partial exemption based upon the use of the total area;

(c) A legal description of all real property, listing the county tax parcel number, and if the property is owned by the applicant, a copy of the current deed; and

(d) If the property is rented or loaned to or from another property owner, a copy of the rental agreement or other document explaining the terms of the lease or loan. This documentation must describe:

(i) What property is rented or loaned;

(ii) The amount of the rent or other consideration paid or received;

(iii) The name of the party from whom and the name of the party to whom the property is rented or loaned;

(iv) How the property is being used; and

(v) The monthly amount of maintenance and operation costs related to rented or loaned property if a nonprofit entity is claiming an exemption for property leased to another party.

(7) **Department's review of the application and notice of its determination.** Upon receipt of an application for exemption, the department will review the application and all supporting documentation. Additional information may be requested about the ownership and use of the property, if the department needs this information to determine if the exemption should be granted. An application for exemption is not considered complete until all required and requested information is received by the department.

(a) Physical inspection. The department ~~((will))~~ may physically inspect the property as part of the application review process.

(b) Deadline. If a complete application is received by March 31st for that assessment year, the department will issue a determination about the application by August 1st. If a complete application is not received by March 31st, the determination will be made within thirty days of the date the complete application is received by the department or by August 1st, whichever is later.

(c) Notice to applicant. The department will mail a written determination about the exemption application to the applicant. An application may be approved or denied, in whole or in part. If the application is denied for any portion of the property covered by the application, the department must clearly explain its reason for denial in its written determination.

(d) Notice to assessor. Once the department makes its determination about the application for exemption, it will notify the assessor of the county in which the property is located about the determination made. In turn, the assessor takes appropriate action so that the department's determination is reflected on the county's assessment roll(s) for the years covered by the determination.

(8) **Effective date of the exemption.** If an application is approved, the property is exempt from property taxes due the year immediately following the year the application for exemption is submitted.

(a) For example, if an application for exemption is submitted to the department in ~~((2000))~~ 2010 and the application is approved ~~((in))~~ for assessment year ~~((2000))~~ 2010, the property will be exempt from taxes due in ~~((2001))~~ 2011.

(b) Retroactive applications for exemption for previous years are accepted, up to a maximum of three years from the date taxes were ~~((paid))~~ due on the property, if the applicant provides the department with acceptable proof that the property qualified for exemption during the pertinent assessment years and pays the ~~((initial application filing fee, renewal declaration fees, and))~~ late filing penalties.

(9) **Annual renewal declaration.** To retain a property tax exemption, each nonprofit entity (except nonprofit cemeteries), foreign national government, public hospital district, and soil and water conservation district receiving an exemp-

tion must annually submit a renewal declaration certifying that the use and exempt status of the real and personal property has not changed. The renewal declaration is a form ~~((prepared))~~ provided by the department.

(a) On or before January 1st each year, the department mails a renewal declaration to the entity receiving an exemption for the property at the entity's last known address. Within sixty days of changing its mailing address, the exempt entity must notify the department about the change.

(b) The renewal declaration, signed by the exempt entity or the exempt entity's authorized agent, ~~((and renewal fee of eight dollars and seventy-five cents))~~ must be ~~((submitted))~~ mailed or delivered to the department or submitted electronically using the department's on-line service no later than March 31st each year. ~~((The department will not process a renewal declaration unless this fee is paid.))~~

(i) The renewal declaration must include information about any change of use of the exempt property and a ~~((certification as to))~~ statement certifying the truth and accuracy of the information listed.

(ii) The renewal declaration is due on or before March 31st even if the department fails to mail the declaration to the exempt entity. If an exempt entity does not receive a renewal declaration, ~~((an application form may be submitted to the))~~ a replacement renewal declaration form may be requested from the department to renew the exemption or the exempt entity may use the department's on-line system to submit the declaration.

(c) If the renewal declaration and renewal fee are not received by March 31st, the department will mail a second notice to the exempt entity at the entity's last known mailing address. If the exempt entity fails to respond to the second notice, the department will remove the exemption from the property and notify the assessor of the county in which the property is located that the exemption has been ~~((cancelled))~~ canceled.

(d) Real property, which was previously exempt from taxation, is assessed and taxed as provided in RCW 84.40.-350 through 84.40.390 when it loses its exempt status.

(i) Property that no longer retains its exempt status is subject to a pro rata portion of the taxes allocable to the remaining portion of the year after the date the property lost its exempt status.

(ii) The assessor lists and assesses the property with reference to its true and fair value on the date the property lost its exempt status.

(iii) RCW 84.40.380 sets forth the dates upon which taxes are payable when property loses its exempt status. Taxes due and payable under RCW 84.40.350 through 84.40.390 constitute a lien on the property that attaches on the date the property loses its exempt status.

(10) Failure to submit an annual renewal declaration and reapplication for exemption. If property loses its exempt status because the annual renewal declaration ~~((and renewal fee were))~~ was not submitted and subsequently the owner wishes to reapply for the property tax exemption:

(a) If the owner reapplies within the same assessment year during which the exemption is ~~((cancelled))~~ canceled, the owner must submit the annual renewal declaration and

pay the ~~((renewal fee and any))~~ required late filing penalties; or

(b) If the owner reapplies after the assessment year during which the exemption is cancelled, the owner must submit an initial application and pay the ~~((initial application fee, any unpaid renewal fees for the intervening years, and))~~ required late filing penalties.

(11) Initial application and renewal declaration procedures regarding cemeteries. There are several types of cemeteries. The initial application for exemption and renewal declaration procedures are specific as to the type of cemetery at issue.

(a) The assessor shall consider the following types of cemeteries exempt from property tax, no initial application or renewal declaration is required for:

(i) Cemeteries owned, controlled, operated, and maintained by a cemetery district authorized by RCW 68.52.090; or

(ii) Indian cemeteries, which are considered to be held by the tribe or held in trust for the tribe by the United States.

(b) An initial application is submitted to the department, but no renewal declaration is required, for:

(i) Family cemeteries;

(ii) Historical cemeteries;

(iii) Community cemeteries; and

(iv) Cemeteries belonging to nonprofit organizations, associations, or corporations.

(c) An initial application for exemption and a renewal declaration must be submitted by all for-profit cemeteries seeking a property tax exemption.

(12) Late filing penalty. When an initial application or renewal declaration is submitted after the due date, a late filing penalty of ten dollars is due for every month, or portion thereof. This penalty is calculated from the date the application or renewal declaration was due until the postmark date shown on the application or declaration or the date the application or declaration is given to the department.

(13) Refund of filing ~~((fee or))~~ penalty. No ~~((filing fees or))~~ late filing penalty ~~((are))~~ is refunded after a determination on the application is issued by the department. However, ~~((filing fees and))~~ the late filing penalty will be refunded under the following circumstances:

(a) When a duplicate application or renewal declaration for the same property is submitted during the same calendar year;

(b) When an application or renewal declaration is received by the department and the department has no authority to grant the exemption requested; or

(c) When a written request to withdraw the application is received before the department issues a determination. The withdrawal request must be signed by the owner or the owner's authorized agent.

(14) Appeals. Any applicant that receives a negative determination from the department on either an initial application or a renewal declaration may appeal this determination to the state board of tax appeals (BTA). Similarly, any assessor who disagrees with the department's determination may appeal the determination to the BTA. See WAC 458-16-120 for specific information about the appeal process.

WSR 10-23-064**PERMANENT RULES****EMPLOYMENT SECURITY DEPARTMENT**

[Filed November 12, 2010, 10:09 a.m., effective December 13, 2010]

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

Purpose: The rules implement a comprehensive review and updating of unemployment insurance tax rules.

Citation of Existing Rules Affected by this Order: Amending WAC 192-300-100, 192-300-190, 192-310-010, 192-310-020, 192-310-025, 192-310-030, 192-310-040, 192-310-050, 192-310-055, 192-310-160, 192-310-190, 192-320-005, 192-320-065, 192-320-070, 192-320-085, 192-330-110, 192-330-150, 192-340-100, 192-350-010, and 192-350-070.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040.

Adopted under notice filed as WSR 10-20-156 on October 6, 2010.

A final cost-benefit analysis is available by contacting Juanita Myers, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 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 20, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 20, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 20, Repealed 0.

Date Adopted: November 12, 2010.

Paul Trause
Commissioner

NEW SECTION

WAC 192-300-090 When does an employer become inactive or reactivated for purposes of unemployment insurance and how does this affect coverage of corporate officers? (1) An employer that has no employees or covered corporate officers for eight consecutive quarters shall automatically be considered to be an inactive employer.

(2) An active employer may change to inactive status if the employer notifies the department that it is no longer an active employer, has no employees at that time or for the foreseeable future, and has not elected coverage under RCW 50.24.160. The employer shall be considered inactive as of the effective date of the notice unless it is a corporation that has not exempted all its paid corporate officers. If the employer is a corporation and has not exempted all its paid corporate officers, it shall continue to be considered an active employer until the end of the calendar year. If it has no employees and has not elected coverage under RCW

50.24.160, the corporation shall no longer be considered an employer as of January 1st of the following calendar year.

Example A: Employer A (not a corporation) notifies the department that, as of June 30th, it no longer considers itself an active employer, has no employees at that time or for the foreseeable future, and has not elected coverage for otherwise exempt workers. The department will notify Employer A that it is considered inactive and Employer A will not have to file reports for the quarter ending September 30th and beyond.

Example B: Employer Corporation B notifies the department that, as of June 30th, it no longer considers itself an active employer, has no employees at that time or for the foreseeable future, and has not elected coverage for otherwise exempt workers. If the corporation is dissolving or is no longer in business or has exempted all its paid corporate officers from coverage, the department will notify it that the corporation is considered inactive and that it will not have to file reports for the quarter ending September 30th and beyond. If the corporation is continuing as a corporation in which all personal services are performed by bona fide corporate officers and has not exempted all its paid corporate officers, the corporation shall continue to be considered an active employer until December 31st and must report quarterly and pay taxes on nonexempt corporate officers. As of the following January 1st, it will no longer be considered an employer.

(3) A corporation in which all personal services are performed only by bona fide corporate officers, that has no employees throughout a calendar year, and that has not elected coverage for corporate officers under RCW 50.24.-160 shall not be covered for corporate officers for that year regardless of whether it has notified the department that it is no longer an active employer.

Example C: Employer Corporation C is an active employer with employees in year 1 and must file quarterly reports. It has not elected coverage for corporate officers, but has not exempted them either, so Employer Corporation C must cover corporate officers in year 1. Throughout year 2, Employer Corporation C no longer has any employees and all personal services are performed by bona fide corporate officers, but fails to notify the department of the change. Employer Corporation C should submit quarterly "no payroll" reports. Because there are no employees in year 2, the corporate officers are no longer considered covered.

(4) An employer that had no employees and was not previously active in the calendar year and reactivates because it has employees or elects coverage under RCW 50.24.160 shall be considered an active employer as of the date it has employees or elects coverage. If the employer is a corporation, once it hires employees, it becomes an employer, so it must register and paid corporate officers become covered unless the corporation exempts them within thirty days. If the corporation does not exempt all of its paid corporate officers, the corporate officers that have not been exempted shall be reported and covered as of the date the employer became an active employer.

Example D: Employer D (not a corporation) had registered in a previous year with the department, but had no employees and was in inactive status as of January 1st. It hires employees for the first time that year on April 1st, noti-

fies the department, and is restored to active status at that time. Employer D does not need to report to the department for the first quarter of the year because it was not an active employer at that time. Employer D must report and pay taxes beginning with the quarter ending June 30th.

Example E: Employer Corporation E is a corporation that had been an active employer in previous years, but had no employees and was in inactive status as of January 1st. Employer Corporation E did not previously exempt its corporate officers from coverage, nor did it elect coverage for the officers, but because it was inactive and had no employees, it does not need to report or pay taxes on the corporate officers for the first quarter of the year. Employer Corporation E hires employees for the first time that year on April 1st, notifies the department, is restored to active status at that time, and does not exempt its paid corporate officers within thirty days of April 1st. Employer Corporation E must report and pay taxes on both employees and on corporate officers beginning with the quarter ending June 30th.

(5) An employer that had been in active status during the calendar year, became inactive, and then returns to active status during the same calendar year shall be considered in active status for the entire time since it first became active in that calendar year. If the employer is a corporation that has not exempted all of its paid corporate officers, the corporate officers that have not been exempted shall be reported and covered for the entire time since the corporation first became active in that calendar year.

Example F: Employer F changed from active status to inactive status and back to active status within the same calendar year. Employer F will be treated as if it had been in active status for the entire time since it first became active that year.

AMENDATORY SECTION (Amending WSR 99-20-127, filed 10/6/99, effective 11/6/99)

WAC 192-300-100 Does the exception from "employment" for immediate family members ((of partners or corporate officers for)) apply to farms owned by corporations, limited liability companies (LLCs), or partnerships under RCW 50.04.150(3)? The exemption in RCW 50.04.150 for family members employed on "corporate farms" ((includes family membership of all legal entities)) applies regardless of the structure of the legal entity, including to a spouse or domestic partner or unmarried child under eighteen of a corporate officer, limited liability company (LLC) member, or partner operating the farm.

AMENDATORY SECTION (Amending WSR 00-05-067, filed 2/15/00, effective 3/17/00)

WAC 192-300-190 Are owners of entities ((are not)) covered for unemployment insurance purposes(3)? ((The owners of a business as)) Businesses identified in RCW 50.04.080 and 50.04.090 include business entities such as limited liability companies, limited liability partnerships, etc. There is no employer-employee relationship in the services provided to the business by the owners, as defined in RCW 50.04.100. Therefore, owners, such as "members" of a limited liability company, partners of a partnership, or owners of

a sole proprietorship are not covered for unemployment insurance purposes.

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-310-010 What reports are required from an employer? (RCW 50.12.070.) (1) **Master business application.**

Every person or unit with one or more individuals performing services for it in the state of Washington must file a master business application with the department of licensing.

(2) Employer registration:

(a) Every employer shall register with the department and obtain an employment security account number. Registration shall include the names, Social Security numbers, mailing addresses, telephone numbers, and the effective dates in that role of natural persons who are spouses or domestic partners of owners and owners, partners, members, or corporate officers of an employer. Registration of corporations shall include the percentage of stock ownership for each corporate officer, delineated as zero percent, less than ten percent, or ten percent or more, and the family relationship of corporate officers to other corporate officers who own ten percent or more. Every employer shall report changes in owners, partners, members, corporate officers, and percentage of ownership of the outstanding stock of the corporation by corporate officers. The report of changes is due each calendar quarter at the same time that the quarterly tax and wage report is due.

(b) A nonprofit corporation that is an employer shall register with the department, but is not required to provide names, Social Security numbers, mailing addresses, or telephone numbers for corporate officers who receive no compensation from the nonprofit corporation with respect to their services for the nonprofit corporation.

(c) For purposes of this subsection:

(i) "Owner" means the owner of an employer operated as a sole proprietorship;

(ii) "Partner" means a general partner of an employer organized as a partnership, other than limited partners of a limited partnership who are not also general partners of the partnership;

(iii) "Member" means a member of an employer organized as a limited liability company, other than members who, pursuant to applicable law or the terms of the limited liability company's operating agreement or other governing documents, have no right to participate in the management of the limited liability company; and

(iv) "Corporate officer" means an officer described in the bylaws or appointed or elected by the board of directors in accordance with the bylaws or articles or certificates of incorporation of an employer organized as a for-profit or nonprofit corporation.

(3) Quarterly tax and wage reports:

(a) Tax report. Each calendar quarter, every employer must file a tax report with the commissioner. The report must list the total wages paid to every employee during that quarter.

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

(i) Social Security numbers are required for persons working in the United States;

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

(iii) If the individual does not have a Social Security card, Internal Revenue Service rules allow an employer to hire the individual with the clear understanding that the individual will apply for a Social Security number within seven calendar days of starting work for the employer. The individual must give the employer a document showing he or she has applied for a Social Security card. When the card is received, the individual must give the employer a copy of the card itself. An employer should keep copies of the document(s) for his or her records; and

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

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

(i) Electronically, using the current version of employer account management services (EAMS), UIFastTax, UIWebTax, or ICESA Washington; or

(ii) Paper forms supplied by the department (or an approved version of those forms). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

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

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

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

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

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-310-020 When are tax payments by employers due? (RCW 50.24.010)(~~(c)~~) (1) Taxes must be paid each quarter. Each quarterly payment must include the taxes owed on all wages paid during that calendar quarter. Payments are due to the department by the last day of the month following the end of the calendar quarter for which taxes are due. Payments made by mail are considered paid on the postmarked date. If the last day of the month falls on a Saturday, Sunday, or a legal holiday, the tax payment must be received or postmarked on the next business day.

(2) Tax payments are due immediately when an employer goes out of business or the account is closed by the department. Taxes not paid immediately are delinquent. However, interest will not be added until the first day of the second month following the end of the calendar quarter for which the taxes are owed.

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

WAC 192-310-025 (~~(Application of)~~) How are payments(~~(c)~~) applied? (1) A payment received with a tax report will be applied to the quarter for which the report is filed. A payment exceeding the legal fees, penalties, interests and taxes due for that quarter will be applied to any other debt as provided in subsection (2). If no debt exists, a credit statement will be issued for any overpayments.

(2) If a payment is received (~~(without)~~) separately from a tax report, the payment will be applied in the following order of priority(~~(c)~~). It will first be applied to the current quarter if a balance is owed for that quarter, then to the previous quarter if a balance is owed for that quarter, then beginning with the oldest quarter in which a balance is owed:

(a) Costs of audit and collection(~~(c)~~);

(b) Penalties for willful misrepresentation of payroll(~~(c)~~);

(c) Lien fees(~~(c)~~);

(d) Warrant fees(~~(c)~~), surcharges, and fees for nonsufficient funds (NSF) on checks;

(e) Penalties for knowingly failing to register with the department;

(f) Penalties for late tax reports (~~(penalty)~~);

(~~(f)~~) (g) Penalties for incomplete reporting (~~(c)~~);

(h) Penalties for reporting using incorrect format(~~(c)~~);

(~~(g)~~) (i) Penalties for failure to maintain records (RCW 50.12.070(3)) or other penalties not otherwise specified here;

(j) Penalties for late tax payments (~~(penalty)~~);

(~~(h)~~) (k) Interest charges(~~(c)~~); and

(~~(i)~~) (l) Tax payments.

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-310-030 What are the report and tax payment penalties and charges? (RCW 50.12.220.) (1) **Penalty for late tax reports.** An employer who does not file a tax report within the time frame required by WAC 192-310-010 (3)(d) must pay a penalty of twenty-five dollars for each violation, unless the penalty is waived by the department.

(2) **Definition of incomplete or incorrect format tax report.** An employer must file a tax report that is complete and in the format required by the commissioner.

(a) An "incomplete report" is any report filed by any employer or their agent where:

- (i) The entire wage report is not filed on time; or
- (ii) A required element is not reported (Social Security number, name, hours worked, or wages paid); or
- (iii) A significant number of employees are not reported;

or

(iv) A significant number of any given element is not reported, for example, missing Social Security numbers, names, hours, or wages; or

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

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

(b) An "incorrect format" means any report that is not filed in the format required by the commissioner under WAC 192-310-010 (3)(c). Agency forms include "drop-out ink" that cannot be copied. Therefore, photocopies are considered incorrectly formatted reports and forms.

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

- (i) One employee and reports incomplete wage elements for the one employee; or
- (ii) Two to nineteen employees and reports incomplete wage elements for two or more employees; or
- (iii) Twenty to forty-nine employees and reports incomplete wage elements for three or more employees; or
- (iv) Fifty or more employees and reports incomplete wage elements for four or more employees.

(3) **Penalty for filing an incomplete or incorrect format tax report.** An employer who files an incomplete or incorrectly formatted tax and wage report will receive a warning letter for the first occurrence. For subsequent occurrences of either an incomplete or incorrectly formatted report within five years of the date of the last occurrence (whether or not the last occurrence was before the effective date of this amendatory section), the employer must pay a penalty as follows:

(a) When quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter: Ten percent of the quarterly contributions for each occurrence, up to a maximum of \$250.00, but not less than:

- (i) 2nd occurrence \$75.00
- (ii) 3rd occurrence \$150.00
- (iii) 4th and subsequent occurrences \$250.00

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

- (i) 2nd occurrence \$75.00

- (ii) 3rd occurrence \$150.00
- (iii) 4th and subsequent occurrences \$250.00

(c) After five years without an occurrence, prior occurrences will not count and the employer shall receive a warning letter instead of a penalty on the next occurrence.

(4) **Penalty for knowingly misrepresenting amount of payroll.** If an employer knowingly (on purpose) misrepresents to the department the amount of his or her payroll that is subject to unemployment taxes, the penalty is up to ten times, in the discretion of the department, the difference between the taxes paid, if any, and the amount of taxes the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer must also pay the department for the reasonable expenses of auditing his or her books and collecting taxes and penalties due as provided in WAC 192-340-100.

(5) **Late tax payments.** All employers must file a tax report every quarter, including employers who have no payroll for a given quarter. If an employer does not report on time, it will be charged a late fee of \$25.00 for each report. If the payment is late, the employer will be charged interest at a rate of one percent of taxes due per month. A late payment penalty is also charged for overdue taxes:

- (a) First month: Five percent of the total taxes due or \$10.00, whichever is greater;
- (b) Second month: An additional five percent of total taxes due or \$10.00, whichever is greater; and
- (c) Third month: An additional ten percent of total taxes due or \$10.00, whichever is greater.

(6) **Nonsufficient funds (NSF).** The department shall charge \$25.00 for checks dishonored by nonacceptance or nonpayment. This is considered a commercial charge under the Uniform Commercial Code (RCW 62A.3-515).

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

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

- (i) The return was filed on time with payment but inadvertently mailed to another agency;
- (ii) The delinquency was caused by an employee of the department, such as providing incorrect information to the employer, when the source can be identified;
- (iii) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family;
- (iv) The delinquency was caused by the unavoidable absence of the employer or key employee before the filing deadline. "Unavoidable absence" does not include absences because of business trips, vacations, personnel turnover, or terminations;

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

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

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

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

~~(c) The department may waive late penalties for failure to file a "no payroll" report for one quarter if a new business initially registered that it would have employees that quarter, but then delayed hiring its first employees until after that quarter; and~~

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

~~((7))~~ **(8) Incomplete reports or incorrect format penalty waivers.** For good cause, the department may waive penalties or not count occurrences for incomplete reports or reports in an incorrect format when the employer can demonstrate that the incomplete or incorrectly formatted report was not due to the fault of the employer.

~~((8))~~ **(9) Missing and impossible Social Security numbers.** When a Social Security number is impossible or missing, the department may waive penalties for incomplete reports only once for each worker and only when:

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

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

~~((9))~~ **(10) Penalty waiver requests.**

(a) An employer must request a waiver of penalties in writing, include all relevant facts, attach available proof, and file the request with a tax office. In all cases the burden of proving the facts is on the employer.

(b) At its discretion, the department may waive penalties on its own motion without requiring a request from the employer if it finds that the penalty was caused by the department's own error or for other good cause.

~~((10))~~ **(11) Extensions.** The department, for good cause, may extend the due date for filing a report. If granted, the employer must make a deposit with the department in an

amount equal to the estimated tax due for the reporting period or periods. This deposit will be applied to the employer's debt. The amount of the deposit must be approved by the department.

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-310-040 (~~(Employer reports—Further defining))~~ How should employers report hours worked? (RCW 50.12.070))~~((7))~~ This section defines the hours that employers must include on the quarterly tax and wage report.

(1) **Vacation pay.** Report the number of hours an employee is on paid leave. Do not report payments made in place of vacation time as hours worked.

(2) **Sick leave pay.** As provided in RCW 50.04.330(1), any payments made to an employee under a qualified plan for sickness or accident disability, insurance or annuities, medical or hospitalization expenses in connection with sickness or accident disability, death or retirement are not considered wages or compensation. Do not report these as hours or wages. For payments under a nonqualified plan, report both wages and hours.

(3) **Overtime.** Report the number of hours actually worked for which overtime pay or compensatory time is provided, without regard to the amount of wages or compensation paid.

(4) **Commissioned or piecework employees.** Report the actual number of hours worked by employees paid by commission or by piecework. If there are no reliable time keeping records, report a full-time commissioned or piecework employee for forty hours worked for each week in which any of their duties were performed.

(5) **Wages in lieu of notice.** When an employee is paid wages in lieu of notice of termination, report the actual number of hours for which they were paid. Wages in lieu of notice of termination pays the employee whose services have been terminated by the employer for the amount of wages they would have earned during the notice period.

(6) **Employees on salary.** If a salaried employee works other than the regular forty-hour week, report the actual number of hours worked. If there are no reliable time keeping records, report forty hours for each week in which a full-time salaried employee worked.

(7) **Faculty employees.** Faculty members of community and technical colleges must teach at least fifteen classroom or laboratory hours to be considered full-time. A teaching load of less than fifteen hours of instruction is considered part-time.

(a) If there is no reliable hourly information, report the hours of instruction as part-time based on fifteen credits as a full-time teaching load and thirty-five hours as full-time employment for a week. For example, an instructor teaches twelve credits per week. Twelve divided by fifteen equals eighty percent. Thirty-five hours times eighty percent equals twenty-eight hours. The employer should report the twenty-eight hours to the department on the employer's quarterly tax and wage report.

(b) Any part-time salaried instructor who does not establish a valid claim because of this formula may provide the

department with evidence of hours worked that exceeds the hours reported by the employer.

(8) **Severance pay.** Do not report additional hours for severance pay. Report only the dollar amount paid to the employee. Severance pay is taxable because it is based on past service and compensates the employee upon job separation.

(9) **Payment in kind.** Report the actual hours worked for performing services which are compensated only by payment in kind.

(10) **Bonuses, tips and other gratuities.** Do not report additional hours for bonuses, tips or other gratuities if they are received by an employee who is working regular hours if bonuses, tips and gratuities are the only sources of compensation.

(11) **Fractions of hours.** If the employee's total number of hours for the quarter results in a fraction amount, round the total to the next higher whole number.

(12) **Practice, preparation, and rehearsal time.** If an employee who is part of a performing group is paid for a performance, but is also required by the employer to attend practice, preparation, and rehearsal on an organized group basis, report the hours spent in the required practice, preparation, and rehearsal as well as the performance.

(13) **On-call and standby hours.** Do not report hours if an employee is paid for a shift of on-call or standby hours in which the employee was not actually called in and did not perform services. If the employee was called in or performed services, report the hours actually worked. If the employer has no records of the number of hours actually worked, report the duration of the shift up to eight hours per day.

AMENDATORY SECTION (Amending WSR 00-01-164, filed 12/21/99, effective 1/21/00)

WAC 192-310-050 ((Employer)) What records((-)) must every employer keep? (RCW 50.12.070.) The commissioner requires every employer to keep true and accurate business, financial, and employment records which are deemed necessary for the effective administration of chapter 50.12 RCW.

(1) **Employment records.** Every employer shall with respect to each worker, make, keep, and preserve original records containing all of the following information for four calendar years following the calendar year in which employment occurred:

- ((a-)) (a) The name of each worker;
- ((b-)) (b) The Social Security number of each worker;
- ((c-)) (c) The beginning date of employment for each worker and, if applicable, the separation date of employment of each worker;
- ((d-)) (d) The basis upon which wages and/or remuneration are paid to each worker;
- (e) The location where such services were performed;
- ((f-)) (f) A summary time record for each worker showing the calendar day or days of the week work was performed and the actual number of hours worked each day;
- ((g-)) (g) The workers' total gross pay period earnings;

((h-)) (h) The specific sums withheld from the earnings of each worker, and the purpose of each sum withheld to equate to net pay; and

((i-)) (i) The cause for any discharge where a worker was separated from the job due to discharge; or the cause of any quit where a worker quit the job if the cause for the quit is known.

(2) Business, financial records, and record retention. Every employer shall make, keep, and preserve business and financial records containing the following information for four calendar years following the calendar year in which employment occurred:

(a) Payroll and accounting records, including payroll ledgers, all check registers and canceled checks covering both payroll and general disbursements, general and subsidiary ledgers, disbursement and petty cash records, and profit and loss statements or financial statements;

(b) Quarterly and annual tax reports, including W-2, W-3, 1099, 1096, and FUTA (940) forms;

(c) Quarterly reports to the employment security department and the department of labor and industries;

(d) For independent contractors and subcontractors, business license numbers and registration numbers and copies of contract agreements and invoices; and

(e) For years prior to 2009 for corporations that did not voluntarily elect to cover corporate officers for unemployment insurance, copies of written notifications to corporate officers that they were ineligible for unemployment insurance benefits.

(3) Employers who pay their workers by check are required to keep and preserve all check registers and bank statements. Employers who pay their workers by cash are required to keep and preserve records of these cash transactions which provide a detailed record of wages paid to each worker.

(4) Penalties for failure to keep and preserve records shall be determined under RCW 50.12.070(3).

AMENDATORY SECTION (Amending WSR 07-22-055, filed 11/1/07, effective 12/2/07)

WAC 192-310-055 ((Employer)) What additional records((-)) must farm operators or farm labor contractors((-)) keep? (RCW 50.04.155 and 50.12.070.) ((Every employer is required to keep true and accurate employment records.))

(1) Farm operators and farm labor contractors must keep the records required under WAC 192-310-050.

(2) Farm operators who contract with a crew leader or a farm labor contractor must keep original records containing the following information:

- (a) The beginning and ending dates of the contract;
- (b) The types of services performed;
- (c) The number of persons performing such services;
- (d) The name of the contractor or crew leader; and
- (e) Evidence the farm labor contractor is licensed as required by chapter 19.30 RCW.

AMENDATORY SECTION (Amending WSR 10-01-156, filed 12/22/09, effective 1/22/10)

WAC 192-310-160 How may corporations exempt corporate officers from unemployment insurance coverage? (1) Subject to RCW 50.04.165 and the other requirements of this section, a corporation may exempt one or more corporate officers from coverage by notifying the department on a form approved by the department. The form must be signed by each exempted officer. Unless the corporate officer exempted is the only officer of the corporation, the form must also be signed by another corporate officer verifying the decision to be exempt from coverage.

(2) The election to exempt corporate officers is effective immediately if made within thirty days of when the corporation first registers with the department as an employer under RCW 50.12.070 or within thirty days of when the corporation changes its status with the department from inactive to active employer. If the election to exempt corporate officers is made after that, the exemption is effective on January 1 of the following calendar year. The corporation must send written notice to the department by January 15 for the exemption to be effective on January 1 of that year. The exemption is not effective until filed with the department and will not be applied retroactively, except for the period from January 1 to January 15 if the notice is sent by January 15. A corporation is not eligible for refund or credit for periods before the effective date of the exemption.

(3) A public company as defined in RCW 23B.01.400 may exempt any bona fide corporate officer:

(a) Who is voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation;

(b) Who is a shareholder of the corporation;

(c) Who exercises substantial control in the daily management of the corporation; and

(d) Whose primary responsibilities do not include the performance of manual labor.

(4) A corporation that is not a public company may exempt eight or fewer bona fide corporate officers who voluntarily agree to be exempted from coverage and sign a form approved by the department verifying this. These corporate officers must be voluntarily elected or voluntarily appointed under the articles of incorporation or bylaws of the corporation and must exercise substantial control in the daily management of the corporation.

(5) A corporation that is not a public company may exempt any number of corporate officers if all exempted officers of the corporation are related by blood within the third degree or by marriage to a person related by blood within the third degree. If any of the corporate officers fail to qualify for this exemption because they are not related by blood or marriage as required, then none of the corporate officers may qualify under this subsection, although they may still qualify under subsection (4) of this section. This is an alternative and not an addition to exemptions under subsection (4) of this section.

For example, a husband and wife or a domestic partner, their biological or adopted children or stepchildren, grandchildren, and great grandchildren, their brothers and sisters, their nephews and nieces, and the spouses or domestic part-

ners of any of these people could qualify for exemption as corporate officers under this section without being limited to eight individuals. However, if any of the corporate officers exempted do not meet this test, then this subsection does not apply.

(6) This section does not apply to officers of a corporation covered by chapter 50.44 RCW (some nonprofit or government organizations) or chapter 50.50 RCW (Indian tribes).

AMENDATORY SECTION (Amending WSR 10-01-156, filed 12/22/09, effective 1/22/10)

WAC 192-310-190 When is a corporate officer with ten percent ownership considered unemployed? (1) This section applies to:

(a) A corporate officer who owns ten percent or more (~~(of the outstanding stock)~~) of the corporation; or

(b) A corporate officer who is a family member of another corporate officer who owns ten percent or more (~~(of the outstanding stock)~~) of the corporation. For purposes of this section, a "family member" is a person related by blood or marriage or domestic partnership as parent, stepparent, grandparent, spouse or domestic partner, child, brother, sister, stepchild, adopted child, or grandchild.

(c) Percentage ownership of the corporation may be measured by the percentage owned of outstanding stock or shares of the corporation.

(2) A corporate officer whose claim for benefits is based on any wages with that corporation is not considered unemployed in any week during the individual's term of office, even if wages are not being paid at the time. The corporate officer is considered unemployed and potentially eligible for benefits if the corporation dissolves or if the officer permanently resigns or is permanently removed as a corporate officer under the articles of incorporation or bylaws.

(3) For purposes of this section, "permanently" means for a period of indefinite duration, but expected to extend at least through the claimant's benefit year end date. If at any time during the benefit year the claimant resumes his or her position as an officer with the corporation, all benefits paid during that benefit year will be considered an overpayment and the claimant will be liable for repayment.

(4) A corporation must provide notice to the department in a format approved by the department when the ownership (~~(of the)~~) percentage of (~~(stock)~~) a corporate officer increases to become ten percent or more or decreases to become less than ten percent. The notice is due by the time the next quarterly tax and wage report is due from the corporation.

AMENDATORY SECTION (Amending WSR 05-19-017, filed 9/9/05, effective 10/10/05)

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

AMENDATORY SECTION (Amending WSR 10-16-038, filed 7/26/10, effective 8/26/10)

WAC 192-320-065 How does an employer request relief of benefit charges? (RCW 50.29.021.) For purposes of RCW 50.29.021, a contribution-paying (~~(nonlocal government)~~) base year employer may request relief from certain benefit charges which result from the payment of benefits to an individual. This section does not apply to local governments.

(1) **Employer added to a monetary determination as the result of a redetermination.** The employer's request for relief of benefit charges must be received or postmarked within thirty days of (~~(mailing)~~) when the department mails the notification of redetermination (Notice to Base Year Employer - EMS 166).

(2) **Timely response.** The commissioner may consider a request for relief of benefit charges that has not been received or postmarked within thirty days as timely if the employer establishes good cause for the untimely response.

(3) **Additional information.**

(a) The employer shall provide the information requested by the department within thirty days of the mailing date of the department's request.

(b) It shall be the responsibility of the employer to provide all pertinent facts to the satisfaction of the department to make a determination of relief of benefits charges, or good cause for failure to respond in a timely manner.

(c) Failure to respond within thirty days will result in a denial of the employer's request for relief of benefit charges unless the employer establishes good cause for the untimely response.

(4) **Denial and appeal of request.** Any denial of a request for relief of benefit charges shall be in writing (~~(and will be the basis of appeal pursuant to)~~). The denial may be appealed under RCW 50.32.050.

AMENDATORY SECTION (Amending WSR 07-23-127, filed 11/21/07, effective 1/1/08)

WAC 192-320-070 What conditions apply for relief of benefit charges due to a voluntary quit? (RCW 50.29.021.) (1) A contribution-paying (~~(nonlocal government)~~) base year employer, who has not been granted relief of charges under RCW 50.29.021(3), may request relief of charges for a voluntary quit not attributable to the employer under RCW 50.29.021(4) and WAC 192-320-065. This section does not apply to local governments.

(2) **Reasons for a voluntary quit not attributable to the employer.** A claimant may have been denied unemployment benefits for voluntarily quitting work without good cause, but subsequently requalify for unemployment benefits through work and earnings. Even if the claimant has requalified for benefits, the following reasons for leaving work will be considered reasons not attributable to the employer:

(a) The claimant's illness or disability or the illness, disability or death of a member(s) of the claimant's immediate family;

(b) The claimant's domestic responsibilities;

(c) Accepting a job with another employer;

(d) Relocating for a spouse's or domestic partner's employment;

(e) Starting or resuming school or training;

(f) Being in jail;

(g) The distance to the job site when the job was accepted and the distance at the time of the quit remained the same; or the job location may have changed but the distance traveled or difficulty of travel was not increased;

(h) Being dissatisfied with wages, hours or other working conditions generally known when the job was accepted; and the working conditions are determined suitable for the occupation in the claimant's labor market; and

(i) (~~(Domestic violence which causes the claimant reasonably to believe that continued employment would jeopardize the safety of)~~) Separation necessary to protect the claimant or any member of the claimant's immediate family from domestic violence or stalking; and

(j) Entry into an apprenticeship program approved by the Washington state apprenticeship training council.

(3) **Reasons for a voluntary quit considered attributable to employer** are those work-related factors of such a compelling nature as to cause a reasonably prudent person to leave employment. The work factors must have been reported to the employer if the employer has reasons not to be aware of the conditions, and the employer failed to improve the factors within a reasonable period of time. The reason for quitting may or may not have been determined good cause for voluntarily leaving work under RCW 50.20.050. For benefit charging purposes, however, such work-related factors may include, but are not limited to:

(a) Change in work location which causes an increase in distance and/or difficulty of travel, but only if it is clearly greater than is customary for workers in the individual's classification and labor market;

(b) Deterioration of work site safety provided the employee has reported such safety deterioration to the employer and the employer has failed to correct the hazards within a reasonable period of time;

(c) Employee skills no longer required for the job;

(d) Unreasonable hardship on the health or morals of the employee;

(e) Reductions in hours;

(f) Reduction in pay;

(g) Notification of impending layoff; and

(h) Other work-related factors the commissioner considers pertinent.

AMENDATORY SECTION (Amending WSR 10-16-038, filed 7/26/10, effective 8/26/10)

WAC 192-320-085 When is an overpayment of benefits(~~(—Credit)~~) credited to an employer's account(=)? Benefits paid shall be recoverable to the extent allowable pursuant to RCW 50.20.190 in the event that the decision allowing benefits is ultimately modified or reversed. (~~(Such ultimate)~~) Reversal or modification shall not affect previous benefit charges (~~(based thereon)~~) ultimately modified or reversed; however, benefit credits in an amount equal to the erroneous charges shall be applied to the employer's account

for the quarter in the calendar year in which the decision is ultimately modified or reversed.

AMENDATORY SECTION (Amending WSR 03-22-032, filed 10/28/03, effective 11/28/03)

WAC 192-330-110 (~~(Delinquencies.)~~) What tax rate is assigned to a delinquent employer who becomes a contribution-paying employer? RCW 50.29.025 (~~((1)(f)(i) and (2)(e)(i))~~) specifies the tax rate that shall be charged to employers who have failed to pay their contributions and who are not in compliance with a deferred payment contract. The tax rate established by that section shall also be assigned to a reimbursable employer (one who makes payments in lieu of contributions) who is delinquent in its payments and elects or is required to become a contribution-paying employer.

AMENDATORY SECTION (Amending WSR 03-22-032, filed 10/28/03, effective 11/28/03)

WAC 192-330-150 How may the option to make payments in lieu of contributions be revoked for tribes and tribal entities(~~(—)~~)? (RCW 50.50.040.) (1) In any revocation action, the department will treat the entire tribe as a single entity. If any tribal entity or unit becomes delinquent, the entire tribe will be treated as delinquent. If any entity of the tribe is a contribution-paying employer and is delinquent, the entire tribe will be treated as a contribution-paying employer and will be subject to revocation of coverage.

(2) The ninety day response period in RCW 50.50.040 (1)(a) and the one hundred eighty day response period(s) in RCW 50.50.040 (2)(a) begin with the date the tax statement is received, which is deemed to be three days after it is mailed to the employer by the department.

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

WAC 192-340-100 What reasonable audit expenses(~~(—)~~) may the department charge if an employer knowingly misrepresents payroll? (RCW 50.12.220 ((1)(b)) (3).) If an employer knowingly misrepresents its payroll to the department, it shall be liable for the reasonable expenses (for) of auditing ((an employer's)) its books and collecting taxes. These may include:

(1) Salaries and benefits based on the payrolls documented for state staff conducting the audit (including reporting and follow-up costs);

(2) Communication costs such as telephone charges for arranging the audit, e-mails, mail or similar communication services;

(3) Travel costs for expenses such as transportation, lodging, subsistence and related items incurred by state employees traveling for the purpose of conducting the audit. Such costs may be charged on an actual cost basis or on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed by the department;

(4) Customary standard commercial airfare costs (coach or equivalent);

(5) Costs for materials and supplies (including the costs of producing reports and audit findings);

(6) Equipment costs necessary for conducting the audit;

(7) Collection costs, including court costs, lien and warrant fees, and related costs; and

(8) Other costs which the department establishes that are directly related to the audit or collection of the penalty (~~(i.e.)~~) e.g. appeal costs).

AMENDATORY SECTION (Amending WSR 07-23-131, filed 11/21/07, effective 1/1/08)

WAC 192-350-010 What is a predecessor-successor relationship? (1) This section applies only to those individuals and organizations that meet the definition of an employer contained in RCW 50.04.080.

(2) A predecessor-successor relationship exists when a transfer occurs and one business (successor) acquires all or part of another business (predecessor). It may arise from the transfer of operating assets, including but not limited to the transfer of one or more employees from a predecessor to a successor. It may also arise from an internal reorganization of affiliated companies. Whether or not a predecessor-successor relationship (including a "partial predecessor" or "partial successor" relationship) exists depends on the totality of the circumstances.

(3) **Predecessor.** An employer may be a "predecessor," including a "full predecessor" or "partial predecessor," if, during any calendar year, it transfers any of the following to another individual or organization:

(a) All or part of its operating assets as defined in subsection (5) of this section; or

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

(4) **Successor.** A "successor" may be either a "full successor" or a "partial successor." An employer may be a "full successor" if, during any calendar year, it acquires substantially all of a predecessor employer's operating assets. It may be a "partial successor" if, during any calendar year, it acquires:

(a) Part of a predecessor employer's operating assets; or

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

(5) **Operating assets.** "Operating assets" include the resources used in the normal course of business to produce operating income. They may include resources that are real or personal, and tangible or intangible. Examples include land, buildings, machinery, equipment, stock of goods, merchandise, fixtures, employees, or goodwill. "Goodwill" includes the value of a trade or business based on expected continued customer patronage due to its name, reputation, or any other factor.

(6) **Transfer of assets.** Transfers from a predecessor to a successor employer may occur by sale, lease, gift, or any legal process, except those listed in subsection (9) of this section.

(7) **Simultaneous acquisition.** For purposes of successor simultaneous acquisition, the term "simultaneous" means all transfers that resulted from acquiring or reorganizing the business, beginning when the acquisition started and ending when the primary unit is transferred.

(8) **Factors.** Factors should be weighed instead of merely adding up the number of individual factors. No single factor is necessarily conclusive(~~(-but)~~). Some of the factors which the department may consider as favoring establishment of a predecessor-successor (including a "full successor" or "partial successor") relationship are:

(a) Whether the employers are in the same or a like business (e.g., providing similar or comparable goods or services or serving the same market);

(b) Whether the asset(s) transferred constitute a substantial or key portion of similar assets for either the predecessor or successor;

(c) Whether the assets were transferred directly and not through an independent third party;

(d) Whether multiple types of assets (e.g., employees, real property, equipment, goodwill) transferred;

(e) Whether a significant number or significant group of employees transferred between employers;

(f) Whether the assets transferred at the same time or in a connected sequence, as opposed to several independent transfers;

(g) Whether the business name of the first employer continued or was used in some way by the second employer;

(h) Whether the second employer retained or attempted to retain customers of the first employer;

(i) Whether there was relative continuity and not a significant lapse in time between the operations of the first and second employers;

(j) Whether there was continuity of management between employers;

(k) Whether the employers shared one or more of the same or related owners;

(l) Whether documents, such as a contract or corporate minutes, show the sale or transfer of a business or a portion of a business; and

(m) Whether other factors indicate that a predecessor-successor relationship exists.

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

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

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

(10) **Burden of proof.** The department has the burden to prove by a preponderance of the evidence that a business is the successor or partial successor to a predecessor business. However, if a business fails to respond to requests for information necessary to determine a predecessor-successor relationship, the department may meet its burden by applying RCW 50.12.080 to determine the necessary facts.

AMENDATORY SECTION (Amending WSR 07-23-131, filed 11/21/07, effective 1/1/08)

WAC 192-350-070 What effect does a predecessor-successor relationship have on tax rates? (1) Under RCW 50.29.062(1), if the successor is an employer at the time of the transfer of a business, the successor's tax rate shall remain unchanged for the rest of the calendar year. Beginning on January 1 of the year after the transfer and until the successor qualifies for its own rate, the successor's tax rate for each rate year shall combine the successor's experience with the experience of the predecessor or the relevant portions of the partial predecessor.

(2)(a) Under RCW 50.29.062 (2)(b), if the successor is not an employer at the time of the transfer of a business and if the transfer occurs after January 1, 2005, the successor's tax rate for the rest of the calendar year shall be the same as the predecessor employer at the time of the transfer. Any experience attributable to the predecessor shall be transferred to the successor.

(b) Under RCW 50.29.062 (2)(b)(ii), if there is a substantial continuity of ownership, control, or management by the successor, beginning on January 1 after the transfer, the successor's tax rate shall be based on a combination of the successor's experience and the transferred experience from the predecessor.

(c) Under RCW 50.29.062 (2)(b)(i), if there is not a substantial continuity of ownership, control, or management by the successor, beginning on January 1 after the transfer, the successor's tax rate shall be assigned under RCW 50.29.062 (2)(b)(i)(B). However, if the predecessor terminates business on December 31st of any year and the successor begins business on January 1st of the next year, the department will calculate tax rates as if the transfer occurred on January 1st. Therefore, the department will assign a tax rate to the predecessor for January 1st and that rate will transfer to the successor.

(3) If the successor simultaneously acquires businesses from two or more employers with different tax rates, the successor's tax rate shall be assigned under RCW 50.29.062 (2)(b)(iii).

(4) The tax rate on any payroll retained by a predecessor employer shall remain unchanged for the rest of the rate year in which the transfer occurs. Beginning on January 1 after the transfer, the predecessor's tax rate shall be assigned under RCW 50.29.062 (3)(b).

(5) Changes in rate class for a predecessor or successor are effective only for the rate year the information was provided and for subsequent rate years.

(6) This section does not apply to a transfer of less than one percent of a business.

(7) This section does not apply if there is "SUTA dumping" under RCW 50.29.063.

NEW SECTION

WAC 192-350-090 When does an employer quit or dispose of a business for purposes of successor liability? (RCW 50.24.210.) For purposes of RCW 50.24.210, an employer is considered to have quit business or disposed of its business or stock of goods if it disposes of substantially all

of its operating assets. An employer is also considered to have quit business or disposed of its business or stock of goods if it transfers operating assets and retains only assets that do not have substantial net value or that are lower in value than total unemployment taxes, penalties, and interest owed. If an employer quits business or disposes of its business or stock of goods and has more than one successor, all successors are jointly and severally liable for any unemployment taxes due unless the employer and all successors have notified the department in writing and the department has approved apportioning any unemployment tax liability between the successors.

WSR 10-23-065

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed November 12, 2010, 10:09 a.m., effective December 13, 2010]

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

Purpose: The rule implements section 1, chapter 72, Laws of 2010 (SSB 6524), by altering the formula for calculating unemployment insurance tax rates for employers who are delinquent in paying their taxes and filing reports.

Citation of Existing Rules Affected by this Order: Amending WAC 192-320-035.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040.

Adopted under notice filed as WSR 10-20-157 on October 6, 2010.

A final cost-benefit analysis is available by contacting Juanita Myers, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.wa.gov.

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

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

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

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

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

Date Adopted: November 12, 2010.

Paul Trause
Commissioner

AMENDATORY SECTION (Amending WSR 09-24-009, filed 11/20/09, effective 12/21/09)

WAC 192-320-035 How are unemployment insurance tax rates determined for employers who are delin-

quent on taxes or reports through rate year 2010? For rate years through 2010:

(1) An employer that has not submitted by September 30 all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1 of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1. These minimum amounts only apply to taxes, interest, and penalties, not to failure to submit required reports.

(3)(a) This section does not apply if the otherwise qualified employer shows to the satisfaction of the commissioner that he or she acted in good faith and that application of the rate for delinquent taxes would be inequitable. This exception is to be narrowly construed to apply at the sole discretion of the commissioner, recognizing that the delinquent tax rate only applies after the employer has already received a grace period of not less than two months beyond the normal due date for reports and taxes due. The commissioner's decision shall be subject to review only under the arbitrary and capricious standard and shall be reversed in administrative proceedings only for manifest injustice based on clear and convincing evidence.

(b) Except for services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the commissioner will not find in the usual course of business that application of the rate for delinquent taxes would be inequitable:

(i) If the employer has been late with filing or with payment in more than one of the last eight consecutive quarters immediately preceding the applicable period;

(ii) If the delinquency was due to absences of key personnel and the absences were because of business trips, vacations, personnel turnover, or terminations;

(iii) If the delinquency was due to adjusting by more than two quarters the liable date when the employer first had employees; or

(iv) If the employer is a successor, the rate for delinquent taxes is based on the predecessor, and the successor could or should have determined the predecessor's tax status at the time of the transfer.

(c) Examples of when the commissioner may find that application of the rate for delinquent taxes would be inequitable include if the delinquency results from:

(i) An employer reducing its tax payment by the amount specified as a credit on the most recent account statement from the department, when the credit amount is later determined to be inaccurate;

(ii) Taxes due which are determined as the result of a voluntary audit;

(iii) Resolution of a pending appeal and any amounts due are paid within thirty days of the final resolution of the amount due or the department approves a deferred payment contract within thirty days of the final resolution of the amount due;

(iv) The serious illness or death of key personnel or their family that extends throughout the period in which the tax

could have been paid prior to September 30 and no reasonable alternative personnel were available and any amounts due are paid no later than December 31 of such year; or

(v) An employee or other contracted person committing fraud, embezzlement, theft, or conversion, the employer could not immediately detect or prevent the wrongful act, the employer had reasonable safeguards or internal controls in place, the employer filed a police report, and any amounts due are paid within thirty days of when the employer could reasonably have discovered the illegal act.

(d) When determining whether an employer acted in good faith and that application of the rate for delinquent taxes would be inequitable, the following factors are considered neutral and neither support nor preclude waiver of the rate for delinquent taxes:

(i) The harshness of the burden on the employer caused by application of the rate for delinquent taxes;

(ii) Lack of knowledge by the employer, bookkeepers, accountants, or other financial advisors about application of the law or the potential harshness of the rate;

(iii) Delay by the employer or its representative in opening mail or receiving other notice from the department; or

(iv) Error by a payroll, bookkeeping, or accounting service on behalf of an employer.

(4) The department shall provide notice to the employer or employer's agent that the employer may be subject to the higher rate for delinquent taxes if the employer does not comply with this section. Notice may be in the form of an insert or statement in July, August, or September billing statements or in a letter or notice of assessment. Evidence of the routine practice of the department in mailing notice in billing statements or in a notice of assessment shall be sufficient to establish that the department provided this notice. No notice need be provided to an employer that is not currently registered and active.

(5) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned an array calculation factor rate two-tenths higher than that in rate class 40, unless the department approves a deferred payment contract with the employer by September 30 of the previous rate year. If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate shall immediately revert to an array calculation factor rate two-tenths higher than in rate class 40.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned a social cost factor rate in rate class 40.

(7) Assignment of the rate for delinquent taxes is not considered a penalty which is subject to waiver under WAC 192-310-030.

(8) The amendments to this section effective July 26, 2009, apply only to tax rates assigned after that date.

NEW SECTION

WAC 192-320-036 How are unemployment insurance tax rates determined for employers who are delinquent on taxes or reports, beginning in rate year 2011? (1)

An employer that has not submitted by September 30th all reports, taxes, interest, and penalties required under Title 50 RCW for the period preceding July 1st of any year is not a "qualified employer."

(2) For purposes of this section, the department will disregard unpaid taxes, interest, and penalties if they constitute less than either one hundred dollars or one-half of one percent of the employer's total tax reported for the twelve-month period immediately preceding July 1st. These minimum amounts only apply to taxes, interest, and penalties, not failure to submit required reports.

(3)(a) This section does not apply if the otherwise qualified employer shows to the satisfaction of the commissioner that he or she acted in good faith and that application of the rate for delinquent taxes would be inequitable. This exception is to be narrowly construed to apply at the sole discretion of the commissioner, recognizing that the delinquent tax rate only applies after the employer has already received a grace period of not less than two months beyond the normal due date for reports and taxes due. The commissioner's decision shall be subject to review only under the arbitrary and capricious standard and shall be reversed in administrative proceedings only for manifest injustice based on clear and convincing evidence.

(b) The commissioner will not find in the usual course of business that application of the rate for delinquent taxes would be inequitable:

(i) If the employer has been late with filing or with payment in more than one of the last eight consecutive quarters immediately preceding the applicable period;

(ii) If the delinquency was due to absences of key personnel and the absences were because of business trips, vacations, personnel turnover, or terminations;

(iii) If the delinquency was due to adjusting by more than two quarters the liable date when the employer first had employees; or

(iv) If the employer is a successor, the rate for delinquent taxes is based on the predecessor, and the successor could or should have determined the predecessor's tax status at the time of the transfer.

The limitations in (b) of this subsection do not apply to services under RCW 50.04.160 performed in domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

(c) Examples of when the commissioner may find that application of the rate for delinquent taxes would be inequitable include if the delinquency results from:

(i) An employer reducing its tax payment by the amount specified as a credit on the most recent account statement from the department, when the credit amount is later determined to be inaccurate;

(ii) Taxes due which are determined as the result of a voluntary audit;

(iii) Resolution of a pending appeal and any amounts due are paid within thirty days of the final resolution of the amount due or the department approves a deferred payment contract within thirty days of the final resolution of the amount due;

(iv) The serious illness or death of key personnel or their family that extends throughout the period in which the tax

could have been paid prior to September 30th and no reasonable alternative personnel were available and any amounts due are paid no later than December 31st of such year; or

(v) An employee or other contracted person committing fraud, embezzlement, theft, or conversion, the employer could not immediately detect or prevent the wrongful act, the employer had reasonable safeguards or internal controls in place, the employer filed a police report, and any amounts due are paid within thirty days of when the employer could reasonably have discovered the illegal act.

(d) When determining whether an employer acted in good faith and that application of the rate for delinquent taxes would be inequitable, the following factors are considered neutral and neither support nor preclude waiver of the rate for delinquent taxes:

(i) The harshness of the burden on the employer caused by application of the rate for delinquent taxes;

(ii) Lack of knowledge by the employer, bookkeepers, accountants, or other financial advisors about application of the law or the potential harshness of the rate;

(iii) Delay by the employer or its representative in opening mail or receiving other notice from the department; or

(iv) Error by a payroll, bookkeeping, or accounting service on behalf of an employer.

(4) The department shall provide notice to the employer or employer's agent that the employer may be subject to the higher rate for delinquent taxes if the employer does not comply with this section. Notice may be in the form of an insert or statement in July, August, or September billing statements or in a letter or notice of assessment. Evidence of the routine practice of the department in mailing notice in billing statements or in a notice of assessment shall be sufficient to establish that the department provided this notice. No notice need be provided to an employer that is not currently registered and active.

(5)(a) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned the array calculation factor rate it would otherwise have had if it had not been delinquent, plus an additional one percent. If the employer fails to pay contributions when due for a second or more consecutive year, it shall be assigned the array calculation factor rate it would otherwise have had if it had not been delinquent, plus an additional two percent.

(b) If the employer fails to provide quarterly tax reports and the department cannot otherwise calculate what tax rate the employer would otherwise have had if it had not been delinquent, the department shall use the higher of the rate calculated under RCW 50.29.025 (2)(d) (NAICS rate with one percent minimum) or the last annual rate assigned to the employer.

(c) The higher rate for an employer in (a) of this subsection shall not apply if the employer enters a deferred payment contract approved by the agency by September 30th of the previous rate year.

(d) If, after September 30th of the previous rate year and within thirty days after the date the department sent its first subsequent tax rate notice to the employer, an employer in (a) of this subsection pays all amounts owed or enters a deferred payment contract approved by the agency, the additional rate shall be one-half percent less than it would otherwise have

been in (a) of this subsection. "First subsequent tax rate notice to the employer" means the first notice to the employer assigning that specific delinquent tax rate, regardless of whether the notice is part of the department's annual tax rate run.

(e) If an employer with an approved deferred payment contract fails to make any one of the payments or fails to submit any tax report and payment in a timely manner, the employer's tax rate shall immediately revert to the rate in (a) of this subsection.

(6) An employer that is not a "qualified employer" because of failure to pay contributions when due shall be assigned a social cost factor rate in rate class 40. The tax rate caps for "qualified employers" in RCW 50.29.025 shall not apply either to the calculation of the social cost factor rate in rate class 40 or to the sum of the array calculation factor rate and the graduated social cost factor rate for employers that are not "qualified employers."

(7) An employer that is not a "qualified employer" because it is a successor and its predecessor was not a "qualified employer" shall be assigned rates based on its successor status.

(8) Assignment of the rate for delinquent taxes is not considered a penalty that is subject to waiver under WAC 192-310-030.

WSR 10-23-074

PERMANENT RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed November 15, 2010, 10:12 a.m., effective December 16, 2010]

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

Purpose: WAC 181-77-005 and 181-77-025 contains technical errors describing requirements for career and technical education certificates in mathematics and science. Changes errors and citations. Provides for certain career and technical education endorsements to be assigned basic education courses.

Citation of Existing Rules Affected by this Order: Amending x [WAC 181-77-005 and 181-77-025].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 10-20-001 on September 22, 2010.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: November 10, 2010.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 08-16-004, filed 7/23/08, effective 8/23/08)

WAC 181-77-005 Types of career and technical education certificates. The following types of certificates shall be issued:

(1) Teacher. The teacher certificate authorizes service as a teacher in the school district(s) or skills center(s) and shall be issued in one of the following categories and/or in a specific subcategory of the major category as approved by the professional educator standards board and/or its designee:

- (a) Agriculture education;
- (b) Business and marketing education;
- (c) Family and consumer sciences education;
- (d) Technology education;
- (e) Trade and industrial;
- (f) Health occupations;
- (g) Career choices;
- (h) Coordinator for worksite learning; or
- (i) New and emerging fields;
- (j) Categories which may be added to a continuing career and technical education certificate are:

(i) Mathematics applied. To add this category, the candidate shall:

(A) ~~((Have completed a state approved career and technical education preparation program based on business and industry under chapter 181-77A WAC;))~~ Hold a continuing career and technical education certificate based on WAC 181-77-041;

(B) Hold ~~((an approved))~~ a baccalaureate degree or higher in a math-related area such as engineering from a regionally accredited college or university pursuant to WAC 181-79A-030(5);

(C) ~~((Hold a continuing career and technical education certificate with a technology education or trade and industrial category under this section. Provided, That trade and industrial candidates hold a math-related degree in mathematics or engineering;~~

~~((D)))~~ Be fully contracted as a teacher or long-term substitute teacher by a Washington public school;

~~((E)))~~ (D) Pass the mathematics subject knowledge test approved by the professional educator standards board; and

~~((F)))~~ (E) Document a minimum of one year teaching experience in technology education or ~~((trade and industrial))~~ skilled and technical science courses.

(ii) Science applied, biology applied, chemistry applied, physics or earth and space science applied. To add ~~((this category))~~ these categories, the candidate shall:

(A) ~~((Have completed a state approved career and technical education teacher preparation program based on business and industry under chapter 181-77A WAC;))~~ Hold a continuing career and technical education certificate based on WAC 181-77-041;

(B) Hold ~~((an approved))~~ a baccalaureate degree or higher in a science-related area such as engineering or in a medical field from a regionally accredited college or university pursuant to WAC 181-79A-030(5);

(C) ~~((Hold a continuing career and technical education certificate with an agriculture education, health occupations, or trade and industrial category under this section. Provided, That trade and industrial candidates hold a science-related degree in science, engineering, or a medical practice field;~~

~~((D)))~~ Be fully contracted as a teacher or long-term substitute by a Washington public school;

~~((E)))~~ (D) Pass the appropriate science, biology, chemistry, physics, or earth and space science subject knowledge test approved by the professional educator standards board; and

~~((F)))~~ (E) Document a minimum of one year teaching experience in agriculture education, health occupations, or ~~((trade and industrial))~~ skilled and technical science courses.

~~((iii))~~ CTE teachers who have earned a mathematics applied or science applied category are eligible for teaching assignments in general education mathematics or science courses, dependent upon the category on the continuing career and technical education certificate, under WAC 181-77-025.)

(2) Director. The director certificate authorizes service as a career and technical education director, as an assistant director, or as a career and technical education supervisor in the school district(s) or skills center(s);

(3) Counselor. The career and technical education counselor certificate authorizes service in the role of career and technical education guidance and counseling;

(4) Occupational information specialist. The occupational information specialist certificate authorizes service in the role as an occupational information specialist.

AMENDATORY SECTION (Amending WSR 08-16-004, filed 7/23/08, effective 8/23/08)

WAC 181-77-025 Personnel assignment. Career and technical education teachers teaching other secondary school subjects and career and technical education counselors serving in addition as general counselors need to hold a valid certificate as provided for in chapter 181-79A WAC. ~~((Career and technical education teachers who hold a mathematics applied category are eligible to teach general education mathematics, and career and technical education teachers who hold a science applied category are eligible to teach general education science under WAC 181-77-005.))~~ CTE teachers who have earned a certificate for mathematics applied, science applied, biology applied, chemistry applied, physics applied, or earth and space science applied category are eligible for teaching assignments in general education mathematics, science, biology, chemistry, physics, or earth and space science courses, dependent upon the category on the continuing career and technical education certificate.

WSR 10-23-075

PERMANENT RULES

DEPARTMENT OF TRANSPORTATION

[Filed November 15, 2010, 10:29 a.m., effective December 16, 2010]

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

Purpose: This rule will edit existing language, updating terms and phrases to accurately reflect current national practices associated with traffic control for bicycle races utilizing state highways.

Citation of Existing Rules Affected by this Order: Amending WAC 468-400-010, 468-400-020, 468-400-030, and 468-400-040.

Statutory Authority for Adoption: RCW 47.36.030.

Adopted under notice filed as WSR 10-20-153 on October 6, 2010.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 4, Repealed 0.

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

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

Date Adopted: November 15, 2010.

Stephen T. Reinmuth
Chief of Staff

AMENDATORY SECTION (Amending Order 171, filed 2/26/98, effective 3/29/98)

WAC 468-400-010 Policy. It is the policy of the Washington state department of transportation (department) to permit bicycle racing on state highways in accordance with the conditions and regulations set forth in this ~~((code))~~ chapter and the latest edition of the "*Washington State Bicycle Racing Guidelines*."

AMENDATORY SECTION (Amending Order 171, filed 2/26/98, effective 3/29/98)

WAC 468-400-020 Definitions. Bicycles are defined in RCW ~~((47.04.071 [46.04.071]))~~ 46.04.071. Bicycle racing means any contest of speed or competition ~~((where))~~ conducted on bicycles ((are used)). Bicycle racing permits riding with more than two riders abreast on a roadway. This ~~((code))~~ chapter applies to all bicycle racing events ((in which bicycle racing takes place)) conducted on state highways, including the following types.

(1) Duathlon, triathlon, or multisport event. ~~((A))~~ Duathlons, triathlons, or multisport ((race)) events are competitions in which bicycle racing forms an essential component ((of the

~~complete event))~~. The bicycle race portion of these events is conducted similar to a time trial.

(2) Time trial. Time trials are events in which individuals or small teams of riders, separately ride the same route and distance for elapsed time. Time trials are generally started at preset intervals and held on an out_and_back or circuit course.

(3) Criterium. Criteriums are massed start, high speed bicycle race events in which riders race around a closed circuit course to compete for order of finish. Criteriums are usually held on closed urban or suburban public streets. The course is normally one-half to one mile ~~((in length))~~ long.

(4) Road race. Road races are massed start events in which riders complete a race course for order of finish. The course may be point_to_point, a large circuit, or repeated laps of a shorter circuit. Road races are usually held on rural or suburban roads, but may also ~~((take place on))~~ utilize urban streets.

(5) Rolling enclosure. A rolling enclosure is a type of traffic control where escort vehicles form ~~((a))~~ an enclosed caravan for the exclusive use of bicyclists, by leading and following a group of racers. The enclosure ~~((sets aside a moving part of))~~ moves along the roadway in the direction of the race ~~((for exclusive use of bicyclists))~~. Racers inside the enclosure are not required to follow the normal rules of the road but are controlled by the rules set forth in the "*Washington State Bicycle Racing Guidelines*." Racers are not allowed to cross the ~~((center line))~~ roadway centerline unless the entire road is traffic controlled. A rolling enclosure is the typical traffic control ~~((used to run))~~ strategy for a road race.

AMENDATORY SECTION (Amending Order 171, filed 2/26/98, effective 3/29/98)

WAC 468-400-030 Bicycle race permit required. No bicycle race event may be held on a state highway without an approved bicycle race permit. All persons or organizations (permittee) conducting any form of bicycle race on a state highway shall apply for a bicycle race permit from the applicable ~~((WSDOT))~~ department region administrator. The bicycle race permit must be applied for at least sixty days before the bicycle race event. ~~((No bicycle race event may be held on a state highway without an approved bicycle race permit.))~~ The ~~((WSDOT))~~ department region administrator may waive these requirements under special conditions.

AMENDATORY SECTION (Amending Order 171, filed 2/26/98, effective 3/29/98)

WAC 468-400-040 Bicycle race permit conditions.

(1) Bicycle race permits shall be granted only under conditions that ensure reasonable safety for ~~((all))~~ participants, spectators, and other highway users. Reasonable safety implies that race participants, spectators, and other highway users have been accommodated ~~((in))~~ during the planning process in a manner ((as to)) that minimizes the possibility of placing one highway user in conflict with another.

(2) Bicycle race permit requests must include a race description stating all the pertinent information required to understanding the bicycle race event. The request must include a map showing the roadway on which the race will be held. Applications must specify the number of escort vehicles

on the roadway used to ~~((run a))~~ conduct the race, starting and anticipated ~~((finish))~~ finishing time, maximum number of racers, number and training of course marshals, types of signing, and communications equipment.

(3) Approval of other involved jurisdictions shall be obtained prior to formal issuance of a bicycle race permit from the ~~((WSDOT))~~ department.

(4) If the race only crosses a state highway, the ~~((WSDOT))~~ department region administrator may waive the need for a bicycle race permit provided the permittee can show that reasonable traffic control and safety are provided by the organizer and other road authority: Provided further, That the permittee provide the indemnification and liability insurance prescribed in subsections (6) and (7) of this section.

(5) Bicycle racing will not normally be allowed on the Interstate Highway System.

(6) The permittee shall indemnify, defend and save harmless the state of Washington for any claim, suit, action for injuries, death or any other cause of personal injury or property damage arising from the issuance of a bicycle race permit, including claims of race participants, pedestrians, or other roadway users.

(7) The permittee shall obtain liability insurance in an amount no less than ~~((one))~~ two million dollars to cover the state of Washington for any and all liabilities, including all costs, attorney fees, judgments or other expenses, arising ~~((out of))~~ from the use of state highways for the bicycle race event. The state shall be named as an additional insured on all insurance policies. When motor vehicles participate during the event, liability insurance for those vehicles is also required.

(8) When five or more vehicles are lined up behind a bicycle race and delayed for more than five minutes, the bicycle race shall be neutralized at a place of safety to allow the delayed vehicles to pass.

(9) Requests for bicycle race permits must comply with the ~~((current WSDOT))~~ latest edition of the department's "Washington State Bicycle Racing Guidelines."

(10) The original or certified copy of the permit must be available at the bicycle race for the duration of the bicycle race event.

~~((Copies of))~~ The "Washington State Bicycle Racing Guidelines" may be obtained from the ((WSDOT bicycle and pedestrian program or a WSDOT region office)) department's web site.

WSR 10-23-076

PERMANENT RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed November 15, 2010, 10:44 a.m., effective December 16, 2010]

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

Purpose: Amends WAC 181-82A-204 to assure that pathway candidates hold the endorsement related to the pathway.

Citation of Existing Rules Affected by this Order:
Amending x [WAC 181-82A-204].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 10-20-016 on September 24, 2010.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

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

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

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

Date Adopted: November 10, 2010.

David Brenna
Legislative and
Policy Coordinator

AMENDATORY SECTION (Amending WSR 10-16-016, filed 7/22/10, effective 8/22/10)

WAC 181-82A-204 Endorsement requirements. (1) Candidates completing endorsements required to obtain a residency certificate, shall complete college/university teacher preparation programs approved by the professional educator standards board pursuant to chapter 181-78A WAC, which include methodology (see WAC 181-78A-264(5)) and field experience/internship (see WAC 181-78A-264(6)) and pursuant to endorsement program approval requirements in this chapter.

(2) In order to add an additional endorsement, the candidate shall:

(a) Have completed a state-approved endorsement program which includes methodology (see WAC 181-78A-264(5)) and addresses all endorsement-specific competencies adopted and published by the professional educator standards board ~~((and published by the superintendent of public instruction))~~. The requirement for field experience shall be at the discretion of the college/university. Provided, that in cases where programs require a field experience/internship, the colleges/universities should make every attempt to allow the individual to complete field-based requirements for the endorsement within the confines of the individual's teaching schedule; or

(b) Achieve National Board certification in a Washington teaching endorsement area and hold a valid National Board certificate; or

(c) Pass the subject knowledge test approved by the professional educator standards board for the certificate endorsement being sought. The instructional methodology and con-

tent-related skills of the desired subject endorsement must be compatible with one or more of the current endorsement(s) on the applicant's teacher certificate, per the list of Pathway 1 endorsements adopted and published by the professional educator standards board (~~and published by the superintendent of public instruction~~). The applicant must document a minimum of ninety days teaching experience as a teacher via full-time, part-time, or substitute experience, in a public or state approved private school, or state agency providing educational services for students, in the endorsement area that is compatible in instructional methodology and content-related skills to the Pathway 1 endorsement; or

(d)(i) Pass the subject knowledge test approved by the professional educator standards board for the certificate endorsement being sought and successfully meet all eligibility criteria and process requirements for Pathway 2 endorsements as adopted and published by the professional educator standards board (~~and published by the superintendent of public instruction~~). The desired subject endorsement must be identified as a Pathway 2 endorsement for one or more of the current endorsement(s) on the applicant's teacher certificate, per the list of Pathway 2 endorsements adopted and published by the professional educator standards board (~~and published by the superintendent of public instruction~~). The applicant must document a minimum of ninety days teaching experience as a teacher via full-time, part-time, or substitute experience, in a public or state approved private school, or state agency providing educational services for students, ~~((in))~~ while holding the endorsement area that is compatible in instructional methodology and content-related skills to the Pathway 2 endorsement.

The ninety day teaching requirement is waived per RCW 28A.660.045 for individuals having an elementary education certificate but who are not employed in positions requiring an elementary education certificate and pursuing an endorsement in middle level mathematics or science.

(ii) Teacher preparation programs that offer Pathway 2 endorsement programs shall follow process steps as adopted by the professional educator standards board and published by the superintendent of public instruction to verify successful completion of the Pathway 2 process and to recommend adding the endorsement to the applicant's teacher certificate.

(3) Candidates from out-of-state shall be required to present verification that they completed a state-approved program (equivalent to a major) in a Washington endorsement area.

(4) Course work used to meet endorsement requirements must be completed through a regionally accredited college/university.

(5) Only course work in which an individual received a grade of C (2.0) or higher or a grade of pass on a pass-fail system of grading shall be counted toward the course work required for the approved endorsement program.

(6) Nothing within this chapter precludes a college or university from adopting additional requirements as conditions for recommendation, by such college or university, to the superintendent of public instruction for a particular subject area endorsement.

WSR 10-23-077
PERMANENT RULES
FOREST PRACTICES BOARD

[Filed November 15, 2010, 10:52 a.m., effective December 16, 2010]

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

Purpose: Amend rules in Title 222 WAC, forest practices to:

- Incorporate provisions of 2010 natural resources reform (SHB 2935) pertaining to appeals of forest practices decisions;
- Incorporate provisions of 2007 legislation (2SSB 5883) pertaining to the notice of conversion to a nonforestry use; and
- Correct a typographical error in WAC 222-30-023.

Citation of Existing Rules Affected by this Order:
Amending WAC 222-12-070, 222-12-080, 222-16-010, 222-20-050, 222-30-023, 222-46-030, 222-46-040, 222-46-060, 222-46-070, and 222-46-090.

Statutory Authority for Adoption: RCW 76.09.040.

Adopted under notice filed as WSR 10-18-077 on August 31, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 9, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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 10, Repealed 0.

Date Adopted: November 9, 2010.

Peter Goldmark
Chair

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-12-070 Enforcement policy. Procedures for enforcement of these rules by the department are provided in chapter 222-46 WAC. Where the department of ecology determines that a person has failed to comply with the forest practices rules relating to water quality protection, and that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof in writing. If the department of natural resources fails to take authorized enforcement action within 24 hours, under RCW 76.09.080, 76.09.090, 76.09.120 or 76.09.130, the department of ecology may petition ~~((to))~~ the ~~((chairman of the))~~ appeals board, ~~((who))~~ which shall, within 48 hours, either deny the petition or direct the department of natural resources to immediately issue a stop work order or a notice to comply or impose a pen-

alty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources.

AMENDATORY SECTION (Amending WSR 05-12-119, filed 5/31/05, effective 7/1/05)

WAC 222-12-080 Administrative and judicial appeals. (1) Certain decisions of the department may be appealed to the ~~((forest practices))~~ appeals board under chapter 76.09 RCW except that notices to comply may not be appealed to the ~~((forest practices))~~ appeals board unless first appealed to the department under RCW 76.09.090. Proceedings at the ~~((forest practices))~~ appeals board are governed by the Administrative Procedure Act, chapter 34.05 RCW, and ~~((Title 223))~~ chapter 371-08 WAC.

(2) ~~((Forest practices applications and notifications related to qualifying projects under chapter 43.21L RCW may be appealed to the environmental and land use hearings board. Proceedings at the environmental and land use hearings board are governed by chapter 43.21L RCW and chapter 199-08 WAC.~~

~~((3))~~ A petition for judicial review of a decision of the appeals boards may be filed in accordance with the Administrative Procedure Act, chapter 34.05 RCW. ~~((In addition, RCW 43.21L.140 governs judicial review of a final decision of the environmental and land use hearings board.))~~

AMENDATORY SECTION (Amending WSR 10-11-081, filed 5/17/10, effective 6/17/10)

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

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

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

"**Alluvial fan**" see "sensitive sites" definition.

"**Appeals board**" means the ~~((forest practices appeals))~~ pollution control hearings board established in ~~((the act))~~ RCW 43.21B.010.

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

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

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

"**Bankfull width**" means:

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

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

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

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

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

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

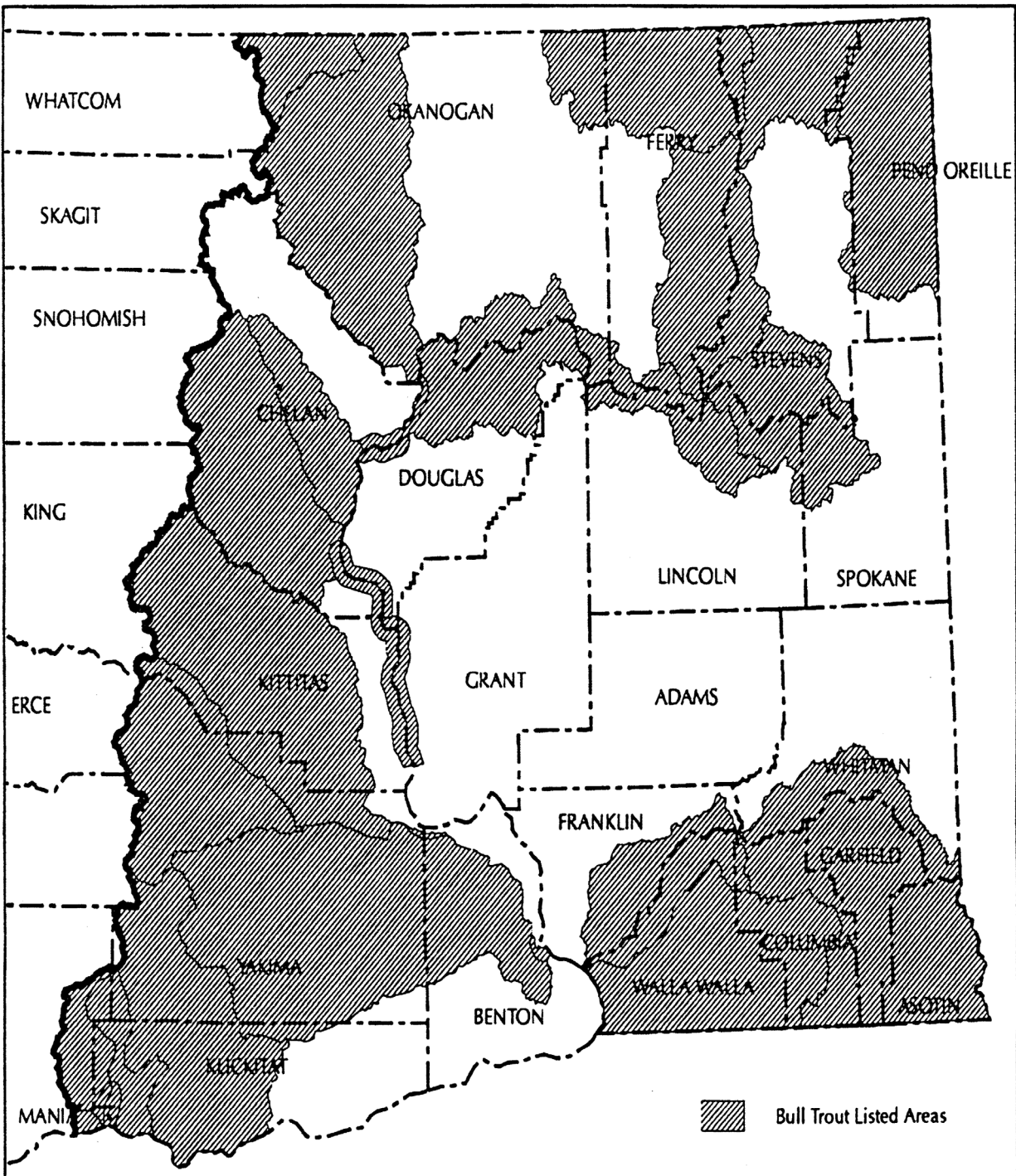
"**Board**" means the forest practices board established by the act.

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

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

"**Bull trout habitat overlay**" means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map



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

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

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

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

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

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

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

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

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

"Completion of harvest" means the latest of:

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

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

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

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

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

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

"Conversion activities" means activities associated with conversions of forest land to land uses other than commercial timber operation. These activities may be occurring during or after timber harvest on forest land. They may include but are not limited to the following:

- Preparation for, or installation of, utilities on the forest practices activity site. The development or maintenance of existing rights of way providing utilities exclusively for other ownerships shall not be considered conversions of forest land (see WAC 222-20-010(5)).

- Any of, or any combination of, the following activities in preparation for nonforestry use of the land: Grading, filling, or stump removal.

- Preparation for, or construction of, any structure requiring local government approval.

- Construction of, or improvement of, roads to a standard greater than needed to conduct forest practices activities.

- Clearing for, or expansion of, rock pits for nonforest practices uses or developing surface mines.

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

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

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

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

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

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

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

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

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

"Date of receipt," as that term is defined in RCW 43.21B.001, means:

(a) Five business days after the date of mailing; or

(b) The date of actual receipt, when the actual receipt date can be proven by a preponderance of the evidence. The recipient's sworn affidavit or declaration indicating the date of receipt, which is unchallenged by the department, shall constitute sufficient evidence of actual receipt. The date of actual receipt, however, may not exceed forty-five days from the date of mailing.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities

which would reasonably be expected to cause significant damage to a public resource.

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

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

"Department" means the department of natural resources.

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

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

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

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

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

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

Eastern Washington Definition Map



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

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

Timber Habitat Types
high elevation

Elevation Ranges
above 5000 feet

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

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

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

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

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

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

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

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

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

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

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

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

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

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

Flow information from gauging stations;

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

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

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

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

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

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

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

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

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

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

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

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

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

- Road and trail construction;
- Harvesting, final and intermediate;
- Precommercial thinning;
- Reforestation;
- Fertilization;
- Prevention and suppression of diseases and insects;
- Salvage of trees; and
- Brush control.

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

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

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

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

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

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

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

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

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

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

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

- Mass wasting;
- Surface and road erosion;
- Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);
- Large organic debris;
- Shading; and
- Stream bank and bed stability.

"Inner gorges" means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

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

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

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

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

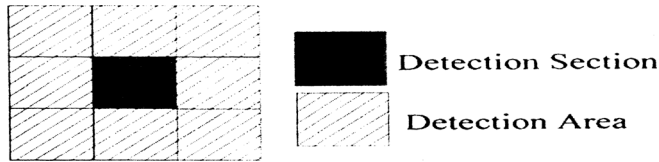
"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

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

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

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

detection was made and the eight sections of land immediately adjacent to that section.



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

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

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

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

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

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

"Northern spotted owl site center" means the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

- Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.
- Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.
- Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines

or protocols and quality control methods established by and available from the department of fish and wildlife.

"Notice of a conversion to a nonforestry use" means a notice issued by the department pursuant to RCW 76.09.060 (3)(b). A landowner who receives such notice is subject to the actions and requirements described in RCW 76.09.460 and 76.09.470.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Occupied marbled murrelet site" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

- (a) A nest is located; or
- (b) Downy chicks or eggs or egg shells are found; or
- (c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or
- (d) Birds calling from a stationary location within the area; or
- (e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1)(e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

- (a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or
- (b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

- (a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or
- (b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Old forest habitat" see WAC 222-16-085 (1)(a).

"Operator" means any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility rights of way, that portion of riparian management zones where scarification is not permitted, and

any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Preferred tree species" means the following species listed in descending order of priority for each timber habitat type:

Ponderosa pine habitat type	Mixed conifer habitat type
all hardwoods	all hardwoods
ponderosa pine	western larch
western larch	ponderosa pine
Douglas-fir	western red cedar
western red cedar	western white pine
	Douglas-fir
	lodgepole pine

"Public resources" means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

"Qualified surveyor" means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian function" includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

"Riparian management zone (RMZ)" means:

(1) **For Western Washington**

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bank-full width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total RMZ Width
I	200'
II	170'
III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

(2) For Eastern Washington

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100*
IV	75' or 100*
V	75' or 100*

* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) **For exempt 20 acre parcels**, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"RMZ core zone" means:

(1) **For Western Washington**, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the thirty foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

"RMZ inner zone" means:

(1) **For Western Washington**, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) **For Eastern Washington**, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

"RMZ outer zone" means the area measured horizontally between the outer boundary of the inner zone and the

RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

"Road construction" means either of the following:

- (a) Establishing any new forest road;
- (b) Road work located outside an existing forest road prism, except for road maintenance.

"Road maintenance" means either of the following:

- (a) All road work located within an existing forest road prism;
- (b) Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility, such as:
 - Maintaining, replacing, and installing drainage structures;
 - Controlling road-side vegetation;
 - Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Sensitive sites" are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

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

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

"**Shorelines of the state**" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"**Side casting**" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"**Site class**" means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) For Western Washington

Site class	50-year site index range (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) For Eastern Washington

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

"**Site preparation**" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"**Skid trail**" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"**Slash**" means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

"**Small forest landowner long-term application**" means a proposal from a small forest landowner to conduct forest practices activities for terms of three to fifteen years. Small forest landowners as defined in WAC 222-21-010(13) are eligible to submit long-term applications.

"**SOSEA goals**" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"**Spoil**" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"**Spotted owl conservation advisory group**" means a three-person advisory group designated by the board as follows: One person shall be a representative of Washington's forest products industry, one person shall be a representative of a Washington-based conservation organization actively involved with spotted owl conservation, and one person shall be a representative of the department's forest practices program. Members of the group shall have a detailed working knowledge of spotted owl habitat relationships and factors affecting northern spotted owl conservation. On an annual basis, beginning November 2010, the board will determine whether this group's function continues to be needed for spotted owl conservation.

"**Spotted owl dispersal habitat**" see WAC 222-16-085(2).

"**Spotted owl special emphasis areas (SOSEA)**" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"**Stop work order**" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"**Stream-adjacent parallel roads**" means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for

more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

"Sub-mature habitat" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least forty percent of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

"Suitable spotted owl habitat" see WAC 222-16-085

(1).

"Temporary road" means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

"Threaten public safety" means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

"Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.-035.

"Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

"Validation," as used in WAC 222-20-016, means the department's agreement that a small forest landowner has correctly identified and classified resources, and satisfactorily completed a roads assessment for the geographic area described in Step 1 of a long-term application.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that

it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent

species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"Yarding corridor" means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

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

WAC 222-20-050 Conversion to nonforest use. (1) If an application to harvest signed by the landowner indicates that within three years after completion, the forest land will be converted to a specified active use which is incompatible with timber growing, the reforestation requirements of these rules shall not apply and the information relating to reforestation on the application form need not be supplied. However, if such specified active use is not initiated within three years after such harvest is completed, the reforestation requirements (see chapter 222-34 WAC) shall apply and such reforestation shall be completed within one additional year.

(2) For Class II, III, and IV special forest practices, if a landowner wishes to maintain the option for conversion to a use other than commercial timber growing, the landowner may request the appropriate local governmental entity to approve a conversion option harvest plan. This plan, if approved by the local governmental entity and followed by the landowner, shall release the landowner from the six-year moratorium on future development, but does not create any other rights. The conversion option harvest plan shall be attached to the application or notification as a condition. Violation of the conversion option harvest plan will result in the reinstatement of the local governmental entity's right to the six-year moratorium. Reforestation requirements will not be waived in the conversion option harvest plan. Reforestation rules shall apply at the completion of the harvest operation as required in chapter 222-34 WAC. Nothing herein shall preclude the local governmental entity from charging a fee to approve such a plan. (See RCW 76.09.060 (3)(b)(i).)

(3) If the application or notification does not state that any land covered by the application or notification will be or is intended to be converted to a specified active use incompatible with commercial timber growing, or if the forest practice takes place without a required application or notification, then the provisions of RCW 76.09.060 (3)(b)(i) regarding the six-year moratorium apply.

(4) A notice of a conversion to a nonforestry use issued by the department under the provisions of RCW 76.09.060

(3)(b) may be appealed to the appeals board in accordance with RCW 43.21B.110 and 43.21B.230.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-30-023 Riparian management zones for exempt 20-acre parcels.

Note: Compliance with this section does not ensure compliance with the federal Endangered Species Act or the Clean Water Act.

On parcels of 20 contiguous acres or less, landowners with total parcel ownership of less than 80 forested acres shall not be required to leave the riparian buffers described in WAC 222-30-021 and 222-30-022. These landowners are required to follow applicable watershed analysis riparian prescriptions in effect as of January 1, 1999, or if there are no watershed analysis riparian prescriptions in effect these landowners are required to follow the riparian management zone rules below.

***(1) Western Washington RMZs for exempt 20-acre parcels.** Riparian management zones are measured horizontally from the outer edge of bankfull width of a Type S or F Water and extend to the line where vegetation changes from wetland to upland plant community, or the line required to leave sufficient shade as required by WAC 222-30-040, whichever is greater, but must not be less than 29 feet in width nor more than the maximum widths described in (f) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a Type A or B Wetland or a wetland management zone, the requirement which best protects public resources shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these rules, including those rules relating to stream bank integrity and shade requirements to maintain stream temperature. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Landowners must meet the following shade requirements in effect January 1, 1999, to maintain stream temperature.

***(i) Determination of adequate shade.** The temperature prediction method in (c)(ii) and (iii) of this subsection shall be used to determine appropriate shade levels for flowing Type S and F Waters to prevent excessive water temperatures which may have detrimental impact on aquatic resources.

***(ii) Temperature prediction method.** In addition to the riparian management zone requirements described in (f) of this subsection, leave trees shall be retained within the maximum riparian management zones on flowing Type S and F Waters as provided by the method described in the board manual which includes the following considerations:

(A) Minimum shade retention requirements; and

(B) Regional water temperature characteristics; and

(C) Elevation; and

(D) Temperature criteria defined for stream classes in chapter 173-201A WAC.

*(iii) Leave tree requirements for shade. The method described in (c)(ii) of this subsection shall be used to establish the minimum shade cover based on site-specific characteristics. When site-specific data indicate that preharvest conditions do not meet the minimums established by the method, no additional shade removal from riparian management zones will be allowed.

(iv) Waivers. The department may waive or modify the shade requirements where:

(A) The applicant agrees to a staggered setting program producing equal or greater shade requirements to maintain stream temperature; or

(B) The applicant provides alternative means of stream temperature control satisfactory to the department; or

(C) The temperature method indicates that additional shade will not affect stream temperature.

(d) For wildlife habitat within the riparian management zone, leave an average of 5 undisturbed and uncut wildlife trees per acre at the ratio of 1 deciduous tree to 1 conifer tree

equal in size to the largest existing trees of those species within the zone. Where the 1 to 1 ratio is not possible, then substitute either species present. Forty percent or more of the leave trees shall be live and undamaged on completion of harvest. Wildlife trees shall be left in clumps whenever possible.

(e) When 10 percent or more of the harvest unit lies within any combination of a riparian management zone of Type S or F Waters or a wetland management zone and the harvest unit is a clearcutting of 20 acres or less, leave not less than 50 percent of the trees required in ~~((f))~~ (f) of this subsection.

(f) Within the riparian management zone, trees shall be left for wildlife and fisheries habitat as provided for in the chart below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations. The number, size, species and ratio of leave trees, deciduous to conifer, is specified by the bed material and average width of the water type within the harvest unit. Trees left according to (c) of this subsection may be included in the number of required leave trees in this subsection.

**Western Washington Riparian Leave Tree Requirements
For exempt 20-acre parcels**

Water Type/Average Bankfull Width	RMZ Maximum Width	Ratio of Conifer to Deciduous/ Minimum Size Leave Trees	# Trees/1000 ft. each side	
			Gravel/Cobble <10" Diameter	Boulder/Bedrock
S or F Water greater than or equal to 75'	115'	representative of stand	58 trees	29 trees
S Water less than 75' and F Water less than 75' and greater than or equal to 10'	86'	representative of stand	115 trees	60 trees
F Water less than 10' and greater than or equal to 5'	58'	2 to 1 12" or next largest available ¹	86 trees	29 trees
F Water less than 5'	29'	1 to 1 6" or next largest available ¹	29 trees	29 trees

¹ "Or next largest available" requires that the next largest trees to those specified in the rule be left standing when those available are smaller than the size specified.

Ponds or lakes which are Type S or F Waters shall have the same leave tree requirements as boulder/bedrock streams.

*(2) **Eastern Washington riparian management zones for exempt 20-acre parcels.** These zones shall be measured horizontally from the outer edge of bankfull width of Type S or F Waters and extend to the line where vegetation changes from wetland to upland plant community, or to the line required to leave sufficient shade as required by WAC 222-30-040, whichever is greater, but shall not be less than the minimum width nor more than the maximum widths described in (c) of this subsection, provided that the riparian management zone width shall be expanded as necessary to include wetlands or ponds adjacent to the stream. When the riparian management zone overlaps a Type A or B Wetland

or a wetland management zone, the requirement which best protects public resources shall apply.

(a) Harvest units shall be designed so that felling, bucking, yarding or skidding, and reforestation can be accomplished in accordance with these rules, including those rules relating to stream bank integrity and shade requirements to maintain stream temperature. Where the need for additional actions or restrictions adjacent to waters not covered by the following become evident, WAC 222-12-050 and 222-12-060 may apply.

(b) When requested in writing by the applicant, the department shall assist in preparation of an alternate plan for the riparian management zone.

(c) Within the riparian management zone, trees shall be left for wildlife and fisheries habitat as provided for below. Fifty percent or more of the trees shall be live and undamaged on completion of the harvest. The leave trees shall be randomly distributed where feasible; some clumping is allowed to accommodate operational considerations.

(i) The width of the riparian management zone shall be based on the adjacent harvest type as defined in WAC 222-16-010 "Partial cutting." When the adjacent unit harvest type is:

Partial cutting - The riparian management zone width shall be a minimum of 35 feet to a maximum of 58 feet on each side of the stream.

Other harvest types - The riparian management zone shall average 58 feet in width on each side of the stream with a minimum width of 35 feet and a maximum of 345 feet on each side of the stream.

(ii) Leave tree requirements within the riparian management zones of Type S or F Waters:

(A) Leave all trees 12 inches or less in diameter breast height (dbh); and

(B) Leave all wildlife reserve trees within the riparian management zone where operations in the vicinity do not violate the state safety regulations (chapter 296-54 WAC and chapter 49.17 RCW administered by department of labor and industries, safety division); and

(C) Leave 18 live conifer trees per acre between 12 inches dbh and 20 inches dbh distributed by size, as representative of the stand; and

(D) Leave 4 live conifer trees per acre 20 inches dbh or larger and the 2 largest live deciduous trees per acre 16 inches dbh or larger. Where these deciduous trees do not exist, and where 2 wildlife reserve trees per acre 20 inches or larger do not exist, substitute 2 live conifer trees per acre 20 inches dbh or larger. If live conifer trees of 20 inches dbh or larger do not exist within the riparian management zone, then substitute the 5 largest live conifer trees per acre; and

(E) Leave 3 live deciduous trees per acre between 12 inches and 16 inches dbh where they exist.

(iii) Minimum leave tree requirements per acre for Type S or F Waters. Trees left for (c)(ii) of this subsection shall be included in the minimum counts.

(A) On streams with a boulder/bedrock bed, the minimum leave tree requirements shall be 75 trees per acre 4 inches dbh or larger.

(B) On streams with a gravel/cobble (less than 10 inches diameter) bed, the minimum leave tree requirement shall be 155 trees per acre 4 inches dbh or larger.

(C) On lakes or ponds, the minimum leave tree requirement shall be 86 trees per acre 4 inches dbh or larger.

Note: See the board manual for guidelines for calculating trees per acre and average RMZ widths.

(d) When 10 percent or more of the harvest unit lies within any combination of a riparian management zone of Type S or F Waters or a wetland management zone and the harvest unit is 20 acres or less, leave not less than 50 percent of the trees required in (c) of this subsection. (See WAC 222-16-010 "Partial cutting.")

***(3) Riparian leave tree areas for exempt 20-acre parcels.** The department will require trees to be left along

Type Np Waters where such practices are necessary to protect public resources. Where such practices are necessary, leave at least 29 conifer or deciduous trees, 6 inches in diameter or larger, on each side of every 1000 feet of stream length within 29 feet of the stream. The leave trees may be arranged to accommodate the operation.

(4) For the purposes of this section RMZ means: A specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-46-030 Notice to comply. If a violation, a deviation, material damage or potential for material damage to a public resource has occurred and the department determines that a stop work order is unnecessary, then the department shall issue and serve upon the operator and/or landowner a notice.

(1) The notice shall clearly set forth:

(a) **The specific** nature, extent, and time of failure to comply with the approved application; or identifying the damage or potential damage; and/or

(b) The relevant provisions of the Forest Practices Act or of the forest practices rules relating thereto;

(c) **The right** of the operator, landowner, or timber owner to a hearing before the department; and

(d) **The specific** course of action ordered by the department to be followed by the operator to correct such failure to comply and to prevent, correct and/or compensate for material damage to public resources which resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practices activities but has not resulted from any violation, unauthorized deviation, or negligence.

(2) **Local governmental entity conditions.** If the notice to comply involves a condition imposed pursuant to WAC 222-20-040(3), then the specific course of action ordered by the department shall include a requirement that the operator obtain approval of the local governmental entity of the action to be taken.

(3) **The department** shall mail a copy of the notice to comply to the forest landowner and the timber owner at the addresses shown on the application, showing the date of service upon the operator. The department shall also mail a copy to the local governmental entity if a condition imposed pursuant to WAC 222-20-040(3) is involved.

(4) **Such notice to comply shall become a final order** of the department: Provided, That no direct appeal to the appeals board will be allowed from such final order. Such operator shall undertake the course of action so ordered by the department unless, within fifteen days after the date of service of such notice to comply, the operator, forest landowner, or timber owner, shall request the department in writing to schedule a hearing. If so requested, the department shall schedule a hearing on a date not more than twenty days after receiving such request. The local governmental entity

shall participate in the hearing if a condition imposed pursuant to WAC 222-20-040(3) is involved. Within ten days after such hearing, the department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by such operator. Such operator shall undertake the course of action so ordered by the department unless within thirty days after the date of receipt of such final order, the operator, forest landowner, or timber owner appeals such final order to the appeals board. No person shall be under any obligation under this section to prevent, correct, or compensate for any damage to public resources which occurs more than one year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules: Provided, That this provision shall not relieve the forest landowner from any obligation to comply with forest practices rules pertaining to providing continuing road maintenance. No action to recover damages shall be taken under this section more than two years after the date the damage involved occurs.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-46-040 Stop work orders. (1) **The department** shall have the authority to serve upon an operator a stop work order which shall be a final order of the department if:

(a) There is any violation of the provisions of the Forest Practices Act or these rules; or

(b) There is a deviation from the approved application; or

(c) Immediate action is necessary to prevent continuation of or to avoid material damage to a public resource.

(2) **The stop work order** shall set forth:

(a) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;

(b) An order to stop all work connected with the violation, deviation, damage, or potential damage;

(c) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to public resources which has resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource. The stop work order shall also set forth those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practices activities but has not resulted from any violation, unauthorized deviation, or negligence. If the stop work order involves a condition imposed pursuant to WAC 222-20-040(3), then the specific course of action ordered by the department shall include a requirement that the operator obtain approval of the local governmental entity of the action to be taken.

(d) The stop work order shall also set forth the right of the operator to a hearing before the appeals board.

(3) The department shall immediately file a copy of such order with the appeals board and mail a copy thereof to the timber owner and forest landowner at the addresses shown on the application. The department shall also mail a copy to the

local governmental entity if a condition imposed pursuant to WAC 222-20-040(3) is involved.

(4) The operator, timber owner, or forest landowner may commence an appeal to the appeals board within ~~((fifteen))~~ thirty days ((after service upon)) from the date of receipt of the order by the operator. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the notice of appeal were filed with the appeals board. Such proceeding shall be a contested case within the meaning of chapter 34.05 RCW.

(5) The operator shall comply with the order of the department immediately upon being served, but the appeals board if requested shall have authority to continue or discontinue in whole or in part the order of the department under such conditions as it may impose pending the outcome of the proceeding.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-46-060 Civil penalties. (1) **Amount of penalty.** Every person who violates any provisions of RCW 76.09.010 through 76.09.280 or of the forest practices rules adopted pursuant thereto, or who converts forest land to a use other than commercial timber operation within three years after completion of the forest practice without the consent of the county, city, or town, shall be subject to a penalty in an amount of not more than ten thousand dollars for each such violation. Each and every such violation shall be a separate and distinct violation. In case of a failure to comply with a stop work order, every day's continuance thereafter shall be a separate and distinct violation.

(2) **Penalty assessments** shall consider the following:

(a) Repairability of the adverse effect from the violation;

(b) Whether the violation of the act or rules was intentional;

(c) Cooperation with the department;

(d) Previous violation history;

(e) Severity of the impact or the potential for material damage to public resources; and

(f) The extent to which a penalty to be imposed on a forest landowner for a forest practices violation committed by another should be reduced because the owner was unaware of the violation and did not receive substantial economic benefits from the violation.

(3) **Calculation of penalty.** The department shall evaluate any violation to determine if a civil penalty is warranted. When penalties are to be assessed they shall be calculated using the following process:

(a) Determine the base penalty; see WAC 222-46-065.

(b) The penalty may be adjusted using factors specific to the incident and the site. The following additional factors will be independently considered and added to the base penalty to calculate the civil penalty:

(i) Repairability:

Repairability shall be based on the length of time natural restoration or implementation of a restoration plan will take and whether repair can be achieved. The penalty will be substantially increased when natural restoration will not occur within three years and the damage cannot be effectively cor-

rected. For this factor, up to double the base penalty may be added to the penalty.

(ii) **Intention:**

In making a determination of intent, the department shall consider, but not be limited to, the following considerations: The foreseeability of the violation; whether precautions were taken to avoid the violation; whether an informal conference or enforcement action was served on the violator prior to the violation. For this factor, up to double the base penalty may be added to the penalty.

(iii) **Cooperation:**

The department shall consider whether the violator did or did not make any attempt to correct the problem. Timeliness of action(s) and/or ignoring or evading agency contacts or directives shall determine if the penalty shall be increased. For this factor, up to double the base penalty may be added to the penalty.

(iv) **Previous violation(s):**

The department shall consider whether the violator has previous violations of a forest practices rule or regulation as documented in an enforcement action. The department may consider company organizations and assignment of operational responsibilities when evaluating previous violations. A history of violations with adverse impacts or potential for adverse impacts or that shows a pattern of ignoring the rules or the act, shall result in a substantially larger penalty.

Enforcement actions for the purposes of this section shall include notices to comply, stop work orders, civil penalties, and criminal citations when those enforcement actions are associated with forest practices violations. For this factor, up to quadruple the base penalty may be added to the penalty.

(v) **Severity:**

The department shall adjust the penalty based on the extent and magnitude of the damage or potential damage to public resources. For this factor, up to quadruple the base penalty may be added to the penalty.

(vi) **Landowner involvement:**

If in the opinion of the department, the landowner exercised reasonable prudence in the development of timber sale contracts or supervision of the forest practices operations, was unaware of the forest practices violation, and the landowner received no substantial economic benefit from the violation, then the landowner generally would not be assessed a civil penalty.

(c) In accordance with RCW 76.09.170, the penalty may not exceed ten thousand dollars for each and every violation.

(d) The department shall determine whether all or a portion of the penalty should be assessed against the operator, landowner, and/or timber owner. The department should consider the responsible party, the degree of control, the sophistication of the party and whether different parties conducted different violations.

(4) **Other participants.** Every person who through an act of commission or omission procures, aids or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty provided for in this section.

(5) **Government employees.** No penalty shall be imposed under this section upon any governmental official, an employee of any governmental department, agency, or

entity, or a member of any board created by the act for any act or omission in his/her duties in the administration of the act or of these rules.

(6) **Written notice.** The penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department describing the violation with reasonable particularity.

(7) **Remission or mitigation.** Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the supervisor of the department or his or her designee for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper: Provided, That the department deems such remission or mitigation to be in the best interests of carrying out the purposes of the act. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rules as they may deem proper. The reviewer may reduce, dismiss or not change the civil penalty.

(8) **Right of appeal.** Any person incurring any penalty hereunder may appeal the same to the ~~((forest practices))~~ appeals board. Such appeals shall be filed within thirty days after the date of receipt of ~~((notice imposing any))~~ the penalty unless an application for remission or mitigation is made to the department. When such an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application for remission or mitigation. Concurrently with the filing of any appeal to the ~~((forest practices))~~ appeals board as provided in this section, the appellant shall file a copy of the appeal with the department region from which the penalty was issued and a copy with the office of the attorney general.

(9) **Penalties due.** The penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When such an application for remission or mitigation is made, any penalty incurred under this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application unless an appeal is filed from such disposition. Whenever an appeal of the penalty incurred is filed, the penalty shall become due and payable only upon completion of all administrative and judicial review proceedings and the issuance of a final order or decision confirming the penalty in whole or in part.

(10) **Enforcement.** If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty, interest, costs, and attorneys' fees. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in the Forest Practices Act. In addition to or as an alternative to seeking enforcement of penalties in superior court, the department may bring an action in district court as provided

in Title 3 RCW, to collect penalties, interest, costs, and attorneys' fees.

(11) **Liens.** Penalties imposed under this section for violations associated with a conversion to a use other than commercial timber operation shall be a lien upon the real property of the person assessed the penalty. The department may collect such amounts in the same manner provided in chapter 60.04 RCW for mechanics' liens.

(12) Any person incurring a penalty is also responsible for the payment of all costs and attorneys' fees incurred with the penalty as well as interest accruing on the unpaid penalty amount.

AMENDATORY SECTION (Amending WSR 08-24-011, filed 11/21/08, effective 12/22/08)

WAC 222-46-070 Injunctions, civil suits, disapprovals. (1) **The department** may take any necessary action to enforce any final order or final decision.

(2)(a) The department may disapprove any forest practices application or notification submitted by any person who has failed to comply with a final order or decision as set forth in RCW 76.09.080, 76.09.090, or 76.09.110, or has failed to pay any civil penalties as provided in RCW 76.09.170. This disapproval will last for up to one year from the issuance of a notice of intent to disapprove notifications and applications under this section, or until the violator pays all outstanding civil penalties and complies with all validly issued and outstanding notices to comply and stop work orders, whichever is longer.

(b) For purposes of this subsection, "validly issued" means a stop work order or notice to comply for which no appeal or request for hearing has been filed; or if appealed, it has not been declared invalid by a final order or decision and all appeals are exhausted.

(c) The department shall provide written notice of its intent to disapprove future applications or notifications, and shall forward copies of such notice to any affected landowner, timber owner or operator. The disapproval period shall run from thirty days following the date of actual notice or from the date all appeals, if any, have been exhausted.

(d) Any person provided notice of intent to disapprove an application or notification may seek review from the ((~~forest practices~~)) appeals board within thirty days of the date of notice.

(e) While the notice of intent to disapprove is in effect, the violator(s) may not serve as a person in charge of, be employed by, manage, or otherwise participate to any degree in forest practices.

(3) **A county** may bring injunctive, declaratory, or other actions for enforcement for forest practices activities within its jurisdiction in the superior court as provided by law against the department, the forest landowner, timber owner or operator to enforce the forest practices regulations or any final order of the department or the appeals board. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department. A county may not commence injunctions, declaratory actions, or other actions for enforcement under this subsection unless the department

fails to take appropriate actions after ten days' written notice to the department by the county of a violation of the forest practices rules or final orders of the department or the appeals board.

AMENDATORY SECTION (Amending WSR 01-12-042, filed 5/30/01, effective 7/1/01)

WAC 222-46-090 Financial assurances. (1) The purpose in requiring financial assurances is to ensure that the landowner or operator has sufficient resources to cover any penalties and mitigation measures, which might be assessed.

(2) The department may require financial assurance prior to the conduct of any further forest practices from an operator or landowner who within the preceding three-year period has:

(a) Operated without an approved forest practices application, other than an unintentional operation in connection with an approved application outside the approved boundary of such an application;

(b) Continued to operate in breach of, or failed to comply with, the terms of an effective stop work order or notice to comply; or

(c) Failed to pay any civil or criminal penalty.

(3) The department must deny any application or notification for failure to submit financial assurances as required.

(4) In deciding whether to require financial assurances, the department shall consider:

(a) The organizational size of the operator or landowner;

(b) Whether the violation was self-reported;

(c) The cooperation exhibited when the violation was discovered; and

(d) Any other factors the department believes indicate that financial assurances are, or are not, warranted.

(5) When the department determines that a financial assurance is required, a notice will be issued to the landowner or operator with violations listed above. The notice cannot be appealed. The financial assurances will be required with all future forest practices activities submitted within the time frame indicated in the notice. The notice shall include the following:

(a) A reference to subsection (6) of this section which identifies the criteria for establishing the amount of the financial assurance;

(b) The types of financial assurance which can be submitted;

(c) The time period during which financial assurances will be required with every future application or notification;

(d) A statement that the department must deny any application or notification from a landowner or operator who submits an application or notification without their required financial assurance;

(e) A statement that an application or notification can be appealed pursuant to RCW ((~~76.09.220 (8)(a))~~) 76.09.205, and the requirement to submit financial assurances may be challenged at that time.

(6) The amount shall be set by the department within 10 days of receipt of a Class III or IV application, or within 3 days of receipt of a Class II notification. Applicants who have been notified of a financial assurance requirement are encouraged to use the early review process for applications

outlined in WAC 222-20-090. In establishing the amount of the financial assurances to be required, the department shall begin with the following base amounts:

- Class II Notifications - \$10,000
- Class III Applications - \$30,000
- Class IV General Applications - \$20,000
- Class IV Special Applications - \$50,000

The base amounts listed above are based on an estimate of the potential for civil penalties, fees and required mitigation that could result from noncompliance with forest practices rules and department directives on forest practices applications or notifications of that classification. The base amounts can be increased or decreased depending on application specific factors including, but not limited to, size of the proposed harvest area, miles of new road construction and road maintenance, proximity to water, proximity to unstable soils, proximity to threatened or endangered species, and types of violations committed by the applicant in the past. In addition, the department should consider the risk to the state of the applicant being unable to pay civil penalties or perform required mitigation work. In weighing this risk, the department should consider the applicant's past history of payment to the department, and any other financial information the applicant chooses to submit to the department. The base amount of financial assurance to be required may be increased or decreased depending on the department's assessment of this risk.

(7) The financial assurance provided shall protect the department and the state from the risk that the landowner or operator may be financially unable to pay civil penalties, fees and/or perform mitigation work required by the department, including mitigation work performed by the department pursuant to RCW 76.09.120, because of violations of the Forest Practices Act or rules. The department may, for any reason, refuse any financial assurance not deemed adequate. The financial assurance provided may be in the following form:

- (a) Bank letter of credit;
- (b) Cash deposit;
- (c) Savings account assignment; or
- (d) Corporate surety bond executed in favor of the department.

(8) The department may obtain compensation from a financial assurance whenever the landowner or operator has failed to pay a civil penalty that is due and owing or has failed to complete mitigation as required. Payment for a specific civil penalty or mitigation does not relieve the surety, operator or landowner of financial responsibility for any other civil penalty or mitigation.

(9) Liability under the financial assurance shall be maintained until all forest practices under the forest practices notification or application issued by the department are completed or until the notification or application expires, and all of the landowner or operator's obligations under the Forest Practices Act and rules are completed to the satisfaction of the department including payment of civil penalties and completion of required mitigation work. Liability under the financial assurance may be released only upon written notification by the department. Notification shall be given upon completion of compliance or acceptance of a substitute financial assurance.

(10) Financial assurances are estimates only. Nothing in this section shall be construed to limit the department's authority to assess and collect civil penalties and fees and to require mitigation work in amounts that exceed existing financial assurances.

WSR 10-23-078
PERMANENT RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed November 15, 2010, 12:26 p.m., effective December 16, 2010]

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

Purpose: Revises WAC 181-78A-110, 181-78A-115 and 181-78A-120, to provide for a compliance agreement in addition to an appeal process for preparation programs who are denied approval by the professional educator standards board.

Citation of Existing Rules Affected by this Order: Amending x [WAC 181-78A-110, 181-78A-115, and 181-78A-120].

Statutory Authority for Adoption: RCW 28A.410.210.

Adopted under notice filed as WSR 10-20-078 on September 29, 2010.

Changes Other than Editing from Proposed to Adopted Version: Timelines were adjusted from the original proposal and notification requirements were added.

A final cost-benefit analysis is available by contacting David Brenna, 600 Washington Street South, Room 400, Olympia, WA 98504-7236, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, 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 3, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 15, 2010.

David Brenna
 Legislative and
 Policy Coordinator

AMENDATORY SECTION (Amending WSR 06-24-082, filed 12/5/06, effective 1/5/07)

WAC 181-78A-110 Length of time for which program approval status shall be granted. (1) Existing programs. Based upon review of the program site visit report and

other documentation requested, and taking into consideration: The degree to which previously identified issues have been successfully addressed, the relationship and balance between program strengths and weaknesses, and the relative importance of specific unmet criteria to the overall function of the program, the professional educator standards board shall ((take)) exercise professional judgment in taking one of the following actions:

(a) ~~((One-year))~~ Limited approval((:)) of up to one year in length. In issuing limited approval, and depending on the nature of evidence that must be considered to regain full approval, the board may specify the requirement of a:

- (i) Focused-site visit related to unmet standards; or
- (ii) Written report, related to unmet standards.

(b) ~~((Five-year))~~ Full approval((:)
(c) ~~Seven-year approval (WAC 181-78A-100(6))~~ of either:

(i) Five years; or

(ii) Seven years, per provisions of WAC 181-78A-100(6); or

~~((d))~~ (c) Disapproval (WAC 181-78A-115)((:));

(i) A program with full five- or seven-year approval prior to the site visit shall not receive a disapproval rating, except under the provisions of subsection (3) of this section.

(ii) A program awarded a disapproval rating may request a hearing conducted through the office of administrative hearings under WAC 181-78A-100 (7)(g) and 10-08-035.

(2) New programs. All new programs shall be conditionally approved for up to ((two-years)) twenty-seven months under WAC 181-78A-105.

(3) The ((superintendent of public instruction)) professional educator standards board, upon receipt of a serious complaint from any source or upon ((her or his initiative, or)) its own initiative ((of the professional educator standards board)) prompted by indications of the need for response, may at any time review all or any part of a preparation program for compliance with the provisions of this chapter. If deviations are found, the professional educator standards board is authorized to ((revoke program approval until the college or university submits an acceptable compliance agreement which will bring the preparation program into compliance as soon as reasonably practicable, but no later than the commencement of the succeeding academic year or six calendar months, whichever is later.

(4) If an acceptable compliance agreement is not developed and approved by the professional educator standards board, the preparation program shall be placed on probationary status and the probationary status provision of WAC 181-78A-115 shall apply)) change the program's current approval status, including full disapproval.

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

WAC 181-78A-115 ((Probationary status:)) Disapproved programs. ((Colleges and universities with)) Approved preparation programs shall not lose official approval status until the professional educator standards board has taken final action to disapprove the preparation program((: Provided, That colleges or universities)) pending

the provisions under WAC 181-78A-110 (1)(d)(ii) programs shall be permitted ((for the current and one additional academic year)) to continue to prepare and recommend for certification candidates who have been previously admitted to the program, provided that no recommendations for certifications will be accepted later than thirty months following receipt of the formal notice of disapproval ((to continue as an approved preparation program on probationary status for the purpose of completing the preparation program for those candidates for certification currently enrolled in the preparation program and who are scheduled to complete such preparation program within such academic years and for the purpose of regaining professional educator standards board approval)). Following the receipt of formal notice of disapproval, the program shall notify all currently enrolled candidates of the program's disapproval status.

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

WAC 181-78A-120 Procedures for reestablishment of approval status for an educator preparation program.

(1) The procedures for the reestablishment of professional educator standards board approval of a preparation program shall be the same as the procedure for initial approval as provided in WAC 181-78A-105, except that if the preparation program continues to operate pursuant to the probationary status provision of WAC 181-78A-115, the professional educator standards board may limit the content of the written plan required by WAC 181-78A-105(3) to program standards determined by the professional educator standards board to be the cause of the ((college or university's probationary)) program's disapproved status.

(2) A disapproved program may submit a compliance agreement for review by the professional educator standards board. If the program submits an acceptable compliance agreement, the program may be granted permission to admit new candidates for a period of time not to exceed twelve calendar months from the date of disapproval. Compliance agreements, not to exceed ten pages, must document the following:

(a) A work plan overview;

(b) A timeline of work that has been and will be performed; and

(c) A matrix that cross references components of the work plan with all unmet standards identified in the site visit report.

WSR 10-23-080

PERMANENT RULES

DEPARTMENT OF HEALTH

(Board of Pharmacy)

[Filed November 15, 2010, 1:49 p.m., effective December 16, 2010]

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

Purpose: WAC 246-863-035 allows qualified applicants to be eligible for a temporary permit while awaiting results of a national background check. The national background check is a lengthy process that can cause licensing delays,

which may affect the public's access to health care. Eligible applicants must meet all licensing requirements, hold a license in another state in good standing, and have no criminal record in Washington state.

Citation of Existing Rules Affected by this Order: Amending WAC 246-863-035 Temporary permit—Pharmacist.

Statutory Authority for Adoption: RCW 18.130.075, 18.130.064, 18.64.005.

Other Authority: RCW 18.64.080.

Adopted under notice filed as WSR 10-15-067 on July 16, 2010.

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

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

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

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

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

Date Adopted: September 16, 2010.

Gary G. Harris, Chair
Board of Pharmacy

AMENDATORY SECTION (Amending Order 317B, filed 11/17/92, effective 12/18/92)

WAC 246-863-035 Temporary permits. (1) A temporary practice permit to practice pharmacy may be issued to an applicant ((licensed)) who meets all of the requirements and qualifications for the license, except the results of the fingerprint-based national background check, if required.

(2) A temporary practice permit to practice pharmacy may be issued to an applicant who:

(a) Holds an unrestricted, active license by examination in ((a)) another state which participates in the ((licensure)) license transfer or reciprocity process ((unless there is a basis for denial of the license or issuance of a conditional license.

(b) The applicant shall meet all the qualifications, submit the necessary paperwork and fees for licensure transfer, and submit a written request for a permit to practice pharmacy with the temporary permit fee specified in WAC 246-907-030.

Prior to issuance of the permit to practice pharmacy, the board shall receive the following documents:

(1) A completed Washington pharmacy license application;

(2) The fee specified in WAC 246-907-030;

(3) A disciplinary report from the National Association of Boards of Pharmacy (NABP) Clearinghouse;

(4) Completed NABP "Official Application for Transfer of Pharmaceutic Licensure";

(5) Proof of seven hours of approved AIDS education.

Such a permit shall expire on the first day of the month following the date of the next jurisprudence examination. In case of failure or nonattendance, the permit shall not be extended);

(b) Has completed a Washington application for pharmacist license by transfer or reciprocity;

(c) Has submitted pharmacist license application fees;

(d) Has passed the Washington state jurisprudence exam;

(e) Is not subject to denial of a license or issuance of a conditional or restricted license; and

(f) Does not have a criminal record in Washington state.

(3) A temporary practice permit grants the individual the full scope of practice of pharmacy, except the ability to qualify as a responsible pharmacist manager.

(4) A temporary practice permit expires when any one of the following occurs:

(a) The license is granted;

(b) A notice of decision on the application is mailed to the applicant, unless the notice of decision specifically extends the duration of the temporary practice permit; or

(c) One hundred eighty days after the temporary practice permit is issued.

(5) To receive a temporary practice permit, the applicant must submit the fingerprint card, a written request for a temporary practice permit, and applicable fees.

WSR 10-23-083

PERMANENT RULES

STATE BOARD OF EDUCATION

[Filed November 16, 2010, 3:33 p.m., effective December 17, 2010]

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

Purpose: The state board of education (SBE) adopted rules necessary to implement the accountability framework contained in Part I of E2SSB 6696 that included developing: (1) A schedule and the process for local school district superintendents and local boards of required action districts to submit a required action plan to SBE; (2) the procedure for SBE to approve a required action plan proposed by a school district; (3) the consequence for failing to submit or receive approval of a plan; and (4) the circumstances under which a district can be released from designation as a required action district.

Statutory Authority for Adoption: RCW 28A.657.120.

Adopted under notice filed as WSR 10-19-115 on September 21, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 5, Amended 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: November 10, 2010.

Edith W. Harding
Executive Director

Chapter 180-17 WAC

ACCOUNTABILITY

NEW SECTION

WAC 180-17-010 Designation of required action districts. In January of each year, the state board of education shall designate as a required action district a school district recommended by the superintendent of public instruction for such designation.

NEW SECTION

WAC 180-17-020 Process for submittal and approval of required action plan. (1) Except as otherwise provided in WAC 180-17-030, school districts designated as required action districts by the state board of education shall develop a required action plan according to the following schedule:

(a) By April 15th of the year in which the district is designated, a school district shall submit a required action plan to the superintendent of public instruction to review and approve that the plan is consistent with federal guidelines for the receipt of a School Improvement Grant. The required action plan must comply with all of the requirements set forth in RCW 28A.657.050.

(b) By May 1st of the year in which the district is designated, a school district shall submit a required action plan approved by the superintendent of public instruction to the state board of education for approval.

(2) The state board of education shall, by May 15th of each year, either:

(a) Approve the school district's required action plan; or
(b) Notify the school district that the required action plan has not been approved stating the reasons for the disapproval.

(3) A school district notified by the state board of education that its required action plan has not been approved under subsection (2)(a) of this section shall either:

(a) Submit a new required action plan to the superintendent of public instruction and state board of education for review and approval within forty days of notification that its plan was rejected. The state board of education shall approve the school district's required action plan by no later than July 15th if it meets all of the requirements set forth in RCW 28A.657.050; or

(b) Submit a request to the required action plan review panel established under RCW 28A.657.070 for reconsideration of the state board's rejection within ten days of the notification that the plan was rejected. The review panel shall

consider and issue a decision regarding a district's request for reconsideration to the state board of education by no later than June 10th. The state board of education shall consider the recommendations of the panel and issue a decision in writing to the school district and the panel by no later than June 20th. If the state board of education accepts the changes to the required action plan recommended by the panel, the school district shall submit a revised required action plan to the superintendent of public instruction and state board of education by July 30th. The state board of education shall approve the plan by no later than August 10th if it incorporates the recommended changes of the panel.

(4) If the review panel issues a decision that reaffirms the decision of the state board of education rejecting the school district's required action plan, then the school district shall submit a revised plan to the superintendent of public instruction and state board of education within twenty days of the panel's decision. The state board of education shall approve the district's required action plan by no later than July 15th if it meets all of the requirements set forth in RCW 28A.657.-050.

NEW SECTION

WAC 180-17-030 Process for submittal and approval of a required action plan when mediation or superior court review is involved.

(1) By April 1st of the year in which a school district is designated for required action, it shall notify the superintendent of public instruction and the state board of education that it is pursuing mediation with the public employment relations commission in an effort to agree to changes to terms and conditions of employment to a collective bargaining agreement that are necessary to implement a required action plan. Mediation with the public employment relations commission must commence no later than April 15th.

(2) If the parties are able to reach agreement in mediation, the following timeline shall apply:

(a) A school district shall submit its required action plan according to the following schedule:

(i) By June 1st, the school district shall submit its required action plan to the superintendent of public instruction for review and approval as consistent with federal guidelines for the receipt of a School Improvement Grant.

(ii) By June 10th, the school district shall submit its required action plan to the state board of education for approval.

(b) The state board of education shall, by June 15th of each year, approve a plan proposed by a school district only if the plan meets the requirements in RCW 28A.657.050 and provides sufficient remedies to address the findings in the academic performance audit to improve student achievement.

(3) If the parties are unable to reach an agreement in mediation, the school district shall file a petition with the superior court for a review of any disputed issues under the timeline prescribed in RCW 28A.657.050. After receipt of the superior court's decision, the following timeline shall apply:

(a) A school district shall submit its revised required action plan according to the following schedule:

(i) By June 30th, the school district shall submit its revised required action plan to the superintendent of public instruction for review and approval as consistent with federal guidelines for the receipt of a School Improvement Grant.

(ii) By July 7th, the school district shall submit its revised required action plan to the state board of education for approval.

(b) The state board of education shall, by July 15th of each year, approve a plan proposed by a school district only if the plan meets the requirements in RCW 28A.657.050 and provides sufficient remedies to address the findings in the academic performance audit to improve student achievement.

NEW SECTION

WAC 180-17-040 Failure to submit or receive approval of a required action plan. The state board of education shall direct the superintendent of public instruction to require a school district that has not submitted a final required action plan for approval, or has submitted but not received state board of education approval of a required action plan by the beginning of the school year in which the plan is intended to be implemented, to redirect the district's Title I funds based on the academic performance audit findings.

NEW SECTION

WAC 180-17-050 Release of a school district from designation as a required action district. (1) The state board of education shall release a school district from designation as a required action district upon recommendation by the superintendent of public instruction, and confirmation by the board, that the district has met the requirements for release set forth in RCW 28A.657.100.

(2) If the board determines that the required action district has not met the requirements for a release in RCW 28A.657.100, the school district shall remain in required action and submit a new or revised required action plan under the process and timeline as prescribed in WAC 180-17-020 or 180-17-030.

WSR 10-23-102

PERMANENT RULES

ARTS COMMISSION

[Filed November 16, 2010, 2:59 p.m., effective December 17, 2010]

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

Purpose: Amendments to Title 30 WAC, Arts commission, will clarify the arts commission's purpose, organization, procedures and processes; and align the Title 30 WAC with current arts commission guidelines and policies. This will serve to make the rules more accessible and understandable.

Citation of Existing Rules Affected by this Order: Repealing WAC 30-01-010, 30-01-050, 30-04-090, 30-08-050, 30-08-060, 30-08-070, 30-12-040, 30-12-050, 30-12-060, 30-12-080, 30-12-090, 30-12-100, 30-12-110, 30-12-130, 30-12-150, 30-14-010, 30-14-020, 30-14-030, 30-14-040, 30-14-050, 30-14-060, 30-14-070, 30-14-080, 30-14-090, 30-14-100, 30-14-110, 30-18-010, 30-18-020, 30-18-

030, 30-18-040, 30-18-050, 30-18-060, 30-18-070, 30-18-080, 30-18-090, 30-18-100, 30-18-110, 30-22-010, 30-22-020, 30-22-030, 30-22-040, 30-22-050, 30-22-060, 30-22-070, 30-22-080, 30-22-090, 30-26-010, 30-26-020, 30-26-030, 30-26-040, 30-26-050, 30-26-060, 30-26-070, 30-26-080, 30-26-090, 30-40-040, 30-40-070, 30-40-080, 30-40-090, 30-41-040, 30-44-050 and 30-44-060; and amending WAC 30-01-020, 30-01-040, 30-01-060, 30-02-010, 30-04-010, 30-04-020, 30-04-030, 30-04-040, 30-04-050, 30-04-060, 30-04-080, 30-04-120, 30-08-010, 30-08-020, 30-08-030, 30-08-040, 30-12-010, 30-12-030, 30-12-160, 30-40-010, 30-40-020, 30-40-050, 30-40-060, 30-41-010, 30-41-020, 30-41-030, 30-44-010, 30-44-020, 30-44-030, and 30-44-040.

Statutory Authority for Adoption: Chapter 43.46 RCW.

Adopted under notice filed as WSR 10-18-109 on September 1, 2010.

Changes Other than Editing from Proposed to Adopted Version: Changes to the document are reflected in the concise explanatory statement, which can be found on-line at www.arts.wa.gov/about/rulemaking.shtml.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 1.

Number of Sections Adopted on the Agency's Own Initiative: New 16, Amended 30, Repealed 62.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 16, Amended 30, Repealed 62.

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 16, Amended 30, Repealed 62.

Date Adopted: November 4, 2010.

Kris Tucker
Executive Director

AMENDATORY SECTION (Amending WSR 95-15-040, filed 7/12/95, effective 8/12/95)

WAC 30-01-020 Rule-making authority. The Washington state arts commission is authorized by RCW 43.46-040 to adopt rules under the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

AMENDATORY SECTION (Amending WSR 10-02-089, filed 1/6/10, effective 2/6/10)

WAC 30-01-040 ((Description of) Commission's purpose ((and goals)). ((+)) The Washington state arts commission is charged with the conservation and development of the state's artistic resources as described in RCW 43.46.005. ~~((It is a citizens' commission consisting of nineteen members appointed by the governor and four members of the legislature.))~~ It is authorized by RCW 43.46.050 to study, plan, and advise the governor, state departments, and

the legislature regarding cultural development. Through the authority granted by RCW 43.46.055, the commission may administer any activity, and assist any person or agency in programs or projects related to the growth and development of the arts and humanities.

~~((2) Statement of purpose. The commission has adopted as its mission: The arts are essential to the quality of life for all of Washington's citizens. The Washington state arts commission states its dedication to the support of the promotion, growth, development, and preservation of the arts within the state. The commission strives to foster artistic merit and ensure accessibility to all citizens of the state.~~

~~(3) Goals. To work toward this mission, the commission will promote throughout the state:~~

- ~~(a) Artistic development, growth, and preservation;~~
- ~~(b) Artistic expressions of the many cultures which contribute to Washington's diversity;~~
- ~~(c) The arts as basic to the education of all citizens;~~
- ~~(d) Access, equity, and local empowerment in all its activities; and~~
- ~~(e) Organizational skills development, stability and continuity, and managerial expertise.))~~

NEW SECTION

WAC 30-01-055 Responsibilities. (1) Board responsibilities.

- (a) Approves the commission budget each fiscal year and biennium;
 - (b) Approves the commission's strategic plan and goals each biennium;
 - (c) Approves all grants, except when such authority is specifically delegated to the executive director;
 - (d) Approves changes to rosters, as specified in these rules;
 - (e) Fulfills other responsibilities as established in Title 30 WAC; and
 - (f) May delegate specific responsibilities to the executive director.
 - (g) Officers of the board serve as specified in WAC 30-08-080 (Board officers and committees).
- (2) Executive director responsibilities.
- (a) Manages the agency;
 - (b) Approves and signs contracts;
 - (c) Acts as official spokesperson for the commission;
 - (d) Fulfills other responsibilities as established in Title 30 WAC and as otherwise determined by the board; and
 - (e) May delegate specific responsibilities to staff.
- (3) Staff responsibilities.

Under the direction of the executive director, staff develop and implement the commission's strategic plan, budget, and programs. Staff have the authority to:

- (a) Manage programs, including development of application forms, guidelines, and review criteria, and convene and manage panels to review applications, nominations, and staff recommendations;
- (b) Define and publish definitions in addition to those in chapter 30-02 WAC (Definitions), as necessary to implement commission programs;
- (c) Negotiate, prepare, and administer contracts; and

(d) Fulfill other responsibilities as established in Title 30 WAC and otherwise as determined by the executive director.

AMENDATORY SECTION (Amending WSR 10-02-089, filed 1/6/10, effective 2/6/10)

WAC 30-01-060 Office hours and contact information. The offices of the Washington state arts commission ~~((is))~~ are open from 8:00 a.m. to 5:00 p.m. Monday through Friday except ~~((weeks that include))~~ on state legal holidays and other posted office closures. Written correspondence should be addressed to P.O. Box 42675, Olympia, WA 98504-2675. Additional information is available on the commission's web site at www.arts.wa.gov. ~~((For business hours and contact information related to public records see WAC 30-04-040.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|---------------|---------------|
| WAC 30-01-010 | Purpose. |
| WAC 30-01-050 | Organization. |

NEW SECTION

WAC 30-02-005 Scope of this chapter. This chapter is to define terms necessary for the public to use commission programs and services, and to understand the rules of the commission. Staff may define and publish additional definitions as necessary to implement commission programs.

AMENDATORY SECTION (Amending WSR 95-15-040, filed 7/12/95, effective 8/12/95)

WAC 30-02-010 Definitions. The following definitions shall apply throughout ~~((this))~~ Title 30 WAC:

~~((1) "Agency" means the agency with one half of one percent of its capital construction appropriations designated for the acquisition of works of art under RCW 43.17.200, 43.19.455, 28A.335.210, and 28B.10.025, as follows:~~

~~(a) RCW 43.17.200 designates all state agencies, departments, boards, councils, commissions, and quasi-public corporations;~~

~~(b) RCW 43.19.455 designates all state agencies under the department of general administration;~~

~~(c) RCW 28A.335.210 designates "common schools" (public schools) recognized by the state of Washington;~~

~~(d) RCW 28B.10.025 designates the University of Washington, Washington State University, regional universities, The Evergreen State College and community college districts;~~

~~(2) "Agency project committee" means an advisory committee that works with the commission to develop a designated art project. The agency project committee shall be appointed at the commission's request by the administration of the agency receiving the project and may consist of members representing: Agency administration, artists or art professionals, community members, and building users. Com-~~

mittee nominations should strive to be balanced by gender, ethnically diverse, and represent the constituencies of the agency. The commission may recommend representatives to the agency project committee.

(3) "Appeal" means any request by an applicant to the commission for reconsideration of a previous decision on a program application.

(4) "Applicant" means a legally incorporated organization, unit of government, or individual.

(5) "Art scholar" means a folklorist, art historian, aesthetician, art critic, or other scholar of the arts recognized as a professional by peers in the field.

(6) "Art selection panel" means a body appointed by the commission to review, recommend, and select artists for projects according to project specifications. Panels will vary in size and be comprised of artists and/or art professionals. Panel nominations should strive to be balanced by gender, ethnically diverse, and represent the variety of contemporary artistic production.

(7) The "artists resource bank" means a file of artists' slides and materials maintained by the commission. Artists included in the artists resource bank are selected by art selection panels through competitions and considered for project selection by agency project committees.

(8) "Award" means the financial assistance committed through a contract or paid to an eligible applicant.

(9) "Chairperson" means that person elected pursuant to RCW 43.46.040.

(10) "Commission" means the Washington state arts commission.

(11) "Commissioners" mean the members of the commission who are appointed pursuant to RCW 43.46.015.

(12) "Committee chairpersons" mean those persons appointed by the chairperson of the commission as described in WAC 30.01.050(3).

(13) "Committees" mean those subgroups of the commission appointed by the chairperson as described in WAC 30.01.050(5).

(14) "Complimentary tickets" are any free admissions provided by arts organizations to commissioners or staff for evaluation purposes.

(15) "Deaccessioning" means the removal of a work of art from the state art collection by the commission.

(16) "Evaluators" are individuals requested to make recommendations regarding programs, selections, and issues before the commission based on their expertise, training, or experience in a given field.

(17) "Executive director" means that person employed pursuant to RCW 43.46.045 to carry out the functions of that chapter.

(18) "Financial assistance" means money provided to applicants from federal, state, or private funds of the commission.

(19) "Fiscal year" means the period beginning July 1 and ending June 30 of the following year.

(20) "Folk artist" means those most valuable and most authentic practitioners of the folk and traditional arts that have been brought up within a traditional community, learning the repertoire from their own seniors and absorbing the

style as they live the life that the style and the repertoire represent.

(21) "Grant" means award or financial assistance.

(22) "Grantee" means an institution, organization, arts group, or individual receiving a grant.

(23) "Literary arts" shall include poetry, fiction, and literary or arts criticism.

(24) "Local arts commission" means a governmental agency created to represent, serve, and promote interdisciplinary arts, artists, and arts organizations within its legal jurisdiction.

(25) "Local arts council" means a private, nonprofit organization, designated under Section 501 (c)(3) as a tax-exempt organization by the Internal Revenue Service, created to represent, serve and promote multidisciplinary arts, artists, and arts organizations within its community jurisdiction.

(26) "Maintenance" means the ongoing upkeep required for artworks to retain their structural and aesthetic integrity.

(27) "Matching component" means an amount of money or the value of materials or services provided by the applicant.

(28) A "Native American" is a person of recognized North American Indian descent through tribal affiliation or general tribal community recognition.

(29) "Nonprofit" means incorporation under the nonprofit laws of the state of Washington or another state, and determination by the Internal Revenue Service (IRS) that the incorporated entity is exempt from taxation under Section 501 (c)(3) of the IRS code.

(30) "Panels" mean those individuals from which the commission, as a part of its regular practice, may seek advice in order to provide a comprehensive professional perspective in the decision-making process, and may include commissioners.

(31) "Performing arts" mean the broad disciplines of music, dance, and drama and the various forms of expression and performances associated within them.

(32) "Postmark" means the date affixed to letters, parcels or packages by the United States Postal Service (USPS), either through the USPS postmark stamp or USPS meter tape.

(33) "Professional artist" means a person generally recognized by critics and peers as a professional producing high quality work on a regular basis. Other indicators of professionalism include frequent or consistent exhibitions, performances, readings, publications, purchases by museums, commissions, honors and awards, and art training. Students enrolled in an ongoing formal art education program and avocational practitioners are not considered professional. Hereinafter, professional artist will be referred to as "artist."

(34) "Public record" includes 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 any state or local agency regardless of physical form or characteristics.

(35) "Special populations" mean public or nonprofit institutions serving prison programs, incarcerated youth programs, and programs serving the mentally or physically disabled, and youth at risk.

(36) "Sponsor" means any Washington state public school, school district, educational service district, private

nonparochial school, college or university, or any cultural or community organization including local arts councils and commissions, retirement centers, libraries, hospitals, correctional centers, and other facilities for special populations.

(37) "Staff" means those persons employed by the executive director pursuant to RCW 43.46.045.

(38) The "state art collection" means all works of art and select design models commissioned or purchased under RCW 43.17.200, 28A.58.055, 28A.335.210, 43.46.090, and 43.19.455. Individual works are held in trust under the terms of an interagency agreement by agencies working in partnership with the commission. Development, administration, and management of the overall collection, including maintenance if funded, deaccessioning and loan policies, archival record-keeping and documentation, shall be carried out by the commission.

(39) "Support" means financial, technical, or information assistance provided by the commission and the staff to individuals or organizations.

(40) "Technical assistance" means the transmittal of information, skills, and/or resources that help to improve the ability of an institution, organization, arts group, or individual to accomplish its purpose.

(41) "Three-dimensional visual arts" shall include relief and sculpture in the round and three-dimensional crafts.

(42) "Traditional artist" means those most valuable and most authentic practitioners of the folk and traditional arts that have been brought up within a traditional community, learning the repertoire from their own seniors and absorbing the style as they live the life that the style and the repertoire represent.

(43) "Two-dimensional visual arts" shall include painting, drawing, print making, photography, multimedia, and two-dimensional crafts.

(44) "Washington state arts commission" means the commission established pursuant to RCW 43.46.015.

(45) "Writing" means handwriting, typewriting, printing, photostating, and every other means of recording, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents.) "Accession" means to formally acquire a work of art for the state art collection, including the action of assigning an accession or control number to the work of art.

"Appeal procedure" means the procedure as established in WAC 30-12-036 (Request for review of denied applications) whereby an applicant may request a review of a denied application.

"Application form" means the printed or electronic forms created and published by staff to be used in commission program applications.

"Application guidelines" means the published document that provides the public with information on how to apply for commission programs, including eligibility requirements, review criteria, deadlines, timelines, and appeal procedure. Application guidelines may be published in a printed format and/or in electronic format accessible through the commission's web site.

"Art advisory committee" means a committee formed by staff and a partner agency to develop plans and overall project specifications, and to make funding allocation decisions related to the state art collection.

"Art in public places program" means the visual art program of the commission established by the legislature in RCW 43.46.090 to acquire works of art and to develop, administer, and operate the state art collection.

"Art selection committee" means a committee formed by a partner agency, and approved by staff, to review and select artists to create works of art for the state art collection, or to review and select works of art for or from the state art collection, through a process facilitated by staff.

"Artistic excellence" means evidence of some or all of the following: Mastery of skills and techniques, professional approaches to process and presentation, and/or communication of unique vision or perspective.

"Artistic merit" means evidence of some or all of the following: Potential impact on the artistic and/or cultural development of a community or individuals; and/or potential to broaden access to, expand and diversify the audiences for, and/or strengthen communities through the arts.

"Arts professional" means an individual who has professional work experience in the arts or an arts-related field.

"Board" means the board of commissioners, consisting of nineteen members appointed by the governor and four members of the legislature appointed to the Washington state arts commission pursuant to RCW 43.46.015.

"Chair" means the chair of the board, elected pursuant to WAC 30-08-050 and fulfilling duties as established in Title 30 WAC.

"Collections management" means the ongoing care, preservation, and maintenance of the state art collection, including activities such as the management of conservation, restoration, deaccession, documentation, inventory, labeling, loans, and re-siting of works of art.

"Commission" means the collective entity of the Washington state arts commission, including the board, executive director, and staff.

"Commissioner" means an individual appointed to the board of the Washington state arts commission.

"Conservation" means treatment of malfunctioning or damaged works of art for the purpose of bringing them to a stable condition so that future routine and special maintenance can be effective. Conservation-related activities may also include examination and documentation.

"Curator" means a qualified visual arts professional with past curatorial experience selected to recommend works of art for acquisition to the state art collection.

"Deaccession" means board action to remove an accessioned work of art from the state art collection.

"Disability" is defined in RCW 49.60.040(7).

"Eligibility requirements" means published standards by which applications are reviewed to determine if they meet the minimum required qualifications to apply for a commission program.

"Executive director" means that person employed pursuant to RCW 43.46.045 to carry out the functions of that chapter and Title 30 WAC.

"Grant" means a contract for arts or cultural services between the commission and an organization or individual, awarded through a competitive application process and approved or ratified by the board.

"Inventory" means a periodic survey of the physical state and current location of works of art in the state art collection.

"Nonprofit" means incorporation under the nonprofit laws of the state of Washington or another state, and determination by the Internal Revenue Service (IRS) that the incorporated entity is exempt from taxation under Section 501 (c)(3) of the IRS code.

"Panel" means a group of individuals convened by staff to review applications, nominations, or staff recommendations based on published review criteria, in order to make recommendations to the board or executive director.

"Partner agency" means a state agency, K-12 public school, university, college, community college, or other public entity working with the art in public places program.

"Professional artist" means an individual who has a history of paid work as an artist.

"Public artist roster" means the board approved list of professional artists eligible to create visual works of art for the state art collection.

"Re-siting" means the relocation of a work of art in the state art collection within the jurisdiction of a partner agency or between partner agencies.

"Restoration" means treatment that returns a malfunctioning or damaged work of art to a known or assumed state, often through the addition of nonoriginal material.

"Review criteria" means the standards used by panels to evaluate applications, nominations, or staff recommendations.

"Roster" means a list of approved arts professionals who have the skills and experience to address the needs of a specific commission program.

"Routine maintenance" means a regular procedure to preserve a work of art in the state art collection in proper condition: Clean, presentable, and in working order.

"Site responsive" means created, planned, or intended for a particular site. A site responsive work of art addresses both the physical characteristics of its location (size, environment, lighting, public use, etc., of the site) and the community in which it is situated (neighborhood, users of site, historical population, etc.).

"Special maintenance" means anticipated but infrequent activities required to maintain aesthetic and/or structural aspects of the works of art in the state art collection, including integrity of the overall surface and/or individual elements.

"Staff" means employees of the Washington state arts commission, under the direction of the executive director, pursuant to RCW 43.46.045, employed to carry out the functions of that chapter, and Title 30 WAC.

"State art collection" means all works of art and select design models commissioned or purchased under RCW 43.17.200, 28A.58.055, 28A.335.210, 43.46.090, and 43.19.455.

"Teaching artist" means a professional artist who is dedicated to arts education as an integral part of his/her professional practice, and who has cultivated skills as an educator in concert with skills as an artist.

"Underserved" means populations whose opportunities to experience the arts are limited by geography, ethnicity, economics, or disability.

"Washington state arts commission" means the collective entity of the Washington state arts commission, including the board and staff.

AMENDATORY SECTION (Amending WSR 10-02-089, filed 1/6/10, effective 2/6/10)

WAC 30-04-010 Purpose. The purpose of this chapter is to ensure compliance by the Washington state arts commission with the provisions of ((~~RCW 42.56.040 through 42.56.520~~)) chapter 42.56 RCW dealing with public records.

AMENDATORY SECTION (Amending WSR 10-02-089, filed 1/6/10, effective 2/6/10)

WAC 30-04-020 Public records available. All public records of the commission ((~~as defined in WAC 30-02-010(34),~~)) are available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.56.210 and WAC 30-04-070.

AMENDATORY SECTION (Amending WSR 10-02-089, filed 1/6/10, effective 2/6/10)

WAC 30-04-030 Public records officer. The commission's public records shall be in the charge of the public records officer designated by the executive director. ((~~The person so designated shall be located in the office.~~)) The public records officer shall be responsible for the following: The implementation of commission policy in regard to the release of public records, coordinating the staff of the office in this regard, and generally insuring staff compliance with the public disclosure requirements of chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 10-02-089, filed 1/6/10, effective 2/6/10)

WAC 30-04-040 Inspection and copying. Public records shall be available for inspection and copying from 9:00 a.m. to ((~~noon and from 1:00 p.m. to~~)) 4:00 p.m., Monday through Friday ((~~except weeks that include state~~)), excluding legal holidays and other posted office closures. All public records of the commission are located at the ((~~Washington State Arts Commission, 711 Capitol Way S., Suite 600, Olympia, WA 98504~~)) office address published on the commission's web site at www.arts.wa.gov.

AMENDATORY SECTION (Amending WSR 10-02-089, filed 1/6/10, effective 2/6/10)

WAC 30-04-050 Requests for public records. In accordance with the requirements of chapter 42.56 RCW, that agencies prevent unreasonable invasion of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the ((~~agency~~)) commission, public records may be inspected or copied, or copies of such records may be obtained, by mem-

bers of the public upon compliance with the following procedure:

(1) A request shall be made in writing (~~(upon a form prescribed by the commission which shall be available at the location listed in WAC 30-04-040. The form shall be presented)~~) (including electronic mail) to the public records officer, or to another designated member of the staff if the public records officer is not available. The request shall include the following information:

- (a) The name of the person requesting the record;
- (b) The time of day and calendar date on which the request was made;
- (c) The nature of the request(;
- ~~(d) If the matter requested is referenced within the current index maintained by the public records officer, a reference to the requested record as it is described in such current index;~~
- ~~(e) If the requested matter is not identifiable by reference to the current index, an appropriate description of the record requested.~~

(2) ~~The public records officer, or staff person assisting the member of the public making the request, will ascertain whether or not the information requested is exempt from public inspection and copying as outlined in WAC 30-04-070 and further defined in RCW 42.56.210. Included therein, but not limited to, are such exemptions as personal information that may violate the rights of privacy of the individual, national defense information, certain aspects of real estate appraisals as outlined in RCW 42.56.260, and other particular information.~~

~~(3) Only after a determination has been made that all or such portion of a public record as is not deleted may be inspected shall such public record or portion thereof be made available for inspection by a member of the public.~~

~~(4) In all cases, it shall be the obligation of the public records officer, or staffperson to whom the request is made, to:~~

- ~~(a) Locate the specific document(s) requested by the member of the public in the most timely manner possible;~~
- ~~(b) Assist the member of the public in appropriately identifying the public record requested;~~
- ~~(c) Protect and otherwise prevent damage to the public record being inspected and copied;~~
- ~~(d) Prevent disorganization of file folders or document containers;~~
- ~~(e) Remain in the company of the member of the public at all times during which a public document is being inspected, and provide the fullest assistance possible;~~
- ~~(f) Prevent excessive interference with the other essential functions of the agency.~~

~~(5) Only the staff and members of the commission may open files to gain access to commission records.~~

~~(6) No public record of the commission may be taken from the premises of the commission by a member of the public.~~

~~(7) Public inspection of commission records shall be done only in such locations as are approved by the public records officer, which locations must provide an opportunity for staff to ensure that no public record of the commission is~~

~~damaged, destroyed, unreasonably disorganized or removed from its proper location or order by a member of the public.~~

~~(8) Public records of the commission may be copied only on the copying machine of the commission unless other arrangements are authorized by the public records officer).~~

(2) If the request is for a list of individuals, the requestor shall certify that the request is not for commercial purposes except as provided under RCW 42.56.070(7).

NEW SECTION

WAC 30-04-055 Response to public records request.

(1) The public records officer shall respond to public records requests within five business days by:

- (a) Providing the record;
- (b) Acknowledging receipt of the request and providing a reasonable estimate of the time the commission will require to respond to the request; or
- (c) Denying the public record request. Responses refusing in whole or in part the inspection of a public record shall include a statement of the specific exemption authorizing the withholding of the record (or any part) and a brief explanation of how the exemption applies to the record(s) withheld.

(2) Additional time to respond to the request may be based upon the need to:

- (a) Clarify the intent of the request;
- (b) Locate and assemble the information requested;
- (c) Notify third persons or agencies affected by the request; or
- (d) Determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request.

(3) In acknowledging receipt of a public record request that is unclear, the public records officer may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the public records officer need not respond to it.

(4) If the public records officer does not respond in writing within five working days of receipt of the request for disclosure, the person seeking disclosure shall be entitled to:

- (a) Consider the request denied; and
- (b) Petition the public records officer under WAC 30-04-080.

(5) If the public records officer responds within five working days acknowledging receipt of the request and providing an estimate of the time required to respond to the request, and the requestor feels the amount of time stated is not reasonable, the person seeking disclosure shall be entitled to petition the public records officer for a review of the estimate of time. The procedures set out in WAC 30-04-080 shall apply to this review.

(6) Only after a determination has been made that all, or such portion of a public record as is not redacted, may be inspected, shall such public record or portion thereof be made available for inspection by appointment.

(7) The request for an appointment shall be made in writing to the public records officer. The public records officer shall acknowledge such request for an appointment within two business days of the receipt of such request and will pro-

vide the requestor with the date(s) that such an appointment could be kept by an authorized staff person.

(8) The viewing of those records that require specialized equipment shall be limited to the availability of that equipment located at the commission office and the availability of authorized staff to operate that equipment.

(9) In all cases, it shall be the obligation of the public records officer to:

(a) Locate the specific document(s) requested by the member of the public in the most timely manner possible;

(b) Assist the member of the public in appropriately identifying the public record requested;

(c) Protect and otherwise prevent damage to the public record being inspected and copied;

(d) Prevent disorganization of file folders or document containers;

(e) Remain in the company of the member of the public at all times during which a public document is being inspected, and provide the fullest assistance possible; and

(f) Prevent excessive interference with the other essential functions of the commission.

AMENDATORY SECTION (Amending WSR 95-15-040, filed 7/12/95, effective 8/12/95)

WAC 30-04-060 Copying. No fee shall be charged for the inspection of public records. The commission shall charge ~~((an appropriate cost determined by the agency for copies of public records and the use of commission copy equipment. This charge is))~~ ten cents per black and white copy. Specialized records, including color copy, will be duplicated at the amount necessary to reimburse the commission for its actual cost ~~((incident to such copying))~~. If the public records officer deems it more efficient to have copying and/or duplicating done outside the ~~((agency))~~ commission, the charges will be based on the actual cost of such outside copying and/or duplicating service. For all copying and/or duplicating service charges incurred, an invoice will be sent to the requestor. Reimbursement is payable within fifteen days of receipt of invoice payable to the Washington state arts commission. The commission may require that all charges be paid in advance of release of the copies of the records.

AMENDATORY SECTION (Amending Order 1, Resolution No. 86-1, filed 4/1/86)

WAC 30-04-080 Review of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by rendering a written request for review to the public records officer. The written request shall specifically refer to the written statement by the public records officer or other ~~((staffperson))~~ staff which constituted or accompanied the denial.

(2) Immediately after receiving a written request or review of a decision denying a public record, the public records officer or other ~~((staffperson))~~ staff denying the request shall refer it to the executive director or designee. The executive director 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 written request for review of the original denial.

(3) Administrative remedies shall not be considered exhausted until the executive director has returned the petition with a decision or until the close of the second business day following the request for review, whichever occurs first.

AMENDATORY SECTION (Amending WSR 10-02-089, filed 1/6/10, effective 2/6/10)

WAC 30-04-120 Records index. The commission shall ~~((provide))~~ establish a ~~((current))~~ records index ~~((based on those records available in the commission office and outlined on the commission's schedule for archival of official agency records. Those records which are considered exempt for the purposes of WAC 30-04-070 and RCW 42.56.210 shall be so noted on the index))~~, which shall be made available for public review.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 30-04-090 Protection of public records.

AMENDATORY SECTION (Amending WSR 10-02-089, filed 1/6/10, effective 2/6/10)

WAC 30-08-010 ((Purpose)) Scope of this chapter. ~~((The purpose of))~~ This chapter is to ensure compliance by the board of the Washington state arts commission with the provisions of chapters ~~((42.56 and))~~ 42.30 and 43.46 RCW, in particular those sections which deal with procedures ~~((and meetings))~~ for the board.

AMENDATORY SECTION (Amending WSR 10-02-089, filed 1/6/10, effective 2/6/10)

WAC 30-08-020 Uniform procedure rules. Practice and procedure in and before the ~~((commission))~~ board are governed by the uniform procedural rules codified in the Washington Administrative Code, WAC 10-08-001 through 10-08-252, as now or hereafter amended, which rules the ~~((commission))~~ board adopts as its own, subject to any additional rules the ~~((commission))~~ board has adopted or may choose to adopt. ~~((The commission))~~ Should any question not covered by its rules come before the board, the board reserves the right to make ((whatever)) a determination that is fair and equitable ((should any question not covered by its rules come before the commission, said determination to be)), and in accordance with the spirit and intent of the law.

AMENDATORY SECTION (Amending WSR 95-15-040, filed 7/12/95, effective 8/12/95)

WAC 30-08-030 ((Commission)) Board meetings. (1) General schedule. The ~~((commission shall meet))~~ board meets at least ~~((five))~~ four times each fiscal year and at such other times as determined to be necessary. ~~((The))~~ All meet-

ings of the ~~((commission shall all be))~~ board are "regular" or "special" meetings⁽²⁾ as those designations are applied in chapter 42.30 RCW. Meetings may be called, subject to the notice requirements of chapter 42.30 RCW, at any time and place by the ~~((chairperson))~~ chair or by a majority of the commissioners.

(2) Notice. Twenty calendar days notice of all meetings shall be given by posting on the commission's web site notification of the date, time and location of the meeting, and by mailing ((a copy of the notice and draft agenda)) or e-mailing the same to each commissioner and to any person who has made a written request to the commission to receive meeting notices.

(3) Special ~~((or emergency))~~ meetings. The twenty-day notice may be waived for special ~~((or emergency))~~ meetings upon consent of ~~((a majority of the commission))~~ the chair. In such cases, the provisions of RCW 42.30.080 ~~((will))~~ govern due notification of the time, place, and business to be transacted.

(4) Executive session. An executive session may be called by the ~~((chairperson))~~ chair or a majority of the ~~((commission))~~ board. Executive sessions shall deal only with matters authorized by chapter 42.30 RCW.

~~((Conference calls. Given the geographic distribution of the commissioners, the chairperson may convene a meeting by conference call if the situation warrants immediate action by the full commission, subject to the notice requirements of))~~ Meeting formats. Meetings may be convened in-person and/or by conference call, on-line, or other alternative format as determined by the chair and the executive director, subject to the requirements of the Open Public Meetings Act, chapter 42.30 RCW.

(6) Rules of order. The ~~((commission shall generally))~~ board generally follows *Roberts Rules of Order*, newly revised, in conducting its business meetings.

(7) Quorum. A simple majority of the regularly appointed ~~((and acting members of the commission shall))~~ board members constitute a quorum. If all ~~((twenty-one))~~ twenty-three positions are filled, the quorum ~~((shall be eleven))~~ is twelve.

(8) Voting rights. All officers of the ~~((commission shall))~~ board have the right to vote on all matters before the ~~((commission))~~ board, just as any other commissioner.

~~((Minutes.))~~ Meeting materials. Staff makes meeting materials available to the public at the time of the meeting, and following the meeting upon request.

~~((10))~~ Minutes ~~((shall be kept))~~ of the proceedings of all ~~((commission))~~ board meetings are kept and published on the commission web site.

~~((10))~~ "Program guidelines" are guidelines and/or applications booklets which are published by the commission and constitute policy and/or interpretive statements and substantive changes cannot be added to or changed except at open public meetings.

AMENDATORY SECTION (Amending WSR 95-15-040, filed 7/12/95, effective 8/12/95)

WAC 30-08-040 ((Commission)) Board meetings—Public participation. ~~((Any person or organization is~~

~~encouraged to offer its points of view to the commission.))~~

(1) Any person or organization wishing to make a formal presentation at a scheduled meeting of the ~~((commission))~~ board shall notify the executive director in writing at least ten days prior to the time of the meeting. The ~~((commission))~~ chair or executive director may waive the ten-day notice period in the event the proposed presentation is of critical importance to the operation of the commission.

(a) Such notification shall contain the name of the person or organization that desires to make a presentation; the address and phone number of the person or organization; and the topic to be presented or discussed.

(b) Permission to make a presentation to the ~~((commission))~~ board shall be granted by the executive director in consultation with the ~~((chairperson, as authorized by the commission))~~ chair.

(c) Confirmation of permission to make a presentation to the ~~((commission))~~ board shall be made, if ~~((at all))~~ reasonably possible, by ~~((the))~~ staff prior to the meeting of the ~~((commission))~~ board, and shall include the date and time of the meeting, and the ~~((time set))~~ approximate start time and duration established for the formal presentation.

(2) The ~~((chairperson))~~ chair shall have the discretion to recognize anyone in the audience who indicates at the time of the meeting a desire to speak at such meeting. Depending on the number of individuals wishing to speak or the ~~((commission's))~~ chair's sense of the business ~~((it))~~ the board must conduct, the ~~((chairperson))~~ chair may limit the time for comment to a reasonable period.

NEW SECTION

WAC 30-08-080 Board officers and committees. (1) Officers. The officers of the board shall be chair, first vice-chair, and second vice-chair.

(a) Election of officers.

(i) At the last meeting of the fiscal year, the current chair shall appoint a nominating committee. At the first meeting of the next fiscal year, the nominating committee shall report its recommendations for officers, after which nominations shall be open to the floor. An election shall be held and the commissioner receiving the highest number of votes for each of the three positions shall be declared elected to the position for the coming year. The officers shall act as chair, first vice-chair, and second vice-chair until the next election or successors are elected.

(ii) Vacancies may be filled by the chair between annual elections of officers.

(b) Duties of officers.

(i) The chair shall preside at all meetings of the board, act as principal spokesperson for the board, represent the board between meetings, appoint standing and ad hoc board committees, appoint committee chairs, remove members of committees, act as an ex officio member of all standing committees, provide a regular report to the board regarding recent actions and activities, and perform other duties that pertain to the office. The chair shall lead board activities in close partnership with the executive director, and coordinate with the executive director in the planning and arrangements for all meetings of the board.

(ii) The first vice-chair shall act as chair in the absence or incapacity of the chair.

(iii) The second vice-chair shall act as chair in the absence or incapacity of both the chair and the first vice-chair.

(2) Executive committee. The chair, first vice-chair, second vice-chair, and at least one commissioner at-large appointed by the chair shall constitute the executive committee.

The executive committee may act on behalf of the board between regular meetings when such action is necessary to authorize staff implementation of a required function in a timely manner. Any executive committee action shall be ratified at the next regular meeting of the board.

(3) Committees of the board. The chair shall appoint such committees as the board or the chair deem necessary to carry on the business of the board.

A committee may act on behalf of the board between regular meetings when such action is necessary to authorize staff implementation of a required function in a timely manner, and when such action has been specifically authorized in advance by a majority vote taken at a regular meeting of the board. Any committee action shall be ratified at the next regular meeting of the board.

NEW SECTION

WAC 30-08-090 Conflict of interest. The requirements of state ethics laws apply to all board members operating in their role as a commissioner, including prohibitions against conflicts of interest, pursuant to chapter 42.52 RCW.

(1) Conflict of interest at board and board committee meetings.

(a) When a member of the board will benefit, directly or indirectly, from a grant, project, issue, or other matter before the board or a committee of the board, he/she shall notify the chair, executive director, or fellow committee members. In relation to approval of grants, indicators of a conflict include financial or management ties to a specific project, such as salary, ownership, hands-on management or directorship by the commissioner, or a member of the commissioner's household or immediate family.

(b) A commissioner with a conflict of interest shall recuse himself/herself from the decision by taking the following actions:

(i) Recuse himself/herself from board/committee discussion regarding the specific grant, project, issue, or matter;

(ii) Recuse himself/herself from the board/committee vote on the specific grant, project, issue, or matter;

(iii) Refrain from attempting to influence the remaining commissioners at their discussion and vote regarding the specific grant, project, issue, or matter.

(c) Recusal may include leaving the room, if so requested by the chair or fellow committee members.

(d) If possible, where there is a known conflict of interest regarding an action item at a board meeting, the item will be scheduled in such a manner that the commissioner can participate in other action items.

(2) Perceived conflict of interest at a board or committee meeting. Any member of the board or committee who feels

that he/she has no prohibited conflict of interest but does have a personal or professional interest which the public might misconstrue in the particular situation, may either voluntarily recuse, as identified above; or disclose the interest to those present, and if there is no objection from anyone present, proceed to discuss and vote on the item. If there is an objection the chair shall determine if recusal is necessary and appropriate.

NEW SECTION

WAC 30-08-100 Complimentary tickets and other gifts. In compliance with chapter 42.52 RCW, Ethics in public service, commissioners, executive director, and staff of the commission will not accept gifts of complimentary tickets or other gifts that will influence or create the appearance of influence on commission decisions.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 30-08-050 Commission meeting materials.

WAC 30-08-060 Committee meetings.

WAC 30-08-070 Appeal procedure—Awards and contracts.

AMENDATORY SECTION (Amending WSR 95-15-040, filed 7/12/95, effective 8/12/95)

WAC 30-12-010 ~~((Purpose.))~~ Scope of this chapter. ~~((The purpose of))~~ This chapter is to ~~((provide the public and the commission's constituents with those))~~ establish rules that apply generally to ~~((all commission))~~ programs and services ~~((, specifically, those that involve competitive application for support, awards or contracts for artistic services. In addition, each commission program has additional rules that apply which are contained in this chapter))~~ of the Washington state arts commission. Additional rules for specific programs are established in application guidelines, and in chapters 30-40 WAC (Art in public places program), 30-41 WAC (Poet laureate program), and 30-44 WAC (Governor's arts and heritage awards).

NEW SECTION

WAC 30-12-015 Grants. (1) The commission provides grants through a competitive process to organizations or individuals for the purpose of developing, sponsoring, and promoting the growth and development of the arts in the state of Washington.

(2) Application cycles, forms, guidelines, eligibility requirements, and review criteria are established and published by staff.

(3) The application process is managed pursuant to WAC 30-12-017 (Applications) and applications are reviewed by a panel pursuant to WAC 30-12-030 (Panels).

(4) The board reviews panel recommendations and approves grants, except as noted below.

(a) The executive director may approve grants which do not exceed three thousand dollars. Such actions are reviewed and ratified at the next meeting of the board.

(b) The board may delegate to the executive director approval of grants which exceed three thousand dollars. Such actions are reviewed and ratified at the next meeting of the board.

NEW SECTION

WAC 30-12-016 Rosters. (1) Staff may establish and manage a roster to address program needs.

(2) Application cycles, forms, guidelines, eligibility requirements, and review criteria are established and published by staff.

(3) The application process is managed pursuant to WAC 30-12-017 (Applications) and applications are reviewed by a panel pursuant to WAC 30-12-030 (Panels).

(4) Staff may eliminate a roster due to changes in priorities, program needs, or resources, subject to the review and approval of the board.

(5) Removal from a roster.

(a) Staff have the authority to remove individuals from a roster for the following reasons:

(i) Individual on the roster fails to inform staff of new contact information;

(ii) Individual on the roster requests to be removed;

(iii) Individual on the roster is deceased;

(iv) Expiration of roster term limit, as published in application guidelines;

(v) Violation of the terms of a commission-related contract;

(vi) If artists are accepted onto a roster as a team and subsequently dissolve the team, all individuals on the team are removed from the roster;

(vii) Any other reason specified in published application guidelines.

(b) Removed individuals may apply to the next roster competition, except if removed for violation of the terms of a commission-related contract or for other reasons as specified in application guidelines.

NEW SECTION

WAC 30-12-017 Applications. (1) Application cycles, forms, guidelines, eligibility requirements, and review criteria are established and published by staff.

(2) Application forms and guidelines are published on the commission web site no fewer than twenty calendar days prior to the deadline for submitting applications, pursuant to RCW 34.05.413.

(3) Applications that arrive or are postmarked by the published deadline as specified in application guidelines are reviewed by staff to determine if the application meets published eligibility requirements.

(4) Staff convene a panel to review eligible applications pursuant to WAC 30-12-030 (Panels).

AMENDATORY SECTION (Amending WSR 95-15-040, filed 7/12/95, effective 8/12/95)

WAC 30-12-030 Panels. (1) Panels are ~~((comprised of individuals whose expertise can address specific issues and program needs.~~

~~(2) Panel members))~~ convened by staff and are authorized to serve by the executive director ~~((and)).~~

(2) Panels may include members of the public, commissioners, and staff and will be three to seven members.

(a) Panelists are selected in order to achieve a balance of relevant expertise, and representation of diverse geographic and cultural communities, as appropriate to the program and review criteria.

(b) Panel members may be reimbursed for their services and/or their travel expenses. Commissioners and staff are not reimbursed for their panel services, but may be reimbursed for their travel expenses.

(3) Staff provide panel members an orientation, including conflict of interest rules pursuant to WAC 30-12-035 (Conflict of interest in panels and program committees).

(4) Panel members are instructed to apply their critical judgment and expertise to evaluate applications, nominations, or staff recommendations based on the review criteria.

(5) The record of the panel process includes: The names and qualifications of the panel members; panel orientation materials; declared conflicts of interest or recusals; scoring sheets; and the panel's recommendations to the board.

~~((3))~~ (6) Panels may refrain from ((making a) scoring an application, nomination, or staff recommendation, if ((-in their opinion,)) they find there is insufficient information ((or merit)) in the material under review.

~~((4))~~ (7) All panel recommendations are subject to the review and approval or ratification of the ((commission)) board.

NEW SECTION

WAC 30-12-035 Conflict of interest in panels and program committees. (1) The requirements of state ethics laws apply to all panels and program committees, including prohibitions against conflicts of interest, pursuant to chapter 42.52 RCW.

(2) When a member of a panel or program committee will benefit, directly or indirectly, from a grant, project, or other matter before the panel or committee, he/she shall notify the staff convening the panel or committee. Indicators of a conflict include financial or management ties to a specific application, proposal, submission or other matter, such as salary, ownership, hands-on management or directorship by the panelist or a member of the panelist's household or immediate family.

(3) Panel and program committee members who have a conflict of interest must recuse themselves from the decision by taking the following actions:

(a) Recuse himself/herself from panel/committee discussion regarding the specific application, proposal, submission or other matter;

(b) Recuse himself/herself from the panel/committee vote on the specific application, proposal, submission or other matter;

(c) Refrain from attempting to influence the remaining panel/committee members in their discussion and vote regarding the specific application, proposal, submission or other matter.

(4) In a panel/program committee meeting, recusal shall include leaving the room for the discussion and vote on the item with which the panel/committee member has a conflict of interest. The panel/committee members may participate in discussion that leads to preparation of the list of recommendations, including scoring of other applications, nominations, or staff recommendations.

(5) Perceived conflict of interest at a panel/committee meeting.

Any member of the panel/committee who feels that he/she has no prohibited conflict of interest but does have a personal or professional interest which the public might misconstrue in the particular situation, may either voluntarily recuse, as identified above, or disclose the interest to those present and, if there is no objection from anyone present, proceed to discuss and vote on the item. If there is an objection, the panel/committee member shall recuse himself/herself.

(6) Panel recommendations presented to the board for approval shall identify all conflicts of interest stated during the panel process.

NEW SECTION

WAC 30-12-036 Appeal procedure—Request for review of denied applications. (1) By this section, the commission adopts RCW 34.05.482 and 34.05.485 through 34.05.494 for the use of brief adjudicative proceedings when an application for a commission program has been denied and the applicant requests review of the denial.

(2) Brief adjudicative proceeding. If the board denies an application for a commission program, the applicant may challenge the board's decision by requesting a brief adjudicative proceeding.

(a) A request for a brief adjudicative proceeding must be filed in writing to the executive director within twenty-one calendar days of the date the denial was sent to the applicant, and must state the reason(s) for the request.

(b) The executive director or his/her designee acts as the presiding officer in the brief adjudicative proceeding.

(c) The presiding officer provides an opportunity for both the applicant and the commission to explain their views of the board's decision.

(i) The applicant and presiding officer may consult with staff to examine the application and panel process, including: Application guidelines, the names and qualifications of the panel members, panel orientation materials, declared conflicts of interest or recusals; scoring sheets; and the panel's recommendations to the board.

(ii) The presiding officer may rely on his/her examination of the application and panel process, additional information provided by the applicant and the commission, and any other relevant information resulting from the presiding officer's inquiries.

(d) Initial order. When the presiding officer has reached a decision, the presiding officer will notify the applicant and the commission in a brief written statement explaining the

reasons for the decision and advising the parties of the right to seek administrative review of the presiding officer's decision.

(e) The presiding officer's brief written statement is an initial order. If neither party requests review of the initial order as authorized by RCW 34.05.488 and 34.05.491, the presiding officer's initial order automatically becomes the final order.

(3) Administrative review of the initial order. The chair will conduct an administrative review of the presiding officer's initial order if the chair receives a written or oral request for review from either the applicant or the commission within twenty-one days after service of the initial order.

(a) The chair or the chair's designee acts as the reviewing officer in administrative review of an initial order.

(b) If neither party requests review, the reviewing officer may nonetheless review an initial order without notice to the parties, but the reviewing officer will not take any action on review that is less favorable to either party than the initial order, without giving that party notice and an opportunity to explain that party's view of the matter;

(c) The reviewing officer ensures that the matter meets the criteria in RCW 34.05.482(1) for brief adjudicative proceedings and that both the applicant and the commission have the additional opportunity, as part of the review, to explain their views of the matter to the reviewing officer;

(d) The reviewing officer may rely on the record of the application and panel process, additional explanations provided by the parties, and any other relevant information resulting from the reviewing officer's inquiries;

(e) The reviewing officer enters a written order within twenty-one calendar days of the request for review, or, if the review was conducted without a request from either party, the reviewing officer enters a written order within twenty-one days of service of the presiding officer's initial order. The reviewing officer's order is a final order containing a brief statement of the reasons for the decision and notifying the parties of the availability of judicial review by a superior court pursuant to RCW 34.05.510 through 34.05.598;

(f) If the reviewing officer does not enter a written order within twenty-one calendar days after the request for review, the request is deemed to have been denied, and the initial order from the presiding officer becomes the final order subject to judicial review by a superior court pursuant to RCW 34.05.510 through 34.05.598.

(4) Record of review. The commission maintains, as its official record of the matter, all documents that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer if an administrative review was conducted.

(a) The presiding officer for the brief adjudicative proceeding, the reviewing officer on administrative review, and the superior court on judicial review may consider matters outside the commission's official record, subject to the limitations of RCW 34.05.558 and 34.05.562.

(b) If a party files a petition for judicial review by a superior court pursuant to RCW 34.05.510 through 34.05.598, staff will prepare and transmit the official record to the superior court as required by RCW 34.05.566.

NEW SECTION

WAC 30-12-037 Accessibility complaints. (1) If a person believes an event, service, or facility funded by the commission has discriminated based upon a disability, he/she may do one of the following:

- (a) File an informal complaint directly with the commission;
- (b) File a complaint with the Washington state human rights commission; or
- (c) Seek private legal counsel.

(2) If a person believes an event, service, or facility funded by the commission has discriminated for a reason other than disability, he/she should contact the Washington state human rights commission.

(3) If a person believes the commission has directly discriminated against him/her for any reason, he/she is advised to contact the Washington state human rights commission.

(4) Responding to informal complaints submitted to the commission. Staff will respond to complaints of discrimination based upon disability at/within/by a commission-funded event, service, or facility. Staff will work with its grantees to address the complaint. If access or an access plan is not satisfactorily attained within thirty days, staff will encourage the complainant to contact the Washington state human rights commission, to which staff will forward the complaint and any relevant records as determined by staff.

(5) If the complaint is verified and the grantee organization is found to be in noncompliance by the Washington state human rights commission, staff may put a hold on pending payment of any grant funds from the commission as well as withhold final decisions on any pending applications until that organization has addressed its noncompliance issues.

AMENDATORY SECTION (Amending WSR 95-15-040, filed 7/12/95, effective 8/12/95)

WAC 30-12-160 Credits and endorsements of local programs. ~~The ((commission recognizes its potential for serving its constituents by the inclusion of credits in promotional information or documentation, to encourage funding from other sources. These credits shall not be considered an endorsement of the organization or individual but will constitute a factual accounting of past and/or present support to the organization or individual by the commission)) commission's logo or other credits may be used to indicate commission support for organizations or individuals who have received grants, membership on a roster, or sponsorship.~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 30-12-040 Support of individual artists.
- WAC 30-12-050 Support of arts institutions.
- WAC 30-12-060 Support of Washington artists and organizations.
- WAC 30-12-080 Special populations.

- WAC 30-12-090 Native American arts.
- WAC 30-12-100 Ethnic communities.
- WAC 30-12-110 Geographic distribution of services.
- WAC 30-12-130 Continuing support.
- WAC 30-12-150 Complimentary tickets requested for the purpose of evaluation.

AMENDATORY SECTION (Amending Order 2, Resolution No. 87-1, filed 5/7/87)

WAC 30-40-010 ((Purpose-)) Scope of this chapter. ~~((The purpose of)) This chapter is to provide ((artists, state agencies, universities, colleges and community colleges, common schools, and the public with)) rules that apply specifically to the art in public places program to acquire and conserve works of art in the state art collection.~~

AMENDATORY SECTION (Amending WSR 95-15-040, filed 7/12/95, effective 8/12/95)

WAC 30-40-020 Authority. The Washington state arts commission is authorized ~~((by RCW 43.46.040 to adopt rules and is authorized))~~ under RCW 43.46.090 to administer the art in public places program and is authorized by RCW 43.46.040 to adopt rules to do so. Staff has the authority to develop, administer, and manage the art in public places program. ~~((Under this authority, the commission develops, inventories, maintains and presents to the public the state art collection.))~~ The specific statutes these rules are intended to implement are: RCW 43.46.090, 43.46.095, 43.17.200, 43.17.205, 43.17.210, 43.19.455, 28A.335.210, 28B.10.025, and 28B.10.027.

AMENDATORY SECTION (Amending WSR 95-15-040, filed 7/12/95, effective 8/12/95)

WAC 30-40-050 ((Fiscal procedures/eligibility-)) Funding. (1) ~~((Construction eligibility. Funding for works of art are generated through the capital budget under the following statutes:~~

(a) ~~RCW 43.17.200 (state agencies) applies to construction of any new building and/or additions to an existing building (structure). Excluded are highway construction sheds, warehouses or other buildings of a temporary nature.~~

(b) ~~RCW 28A.335.210 (common schools) applies to construction of any new building and/or additions to an existing building (structure). Excluded are sheds, warehouses, or other buildings of a temporary nature.~~

(c) ~~RCW 28B.10.027 (universities, colleges and community colleges) applies to construction of any new building and/or additions to an existing building (structure). Renovation and remodel work exceeding two hundred thousand dollars are included. Excluded are sheds, warehouses and other buildings of a temporary nature.~~

(2) ~~Calculation of funds. ((The amount to be made available for works of art is to be calculated as follows:))~~

~~(a) ((RCW 43.17.200 and 28B.10.027) For each eligible appropriation, the one-half of one percent formula is to be applied to architecture and engineering fees, total building cost and equipment costs.~~

~~(b) (RCW 28A.335.210) For each eligible appropriation, the one-half of one percent formula is to be applied to the total moneys appropriated for state assistance to school districts.~~

~~(3)) Pursuant to RCW 43.46.090 through 43.46.095, one-half of one percent of the state's capital appropriation for the original construction of specific public buildings is set aside for the administration, acquisition, and conservation of works of art for the state art collection.~~

~~(b) The formula is applied to escalated maximum allowable construction cost, and may be applied to architecture and engineering fees and equipment cost.~~

~~(c) Funding is generated by construction of any new building and/or additions to an existing building or structure except for highway construction sheds, warehouses, or other temporary buildings. In addition, funding is generated by any renovation and remodel work exceeding two hundred thousand dollars at universities, colleges, and community colleges. Renovation and remodel work does not include repair, maintenance, or replacement of building systems, such as HVAC, plumbing, wiring, fire sprinklers, roofs, insulation, lighting, or other system that keeps the building functional and safe.~~

~~(2) Partner agency eligibility and site requirements of funds.~~

~~(a) All state agencies including all state departments, boards, councils, commissions, and quasi-public corporations; all universities, colleges, community colleges, and technical colleges; and the office of the superintendent of public instruction who appropriates state funding to school districts for the original construction of school plant facilities, shall apply the formula.~~

~~(b) Works of art must be placed in public buildings or on public lands. In siting works of art, priority is given to state properties and K-12 public schools.~~

~~(c) Works of art may be sited in a location other than the construction site generating the funding.~~

~~(3) Use of funds.~~

~~(a) Staff is responsible for negotiating contracts and expending funds.~~

~~(b) Funds may be used for works of art in the state art collection that are:~~

~~(i) Integral to or attached to a public building or structure;~~

~~(ii) Detached inside or outside a public building or structure;~~

~~(iii) On or part of the landscape;~~

~~(iv) Permanent or temporary;~~

~~(v) Part of a portable exhibition or collection.~~

~~(c) Funds may be used for expenses incurred in the design, fabrication, and installation of works of art, artists' fees and expenses, staff administrative expenses, and conservation.~~

~~(d) Funds shall not be used for the partner agency's administrative expenses, architectural or professional design~~

~~services, site preparation, public event expenses, insurance, or maintenance of the work of art.~~

~~(e) Funds shall not be used for clock towers, electrically powered water features, memorials, logos, signage, or the depiction of school mascots.~~

~~(4) Determination of funds. ((The commission)) Staff shall determine the funds that are available for projects and sites, in consultation with the partner agency; director of general administration ((and/or the)) directors of state agencies((;)); the superintendent of public instruction((;)) and school district boards of directors((, and)); or the boards of regents or trustees of universities, colleges, and community colleges((, shall determine the funds to be made available for art under)). (RCW 43.17.210, 43.19.455, 28A.335.210, and 28B.10.025).~~

~~((4) Supplementing) (5) Supplemental funds ((for art)). The one-half of one percent ((expenditure)) formula is a required minimum for works of art. ((State)) Partner agencies((, universities, colleges and community colleges, and common schools)) may designate ((more than this amount in planning for a project. Other private and public funding sources may provide supplemental grants and matching funds)) additional funds from other sources. Works of art acquired using supplemental funding become part of the state art collection.~~

~~((5)) (6) Transfer of funds. ((The commission maintains the fiscal system for all one-half of one percent funds for art.)) After project funds for works of art ((have been)) are determined, ((the commission)) staff may request((s)) transfer of the funds ((for art to the commission. The transaction is made through an appropriate billing from the commission to the agency, and the agency transfers the funds to the commission.~~

~~The funds are transferable to the commission at the time the law providing for the appropriation becomes effective. In the case of projects governed by the sale of bonds, the funds for art shall be eligible for transfer thirty days after the sale of the bond(s).~~

~~(6) Reappropriation of funds. Upon timely notification by the commission, the agency shall request reappropriation of the unspent funds for art in the coming biennium.~~

~~(7) Use of funds for art. The one-half of one percent funds for art may be used for expenses incurred in the design, fabrication and installation of works of art, artists' expenses and the commission's administrative expenses.~~

~~Funds for art may not be used for administrative expenses of the agency or architect; expenses of the agency as agreed upon for the preparation and installation of the work, dedication, and insurance, or for the maintenance of the works of art.~~

~~(8) Determination of projects and sites. The commission, in consultation with the director of general administration and/or the directors of state agencies, the superintendent of public instruction, and school district boards of directors, and the boards of regents or trustees of universities, colleges and community colleges, shall determine the projects and sites to be designated for works of art under RCW 43.17.210, 43.19.455, 28A.335.210, and 28B.10.025.~~

(9) Contracting and expenditure.

(a) ~~The commission is responsible for contracting and expending the one-half of one percent funds for art.~~

~~(b) The artists enter into a contract with the commission to create a new work or transfer title of an existing work according to the terms of the contract.~~

~~(c) The agency will comply with the terms of the inter-agency agreement as negotiated with the commission.~~

~~(10) Waiver of funds. School districts under the superintendent of public instruction may elect to waive their use of art funds. Waiver of funds for art will not cause loss of or otherwise endanger state construction funds. These funds shall be applied to works of art according to RCW 28A.335.210 at the discretion of the commission))~~ from the partner agency.

(7) Pooling of funds.

(a) Staff may determine that funds from multiple construction projects may be combined as part of a pooling program or to fund larger works of art within a partner agency.

(b) Only K-12 school districts with applicable state assisted construction project funds may apply for K-12 pooled funds.

(c) Eligible K-12 school districts may apply for pooled funds pursuant to WAC 30-12-017 (Applications), 30-12-030 (Panels), and in accordance with published application guidelines.

AMENDATORY SECTION (Amending WSR 95-15-040, filed 7/12/95, effective 8/12/95)

WAC 30-40-060 ((Maintenance/deaccessioning.))
Collections management. (((1) Maintenance responsibilities. The agency is responsible for all routine maintenance operations required on a periodic basis as specified by the artist in his/her maintenance specifications report. The commission is responsible as funded for any extraordinary repair or unscheduled maintenance required to restore a structurally or aesthetically diminished artwork to its original intent and function.

(2) Deaccessioning. Works of art will be removed and disposed of according to the process established in the commission's deaccession policy from the state art collection if it has been determined by the commission that the work:

(a) Has been lost or stolen;

(b) Presents a safety hazard in its present condition; or that

(c) The restoration of the work's structural or aesthetic integrity is:

(i) Technically unfeasible;

(ii) Disproportionate to the value of the work.

(d) The environment/architectural support (on which a site specific work depends) is to be destroyed or modified as to distort the artist's initial intent.)) (1) Staff manage the state art collection as funded, including conservation, restoration, deaccession, inventory, loans, and re-siting.

(2)(a) The commission enters into interagency agreements with partner agencies hosting sites for works of art in the state art collection. The interagency agreement is in effect throughout the partner agency's possession of the work(s) of art.

(b) Partner agencies are responsible for all routine and special maintenance for works of art in the state art collection, which they hold as stated in the interagency agreement.

(i) Routine maintenance includes activities such as surface dusting, replacement of lights, cleaning of glass or Plexiglas, removal of debris, or oiling of moving parts.

(ii) Special maintenance typically involves non-art specific skills including, but not limited to, the application of paint and/or sealant to certain works of art, mortar replacement, or landscape maintenance.

(3) Collections management policy includes:

(a) Conservation/restoration. The commission is responsible for the conservation and restoration of the state art collection. Staff determine conservation and restoration priorities and actions.

(b) Deaccession. The board has authority to formally remove works of art from the state art collection when those works of art meet the review criteria in the collection management policy. Removal of works of art follows the procedures outlined in the collection management policy.

(c) Gifts and transfers. The commission does not accept gifts and transfers of works of art to the state art collection.

(d) Insurance. The state art collection is self-insured.

(e) Inventory. Staff inventory the state art collection in accordance with the state administrative and accounting manual.

(f) Loans of works of art. Works of art may be loaned for temporary exhibition in accordance with the collection management policy. The executive director approves, and staff coordinate outgoing loans.

(g) Re-siting. Staff manage the re-siting of works of art from the state art collection. Re-siting is intended to provide a long-term, secure, and visible home for a work of art. Priority for re-siting is given to the original partner agency when possible.

(i) If re-siting within the original partner agency jurisdiction is not feasible, then the work of art becomes available for re-siting to other partner agencies, in accordance with the collection management policy. Priority may be given to partner agencies that have generated funding pursuant to WAC 30-40-050 (Funding) but have not received a public art project.

(ii) Re-siting may not be feasible for physically integrated or site-responsive works of art.

(h) Collections management policies are approved by the board and published on the commission's web site.

NEW SECTION

WAC 30-40-100 Art acquisition committees. (1) Art advisory committees. Staff may recommend that a partner agency form an art advisory committee. Staff may appoint members of the committee. The committee may include, but is not limited to, members of an established art selection committee. The art advisory committee does not select artists or make decisions regarding artist proposals.

(2) Art selection committees. At staff request, an art selection committee shall be formed by the partner agency receiving the project. The committee is convened and facilitated by staff according to published program guidelines.

(a) Committee members may include partner agency administration, visual artists or visual art professionals, community members, board members and trustees, and building/location users. A balanced representation, reflecting the partner agency and the site's constituencies, should be appointed to the committee. Staff may recommend appointees to the committee.

(b) A preferred committee size is from three to seven members, depending on the method of acquisition of works of art.

(i) For commissioning works of art, the minimum committee size is five members. The committee shall select the artist and approve the artist's concept.

(ii) For direct purchase of curated existing works of art, the minimum committee size is five members. The committee will approve the curator, selection of artists, and work(s) of art.

(iii) For re-siting works from the state art collection, the minimum committee size is three members. The committee shall select the work(s) of art to be permanently re-sited.

NEW SECTION

WAC 30-40-110 Acquisition of works of art. (1) The commission enters into an interagency agreement with any partner agency generating one-half of one percent funds and/or hosting a site for a work of art in the state art collection.

(2) Methods of selecting artists and works of art.

(a) Commissioning new works of art. The primary method of acquisition is by commissioning new works of art through an art selection committee. The public artist roster (WAC 30-40-120) is the tool for selecting artists for commissioning except as specified in (d) of this subsection.

(b) Curated purchase. Staff facilitates a process whereby a curator recommends work(s) of art for art selection committee approval. The curator roster (WAC 30-40-130) is the tool for selecting curators for recommendations except as specified in (d) of this subsection.

(c) Re-siting. Works of art may be re-sited with any partner agency pursuant to WAC 30-40-060 (3)(g) and in accordance with the collection care policy.

(d) Open competition. In consultation with the director of a partner agency, staff may elect to manage an open competition for artists to be considered for the commissioning of a new work(s) of art or for curators to recommend existing works of art through a curated purchase. The open competition process is managed pursuant to WAC 30-12-017 (Applications) and 30-12-030 (Panels) unless otherwise noted in this subsection.

(i) A partner agency art selection committee may act as the panel for the application review process.

(ii) In addition to artists who apply to the open competition, the art selection committee will review and consider all eligible artists from the public artist roster.

(iii) Artwork selection committee decisions regarding acquisitions are final and do not need board approval.

NEW SECTION

WAC 30-40-120 Public artist roster. (1) The public artist roster is managed pursuant to WAC 30-12-017 (Applications), 30-12-030 (Panels), and 30-12-016 (Rosters).

(2) An artist or artist team on the public artist roster is considered inactive and, therefore, not eligible for a new contract:

(a) For a period of two years from the date a commissioning contract is signed; and/or

(b) While under a proposal contract.

NEW SECTION

WAC 30-40-130 Curator roster. (1) The curator roster is managed pursuant to WAC 30-12-017 (Applications), 30-12-030 (Panels), and 30-12-016 (Rosters).

(2) A curator on the roster is not eligible for a new contract while under a current contract with the commission.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 30-40-040	Program purpose and goals.
WAC 30-40-070	Program procedures.
WAC 30-40-080	Rejection of art.
WAC 30-40-090	Evaluation methods.

AMENDATORY SECTION (Amending WSR 10-02-089, filed 1/6/10, effective 2/6/10)

WAC 30-41-010 Purpose. The Washington state arts commission is authorized by RCW 43.46.081 to establish and administer the poet laureate program. The poet laureate shall serve a two-year term, and engage in activities to promote and encourage poetry within the state, including, but not limited to, readings, workshops, lectures, and/or presentations for ~~((Washington))~~ educational institutions and communities in geographically diverse areas ~~((over a two-year term))~~.

AMENDATORY SECTION (Amending WSR 10-02-089, filed 1/6/10, effective 2/6/10)

WAC 30-41-020 Procedures. (1) ~~((Selection of))~~ The process for selecting a poet laureate ((shall be made by a committee appointed and coordinated by the commission. The committee may)) is managed pursuant to WAC 30-12-017 (Applications) and WAC 30-12-030 (Panels), unless otherwise noted in this section.

(2) A member of the staff serves on the panel, which may also include representatives of the board, the Washington state library, the education community, the Washington commission for the humanities, publishing, and the community of Washington poets.

~~((2))~~ (3) The ((commission and the committee shall establish)) panel establishes review criteria to be used for the selection of a poet laureate. ((In addition to other criteria)) Competition frequency, and application forms and guidelines

shall be established (~~(the poet laureate must be a published poet, a resident of Washington state, active in the poetry community, and willing and able to promote poetry in the state of Washington throughout the two-year term)) and published by staff.~~

~~((3) The recommendation of the poet laureate selection committee shall be forwarded to the commission, which shall appoint the poet laureate with the approval of the governor.)~~

~~(4) The board shall review the panel's recommendations and advise the governor of its decisions. The governor has final approval authority.~~

~~(5) Following the governor's approval of the poet laureate, staff shall inform the board and the appointee.~~

~~(6) If the governor fails to approve the appointee, the commission shall restart the application process.~~

AMENDATORY SECTION (Amending WSR 10-02-089, filed 1/6/10, effective 2/6/10)

WAC 30-41-030 Compensation. The poet laureate shall receive compensation at a level determined by the ~~((commission))~~ executive director. Travel expenses shall be provided in accordance with RCW 43.03.050 and 43.03.060.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 30-41-040 Term limits.

AMENDATORY SECTION (Amending WSR 95-15-040, filed 7/12/95, effective 8/12/95)

WAC 30-44-010 Scope of this chapter. This chapter contains general rules affecting the governor's arts and heritage awards ~~((GAHA) program eligibility, review criteria, and nomination requirements. Further rules are in chapter 30-01 WAC (Washington state arts commission), chapter 30-08 WAC (Practice and procedure), and chapter 30-12 WAC (General rules))~~.

AMENDATORY SECTION (Amending WSR 95-15-040, filed 7/12/95, effective 8/12/95)

WAC 30-44-020 Program purpose. The governor's arts and heritage awards recognize ~~((s))~~ those individuals and organizations who have contributed significantly to the arts and cultural development of the state of Washington. ~~((The governor's heritage awards recognizes those individuals and organizations who have contributed significantly to the cultural heritage and traditional arts of the state of Washington.))~~

AMENDATORY SECTION (Amending WSR 95-15-040, filed 7/12/95, effective 8/12/95)

WAC 30-44-030 Eligibility. (1) In order for the commission to consider an individual or organization for a governor's arts or heritage award, the nominee must:

~~((+))~~ (a) Be a current resident of the state of Washington, or have been a resident of the state of Washington during

the time the contributions were made and/or achievements accomplished;

~~((2))~~ (b) Not have been a previous individual recipient;

(c) Not have been a previous organizational recipient within the last twenty years.

(2) The commission may establish additional eligibility requirements to be published in nomination guidelines.

AMENDATORY SECTION (Amending WSR 95-15-040, filed 7/12/95, effective 8/12/95)

WAC 30-44-040 Nomination ~~((form))~~ and presentation of awards. ~~((1) Public notice of nominations will be made through the media and in other agency publications. Nomination forms are available from the commission and published with the program guidelines.~~

(2) Nomination forms shall be sent by direct mail to every Washington address on the agency mailing list, and to those who request a nomination form.

(3) All nomination forms must be completed and submitted in the format prescribed by the commission. Nominations must be submitted by the deadline determined by the commission.

(4) The commission may recommend individuals or organizations not nominated in a current year, but who have been nominated in past years.) (1) Nominations are managed pursuant to WAC 30-12-017 (Applications) and WAC 30-12-030 (Panels), unless otherwise noted in this section.

(2) The panel may review nominations of individuals or organizations not nominated in a current year, but who have been nominated in past years.

The board shall review the panel's recommendations for nominations and advise the governor of its decisions. The governor has final approval authority.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 30-44-050 Nomination review process.

WAC 30-44-060 Nomination review criteria.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 30-14-010 Scope of chapter.

WAC 30-14-020 Purpose.

WAC 30-14-030 Eligibility.

WAC 30-14-040 Application form.

WAC 30-14-050 Application deadlines.

WAC 30-14-060 Application review process.

WAC 30-14-070 Application review criteria.

WAC 30-14-080 Appeals procedure.

WAC 30-14-090	Contracting.	WAC 30-26-070	Contracting.
WAC 30-14-100	Disbursement of funds.	WAC 30-26-080	Disbursement of funds.
WAC 30-14-110	Evaluation methods.	WAC 30-26-090	Evaluation methods.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 30-18-010	Scope of chapter.
WAC 30-18-020	Program purpose.
WAC 30-18-030	Eligibility for artists in residence.
WAC 30-18-040	Eligibility for grantees.
WAC 30-18-050	Application form.
WAC 30-18-060	Application review process.
WAC 30-18-070	Application review criteria.
WAC 30-18-080	Contracting of artists.
WAC 30-18-090	Contracting of grantees.
WAC 30-18-100	Disbursement of funds.
WAC 30-18-110	Evaluation methods.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 30-22-010	Scope of chapter.
WAC 30-22-020	Program purpose.
WAC 30-22-030	Eligibility.
WAC 30-22-040	Application form.
WAC 30-22-050	Application review process.
WAC 30-22-060	Application review criteria.
WAC 30-22-070	Contracting.
WAC 30-22-080	Disbursement of funds.
WAC 30-22-090	Evaluation methods.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 30-26-010	Scope of chapter.
WAC 30-26-020	Program purpose.
WAC 30-26-030	Eligibility.
WAC 30-26-040	Application form.
WAC 30-26-050	Application review process.
WAC 30-26-060	Application review criteria.

WSR 10-23-104**PERMANENT RULES****STATE BOARD OF EDUCATION**

[Filed November 16, 2010, 3:28 p.m., effective December 17, 2010]

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

Purpose: The state board of education discovered a number of technical errors in multiple chapters during a periodic review of its rules. As a result, the state board of education adopted amendments to its rules for the purpose of fixing inaccurate references to statutes and rules that had been amended or repealed over time.

Citation of Existing Rules Affected by this Order: Amending WAC 180-08-001, 180-08-004, 180-08-006, 180-08-008, 180-16-162, 180-16-164, 180-16-220, 180-18-040, 180-18-050, 180-38-020, 180-52-070, 180-72-050, 180-90-112, and 180-96-040.

Statutory Authority for Adoption: Chapter 28A.305 RCW, RCW 28A.150.220, 28A.230.090, 28A.310.020, 28A.210.160, and 28A.195.040.

Adopted under notice filed as WSR 10-20-143 on October 5, 2010.

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 14, Repealed 0.

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

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

Date Adopted: November 10, 2010.

Edith W. Harding
Executive Director

AMENDATORY SECTION (Amending WSR 02-18-054, filed 8/28/02, effective 9/28/02)

WAC 180-08-001 Purpose and authority. (1) The purpose of this chapter is to establish the formal and informal procedures of the state board of education relating to rules adoption, protection of public records, and access to public records.

(2) The authority for this chapter is RCW 34.05.220 and ((42.17.250 through 42.17.348)) chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 02-18-054, filed 8/28/02, effective 9/28/02)

WAC 180-08-004 Definitions. (1) As used in this chapter, "public record" includes 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 state board of education, regardless of physical form or characteristics. Personal and other records cited in RCW ((42.17.310)) 42.56.210 are exempt from the definition of public record.

(2) As used in this chapter, "writing" means handwriting, typewriting, printing, photostating, photographing, use of facsimile and electronic communication, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, disks, drums, diskettes, sound recordings, and other documents including existing data compilations from which data may be obtained or translated.

(3) The state board of education shall hereafter be referred to as the "board" or "state board."

AMENDATORY SECTION (Amending WSR 06-23-007, filed 11/2/06, effective 12/3/06)

WAC 180-08-006 Public records officer—Access to public records—Requests for public records—Determination regarding exempt records—Review of denials of public record requests—Protection of public records—Copying—Office hours. (1) The state board's public records officer shall be the board's secretary (executive director) located in the administrative office of the board located in the Old Capitol Building, 600 South Washington, Olympia, Washington 98504-7206. The secretary (executive director) shall be responsible for implementation of the board's rules and regulations regarding release of public records and generally ensuring compliance by staff with the public records disclosure requirements in chapter ((42.17)) 42.56 RCW.

(2) Access to public records in the state board of education shall be provided in compliance with the provisions of RCW ((42.17.260)) 42.56.070.

(3) Requests for public records must comply with the following procedures:

(a) A request shall be made in writing to the secretary (executive director) or designee of the director. The request may be brought to the administrative office of the board during customary office hours or may be mailed, delivered by facsimile, or by electronic mail. The request shall include the following information:

- (i) The name of the person requesting the record;
- (ii) The time of day and calendar date on which the request was made;
- (iii) The nature of the request;
- (iv) If the matter requested is referenced within the current index maintained by the secretary (executive director), a reference to the requested information as it is described in such current index;

(v) If the requested matter is not identifiable by reference to the current index, an appropriate description of the record requested shall be provided.

(b) In all cases in which a member of the public is making a request, it shall be the obligation of the secretary (executive director), or person to whom the request is made, to assist the member of the public in succinctly identifying the public record requested.

(4)(a) The board reserves the right to determine that a public record requested in accordance with subsection (3) of this section is exempt under the provisions of RCW ((42.17-310 and 42.17.315)) 42.56.210. Such determination may be made in consultation with the secretary (executive director) or an assistant attorney general assigned to the board.

(b) Pursuant to RCW ((42.17.260)) 42.56.070, the board reserves the right to delete identifying details when it makes available or publishes any public record when there is reason to believe that disclosure of such details would be an unreasonable invasion of personal privacy: Provided, however, In each case, the justification for the deletion shall be explained fully in writing.

(c) Response to requests for a public record must be made promptly. Within five business days of receiving a public record request, the executive director shall respond by either:

- (i) Providing the record;
- (ii) Acknowledging that the board has received the request and providing a reasonable estimate of the time required to respond to the request; or
- (iii) Denying the public record request.

(d) Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, the executive director may ask the requester to clarify what information the requester is seeking. If the requester fails to clarify the request within five working days of being asked for said clarification, the executive director need not respond to it.

(5) All denials of request for public records must be accompanied by a written statement, signed by the secretary (executive director) or designee, specifying the reason for the denial, a statement of the specific exemption authorizing the withholding of the record, and a brief explanation of how the exemption applies to the public record withheld.

(6)(a) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement which constituted or accompanied the denial.

(b) The written request by a person petitioning for prompt review of a decision denying a public record shall be submitted to the board's secretary (executive director) or designee.

(c) Within two business days after receiving a written request by a person petitioning for a prompt review of a deci-

sion denying a public record, the secretary (executive director) or designee shall complete such review.

(d) During the course of the review the secretary (executive director) or designee shall consider the obligations of the board to comply fully with the intent of chapter ((42-17)) 42.56 RCW insofar as it requires providing full public access to official records, but shall also consider both the exemptions provided in RCW ((42-17.310 through 42-17.315)) 42.56.210 and 42.56.510, and the provisions of the statute which require the board to protect public records from damage or disorganization, prevent excessive interference with essential functions of the board, and prevent any unreasonable invasion of personal privacy by deleting identifying details.

(7) Public records and a facility for their inspection will be provided by the secretary (executive director) or designee. Such records shall not be removed from the place designated for their inspection. Copies of such records may be arranged for according to the provisions of subsection (8) of this section.

(8) No fee shall be charged for the inspection of public records. The board may impose a charge for providing copies of public records and for the use by any person of agency equipment to copy public records. Copying charges shall be reasonable and conform with RCW ((42-17-300)) 42.56.120. No person shall be released a record so copied until and unless the person requesting the copied public record has tendered payment for such copying to the appropriate official. All charges must be paid by money order, check, or cash in advance.

(9) Public records shall be available for inspection and copying during the customary office hours of the administrative office of the board. For the purposes of this chapter, the customary office hours shall be from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays and dates of official state board of education business requiring all board staff to be away from the office.

AMENDATORY SECTION (Amending WSR 02-18-054, filed 8/28/02, effective 9/28/02)

WAC 180-08-008 Administrative practices regarding hearings and rule proceedings. (1) Administrative practices before and pertaining to the state board of education are governed by the state Administrative Procedure Act, chapter 34.05 RCW, the Washington State Register Act, chapter 34.08 RCW, and the Office of Administrative Hearings Act, chapter 34.12 RCW. These acts govern the conduct of "agency action"; the conduct of "adjudicative proceedings"; and "rule making" as these terms are defined in RCW 34.05.010.

(2) The rules of the state code reviser (currently set forth in chapter((s-1-08 and)) 1-21 WAC) and the rules of the office of administrative hearings (currently set forth in chapter 10-08 WAC) shall govern procedures and practices before the state board of education for the following: Petitions for declaratory rulings; petitions for adoption, amendment, or repeal of a rule; and the conduct of adjudicative proceedings. All other regulatory actions and hearings conducted by the

state board of education may be conducted informally at the discretion of the state board of education.

AMENDATORY SECTION (Amending WSR 02-18-053, filed 8/28/02, effective 9/28/02)

WAC 180-16-162 Strike defined—Presumption of approved program operation—Strikes—Exception—Approval/disapproval of program during strike period—Work stoppages and maintenance of approved programs for less than one hundred eighty days not condoned. (1) Strike defined. For the purpose of this section the term "strike" shall mean: A concerted work stoppage by employees of a school district of which there has been a formal declaration by their recognized representative and notice of the declaration has been provided to the district by the recognized representative at least two calendar school days in advance of the actual stoppage.

(2) Presumption of approved program. It shall be presumed that all school days conducted during a school year for which the state board of education has granted annual program approval are conducted in an approved manner, except for school days conducted during the period of a strike. The following shall govern the approval or disapproval of a program conducted during the period of a strike:

(a) Upon the submission of a written complaint of substandard program operation by a credible observer, the state superintendent of public instruction may investigate the complaint and program being operated during the strike.

(b) The district's program shall be deemed disapproved if the investigation of the state superintendent establishes a violation of one or more of the following standards or, as the case may be, such deviations as have been approved by the state board:

(i) All administrators must have proper credentials;

(ii) WAC 180-16-220((2)) (1) which requires that all teachers have proper credentials;

(iii) The school district shall provide adequate instruction for all pupils in attendance;

(iv) Adequate provisions must be made for the health and safety of all pupils;

(v) The local district shall have a written plan for continuing the school program during this period; and

(vi) The required ratio of enrolled pupils to certificated personnel for the first five days shall not exceed 60 to 1, for the next five days shall not exceed 45 to 1 and thereafter shall not exceed 30 to 1.

(c) Program disapproval shall be effective as of the day following transmittal of a notice of disapproval by the state superintendent and shall apply to those particular school days encompassed in whole or in part by the remainder of the strike period.

(d) The decision of the state superintendent shall be final except as it may be reviewed by and at the option of the state board of education.

(e) The program shall be deemed approved during those days of operation for which a trial court order ordering striking employees to work is in effect.

(3) Work stoppages. Nothing in this section or WAC 180-16-191 through 180-16-225 shall be construed as con-

doning or authorizing any form of work stoppage which disrupts any portion of the planned educational program of a district or the maintenance of an approved program for less than the minimum number of school days required by law, except as excused for apportionment purposes by the superintendent of public instruction pursuant to RCW 28A.150.290.

AMENDATORY SECTION (Amending WSR 90-17-009, filed 8/6/90, effective 9/6/90)

WAC 180-16-164 Work stoppages and maintenance of approved programs for less than 180 days not condoned. Nothing in WAC 180-16-162, 180-16-163 or 180-16-191 through ~~((180-16-240))~~ 180-16-225 shall be construed as condoning or authorizing any form of work stoppage which disrupts the planned educational program of a district, or any portion thereof, or the maintenance of an approved program for less than the minimum number of school days required by law except as excused for apportionment purposes by the superintendent of public instruction pursuant to RCW 28A.150.290.

AMENDATORY SECTION (Amending WSR 04-23-008, filed 11/4/04, effective 12/5/04)

WAC 180-16-220 Supplemental basic education program approval requirements. The following requirements are hereby established by the state board of education as related supplemental condition to a school district's entitlement to state basic education allocation funds, as authorized by RCW 28A.150.220(4).

(1) **Current and valid certificates.** Every school district employee required by WAC ~~((180-79A-140))~~ 181-79A-140 to possess an education permit, certificate, or credential issued by the superintendent of public instruction for his/her position of employment, shall have a current and valid permit, certificate or credential. In addition, classroom teachers, principals, vice principals, and educational staff associates shall be required to possess endorsements as required by WAC ~~((180-82-105, 180-82-120, and 180-82-125))~~ 181-82-105, 181-82-120, and 181-82-125, respectively.

(2) **Annual school building approval.**

(a) Each school in the district shall be approved annually by the school district board of directors under an approval process determined by the district board of directors.

(b) At a minimum the annual approval shall require each school to have a school improvement plan that is data driven, promotes a positive impact on student learning, and includes a continuous improvement process that shall mean the ongoing process used by a school to monitor, adjust, and update its school improvement plan. For the purpose of this section "positive impact on student learning" shall mean:

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

(ii) Promoting continuous improvement of student achievement of the state learning goals and essential academic learning requirements; and

(iii) Recognizing nonacademic student learning and growth related, but not limited to: Public speaking, leadership, interpersonal relationship skills, teamwork, self-confidence, and resiliency.

(c) The school improvement plan shall be based on a self-review of the school's program for the purpose of annual building approval by the district. The self-review shall include active participation and input by building staff, students, families, parents, and community members.

(d) The school improvement plan shall address, but is not limited to:

(i) The characteristics of successful schools as identified by the superintendent of public instruction and the educational service districts, including safe and supportive learning environments;

(ii) Educational equity factors such as, but not limited to: Gender, race, ethnicity, culture, language, and physical/mental ability, as these factors relate to having a positive impact on student learning. The state board of education strongly encourages that equity be viewed as giving each student what she or he needs and when and how she or he needs it to reach their achievement potential;

(iii) The use of technology to facilitate instruction and a positive impact on student learning; and

(iv) Parent, family, and community involvement, as these factors relate to having a positive impact on student learning.

(3) Nothing in this section shall prohibit a school improvement plan from focusing on one or more characteristics of effective schools during the ensuing three school years.

(4) School involvement with school improvement assistance under the state accountability system or involvement with school improvement assistance through the federal Elementary and Secondary Education Act shall constitute a sufficient school improvement plan for the purposes of this section.

(5) Nonwaiverable requirements. Certification requirements, including endorsements, and the school improvement plan requirements set forth in subsection (2) of this section may not be waived.

AMENDATORY SECTION (Amending WSR 10-10-007, filed 4/22/10, effective 5/23/10)

WAC 180-18-040 Waivers from minimum one hundred eighty-day school year requirement and student-to-teacher ratio requirement. (1) A district desiring to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district may apply to the state board of education for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW ~~((28A.150.220(5)))~~ 28A.305.140 and WAC 180-16-215 by offering the equivalent in annual minimum program hour offerings as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district. The state board of education may grant said initial waiver requests for up to three school years.

(2) A district that is not otherwise ineligible as identified under WAC 180-18-050 (3)(b) may develop and implement a plan that meets the program requirements identified under WAC 180-18-050(3) to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW ((28A.150.220(5))) 28A.305.140 and WAC 180-16-215 by offering the equivalent in annual minimum program hour offerings as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district.

(3) A district desiring to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district may apply to the state board of education for a waiver from the student-to-teacher ratio requirement pursuant to RCW 28A.150.250 and WAC 180-16-210, which requires the ratio of the FTE students to kindergarten through grade three FTE classroom teachers shall not be greater than the ratio of the FTE students to FTE classroom teachers in grades four through twelve. The state board of education may grant said initial waiver requests for up to three school years.

AMENDATORY SECTION (Amending WSR 10-10-007, filed 4/22/10, effective 5/23/10)

WAC 180-18-050 Procedure to obtain waiver. (1) State board of education approval of district waiver requests pursuant to WAC 180-18-030 and 180-18-040 (1) and (3) shall occur at a state board meeting prior to implementation. A district's waiver application shall be in the form of a resolution adopted by the district board of directors. The resolution shall identify the basic education requirement for which the waiver is requested and include information on how the waiver will support improving student achievement. The resolution shall be accompanied by information detailed in the guidelines and application form available on the state board of education's web site.

(2) The application for a waiver and all supporting documentation must be received by the state board of education at least fifty days prior to the state board of education meeting where consideration of the waiver shall occur. The state board of education shall review all applications and supporting documentation to insure the accuracy of the information. In the event that deficiencies are noted in the application or documentation, districts will have the opportunity to make corrections and to seek state board approval at a subsequent meeting.

(3)(a) Under this section, a district meeting the eligibility requirements may develop and implement a plan that meets the program requirements identified under this section and any additional guidelines developed by the state board of education for a waiver from the provisions of the minimum one hundred eighty-day school year requirement pursuant to RCW ((28A.150.220(5))) 28A.305.140 and WAC 180-16-215. The plan must be designed to improve student achievement by enhancing the educational program for all students in the district or for individual schools in the district by offering the equivalent in annual minimum program hour offer-

ings as prescribed in RCW 28A.150.220 in such grades as are conducted by such school district. This section will remain in effect only through August 31, 2018. Any plans for the use of waived days authorized under this section may not extend beyond August 31, 2018.

(b) A district is not eligible to develop and implement a plan under this section if:

(i) The superintendent of public instruction has identified a school within the district as a persistently low achieving school; or

(ii) A district has a current waiver from the minimum one hundred eighty-day school year requirement approved by the board and in effect under WAC 180-18-040.

(c) A district shall involve staff, parents, and community members in the development of the plan.

(d) The plan can span a maximum of three school years.

(e) The plan shall be consistent with the district's improvement plan and the improvement plans of its schools.

(f) A district shall hold a public hearing and have the school board approve the final plan in resolution form.

(g) The maximum number of waived days that a district may use is dependent on the number of learning improvement days, or their equivalent, funded by the state for any given school year. For any school year, a district may use a maximum of three waived days if the state does not fund any learning improvement days. This maximum number of waived days will be reduced for each additional learning improvement day that is funded by the state. When the state funds three or more learning improvement days for a school year, then no days may be waived under this section.

Scenario	Number of learning improvement days funded by state for a given school year	Maximum number of waived days allowed under this section for the same school year
A	0	3
B	1	2
C	2	1
D	3 or more	0

(h) The plan shall include goals that can be measured through established data collection practices and assessments. At a minimum, the plan shall include goal benchmarks and results that address the following subjects or issues:

(i) Increasing student achievement on state assessments in reading, mathematics, and science for all grades tested;

(ii) Reducing the achievement gap for student subgroups;

(iii) Improving on-time and extended high school graduation rates (only for districts containing high schools).

(i) Under this section, a district shall only use one or more of the following strategies in its plan to use waived days:

(i) Use evaluations that are based in significant measure on student growth to improve teachers' and school leaders' performance;

(ii) Use data from multiple measures to identify and implement comprehensive, research-based, instructional pro-

grams that are vertically aligned from one grade to the next as well as aligned with state academic standards;

(iii) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction to meet the needs of individual students;

(iv) Implement strategies designed to recruit, place, and retain effective staff;

(v) Conduct periodic reviews to ensure that the curriculum is being implemented with fidelity, is having the intended impact on student achievement, and is modified if ineffective;

(vi) Increase graduation rates through, for example, credit-recovery programs, smaller learning communities, and acceleration of basic reading and mathematics skills;

(vii) Establish schedules and strategies that increase instructional time for students and time for collaboration and professional development for staff;

(viii) Institute a system for measuring changes in instructional practices resulting from professional development;

(ix) Provide ongoing, high-quality, job-embedded professional development to staff to ensure that they are equipped to provide effective teaching;

(x) Develop teacher and school leader effectiveness;

(xi) Implement a school-wide "response-to-intervention" model;

(xii) Implement a new or revised instructional program;

(xiii) Improve student transition from middle to high school through transition programs or freshman academies;

(xiv) Develop comprehensive instructional strategies;

(xv) Extend learning time and community oriented schools.

(j) The plan must not duplicate activities and strategies that are otherwise provided by the district through the use of late-start and early-release days.

(k) A district shall provide notification to the state board of education thirty days prior to implementing a new plan. The notification shall include the approved plan in resolution form signed by the superintendent, the chair of the school board, and the president of the local education association; include a statement indicating the number of certificated employees in the district and that all such employees will be participating in the strategy or strategies implemented under the plan for a day that is subject to a waiver, and any other required information. The approved plan shall, at least, include the following:

(i) Members of the plan's development team;

(ii) Dates and locations of public hearings;

(iii) Number of school days to be waived and for which school years;

(iv) Number of late-start and early-release days to be eliminated, if applicable;

(v) Description of the measures and standards used to determine success and identification of expected benchmarks and results;

(vi) Description of how the plan aligns with the district and school improvement plans;

(vii) Description of the content and process of the strategies to be used to meet the goals of the waiver;

(viii) Description of the innovative nature of the proposed strategies;

(ix) Details about the collective bargaining agreements, including the number of professional development days (district-wide and individual teacher choice), full instruction days, late-start and early-release days, and the amount of other noninstruction time; and

(x) Include how all certificated staff will be engaged in the strategy or strategies for each day requested.

(l) Within ninety days of the conclusion of an implemented plan a school district shall report to the state board of education on the degree of attainment of the plan's expected benchmarks and results and the effectiveness of the implemented strategies. The district may also include additional information, such as investigative reports completed by the district or third-party organizations, or surveys of students, parents, and staff.

(m) A district is eligible to create a subsequent plan under this section if the summary report of the enacted plan shows improvement in, at least, the following plan's expected benchmarks and results:

(i) Increasing student achievement on state assessments in reading and mathematics for all grades tested;

(ii) Reducing the achievement gap for student subgroups;

(iii) Improving on-time and extended high school graduation rates (only for districts containing high schools).

(n) A district eligible to create a subsequent plan shall follow the steps for creating a new plan under this section. The new plan shall not include strategies from the prior plan that were found to be ineffective in the summary report of the prior plan. The summary report of the prior plan shall be provided to the new plan's development team and to the state board of education as a part of the district's notification to use a subsequent plan.

(o) A district that is ineligible to create a subsequent plan under this section may submit a request for a waiver to the state board of education under WAC 180-18-040(1) and subsections (1) and (2) of this section.

AMENDATORY SECTION (Amending WSR 06-23-006, filed 11/2/06, effective 12/3/06)

WAC 180-38-020 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Student" shall mean the same as defined for "child" in RCW 28A.210.070(6).

(2) "Chief administrator" shall mean the same as defined in RCW 28A.210.070(1).

(3) "Full immunization" shall mean the same as defined in RCW 28A.210.070(2).

(4) "Schedule of immunization" shall mean the beginning or continuing of a course of immunization, including the conditions for private school attendance when a child is not fully immunized, as prescribed by the state board of health (~~(((WAC 246-100-166(5)))~~ chapter 246-100 WAC).

(5) "Certificate of exemption" shall mean the filing of a statement exempting the child from immunizations with the chief administrator of the private school, on a form pre-

scribed by the department of health, which complies with RCW 28A.210.090.

(6) "Exclusion" shall mean the case or instance when the student is denied initial or continued attendance due to failure to submit a schedule of immunization, or a certificate of exemption in accordance with RCW 28A.210.120.

(7) "School day" shall mean each day of the school year on which students enrolled in the private school are engaged in educational activity planned by and under the direction of the staff, as directed by the chief administrator and applicable governing board of the private school.

(8) "Parent" shall mean parent, legal guardian, or other adult *in loco parentis*.

AMENDATORY SECTION (Amending WSR 02-14-125, filed 7/2/02, effective 8/2/02)

WAC 180-52-070 Approved standardized tests for use by students receiving home-based instruction—Examples—Assistance. (1)(a) Pursuant to RCW 28A.200.-010(~~(3)~~), the state board of education will provide a list of examples of standardized achievement tests that a parent may use to assess and determine whether their child is making reasonable academic progress.

(b) Tests on the list are approved by the state board of education on the basis that they are standardized achievement tests.

(c) Parents may use a standardized test that does not appear on the list of examples if it has been evaluated by a test evaluation organization recognized by the state board of education and cited on the state board web page.

(d) Parents may contact the state board of education office for assistance in determining if a test of their choosing that is not on the list of examples is standardized.

(2) The list of examples of standardized achievement tests shall be:

(a) Made available on the web page of the state board;

(b) Included in the following publication of the office of the superintendent of public instruction, "*Washington's State Laws Regulating Home-Based Instruction*"; and

(c) Provided on request.

(3) The list of examples of standardized achievement tests on the state board web page may not be changed without prior approval of the state board of education.

AMENDATORY SECTION (Amending WSR 04-20-093, filed 10/5/04, effective 11/5/04)

WAC 180-72-050 Adult education defined. For the purpose of this chapter "adult education" shall be defined as set forth in RCW 28B.50.030(~~(12)~~) which provides as follows: "Adult education" shall mean all education or instruction, including academic, vocational education or training, basic skills and literacy training, and "occupational education" (~~(WAC 180-51-061(2))~~) chapter 180-51 WAC) provided by public educational institutions and community-based organizations, including common school districts for persons who are eighteen years of age and over or who hold a high school diploma or certificate: However, "adult education" shall not include academic education or instruction for persons under twenty-one years of age who do not hold a

high school degree or diploma and who are attending a public high school for the sole purpose of obtaining a high school diploma or certificate: Nor shall "adult education" include education or instruction provided by any four year public institution of higher education.

AMENDATORY SECTION (Amending WSR 03-04-053, filed 1/29/03, effective 3/1/03)

WAC 180-90-112 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Approved private school" means a nonpublic school or nonpublic school district conducting a program consisting of kindergarten and at least grade one, or a program consisting of any or all of grades one through twelve which has been approved by the state board of education in accordance with the minimum standards for approval as prescribed in this chapter.

(2)(a) "Reasonable health requirements" means those standards contained in chapter (~~248-64~~) 246-366 WAC as adopted by the state board of health.

(b) "Reasonable fire safety requirements" means those standards adopted by the state fire marshal pursuant to chapter (~~48-48~~) 43.44 RCW.

(3)(a) "Minor deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel, and which does not raise a question as to the ability of the school to provide an educational program which is in substantial compliance with the minimum standards set forth in WAC 180-90-160, and which, therefore, does not preclude the granting of full approval.

(b) "Major deviation" means a variance from the standards established by these regulations which represents little or no threat to the health or safety of students and school personnel but raises a question as to the ability of the school to provide an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160, but is not so serious as to constitute an unacceptable deviation.

(c) "Unacceptable deviation" means a variance from the standards established by these regulations which either:

(i) Constitutes a serious, imminent threat to the health or safety of students or school personnel; or

(ii) Demonstrates that the school is not capable of providing an educational program which substantially complies with the minimum standards set forth in WAC 180-90-160.

(4) "Total instructional hour offering" means those hours when students are provided the opportunity to engage in educational activity planned by and under the direction of school staff, as directed by the administration and board of directors, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences which are planned and scheduled by the approved private school for the purpose of discussing students' educational needs for progress, and exclusive of time actually spent for meals.

(5)(a) "Non-Washington state certificated teacher" means a person who has:

(i) A K-12 teaching certificate from a nationally accredited preparation program, other than Washington state, recognized by the U.S. Department of Education; or

(ii) A minimum of forty-five quarter credits beyond the baccalaureate degree with a minimum of forty-five quarter credits in courses in the subject matter to be taught or in courses closely related to the subject matter to be taught; or

(iii) A minimum of three calendar years of experience in a specialized field. For purposes of this subsection the term "specialized field" means a specialized area of the curriculum where skill or talent is applied and where entry into an occupation in such field generally does not require a baccalaureate degree, including, but not limited to, the fields of art, drama, dance, music, physical education, and career and technical or occupational education.

(b) "Exceptional case" means that a circumstance exists within a private school in which:

(i) The educational program offered by the private school will be significantly improved with the employment of a non-Washington state certificated teacher. Each teacher not holding a valid Washington state certificate shall have experience or academic preparation appropriate to K-12 instruction and consistent with the school's mission. Such experience or academic preparation shall be consistent with the provisions of (c) of this subsection; and

(ii) The school which employs a non-Washington state certificated teacher or teachers pursuant to this subsection employs at least one person certified pursuant to rules of the state board of education and (c) of this subsection to every twenty-five FTE students enrolled in grades kindergarten through twelve. The school will report the academic preparations and experience of each teacher providing K-12 instruction; and

(iii) The non-Washington state certificated teacher of the private school, employed pursuant to this section and as verified by the private school, meets the age, good moral character, and personal fitness requirements of WAC ((~~180-79A-150~~) 181-79A-150 (1) and (2), has not had his or her teacher's certificate revoked by any state or foreign country. (WAC ((~~180-79A-155~~) 181-79A-155 (5)(a).)

(c) "Unusual competence": As applied to an exceptional case wherein the educational program as specified in RCW 28A.195.010 and WAC 180-90-160(7) will be significantly improved with the employment of a non-Washington state certificated teacher as defined in (a) of this subsection.

(d) "General supervision" means that a Washington state certificated teacher or administrator shall be generally available at the school site to observe and advise the teacher employed under provision of (c) of this subsection and shall evaluate pursuant to policies of the private school.

AMENDATORY SECTION (Amending Order 21-88, filed 12/14/88)

WAC 180-96-040 Regular high school education program—Definition. As used in this chapter the term "regular high school education program" means a secondary education program operated pursuant to chapters ((~~180-50~~) 392-410 and 180-51 WAC leading to the issuance of a high school diploma.

WSR 10-23-112

**PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 17, 2010, 8:53 a.m., effective December 18, 2010]

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

Purpose: The department is amending Basic Food work requirement rules to:

- Change the names "food stamps" and "food stamp employment and training" program to "Basic Food" and "Basic Food employment and training" program or "BF E&T";
- Changes title of chapter 388-444 WAC to "Basic Food work requirements";
- Make edits so rules are easier to read and understand; and
- Align rules with current federal regulations on ABAWD and job quit requirements.

Rule changes will help reduce Basic Food payment errors and compliance with federal regulations is required to continue to receive federal funding.

Citation of Existing Rules Affected by this Order: Amending WAC 388-444-0030, 388-444-0035, 388-444-0040, 388-444-0045, 388-444-0065, 388-444-0070, and 388-444-0075.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.515, 74.08.090, 74.08A.120, and 74.08A.903.

Other Authority: 7 C.F.R. §§ 273.7 and 273.24.

Adopted under notice filed as WSR 10-19-137 on September 22, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 7, 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 7, Repealed 0.

Date Adopted: November 10, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-13-046, filed 6/9/10, effective 7/10/10)

WAC 388-444-0030 ((~~Work requirements for persons who are~~) Do I have to work to be eligible for Basic Food benefits if I am an able-bodied adult((s)) without dependents ((~~ABAWDs~~)) (ABAWD)? (1) ((~~Able-bodied~~

adults without dependents (ABAWDs) are age eighteen to fifty and have no dependents. They must, unless determined exempt, participate in specific employment and training activities to receive food assistance.

~~(2))~~ An able-bodied adult without dependents (ABAWD) is a person who:

- (a) Is physically and mentally able to work;
- (b) Is age eighteen through forty-nine; and
- (c) Has no child in the household.

(2) If you are an ABAWD, you must participate in employment and training activities under subsection (4) unless you are exempt from ABAWD requirements under WAC 388-444-0035.

(3) Nonexempt ABAWDs who fail to participate may continue to receive food assistance until September 30, 2011.

~~((3))~~ (4) Beginning October 1, 2011, an ABAWD is not eligible to receive food assistance for more than three full months in a thirty-six month period, except as provided in WAC 388-444-0035, unless that person:

(a) Is exempt from ABAWD requirements under WAC 388-444-0035;

(b) Works at least twenty hours a week averaged monthly; ~~((or))~~

~~((b))~~ (c) Participates in ~~((and complies with the requirements of a work program for twenty hours or more per week; or~~

~~(e) Participates in a workfare program as provided in WAC 388-444-0040.~~

(4) A work program is defined as a program under:

(a) The Job Training Partnership Act (JTPA);

(b) Section 236 of the Trade Act of 1974; or

(c) A state-approved employment and training program) on the job training (OJT), which may include paid work and classroom training time, for at least twenty hours a week;

(d) Participates in an unpaid work program as provided in WAC 388-444-0040; or

(e) Participates in and meets the requirements of one of the following work programs:

(i) The job training partnership act (JTPA);

(ii) Section 236 of the trade act of 1974; or

(iii) A state-approved employment and training program.

AMENDATORY SECTION (Amending WSR 03-05-031, filed 2/10/03, effective 4/1/03)

WAC 388-444-0035 ((When am I (able-bodied adult with no dependents) exempt from ABAWD provisions) Who is exempt from ABAWD work requirements? Some ~~((food assistance household members))~~ persons receiving Basic Food are exempt from ABAWD ~~((provisions))~~ work requirements. You are exempt from the ABAWD ~~((rules provided in))~~ requirements under WAC 388-444-0030 if you are:

(1) Under eighteen or fifty years of age or older;

(2) Determined to be physically or mentally unable to work;

(3) A member of a household with responsibility for a person ~~((determined to be))~~ who is incapacitated;

(4) An adult in a household that has a member who is under the age of eighteen, even ~~((when))~~ if the child is ~~((an ineligible household member))~~ not eligible for Basic Food;

(5) Pregnant;

(6) Living in an area approved as exempt by U.S. Department of Agriculture;

(7) Complying with the work requirements of an employment and training program under temporary assistance for needy families (TANF);

(8) Applying for or receiving unemployment compensation;

(9) ~~((Students))~~ A student enrolled at least half time as defined by the institution in:

(a) Any accredited school;

(b) Training program; or

(c) Institution of higher education. A student enrolled in higher education must ~~((follow the student criteria defined in chapter 388-482-WAC))~~ meet the requirements under WAC 388-482-0005 in order to be eligible for Basic Food.

(10) Participating in a chemical dependency treatment and rehabilitation program;

(11) Employed a minimum of thirty hours per week or receiving weekly earnings which equal the minimum hourly rate multiplied by thirty hours;

(12) Eligible for one of the annual federal-approved exemption slots under ~~((what is called))~~ the fifteen percent exemption rule.

AMENDATORY SECTION (Amending WSR 09-04-009, filed 1/22/09, effective 2/22/09)

WAC 388-444-0040 ((Work programs for ABAWDs in the food stamp employment and training program.)) Can I volunteer for an unpaid work program in order to meet the work requirements under WAC 388-444-0030? ~~((Work programs are available to clients eighteen to fifty years of age who are able to work and have no dependents))~~ The department makes unpaid work programs available for persons who need to meet work requirements under WAC 388-444-0030.

(1) The following are considered unpaid work programs:

(a) Workfare ~~((consists of))~~, which includes:

(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))~~ you to remain eligible for ~~((food stamps))~~ Basic Food benefits.

(iii) Workfare ~~((is not))~~ does not include enforced community service or for paying fines or debts due to legal problems.

(b) Work experience (WEX) ~~((is))~~ which provides supervised, unpaid work for at least twenty hours a week. ~~((The work))~~ WEX is intended to improve a person's work skills and make them more competitive in the job market. WEX must be for a nonprofit ~~((agency or governmental))~~ organization, government agency, or tribal entity. ~~((This work is to improve the work skills of the client.~~

~~(e) 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)) We may not require you to participate more than one hundred and twenty hours per month in an unpaid-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)) the costs for you to participate in work programs. ((Standards for paying expenses are set by the department)) We set the standards for the amount we will pay for these expenses.~~

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

WAC 388-444-0045 ((Regaining eligibility for food assistance.)) How does an ABAWD regain eligibility for Basic Food after being closed for the three-month limit?

~~(1) ((A client who is ineligible for food assistance because that client has exhausted the three-month limit in)) If you have used up your three months of benefits as an able-bodied adult without dependents (ABAWD) under WAC 388-444-0030, you can regain eligibility by:~~

~~(a) Working eighty hours or more during a thirty-day period;~~

~~(b) Participating in and ((complying with)) meeting the requirements of a work program for eighty hours or more during a thirty-day period;~~

~~(c) Participating in and ((complying with)) meeting the requirements of the community service part of a Workfare program; or~~

~~(d) Meeting any of the work requirements in (a) through (c) of this subsection in the thirty days after ((an application for benefits has been filed)) the date you have applied for Basic Food.~~

~~(2) ((A client who regains)) If you regain eligibility for food assistance under subsection (1) of this section ((is)), you are eligible for Basic Food from the date ((of application)) you applied for Basic Food and as long as you continue to meet the requirements of WAC 388-444-0030 ((are met)).~~

~~(3) If ((otherwise eligible, a client who regains)) you meet all other requirements for Basic Food and you have regained eligibility under ((the provision of)) subsection (1) ((of this section)), you may receive an additional three consecutive months of ((food assistance)) Basic Food benefits when ((the client)) you:~~

~~(a) Lose((s)) employment; or~~

~~(b) Lose((s)) the opportunity to participate in a work program.~~

~~(4) ((The provisions in)) We only allow the additional three months of Basic Food under subsection (3) ((of this section are allowed only)) once in ((the)) each thirty-six month period.~~

AMENDATORY SECTION (Amending WSR 00-04-006, filed 1/20/00, effective 3/1/00)

WAC 388-444-0065 ((What happens)) Am I eligible for Basic Food if I quit my job? (1) You are not eligible for ((food assistance)) Basic Food if you quit your current job without good cause as defined in WAC 388-444-0070, and you are in one of the following categories:

~~(a) You were working twenty hours or more per week or the job provided weekly earnings equal to the federal minimum wage multiplied by twenty hours;~~

~~(b) The quit was within sixty days before you applied for ((food assistance)) Basic Food or any time after;~~

~~(c) At the time of quit you were ((an applicant)) applying for Basic Food and would have been required to register for work as defined in WAC ((388-444-0010)) 388-444-0005;~~

~~(d) If you worked or you were self-employed and working thirty hours a week or you had weekly earnings at least equal to the federal minimum wage multiplied by thirty hours.~~

~~(2) You are not eligible to receive ((food assistance)) Basic Food if you have participated in a strike against a federal, state or local government and have lost your employment because of such participation.~~

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-444-0070 ((Good)) What is good cause for quitting ((a)) my job((-))? Unless otherwise specified the following rules apply to all ((food assistance clients)) persons receiving Basic Food.

~~(1) ((Good cause)) You must have a good reason (good cause) for quitting a job or you will be disqualified from receiving Basic Food under WAC 388-444-0075. Good cause includes the following:~~

~~(a) ((For all food assistance clients, the)) Your employment is unsuitable as ((defined)) under WAC 388-444-0060;~~

~~(b) ((The client is)) You were discriminated against by an employer based on age, race, sex, color, religious belief, national origin, political belief, marital status, or the presence of any sensory, mental, or physical disability or other reasons in RCW 49.60.180;~~

~~(c) Work demands or conditions make continued employment unreasonable, such as working without being paid on schedule;~~

~~(d) ((The client accepts)) You accepted other employment or ((is)) are enrolled at least half time in any recognized school, training program, or institution of higher education;~~

~~(e) ((The client)) You must leave a job because another assistance unit member ((accepts)) accepted a job or is enrolled at least half time in any recognized school, training program, or institution of higher education in another county or similar political subdivision and ((the)) your assistance unit must move;~~

~~(f) ((The client who is)) You are under age sixty and retire((s)) as recognized by ((the)) your employer;~~

~~(g) ((The client accepts)) You accept a bona fide offer of employment of twenty hours or more a week or where the weekly earnings are equivalent to the federal minimum wage multiplied by twenty hours. However, because of circum-~~

stances beyond ~~((the))~~ your control ~~((of the client))~~, the job either does not materialize or results in employment of twenty hours or less a week or weekly earnings of less than the federal minimum wage multiplied by twenty hours;

(h) ~~((The client leaves))~~ You leave a job in connection with patterns of employment where workers frequently move from one employer to another, such as migrant farm labor or construction work; and~~((:))~~

(i) ~~((For FS E&T participants,))~~ Circumstances included under WAC 388-444-0050;

(2) ~~((A client who quits the most recent job is eligible for food assistance))~~ You are eligible for Basic Food after quitting a job if the circumstances of the job involve:

(a) Changes in job status resulting from reduced hours of employment while working for the same employer;

(b) Termination of a self-employment enterprise; or

(c) Resignation from a job at the demand of an employer.

(3) ~~((The client must verify good cause for quitting. Food assistance is not denied if the client and the department are unable to obtain verification))~~ You must provide proof that you had good cause for quitting a job. However, we do not deny your application for Basic Food if you are unable to get this proof even with our help.

AMENDATORY SECTION (Amending WSR 01-05-006, filed 2/7/01, effective 3/1/01)

WAC 388-444-0075 What are the ~~((disqualification periods for quitting))~~ penalties if I quit a job without good cause? (1) If you ~~((are an applicant who quits))~~ have applied for Basic Food and have quit a job without good cause within sixty days before applying for ~~((food assistance))~~ Basic Food, ~~((the department will))~~ we deny your application~~((-The penalty period in))~~ and you must have a penalty period as described under subsection (3) ~~((of this section begins))~~ from the date of your application.

(2) If you ~~((are))~~ already ~~((receiving food assistance))~~ receive Basic Food and you quit your job without good cause, ~~((the department must))~~ we send you a letter notifying you that you ~~((are going to))~~ will be disqualified from ~~((food assistance))~~ Basic Food. The disqualification in subsection (3) of this section begins the first of the month following the notice of adverse action.

(3) You are disqualified for the following minimum periods of time and until the conditions in subsection (4) of this section are met:

(a) For the first quit, one month;

(b) For the second quit, three months; and

(c) For the third or subsequent quit, six months.

(4) You may reestablish eligibility after servicing the disqualification period, if otherwise eligible by:

(a) Getting a new job; or

(b) ~~((In nonexempt areas, participating in the FS E&T program;~~

~~((e)))~~ Participating in Workfare as provided in WAC 388-444-0040~~((;))~~

~~((d))~~ In an exempt area, servicing the penalty period.

(5) ~~((The department can end the disqualification period if you become exempt from the work registration requirements as provided in))~~ If you become exempt from work reg-

istration under WAC ~~((388-444-0015))~~ 388-444-0010, we end your disqualification for a job quit unless you are exempt for applying for or receiving unemployment compensation (UC), or participating in an employment and training program under TANF.

(6) If you are disqualified and move from the assistance unit and join another assistance unit, ~~((you))~~ we continue to ~~((be treated))~~ treat you as an ineligible member of the new assistance unit for the remainder of the disqualification period.

~~((7))~~ If you are disqualified and move to a FS E&T exempt area, you must serve the remainder of the disqualification period.

WSR 10-23-114

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 17, 2010, 9:19 a.m., effective December 18, 2010]

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

Purpose: The department is amending the following WACs to implement annual adjustments to standards for the Washington Basic Food program: WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? and 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food?

The amendments increase the standard deduction for Basic Food households for one, two, and three persons, and decreases the maximum shelter deduction. The amendments update Basic Food standards for federal fiscal year 2011 to comply with requirements of the United States Department of Agriculture, Food and Nutrition Service (FNS), SNAP Administrative Notice 10-33. When effective, this permanent filing will supersede emergency rules filed as WSR 10-20-063 on September 28, 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0185 and 388-450-0190.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090.

Other Authority: 7 C.F.R. 273.9.

Adopted under notice filed as WSR 10-19-131 on September 22, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a 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: November 9, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-104, filed 8/2/10, effective 9/2/10)

WAC 388-450-0185 What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? We determine if your assistance unit (AU) is eligible for Basic Food and calculate your monthly benefits according to requirements of the Food and Nutrition Act of 2008 and federal regulations related to the supplemental nutrition assistance program (SNAP).

These federal laws allow us to subtract **only** the following amounts from your AU's total monthly income to determine your countable monthly income under WAC 388-450-0162:

(1) A standard deduction based on the number of eligible people in your AU under WAC 388-408-0035:

Eligible AU members	Standard deduction
1	\$ ((141)) <u>142</u>
2	\$ ((141)) <u>142</u>
3	\$ ((141)) <u>142</u>
4	\$153
5	\$179
6 or more	\$205

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense needed for an AU member to:

- (a) Keep work, look for work, or accept work;
- (b) Attend training or education to prepare for employment; or

(c) Meet employment and training requirements under chapter 388-444 WAC.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 09-24-001, filed 11/18/09, effective 12/19/09)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food? The

department calculates your shelter cost income deduction as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties or mortgage payments you make ahead of time as an allowable cost. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;
- (f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;
- (g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

- (i) AU intends to return to the home;
- (ii) AU has current occupants who are not claiming the shelter costs for Basic Food purposes; and
- (iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (5) from your AU's gross income. The result is your AU's net income.

(3) Finally, we subtract one-half of your AU's net income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

- (a) Up to a maximum of four hundred (~~(fifty-nine))~~ fifty-eight dollars if no one in your AU is elderly or disabled; or
- (b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over four hundred (~~(fifty-nine))~~ fifty-eight dollars.

WSR 10-23-115
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 17, 2010, 9:21 a.m., effective December 18, 2010]

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

Purpose: The department is amending rules under chapter 388-492 WAC, Washington combined application project (WASHCAP), to make changes necessary to clarify when WASHCAP benefits can begin, update and clarify rules to current procedures and to reduce payment errors caused by failure to follow correct procedures. This rule amendment does not change WASHCAP eligibility or standards.

Rule changes will help reduce Basic Food payment errors and compliance with federal regulations is required to continue to receive federal funding.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-492-0130; and amending WAC 388-492-0020, 388-492-0030, 388-492-0050, 388-492-0070, 388-492-0080, 388-492-0100, 388-492-0110, and 388-492-0120.

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

Other Authority: 7 C.F.R. 273.23.

Adopted under notice filed as WSR 10-19-127 on September 22, 2010.

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

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

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

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

Date Adopted: November 9, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-23-026, filed 11/8/04, effective 12/9/04)

WAC 388-492-0020 What are WASHCAP food benefits and what do I need to know about WASHCAP? WASHCAP means the Washington State Combined Application (~~(program)~~) Project.

(1) WASHCAP is a simplified food benefits program for ~~((certain))~~ most single Supplemental Security Income (SSI) recipients. Unless specifically stated in this WAC chapter, WASHCAP food benefits follow all the program requirements of the Basic Food program as described under WAC 388-400-0040.

(2) The Social Security Administration (SSA) asks you if you want to get food benefits when you apply for SSI in Washington state.

(3) If you meet the requirements of WAC 388-492-0030, you will get WASHCAP food benefits unless you can choose Basic Food benefits under WAC 388-492-0040.

(4) If you are eligible for WASHCAP food benefits under WAC 388-492-0030, SSA electronically sends us the information we need to open your WASHCAP food benefits.

(5) WASHCAP food benefits begin the first month after the month you apply and are eligible for ongoing SSI.

(6) You do not have to go to your local community services office (CSO) to apply for WASHCAP.

(7) If you want Basic Food benefits before WASHCAP food benefits begin, you can apply ~~((at your local CSO, home and community services office (HCS), or SSA.~~

~~(8))~~);

(a) By contacting the customer service center (CSC) at 1-877-501-2233;

(b) Over the internet;

(c) At any community services office (CSO);

(d) At any home and community services office (HCS);

or

(e) At any Social Security Administration (SSA) office.

(8) If you get Basic Food benefits, these benefits will continue;

(a) Through the end of your certification period; or

(b) Through the month before your WASHCAP food benefits start.

(9) While you get WASHCAP food benefits, you must report all changes to SSA.

~~((9) SSA shares the changes you report to them with your WASHCAP worker.))~~

(10) You do not have to report changes to your WASHCAP worker. See WAC 388-492-0080.

AMENDATORY SECTION (Amending WSR 04-23-026, filed 11/8/04, effective 12/9/04)

WAC 388-492-0030 Who can get WASHCAP? (1)

You can get WASHCAP food benefits if:

(a) You are eligible to receive federal SSI benefits; and

(b) You are eighteen years of age or older; and

(c) You live alone, or SSA considers you as a single household; or

(d) You are age eighteen through twenty-one, living with your parent(s) who do not get Basic Food benefits, and you purchase food separately; or

(e) You live with others but buy and cook your food separately from them; and

~~((e))~~ (f) You do not have earned income when you apply for SSI; or

~~((f))~~ (g) You already get WASHCAP food benefits and become employed and receive earned income for less than three consecutive months and are still eligible to receive federal SSI cash benefits; or

~~((g))~~ (h) You already get WASHCAP and move to an institution for ninety days or less.

(2) You are not eligible for WASHCAP food benefits if:

(a) You live in an institution;

(b) You are under age eighteen;

(c) You live with your spouse;

(d) You are under age twenty-two and you live with your parent(s) who are getting Basic Food benefits;

(e) You begin working after you have been approved for WASHCAP and have earned income for more than three consecutive months;

(f) You live with others and do not buy and cook your food separately from them; or

(g) You are ineligible for Basic Food benefits under WAC 388-400-0040 ~~((13)(b))~~ (14)(b) and (e).

(3) We ~~((accept))~~ use SSA information ~~((about))~~ to determine your WASHCAP eligibility ~~((unless you prove the information is not accurate)).~~

AMENDATORY SECTION (Amending WSR 04-23-026, filed 11/8/04, effective 12/9/04)

WAC 388-492-0050 How do I apply for WASHCAP?

(1) You apply for WASHCAP food benefits at the Social Security Administration (SSA) when you apply for Supplemental Security Income (SSI).

(2) If you want food benefits, your SSA worker will ask you WASHCAP food eligibility questions when you have your SSI interview.

(3) If you are eligible for WASHCAP food benefits, your benefits will start the first of the month after the month you apply and are eligible for ongoing SSI benefits.

(4) If you need food benefits in five days or less, you must apply for expedited services at:

(a) ~~((Your local))~~ Any community services office (CSO);

(b) ~~((Your local))~~ Any home and community services office (HCS) if you get long-term care services; or

(c) ~~((The))~~ Any SSA office if you give them an application for Basic Food expedited services when you apply for SSI. SSA forwards the Basic Food application to the local CSO to process.

(5) If you want Basic Food benefits before you get SSI, you must apply at:

(a) SSA if you give them a Basic Food application when you apply for SSI;

(b) ~~((Your local))~~ Any CSO; or

(c) ~~((Your local))~~ Any HCS office if you get long-term care services.

(6) If you already receive SSI and want WASHCAP food benefits, you can apply at:

(a) ~~((Your))~~ Any SSA office;

(b) ~~((Your local))~~ Any CSO;

(c) ~~((Your local))~~ Any HCS office if you get long-term care services.

(7) If you get Basic Food benefits, these benefits will continue:

(a) Through the end of your certification period; or

(b) Through the month before your WASHCAP food benefits start.

(8) If your Basic Food benefits end before you are eligible for WASHCAP food benefits, you must reapply to continue these benefits.

(9) If you get Basic Food benefits and you become eligible for WASHCAP food benefits, we will automatically change your Basic Food benefits to WASHCAP food benefits.

AMENDATORY SECTION (Amending WSR 09-24-001, filed 11/18/09, effective 12/19/09)

WAC 388-492-0070 How are my WASHCAP food benefits calculated? We calculate your food benefits as follows:

(1) We begin with your gross income.

(2) We subtract ~~((one hundred forty one dollars))~~ the current standard deduction for one person under WAC 388-450-0185 from your gross income to get your countable income.

(3) We figure your shelter cost based on information we receive from the Social Security Administration (SSA), unless you report a change as described under WAC 388-492-0080. If you pay:

(a) Three hundred dollars or more a month for shelter, we use three hundred seventy-nine dollars as your shelter cost; or

(b) Less than three hundred dollars for shelter, we use one hundred eighty-two dollars as your shelter cost; and

(c) We add the current standard utility allowance under WAC 388-450-0195 to determine your total shelter cost.

(4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.

(5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.

(6) We figure your WASHCAP food benefits (allotment) by:

(a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and

(b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

(c) If you are eligible for WASHCAP, you will get at least the minimum monthly benefit for Basic Food under WAC 388-412-0015.

AMENDATORY SECTION (Amending WSR 04-23-026, filed 11/8/04, effective 12/9/04)

WAC 388-492-0080 Where do I report changes? (1)

You report all changes to the Social Security Administration (SSA) according to their reporting requirements. Social Security reports these changes to your WASHCAP worker.

(2) SSA will not accept or report shelter costs changes to WASHCAP until SSA does its redetermination.

(3) You do not have to report any changes to your WASHCAP worker.

(4) You can choose to report the following changes to your WASHCAP worker to see if you will get more food benefits.

(a) A change in your address;

(b) An increase in your shelter costs; or

(c) An increase in your out-of-pocket medical expenses.

(5) If you or someone you authorize reports changes ~~((are reported))~~ to DSHS, proof may be required.

(6) If you report a change that could increase the amount of your food benefits, we will not increase the benefit amount if we have asked for proof and it has not been provided.

AMENDATORY SECTION (Amending WSR 04-23-026, filed 11/8/04, effective 12/9/04)

WAC 388-492-0100 How is my eligibility for WASHCAP food benefits reviewed? (1) If the Social Security Administration (SSA) reviews your Supplemental Security Income (SSI) eligibility, they will also complete your review for WASHCAP. SSA sends us this information electronically and we will automatically extend your WASHCAP certification period.

(2) If SSA does not review your SSI eligibility, we will mail you a one-page application two months before your WASHCAP benefits end. You must complete and return this application to the WASHCAP unit or your local home and community services office (HCS).

(3) We do WASHCAP reviews by mail. If you bring your WASHCAP application to the local office, we will process the application as follows:

(a) If you get long-term care services, your local HCS office will process your application; or

(b) If you do not get long-term care services, the local office will forward your application to the WASHCAP central unit.

(4) If we get your completed ~~((one page))~~ application after your WASHCAP food benefits end, we will reopen your benefits back to the first of the month if:

(a) We get your application form within thirty days from the end of your certification period; and

(b) You are still eligible for WASHCAP food benefits.

(5) If we get your completed ~~((one page))~~ application form more than thirty days after your benefits end, your WASHCAP food benefits open the first of the next month after:

(a) You turn in your application; and

(b) SSA shows you are eligible for WASHCAP in their system.

(6) If your application is not complete, we will return it to you to complete.

(7) If you want Basic Food benefits while you are waiting for WASHCAP food benefits, you must apply for these benefits ~~((at the local CSO or HCS office))~~:

(a) By contacting the customer service center (CSC) at 1-877-501-2233;

(b) Over the internet;

(c) At any community services office (CSO);

(d) At any home and community services office (HCS);

or

(e) At any Social Security Administration (SSA) office.

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

AMENDATORY SECTION (Amending WSR 04-23-026, filed 11/8/04, effective 12/9/04)

WAC 388-492-0110 What happens if my WASHCAP food benefits end? (1) If your WASHCAP food benefits end because you did not have the review required under WAC 388-492-0100, you must finish the required review or apply for Basic Food benefits ~~((at))~~:

(a) ~~((Your local community services office (CSO); or))~~ By contacting the customer service center (CSC) at 1-877-501-2233;

(b) ~~((You))~~ Over the internet;

(c) At any community services office (CSO);

(d) At any home and community services (HCS) office;

or

(e) At any Social Security Administration (SSA) office.

(2) If your WASHCAP benefits end because you are disqualified under WAC 388-400-0040 ~~((+13)(b))~~ (14)(b) or (e), you are not eligible for Basic Food benefits and:

(a) If you get medical assistance, we will send your medical assistance case to your local office;

(b) If you are a HCS client, your medical case will remain at HCS.

(3) If your WASHCAP benefits end for any other reason:

(a) We will send you an application for Basic Food benefits along with ~~((=~~

~~Information about what you must verify in order to get benefits; and~~

~~((+))~~ the address of your local CSO. If you are an HCS client, your case will remain at your HCS office.

(b) For the local CSO to decide if you are eligible for Basic Food benefits, you must:

(i) Finish the application process for Basic Food benefits under chapter 388-406 WAC; and

(ii) Have an interview for Basic Food benefits under WAC 388-452-0005.

(c) If you get medical assistance, we will send your medical case to the local CSO unless you are an HCS client;

(d) If your WASHCAP benefits closed because SSA ended your SSI, you will still receive the same medical benefits until we decide what medical program you are eligible for under WAC 388-418-0025.

AMENDATORY SECTION (Amending WSR 04-23-026, filed 11/8/04, effective 12/9/04)

WAC 388-492-0120 What happens to my WASHCAP benefits if I am disqualified? (1) If you are disqualified from receiving SSI for any reason, you will not be able to get WASHCAP benefits. See WAC 388-492-0030, Who can get WASHCAP?

(2) If you are disqualified from receiving Basic Food for any reason, you will not get WASHCAP food benefits. This includes clients who:

(a) Are ineligible under WAC 388-400-0040 ~~((+13)(b))~~ (14)(b) and (e) and 388-442-0010; or

(b) Did not cooperate with quality assurance as required under WAC 388-464-0001.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-492-0130

What can I do if I disagree with a decision the department made about my WASHCAP benefits?

WSR 10-23-119
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 17, 2010, 10:00 a.m., effective December 18, 2010]

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

Purpose: The department is amending WAC 388-489-0010 to inform households that transitional food benefits are adjusted based on the change in the household size and the removal of income and expenses belonging to the persons who left the assistance unit. This change is necessary to comply with federal regulations at 7 C.F.R. 273.30, published on January 29, 2010, related to the Farm Security and Rural Investment Act of 2002.

Citation of Existing Rules Affected by this Order: Amending WAC 388-489-0010.

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.010, 74.08A.903.

Adopted under notice filed as WSR 10-19-128 on September 22, 2010.

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

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

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

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

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

Date Adopted: November 9, 2010.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-19-060, filed 9/16/05, effective 11/1/05)

WAC 388-489-0010 How is my transitional food assistance benefit calculated? (1) We base your transitional food assistance benefit amount on the regular monthly benefit allotment issued to your Basic Food assistance unit for the last month your ~~((family))~~ **household** received temporary assistance for needy families. We will not count your last temporary assistance for needy families grant payment when we calculate your transitional food assistance benefit amount. For example:

(a) If your Basic Food assistance unit's only income was temporary assistance for needy families, the transitional food assistance benefit will be the amount your household would have received if you had no income.

(b) If your Basic Food benefit was calculated using temporary assistance for needy families plus income from another source, we will count only the income from the other source when calculating the transitional food assistance amount.

(2) We will adjust your transitional food assistance benefits if:

(a) Someone who gets transitional food assistance with you leaves your assistance unit and is found eligible to

receive Basic Food in another assistance unit. We will ~~((reduce))~~ **adjust your benefits by:**

~~((i))~~ **Reducing your ~~((transitional food))~~ assistance ~~((based on))~~ **unit size by** the number of persons who left your assistance unit; and ~~((become eligible in another Basic Food assistance unit))~~**

~~((ii))~~ **Removing the income and expenses clearly belonging to the persons who left your assistance unit.**

(b) A change to the maximum allotment for Basic Food under WAC 388-478-0060 results in an increase in benefits for Basic Food assistance units.

(c) You got an overpayment of Basic Food benefits and we need to adjust the amount we deduct from your monthly benefits to repay the overpayment as required in WAC 388-410-0033. This includes:

(i) Starting a new monthly deduction;

(ii) Changing the amount of the monthly deduction; and

(iii) Ending the monthly deduction when the amount you owe has been paid off.

WSR 10-23-120

PERMANENT RULES

DEPARTMENT OF PERSONNEL

[Filed November 17, 2010, 10:03 a.m., effective December 18, 2010]

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

Purpose: These changes are a result of the passage of ESSB 6503. This bill requires immediate action to reduce expenditures during the 2009-2011 fiscal biennium. It is the intent of this bill that state agencies of the legislative branch, judicial branch, and executive branch, including institutions of higher education, shall achieve a reduction in government operating expenses as provided in the bill. For some state employers this means implementing temporary layoffs. There are provisions in the bill which require us to make changes to the current temporary layoff rules in order to implement temporary layoffs as described in the bill.

The original CR-103 filing WSR 10-23-040 filed November 10, 2010, did not include these rules in error. These should have been included with the packet filed November 10, 2010.

Citation of Existing Rules Affected by this Order: Amending WAC 357-31-390, 357-31-025, 357-31-115, 357-31-170, 357-31-230, 357-31-355, and 357-31-567.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Adopted under notice filed as WSR 10-20-176 on October 6, 2010.

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 7, Repealed 0.

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, 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 7, Repealed 0.

Date Adopted: November 10, 2010.

Eva N. Santos
Director

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-025 How many hours are higher education employees compensated for on a holiday? When a holiday as designated under WAC 357-31-005 falls on a higher education employee's scheduled work day:

(1) Full-time employees receive eight hours of regular holiday pay per holiday. Any differences between the scheduled shift for the day and eight hours may be adjusted by use of vacation leave, use of accumulation of compensatory time as appropriate, or leave without pay.

(2) Part-time higher education employees are entitled to the number of paid hours on a holiday that their monthly schedule bears to a full-time schedule. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 05-08-136, filed 4/6/05, effective 7/1/05)

WAC 357-31-115 How many hours of sick leave does an employee earn each month? (1) Full-time employees earn eight hours of sick leave per month.

(2) Part-time general government employees earn sick leave on a pro rata basis in accordance with WAC 357-31-125.

(3) Part-time higher education employees earn sick leave on the same pro rata basis that their appointment bears to a full-time appointment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 05-08-137, filed 4/6/05, effective 7/1/05)

WAC 357-31-170 At what rate do part-time employees accrue vacation leave? (1) Part-time general government employees accrue vacation leave credits on a pro rata basis in accordance with WAC 357-31-125.

(2) Part-time higher education employees accrue on the same pro rata basis that their appointment bears to a full-time appointment. Time spent on temporary layoff as provided in WAC 357-46-063 is considered time in pay status for the purpose of this subsection.

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-230 When can an employee use accrued compensatory time? (1) Employees must request to use accrued compensatory time in accordance with the employer's leave policy. When considering employees'

requests, employers must consider the work requirements of the department and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) Compensatory time off may be scheduled by the employer during the final sixty days of a biennium.

(6) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(7) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use compensatory time in lieu of temporary layoff as described in chapter 32, Laws of 2010.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

WAC 357-31-355 How does leave without pay affect the duration of an employee's probationary period, trial service period or transition review period? If an employee uses leave without pay for an entire workshift while serving a probationary period, trial service period or transition review period, the probationary period, trial service period or transition review period is extended by one work day for each workshift of leave without pay. The duration of an employee's probationary period, trial service period, or transition review period shall not be extended for periods of time spent on temporary layoff.

AMENDATORY SECTION (Amending WSR 08-15-043, filed 7/11/08, effective 10/1/08)

WAC 357-31-390 What criteria does an employee have to meet to be eligible to receive shared leave? An employee may be eligible to receive shared leave if the agency head or higher education institution president has determined the employee meets the following criteria:

(1) The employee:

(a) Suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature;

(b) The employee has been called to service in the uniformed services;

(c) A state of emergency has been declared anywhere within the United States by the federal or any state government and the employee has the needed skills to assist in responding to the emergency or its aftermath and volunteers (~~his/her~~) their services to either a governmental agency or to a nonprofit organization engaged in humanitarian relief in the devastated area, and the governmental agency or nonprofit organization accepts the employee's offer of volunteer services; (~~or~~)

(d) The employee is a victim of domestic violence, sexual assault, or stalking as defined in RCW 41.04.655; or

(e) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use shared leave in lieu of temporary layoff as described in chapter 32, Laws of 2010.

(2) The illness, injury, impairment, condition, call to service, (~~or~~) emergency volunteer service, (~~or~~) consequence of domestic violence, sexual assault, or stalking, or temporary layoff under chapter 32, Laws of 2010, has caused, or is likely to cause, the employee to:

(a) Go on leave without pay status; or

(b) Terminate state employment.

(3) The employee's absence and the use of shared leave are justified.

(4) The employee has depleted or will shortly deplete (~~his or her~~) their:

(a) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and accrued sick leave if the employee qualifies under subsection (1)(a) of this section; or

(b) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, and paid military leave allowed under RCW 38.40.060 if the employee qualifies under subsection (1)(b) of this section; or

(c) Compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, and accrued vacation leave if the employee qualifies under (1)(c) or (d) of this section; or

(d) Compensatory time, recognition leave as described in WAC 357-31-565, and accrued vacation leave if the employee qualifies under subsection (1)(e) of this section.

(5) The employee has abided by employer rules regarding:

(a) Sick leave use if the employee qualifies under subsection (1)(a) of this section; or

(b) Military leave if the employee qualifies under subsection (1)(b) of this section.

(6) If the illness or injury is work-related and the employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW if the employee qualifies under subsection (1)(a) of this section.

AMENDATORY SECTION (Amending WSR 09-17-056 and 09-18-113, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-567 When must an employer grant the use of recognition leave? (1) An employee's request to use recognition leave must be approved under the following conditions:

(a) An employee must be granted the use of recognition leave if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; and

(b) In accordance with WAC 357-31-373, an employee must be granted the use of recognition leave to be with a spouse or registered domestic partner who is a member of the Armed Forces of the United States, National Guard, or Reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(2) In accordance with the employer's leave policy, approval for the reasons listed in (1)(a) and (b) above may be subject to verification that the condition or circumstance exists.

(3) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use recognition leave in lieu of temporary layoff as described in chapter 32, Laws of 2010.

WSR 10-23-121

PERMANENT RULES

OLYMPIC COLLEGE

[Filed November 17, 2010, 10:39 p.m., effective December 18, 2010]

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

Purpose: This new policy updates and clarifies activities that are acceptable on Olympic College campuses and are protected under the first amendment of the United States constitution.

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

Adopted under notice filed as WSR 10-20-159 on October 6, 2010.

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

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

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

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

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

Date Adopted: November 12, 2010.

Thomas Oliver
Rules Coordinator

NEW SECTION

WAC 132C-10-009 First amendment activities. (1)

Purpose. Olympic College recognizes and supports the rights of groups and individuals to engage in first amendment activities. This policy shall be interpreted and construed to support such activities while simultaneously balancing the needs and interests of the college to fulfill its mission as a state educational institution of Washington.

The purpose of this policy is to establish procedures and reasonable controls for the use of college facilities for both noncollege and college groups. It establishes time, place and manner regulations intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of noncollege groups or college groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression.

(2) Definitions.

(a) **Noncollege groups:** For the purposes of this policy noncollege groups shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of Olympic College or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

(b) **College groups:** For the purposes of this policy college groups shall mean individuals, or combinations of individuals, who are currently enrolled students or current employees of Olympic College or who are affiliated with a recognized student organization or a recognized employee group of the college.

(c) **First amendment activities:** For the purposes of this policy first amendment activities (hereinafter "the event") would include, but not necessarily be limited to: Informational picketing, petition circulation, distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, and/or other types of constitutionally protected assemblies to share information, perspectives, or viewpoints.

(d) **Limited public forum:** For the purposes of this policy a limited public forum is identified by the college as a location where noncollege groups or individuals may exercise their first amendment rights through expressive activity.

(3) **Policy.** Olympic College is an educational institution provided and maintained for and by the people of the state of Washington. However, the public character of the college does not grant to individuals or groups an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities and business of the college.

The college's buildings, facilities, and grounds are not available for unrestricted use by either college groups or noncollege groups. College groups will be given priority except

when advance booking and payment by a noncollege group is accepted by the college.

Materials which are commercial, obscene, or unlawful in character are prohibited.

(4) **Commercial events.** Activities and events of a commercial nature by college groups are not covered by the first amendment policy. See chapter 42.52 RCW.

(5) **Criminal trespass.** Any person determined to be violating this policy is subject to an order from the college safety and security department to leave the college campus. Persons failing to comply with such an order are subject to arrest for criminal trespass.