WSR 14-22-003

PERMANENT RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed October 22, 2014, 3:22 p.m., effective November 22, 2014]

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

Purpose: The health care authority (agency) is making changes to hospital rules to allow for payment increases under the sole community hospital program and to allow for updates to inpatient conversion factors due to annual medical education and wage index changes.

Citation of Existing Rules Affected by this Order: Amending WAC 182-550-7500.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 14-19-118 on September 17, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 0.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: October 22, 2014.

Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-550-3830 Adjustments to inpatient rates. (1) The medicaid agency updates all the following components of a hospital's specific diagnosis-related group (DRG) factor and per diem rates between rebasing periods:

(a) Effective July 1st of each year, the agency updates all of the following:

(i) Wage index adjustment;

(ii) Direct graduate medical education (DGME);

(iii) Indirect medical education (IME).

(b) Effective January 1, 2015, the agency updates the sole community hospital adjustment.

(2) The agency does not update the statewide average DRG factor between rebasing periods, except:

(a) To satisfy the budget neutrality conditions in WAC 182-550-3850; and

(b) When directed by the legislature.

(3) The agency updates the wage index to reflect current labor costs in the core-based statistical area (CBSA) where a hospital is located. The agency:

(a) Determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(b) Multiplies the amount in (a) of this subsection by the most recent wage index information published by the centers for medicare and medicaid services (CMS) when the rates are set; then

(c) Adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(4) DGME. The agency obtains DGME information from the hospital's most recently filed medicare cost report that is available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate DGME.

(c) In the case where a hospital has not submitted a CMS medicare cost report in more than eighteen months from the end of the hospital's cost reporting period, the agency considers the current DGME costs to be zero.

(d) The agency calculates the hospital-specific DGME by dividing the DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(5) IME. The agency sets the IME adjustment equal to the "IME adjustment factor for Operating PPS" available in the most recent CMS final rule impact file available on CMS's web site as of May 1st of the rate-setting year.

(6)(a) Effective January 1, 2015, the agency multiplies the hospital's specific conversion factor and per diem rates by 1.25 if the hospital meets the agency's sole community hospital criteria in this subsection.

(b) The agency considers an in-state hospital to be a sole community hospital if all of the following conditions apply. The hospital must:

(i) Be certified by CMS as a sole community hospital as of January 1, 2013.

(ii) Have a level III adult trauma service designation from the department of health as of January 1, 2014.

(iii) Have less than one hundred fifty acute care licensed beds in fiscal year 2011.

(iv) Be owned and operated by the state or a political subdivision.

(v) Not qualify for the certified public expenditures (CPE) payment program defined in WAC 182-550-4650.

AMENDATORY SECTION (Amending WSR 14-14-049, filed 6/25/14, effective 7/26/14)

WAC 182-550-7500 OPPS rate. (1) The medicaid agency calculates hospital-specific outpatient prospective payment system (OPPS) rates using all of the following:

(a) A base conversion factor established by the agency;

(b) ((~~The latest wage index information established and published by the centers for medicare and medicaid services (CMS) at the time the OPPS rates are set for the upcoming~~

~~year. Wage index information reflects labor costs in the cost-based statistical area (CBSA) where a hospital is located; and~~

~~(c)~~)) An adjustment for direct graduate medical education (((~~(GME)~~))) (DGME); and

(c) The latest wage index information established and published by the centers for medicare and medicaid services (CMS) when the OPPS rates are set for the upcoming year. Wage index information reflects labor costs in the cost-based statistical area (CBSA) where a hospital is located.

(2) Base conversion factors. The agency calculates the ((~~average, or~~)) base((~~,~~)) enhanced ambulatory patient group (EAPG) conversion factor during a hospital payment system rebasing. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter, to maintain aggregate payments across the system. The agency will publish base conversion factors on its web site.

(3) Wage index adjustments reflect labor costs in the CBSA where a hospital is located.

(a) The agency determines the labor portion of the base rate by multiplying the base ((~~factor or~~)) rate by the labor factor established by medicare; then

(b) Multiplying the amount in (a) of this subsection is multiplied by the most recent wage index information published by CMS ((~~at the time~~)) when the rates are set; then

(c) The agency adds the nonlabor portion of the base rate to the amount in (b) of this subsection to produce a hospital-specific wage adjusted factor.

(4) ((~~GME~~)) DGME. The agency obtains the ((~~GME~~)) DGME information from the hospital's most recently filed medicare cost report as available in the CMS health care cost report information system (HCRIS) dataset.

(a) The hospital's medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(b) If a hospital's medicare cost report is not available on HCRIS, the agency may use the CMS Form 2552-10 to calculate ((~~GME~~)) DGME.

(c) In the case where a hospital has not submitted a CMS medicare cost report in ((~~greater~~)) more than eighteen months from the end of the hospital's cost reporting period, the agency may remove the hospital's ((~~GME~~)) DGME adjustment.

(d) The agency calculates the hospital-specific ((~~GME~~)) DGME by dividing the ((~~durable medical equipment~~)) DGME cost reported on worksheet B, part 1 of the CMS cost report by the adjusted total costs from the CMS cost report.

(5) The formula for calculating the hospital's final specific conversion factor is:

EAPG base rate x (.6(wage index) + .4)/(1-((~~GME~~)) DGME)

(6) Effective January 1, 2015, the agency multiplies the hospital's specific conversion factor by 1.25 if the hospital meets the agency's sole community hospital criteria listed in (a) of this subsection.

(a) The agency considers an in-state hospital a sole community hospital if all the following conditions apply. The hospital must:

(i) Be certified by CMS as a sole community hospital as of January 1, 2013.

(ii) Have a level III adult trauma service designation from the department of health as of January 1, 2014.

(iii) Have less than one hundred fifty acute care licensed beds in fiscal year 2011.

(iv) Be owned and operated by the state or a political subdivision.

(b) The formula for calculating a sole community hospital's final conversion factor is:

[EAPG base rate x (.6(wage index) + .4)/(1-DGME)] x 1.25

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

WSR 14-22-007
PERMANENT RULES
OFFICE OF INSURANCE COMMISSIONER

[Filed October 23, 2014, 9:29 a.m., effective November 23, 2014]

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

Purpose: The proposed rule corrects typographical errors without changing the effect of the rule. WAC 284-43-221 and 284-43-222 reference an incorrect WAC 284-43-130 definitional section.

Citation of Existing Rules Affected by this Order: Amending WAC 284-43-221 and 284-43-222.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, 48.46.200.

Other Authority: RCW 48.20.450, 48.43.515, 48.44.020, 48.44.080, 48.46.030, 45 C.F.R. 156.230, 156.235, 156.245.

Adopted under notice filed as WSR 14-17-050 on August 14, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 2, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 23, 2014.

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 14-10-017, filed 4/25/14, effective 5/26/14)

WAC 284-43-221 Essential community providers for exchange plans—Definition. "Essential community pro-

vider" means providers listed on the Centers for Medicare and Medicaid Services Non-Exhaustive List of Essential Community Providers. This list includes providers and facilities that have demonstrated service to medicaid, low-income, and medically underserved populations in addition to those that meet the federal minimum standard, which includes:

(1) Hospitals and providers who participate in the federal 340B Drug Pricing Program;

(2) Disproportionate share hospitals, as designated annually;

(3) Those eligible for Section 1927 Nominal Drug Pricing;

(4) Those whose patient mix is at least thirty percent medicaid or medicaid expansion patients who have approved applications for the Electronic Medical Record Incentive Program;

(5) State licensed community clinics or health centers or community clinics exempt from licensure;

(6) Indian health care providers as defined in WAC 284-43-130((~~(17)~~)) (16);

(7) Long-term care facilities in which the average residency rate is fifty percent or more eligible for medicaid during the preceding calendar year;

(8) School-based health centers as referenced for funding in Sec. 4101 of Title IV of ACA;

(9) Providers identified as essential community providers by the U.S. Department of Health and Human Services through subregulatory guidance or bulletins;

(10) Facilities or providers who waive charges or charge for services on a sliding scale based on income and that do not restrict access or services because of a client's financial limitations;

(11) Title X Family Planning Clinics and Title X look-alike Family Planning Clinics;

(12) Rural based or free health centers as identified on the Rural Health Clinic and the Washington Free Clinic Association web sites; and

(13) Federal qualified health centers (FQHC) or FQHC look-alikes.

AMENDATORY SECTION (Amending WSR 14-10-017, filed 4/25/14, effective 5/26/14)

WAC 284-43-222 Essential community providers for exchange plans—Network access. (1) An issuer must include essential community providers in its provider network for qualified health plans and qualified stand-alone dental plans in compliance with this section and as defined in WAC 284-43-221.

(2) An issuer must include a sufficient number and type of essential community providers in its provider network to provide reasonable access to the medically underserved or low-income in the service area, unless the issuer can provide substantial evidence of good faith efforts on its part to contract with the providers or facilities in the service area. Such evidence of good faith efforts to contract will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the provider.

(3) The following minimum standards apply to establish adequate qualified health plan inclusion of essential community providers:

(a) Each issuer must demonstrate that at least thirty percent of available primary care providers, pediatricians, and hospitals that meet the definition of an essential community provider in each plan's service area participate in the provider network;

(b) The issuer's provider network must include access to one hundred percent of Indian health care providers in a service area, as defined in WAC 284-43-130((~~(17)~~)) (16), such that qualified enrollees obtain all covered services at no greater cost than if the service was obtained from network providers or facilities;

(c) Within a service area, fifty percent of rural health clinics located outside an area defined as urban by the 2010 Census must be included in the issuer's provider network;

(d) For essential community provider categories of which only one or two exist in the state, an issuer must demonstrate a good faith effort to contract with that provider or providers for inclusion in its network, which will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the provider;

(e) For qualified health plans that include pediatric oral services or qualified dental plans, thirty percent of essential community providers in the service area for pediatric oral services must be included in each issuer's provider network;

(f) Ninety percent of all federally qualified health centers and FQHC look-alike facilities in the service area must be included in each issuer's provider network;

(g) At least one essential community provider hospital per county in the service area must be included in each issuer's provider network;

(h) At least fifteen percent of all providers participating in the 340B program in the service area, balanced between hospital and nonhospital entities, must be included in the issuer's provider network;

(i) By 2016, at least seventy-five percent of all school-based health centers in the service area must be included in the issuer's network.

(4) An issuer must, at the request of a school-based health center or group of school-based health centers, offer to contract with such a center or centers to reimburse covered health care services delivered to enrollees under an issuer's health plan.

(a) If a contract is not entered into, the issuer must provide substantial evidence of good faith efforts on its part to contract with a school-based health center or group of school-based health centers. Such evidence of good faith efforts to contract will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the provider.

(b) "School-based health center" means a school-based location for the delivery of health services, often operated as a partnership of schools and community health organizations, which can include issuers, which provide on-site medical and mental health services through a team of medical and mental health professionals to school-aged children and adolescents.

(5) An issuer must, at the request of an Indian health care provider, offer to contract with such a provider to reimburse covered health care services delivered to qualified enrollees under an issuer's health plan.

(a) Issuers are encouraged to use the current version of the Washington State Indian Health Care Provider Addendum, as posted on http://www.aihc-wa.com, to supplement the existing provider contracts when contracting with an Indian health care provider.

(b) If an Indian health care provider requests a contract and a contract is not entered into, the issuer must provide substantial evidence of good faith efforts on its part to contract with the Indian health care provider. Such evidence of good faith efforts to contract will include documentation about the efforts to contract but not the substantive contract terms offered by either the issuer or the provider.

(6) These requirements do not apply to integrated delivery systems pursuant to RCW 43.71.065.

WSR 14-22-020
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 27, 2014, 7:27 a.m., effective November 27, 2014]

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

Purpose: Revisions to chapter 392-144 WAC were adopted on March 25, 2014, with an effective date of September 1, 2014. The language that specified a school district is required to get a copy of each school bus driver's driving records for evaluation during the annual review of school bus driver compliance was accidentally omitted.

The revision shown below adds the omitted language.

Citation of Existing Rules Affected by this Order: Amending WAC 392-144-160.

Statutory Authority for Adoption: RCW 28A.160.210.

Adopted under notice filed as WSR 14-19-057 on September 12, 2014.

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

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

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

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

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

Date Adopted: October 27, 2014.

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 14-09-031, filed 4/9/14, effective 9/1/14)

WAC 392-144-160 School district—Verification of driver's continuing compliance. (1) Every school district shall annually evaluate each authorized school bus driver for continuing compliance with the provisions of this chapter ((~~annually~~)). The results of this evaluation of all drivers shall be submitted to the superintendent or their designee no later than the last business day in October of each year.

(2) This annual evaluation shall certify that the district has verified the following:

(a) That each authorized school bus driver's medical examination certificate expiration date, first-aid expiration date, driver's license expiration date and most recent school bus driver in-service training date has been updated in compliance with procedures established by the superintendent;

(b) That each authorized school bus driver's abstract of driving record provided by the department of licensing has been reviewed and is in compliance with WAC 392-144-103;

(c) That each authorized school bus driver has made an updated disclosure in writing and signed and sworn under penalty of perjury which updates the disclosure required in WAC 392-144-102(4); and

((~~(c)~~)) (d) That each authorized school bus driver remains in compliance with the physical requirements of WAC 392-144-102(5).

WSR 14-22-023
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed October 27, 2014, 11:22 a.m., effective November 27, 2014]

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

Purpose: WAC 458-20-217 Lien for taxes, is amended to recognize:

- 2ESSB 6143, Part VIII (chapter 23, Laws of 2010), which changed personal liability provisions for collected, but unremitted, retail sales and spirits taxes;
- HB 2758 (chapter 39, Laws of 2012) that amended RCW 82.32.145 to clarify that all spirits taxes under RCW 82.08.150 are trust fund taxes that subject certain responsible individuals to personal liability for such taxes and related penalties and interest; and
- HB 1239 (chapter 131, Laws of 2011) that provides in lieu of filing a tax warrant with a superior court, the department may in some circumstances issue a notice in lien against any real property in which the taxpayer has any ownership interest.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-217 Lien for taxes.

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

Other Authority: RCW 82.08.050, 82.08.150, 82.32.145, 82.32.210, and 82.32.212.

Adopted under notice filed as WSR 14-17-125 on August 20, 2014.

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

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

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

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

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

Date Adopted: October 27, 2014.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-16-073, filed 7/31/08, effective 8/31/08)

WAC 458-20-217 Lien for taxes. (1) **Introduction.** This rule provides an overview of the administrative collection remedies and procedures available to the department of revenue (department) to collect unpaid and overdue tax liabilities. It discusses tax liens and the liens that apply to probate, insolvency, assignments for the benefit of creditors, bankruptcy and public improvement contracts. The rule also explains the personal liability of persons in control of collected but unpaid sales tax. Although the department may use judicial remedies to collect unpaid tax, most of the department's collection actions are enforced through the administrative collection remedies discussed in this rule.

(2) **Tax liens.** The department is not required to obtain a judgment in court to have a tax lien. A tax lien is created when a warrant issued under RCW 82.32.210 is filed with a superior court clerk who enters it into the judgment docket. A copy of the warrant may be filed in any county in this state in which the department believes the taxpayer has real and/or personal property. The department is not required to give a taxpayer notice prior to filing a tax warrant. *Peters v Sjoholm*, 95 Wn.2d 871, 877, 631 P.2d 937 (1981) *appeal dismissed, cert. denied* 455 U.S. 914 (1982). The tax lien is an encumbrance on property. The department may enforce a tax lien by administrative levy, seizure or through judicial collection remedies.

(a) **Attachment of lien.** The filed warrant becomes a specific lien upon all personal property used in the conduct of the business and a general lien against all other real and personal property owned by the taxpayer against whom the warrant was issued.

(i) The specific lien attaches to all goods, wares, merchandise, fixtures, equipment or other personal property used in the conduct of the business of the taxpayer. Other personal property includes both tangible and intangible property. For example, the specific lien attaches to business assets such as accounts receivable, chattel paper, royalties, licenses and franchises. The specific lien also attaches to property used in the business which is owned by persons other than the taxpayer who have a beneficial interest, direct or indirect, in the operation of the business. (See subsection (3) of this ((~~section~~)) rule for what constitutes a beneficial interest.) The lien is perfected on the date it is filed with the superior court clerk. The lien does not attach to property used in the business that was transferred prior to the filing of the warrant. It does attach to all property existing at the time the warrant is filed as well as property acquired after the filing of the warrant. No sale or transfer of such personal property affects the lien.

(ii) The general lien attaches to all real and personal nonbusiness property such as the taxpayer's home and nonexempt personal vehicles.

(b) **Lien priorities.** The department does not need to levy or seize property to perfect its lien. The lien is perfected when the warrant is filed. The tax lien is superior to liens that vest after the warrant is filed.

(i) The lien for taxes is superior to bona fide interests of third persons that vested prior to the filing of the warrant if such persons have a beneficial interest in the business.

(ii) The lien for taxes is also superior to any interest of third persons that vested prior to the warrant if the interest is a mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as the trustee for unsecured creditors of the taxpayer mentioned in the warrant.

(iii) In most cases, to have a vested or perfected security interest in personal property, the secured party must file a UCC financing statement indicating its security interest. RCW 62A.9-301. See RCW 62A.9-302 for the exceptions to this general rule. The financing statement must be filed prior to the filing of the tax warrant for the lien to be superior to the department's lien.

(c) **Period of lien.** A filed tax warrant creates a lien that is enforceable for the same period as a judgment in a civil case that is docketed with the clerk of the superior court. RCW 82.32.210(4). A judgment lien expires ten years from the date of filing. RCW 4.56.310. The department may extend the lien for an additional ten years by filing a petition for an order extending the judgment with the clerk of the superior court. The petition must be filed within ninety days of the expiration of the original ten-year period. RCW 6.17.020.

(3) **Persons who have a beneficial interest in a business.** A third party who receives part of the profit, a benefit, or an advantage resulting from a contract or lease with the business has a beneficial interest in the operation of the business. A party whose only interest in the business is securing the payment of debt or receiving regular rental payments on equipment does not have a beneficial interest. Also, the mere loaning of money by a financial institution to a business and securing that debt with a UCC filing does not constitute a beneficial interest in the business. Rather, a party who owns property used by a delinquent taxpayer must also have a beneficial interest in the operation of that business before the lien will attach to the party's property. The definition of the term "beneficial interest" for purposes of determining lien priorities is not the same as the definition used for tax free transfers described in WAC 458-20-106.

(a) **Third party.** A third party is simply a party other than the taxpayer. For example, if the taxpayer is a corporation, an officer or shareholder of that corporation is a "third party" with a beneficial interest in the operation of the business. If the corporate insider has a security interest in property used by the business, the tax lien will be superior even if the corporate insider's lien was filed before the department's lien.

(b) **Beneficial interest of lessor.** In some cases a lessor or franchisor will have a beneficial interest in the leased or franchised business. For example, an oil company that leases a gas station and other equipment to an operator and requires the operator to sell its products is a third party with a beneficial interest in the business. Factors which support a finding of a beneficial interest in a business include the following:

(i) The business operator is required to pay the lessor or franchisor a percentage of gross receipts as rent;

(ii) The lessor or franchisor requires the business operator to use its trade name and restricts the type of business that may be operated on the premises;

(iii) The lease places restrictions on advertising and hours of operation; and/or

(iv) The lease requires the operator to sell the lessor's products.

(c) A third party who has a beneficial interest in a business with a filed lien is not personally liable for the amounts owing. Instead, the amount of tax, interest and penalties as reflected in the warrant becomes a specific lien upon the third party's property that is used in the business.

(4) **Notice and order to withhold and deliver.** A tax lien is sufficient to support the issuance of a writ of garnishment authorized by chapter 6.27 RCW. RCW 82.32.210(4). A tax lien also allows the department to issue a notice and order to withhold and deliver. A notice and order to withhold and deliver (order) is an administrative garnishment used by the department to obtain property of a taxpayer from a third party such as a bank or employer. See RCW 82.32.235. The department may issue an order when it has reason to believe that a party is in the possession of property that is or shall become due, owing or belonging to any taxpayer against whom a warrant has been filed.

(a) **Service of order.** The department may serve an order to withhold and deliver to any person, or to any political subdivision or department of the state. The order may be served by the sheriff or deputy sheriff of the county where service is made, by any authorized representative of the department, or by certified mail.

(b) **Requirement to answer order.** A person upon whom service has been made is required to answer the order in writing within twenty days of service of the order. The date of mailing or date of personal service is not included when calculating the due date of the answer. All answers must be true and made under oath. If an answer states that it cannot presently be ascertained whether any property is or shall become due, owing, or belonging to such taxpayer, the person served must answer when such fact can be ascertained. RCW 82.32.235.

(i) If the person served with an order possesses property of the taxpayer subject to the claim of the department, the party must deliver the property to the department or its duly authorized representative upon demand. If the indebtedness involved has not been finally determined, the department will hold the property in trust to apply to the indebtedness involved or for return without interest in accordance with the final determination of liability or nonliability. In the alternative, the department must be furnished a satisfactory bond conditioned upon final determination of liability. RCW 82.32.235.

(ii) If the party upon whom service has been made fails to answer an order to withhold and deliver within the time prescribed, the court may enter a default judgment against the party for the full amount claimed owing in the order plus costs. RCW 82.32.235.

(c) **Continuing levy.** A notice and order to withhold and deliver constitutes a continuing levy until released by the department. RCW 82.32.237.

(d) **Assets that may be attached.** Both tangible assets, as a vehicle, and intangible assets may be attached. Examples of intangible assets that may be attached by an order to withhold and deliver include, but are not limited to, checking or savings accounts; accounts receivable; refunds or deposits; contract payments; wages and commissions, including bonuses; liquor license deposits; rental income; dealer reserve accounts held by service stations or auto dealers; and funds held in escrow pending sale of a business. Certain insurance proceeds are subject to attachment such as the cash surrender value of a policy. The department may attach funds in a joint account that are owned by the delinquent taxpayer. Funds in a joint account with the right of survivorship are owned by the depositors in proportion to the amount deposited by each. RCW 30.22.090. The joint tenants have the burden to prove the separate ownership.

(e) **Assets exempt from attachment.** Examples of assets which are not attachable include Social Security, railroad retirement, welfare, and unemployment benefits payable by the federal or state government.

(5) **Levy upon real and/or personal property.** The department may issue an order of execution, pursuant to a filed warrant, directing the sheriff of the county in which the warrant was filed to levy upon and sell the real and/or personal property of the taxpayer in that county. RCW 82.32.-220. If the department has reason to believe that a taxpayer has personal property in the taxpayer's possession that is not otherwise exempt from process or execution, the department may obtain a warrant to search for and seize the property. A search warrant is obtained from a superior or district court judge in the county in which the property is located. See RCW 82.32.245.

(6) **Probate, insolvency, assignment for the benefit of creditors or bankruptcy.** In all of these cases or conditions, the claim of the state for unpaid taxes and increases and penalties thereon, is a lien upon all real and personal property of the taxpayer. RCW 82.32.240. All administrators, executors, guardians, receivers, trustees in bankruptcy, or assignees for the benefit of creditors are required to notify the department of such administration, receivership, or assignment within sixty days from the date of their appointment and qualification. In cases of insolvency, this includes the duty of the person who is winding down the business to notify the department.

(a) The state does not have to take any action to perfect its lien. The lien attaches the date of the assignment for the benefit of creditors or of the initiation of the probate or bankruptcy. In cases of insolvency, the lien attaches at the time the business becomes insolvent. The lien, however, does not affect the validity or priority of any earlier lien that may have attached in favor of the state under any other provision of the Revenue Act.

(b) Any administrator, executor, guardian, receiver, or assignee for the benefit of creditors who does not notify the department as provided above is personally liable for payment of the taxes and all increases and penalties thereon. The personal liability is limited to the value of the property subject to administration that otherwise would have been available to pay the unpaid liability.

(c) In probate cases in which a surviving spouse or surviving domestic partner is separately liable for unpaid taxes and increases and penalties thereon, the department does not need to file a probate claim to protect the state's interest against the surviving spouse or surviving domestic partner. The department may collect from the separate property of the surviving spouse or surviving domestic partner and any assets formerly community property or property of the domestic partnership which become the property of the surviving spouse or the surviving domestic partner. If the deceased spouse or deceased domestic partner and/or the community or domestic partnership also was liable for the tax debt, the claim also could be asserted in the administration of the estate of the deceased spouse or deceased domestic partner.

(7) **Lien on retained percentage of public improvement contracts.** Every public entity engaging a contractor under a public improvement project of ((~~twenty~~)) thirty-five thousand dollars or more, shall retain five percent of the total contract price, including all change orders, modifications, etc. This retainage is a trust fund held for the benefit of the department and other statutory claimants. In lieu of contract retainage, the public entity may require a bond. All taxes, increases, and penalties due or to become due under Title 82 RCW from a contractor or the contractor's successors or assignees with respect to a public improvement contract of ((~~twenty~~)) thirty-five thousand dollars or more shall be a lien upon the amount of the retained percentage withheld by the disbursing officer under such contract. RCW 60.28.040.

(a) **Priorities.** The employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under the public improvement contract have a first priority lien against the bond or retainage. The department's lien for taxes, increases, and penalties due or to become due under such contract is prior to all other liens. The amount of all other taxes, increases and penalties due from the contractor is a lien upon the balance of the retained percentage after all other statutory lien claims have been paid. RCW 60.28.040.

(b) **Release of funds.** Upon final acceptance by the public entity or completion of the contract, the disbursing officer shall contact the department for its consent to release the funds. The officer cannot make any payment from the retained percentage until the department has certified that all taxes, increases, and penalties due have been paid or are readily collectible without recourse to the state's lien on the retained percentage. RCW 60.28.050 and 60.28.051.

(8) **Personal liability for unpaid trust funds.** The retail sales tax ((~~is~~)) and all spirits taxes under RCW 82.08.150 are to be held in trust. RCW 82.08.050. As a trust fund, the retail sales tax ((~~is~~)) and spirits taxes are not to be used to pay other corporate or personal debts. ((~~RCW 82.32.145 imposes personal liability on any responsible person who willfully fails to pay or cause to be paid any collected but unpaid retail sales tax. Collection authority and procedures prescribed in chapter 82.32 RCW apply to the collection of trust fund liability assessments.~~

(~~a) **Responsible person.** A responsible person is any officer, member, manager, or other person having control or supervision of retail sales tax funds collected and held in trust or who has the responsibility for filing returns or paying the collected retail sales tax.~~

(~~i) A responsible person may have "control and supervision" of collected retail sales tax or the responsibility to report the tax under corporate bylaws, job description, or other proper delegation of authority. The delegation of authority may be established by written documentation or by conduct.~~

(~~ii) A responsible person must have significant but not necessarily exclusive control or supervision of the trust funds. Neither a sales clerk who only collects the tax from the customer nor an employee who only deposits the funds in the bank has significant supervision or control of the retail sales tax. An employee who has the responsibility to collect, account for, and deposit trust funds does have significant supervision or control of the tax.~~

(~~iii) A person is not required to be a corporate officer or have a proprietary interest in the business to be a responsible person.~~

(~~iv) A member of the board of directors, a shareholder, or an officer may have trust fund liability if that person has the authority and discretion to determine which corporate debts should be paid and approves the payment of corporate debts out of the collected retail sales trust funds.~~

(~~v) More than one person may have personal liability for the trust funds if the requirements for liability are present for each person.~~

(~~b) **Requirements for liability.** In order for a responsible person to be held personally liable for collected and unpaid retail sales tax:~~

(~~i) The tax must be the liability of a corporate or limited liability business;~~

(~~ii) The corporation must be terminated, dissolved, or abandoned;~~

(~~iii) The failure to pay must be willful; and~~

(~~iv) The department must not have a reasonable means of collecting the tax from the corporation.~~

(~~c) **Willful failure to pay.** A willful failure to pay means that the failure was an intentional, conscious, and voluntary course of action. An intent to defraud or a bad motive is not required. For example, using collected retail sales tax to pay other corporate obligations is a willful failure to pay the trust funds to the state.~~

(~~i) A responsible person depositing retail sales tax funds in a bank account knowing that the bank might use the funds

~~to off-set amounts owing to it is engaging in a voluntary course of action. It is a willful failure to pay if the bank does exercise its right of set off which results in insufficient funds to pay the corporate retail sales tax that was collected and deposited in the account. To avoid personal liability in such a case, the responsible party can set aside the collected retail sales tax and not commingle it with other funds that are subject to attachment or set off.~~

~~(ii) If the failure to pay the trust funds to the state was due to reasons beyond that person's control, the failure to pay is not willful. For example, if the person responsible for remitting the tax provides evidence that the trust funds were unknowingly stolen or embezzled by another employee, the failure to pay is not considered willful. To find that a failure to pay the trust funds to the state was due to reasons beyond that person's control, the facts must show both that the circumstances caused the failure to pay the tax and that the circumstances were beyond the person's control.~~

~~(iii) If a responsible person instructs an employee or hires a third party to remit the collected sales tax, the responsible person is not relieved of personal liability for the tax if the tax is not paid.~~

~~(d)~~)) Whenever the department has issued a warrant under RCW 82.32.210 for the collection of unpaid retail sales tax funds or spirits taxes funds collected and held in trust under RCW 82.08.050 from a limited liability business entity and that entity is terminated, dissolved, abandoned, or insolvent, RCW 82.32.145 authorizes the department to impose personal liability against any or all of the responsible individuals. For a responsible individual who is the current or a former chief executive or chief financial officer, personal liability may be imposed regardless of fault or whether the individual was or should have been aware of the unpaid retail sales tax or spirits taxes liability. Collection authority and procedures prescribed in chapter 82.32 RCW apply to the collection of personal liability assessments.

(a) **Responsible individual.**

(i) A responsible individual includes any current or former officer, manager, member, partner, or trustee of a limited liability business entity with an unpaid tax warrant issued by the department.

(A) "Officer" means any officer or assistant officer of a corporation, including the president, vice-president, secretary, and treasurer.

(B) "Manager" has the same meaning as in RCW 25.15.-005.

(C) "Member" has the same meaning as in RCW 25.15.-005, except that the term only includes members of member-managed limited liability companies.

(ii) "Responsible individual" also includes any current or former employee or other individual, but only if the individual had the responsibility or duty to remit payment of the limited liability business entity's unpaid sales tax liability reflected in a tax warrant issued by the department.

(A) A responsible individual may have "control and supervision" of collected retail sales tax or spirits taxes or the responsibility to report the tax under corporate bylaws, job description, or other proper delegation of authority. The delegation of authority may be established by written documentation or by conduct.

(B) Except for the current or a former chief executive or chief financial officer of a limited liability business entity, a responsible individual must have significant but not necessarily exclusive control or supervision of the trust funds. Neither a sales clerk who only collects the tax from the customer nor an employee who only deposits the funds in the bank has significant supervision or control of the retail sales tax or spirits taxes. An employee who has the responsibility to collect, account for, and deposit trust funds does have significant supervision or control of the tax.

(C) A person is not required to be a corporate officer or have a proprietary interest in the business to be a responsible individual.

(D) A member of the board of directors, a shareholder, or an officer may have trust fund liability if that person has the authority and discretion to determine which corporate debts should be paid and approves the payment of corporate debts out of the collected retail sales or spirits taxes trust funds.

(E) More than one person may have personal liability for the trust funds if the requirements for liability are present for each person.

(iii) Whenever a limited liability business entity with an unpaid tax warrant issued against it by the department has one or more limited liability business entities as a member, manager, or partner, "responsible individual" also includes any current and former officers, members, or managers of the limited liability business entity or entities or of any other limited liability business entity involved directly in the management of the limited liability business entity with an unpaid tax warrant issued against it by the department.

(b) **Chief executive or chief financial officer.**

(i) For a responsible individual who is the current or a former chief executive or chief financial officer of a limited liability business entity, liability under this rule applies regardless of fault or whether the individual was or should have been aware of the unpaid retail sales tax or spirits taxes liability of the limited liability business entity. There is no "willfully fails to pay" requirement for chief executive officers and chief financial officers.

(ii) A responsible individual who is the current or a former chief executive or chief financial officer is liable under this rule only for retail sales tax or spirits taxes liability accrued during the period that he or she was the chief executive or chief financial officer. However, if the responsible individual had the responsibility or duty to remit payment of the limited liability business entity's retail sales tax or spirits taxes to the department during any period of time that the person was not the chief executive or chief financial officer, that individual is also liable for retail sales tax or spirits taxes liability that became due during the period that he or she had the duty to remit payment of the limited liability business entity's taxes to the department but was not the chief executive or chief financial officer.

(iii) "Chief executive" means: The president of a corporation; or for other entities or organizations other than corporations or if a corporation does not have a president as one of its officers, the highest ranking executive manager or administrator in charge of the management of the company or organization.

(iv) "Chief financial officer" means: The treasurer of a corporation; or for entities or organizations other than corporations or if a corporation does not have a treasurer as one of its officers, the highest senior manager who is responsible for overseeing the financial activities of the entire company or organization.

(c) **Other responsible individuals.**

(i) For any other responsible individual, liability under this rule applies only if he or she willfully fails to pay or to cause to be paid to the department the retail sales tax or spirits taxes due from the limited liability business entity.

(A) "Willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action. Intent to defraud or bad motive is not required. For example, using collected retail sales tax or spirits taxes to pay other corporate obligations is a willful failure to pay the trust funds to the state.

(B) Depositing retail sales tax or spirits taxes funds in a bank account knowing that the bank might use the funds to off-set amounts owing to it is engaging in a voluntary course of action. It is a willful failure to pay if the bank exercises its right of set-off which results in insufficient funds to pay the corporate retail sales tax or spirits taxes that were collected and deposited in the account. To avoid personal liability in such a case, the responsible individual can set aside the collected retail sales tax or spirits taxes and not commingle it with other funds that are subject to attachment or set-off.

(C) If the failure to pay the trust funds to the state was due to reasons beyond an individual's control, the failure to pay is not willful. For example, if evidence is provided that the trust funds were unknowingly stolen or embezzled by another employee, the failure to pay is not considered willful. To find that a failure to pay the trust funds to the state was due to reasons beyond an individual's control, the facts must show both that the circumstances caused the failure to pay the tax and that the circumstances were beyond the individual's control.

(D) If a responsible individual instructs an employee or hires a third party to remit the collected retail sales tax or spirits taxes, the responsible individual is not relieved of personal liability for the tax if the tax is not paid.

(ii) Responsible individuals other than a current or former chief executive or chief financial officer of the limited liability business entity are liable under this rule only for retail sales tax or spirits taxes liability that became due during the period he or she had the responsibility or duty to remit payment of the limited liability business entity's taxes to the department.

(d) **Limited liability business entity.**

(i) A "limited liability business entity" is a type of business entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity, or a business entity that is managed or owned in whole or in part by an entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity. Limited liability business entities include corporations, limited liability companies, limited liability partnerships, trusts, general partnerships and joint ventures in which one or more of the partners or parties are also limited liability business entities, and limited partnerships in which one or more of the general partners are also limited liability business entities.

(ii) Whenever the department has issued a warrant under RCW 82.32.210 for the collection of unpaid retail sales tax or spirits taxes funds collected and held in trust under RCW 82.08.050 from a limited liability business entity and that business entity has been terminated, dissolved, or abandoned, or is insolvent, the department may pursue collection of the entity's unpaid state and local sales taxes, including penalties and interest on those taxes, against any or all of the responsible individuals.

(e) **Requirements for liability.** In order for a responsible individual to be held personally liable for collected and unpaid retail sales tax or spirits taxes:

(i) The tax must be the liability of a limited liability business entity.

(ii) The limited liability business entity must be terminated, dissolved, abandoned, or insolvent. Insolvent means the condition that results when the sum of the entity's debts exceeds the fair market value of its assets. The department may presume that an entity is insolvent if the entity refuses to disclose to the department the nature of its assets and liabilities.

(f) **Extent of liability.** Trust fund liability includes the collected but unpaid retail sales tax or spirits taxes as well as the interest and penalties due on the tax.

~~((i) An individual is only liable for trust funds collected during the period he or she had the requisite control, supervision, responsibility, or duty to remit the tax, plus interest and penalties on those taxes. RCW 82.32.145(2).~~

~~(ii) Any retail sales taxes that were paid to the department but not collected may be deducted from the retail sales taxes collected but not paid.~~

~~(e) **No reasonable means of collection.** The department has "no reasonable means of collection" if the costs of collection would be more than the amount that could be collected; if the amount that might be recovered through a levy, foreclosure or other collection action would be negligible; or if the only means of collection is against a successor corporation.~~

~~(f)~~)) (g) Except for the current or a former chief executive or chief financial officer of a limited liability business entity, an individual is only liable for trust funds collected during the period he or she had the requisite control, supervision, responsibility, or duty to remit the tax, plus interest and penalties on those taxes.

(h) **Appeal of personal liability assessment.** Any person who receives a personal liability assessment is encouraged to request a supervisory conference if the person disagrees with the assessment. The request for the conference should be made to the department representative that issued the assessment or the representative's supervisor at the department's field office. A supervisory conference provides an opportunity to resolve issues with the assessment without further action. If unable to resolve the issue, the person receiving the assessment is entitled to administrative and judicial appeal procedures. RCW 82.32.145(4). See also RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

While encouraged to request a supervisory conference, any person receiving a personal liability assessment may

elect to forego the supervisory conference and proceed directly with an appeal of the assessment. Refer to WAC 458-20-100 for information about the department's administrative appeal procedures, including how to timely file a petition for appeal.

(9) **Notice of lien.** Under RCW 82.32.212, the department may issue a notice of lien to secure payment of a tax warrant issued under RCW 82.32.210. The notice of lien is an alternative to filing a lien under RCW 82.32.210. The notice of lien is against any real property in which the taxpayer has an ownership interest.

(a) To file a notice of lien the amount of the tax warrant at issue must exceed twenty-five thousand dollars. The department must determine that issuing the notice of tax lien would best protect the state's interest in collecting the amount due on the warrant.

(b) The notice of tax lien is recorded with a county auditor in lieu of filing a warrant with the clerk of a county superior court. A general lien authorized in RCW 82.32.210 can be filed (or refiled) if the department determines that filing or refiling the warrant is in the best interest of collecting the amount due on the tax warrant, or the warrant remains unpaid six months after the notice of lien is issued.

Date Adopted: October 28, 2014.

Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending Order PT 68-6, filed 4/29/68)

WAC 458-12-165 Listing of property—Public lands—Purchase by state, county or city. Real property acquired either by purchase or condemnation by the state, county, city or any exempt political subdivision shall remain liable for any tax liens existing on the realty at the time the conveyance is completed. (RCW 84.60.050) ((~~If the taxes are not delinquent at the time of the purchase or condemnation, the date of completion of the sale shall be noted. If the transfer was before February 15 of the taxable year, there shall be no tax payable. If the transfer is between February 15 and April 30, one-half of the tax shall be payable. If the transfer is after April 30, the full amount of tax shall be payable. (RCW 84.60.060)~~)) Whenever only part of a parcel of property is purchased or condemned, the assessor is authorized to segregate the taxes according to the provision of RCW 84.60.070.

WSR 14-22-030
PERMANENT RULES
DEPARTMENT OF REVENUE

[Filed October 28, 2014, 11:04 a.m., effective November 28, 2014]

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

Purpose: This rule provided an incorrect citation to and incorporates language from repealed statute RCW 84.60.060. The department is deleting this outdated language from the rule.

Citation of Existing Rules Affected by this Order: Amending WAC 458-12-165 Listing of property—Public lands—Purchase by state, county or city.

Statutory Authority for Adoption: RCW 84.08.010 and 84.08.070.

Other Authority: RCW 84.60.050 and 84.60.070.

Adopted under notice filed as WSR 14-17-133 on August 20, 2014.

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

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

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

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

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

WSR 14-22-033
PERMANENT RULES
BOARD OF ACCOUNTANCY

[Filed October 28, 2014, 3:26 p.m., effective November 28, 2014]

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

Purpose: WAC 4-30-088 What is the effect on a Washington individual licensee or CPA-inactive certificateholder in the armed forces, reserves, or National Guard if the individual receives orders to deploy for active military duty? This proposed rule is drafted to relieve military personnel deployed on active military duty and members of the state's National Guard called to duty by this state's governor from the requirements of renewal and payment of fees during a period of active duty and for a reasonable time thereafter.

Statutory Authority for Adoption: RCW 18.04.055, 14.04.105(1) [18.04.105(1)], 18.04.215(1).

Adopted under notice filed as WSR 14-18-034 on August 27, 2014.

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

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

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

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

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

Date Adopted: October 24, 2014.

Richard C. Sweeney, CPA
Executive Director

NEW SECTION

WAC 4-30-088 What is the effect on a Washington individual licensee or CPA-inactive certificateholder in the armed forces, reserves, or National Guard if the individual receives orders to deploy for active military duty?

(1) **Definitions.** For purposes of this rule:

(a) "Active military duty" means:

(i) Deployed upon order of the President of the United states, the U.S. Secretary of Defense or Homeland Security in the case of a member of the armed forces or armed force reserves; or

(ii) Deployed upon order of the governor of this state in the case of the National Guard.

(b) "Armed forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard and reserves of each branch of the armed forces.

(c) "Active duty" means full-time employment in the armed forces of the United States. Such term does not include National Guard duty.

(d) "Military individual" means a living human being serving full time in the United States armed forces.

(e) "Military spouse" means the husband, wife, or registered domestic partner of a military individual.

(2) **Active military duty.**

(a) An individual fully employed on active duty in the armed forces of the United States applying for an initial license in this state shall receive priority processing of the application for initial licensing.

(b) A military applicant who obtains an initial license or a military individual holding a current license issued by this board, will be classified as "military" if the services provided to the armed forces include services within the definition of the practice of public accounting.

(c) An individual in the armed forces, reserves or National Guard and called to "active military duty" while holding an active license or CPA-Inactive certificate issued by this board may apply for a waiver of renewal fees and continuing professional education (CPE):

(i) The request for waiver of renewal fees and continuing professional education may be made through the board's online application and payment system or on a form provided by the board upon request;

(ii) The request for waiver must be supported by submitting documentation to substantiate the military individual's "active military duty" status;

(iii) Upon approval the waiver will serve to classify the individual as "military inactive";

(iv) The CPE reporting period and renewal year will not be affected by this reclassification of status;

(v) The waiver will continue to maintain an individual's military inactive status without fee or CPE until the individual is released from active military duty or discharged from the armed forces, reserves, or National Guard;

(vi) The board must be notified within six months after the date of release from active military duty or discharge from the armed forces. The board must be notified within six months of the date of release from a treatment facility if the individual is or has been in a treatment facility and a discharge was the result of injury or other reasons.

(3) **Return to previously held status after release from "active military duty" or discharge from the armed forces.**

(a) If a military individual desires to return to a previously held status after release from active military duty or discharge from the armed forces, all required information, documents, and fees must be submitted to the board before the application will be evaluated. An application for return to previously held status may be made through the board's online application and payment system or on a form provided by the board upon request and must include the following:

(i) Documentation to substantiate:

• Release from "active military duty"; or

• Type of discharge from the armed forces.

(ii) Documentation to substantiate completion of the following qualified CPE:

• If the application is submitted in the last year of the previous CPE reporting period the individual must have completed four CPE credit hours in ethics and regulation in Washington state and receive a passing grade of ninety percent on the board prepared examination available on the board's web site. The renewal fee is waived in this circumstance;

• If the application is submitted in the second year of the previous CPE reporting period the individual must have completed forty CPE credit hours including four CPE credit hours in ethics and regulation in Washington state and receive a passing grade of ninety percent on the board prepared examination available on the board's web site;

• If the application is submitted in the first year of the previous CPE reporting period the individual must have completed eighty CPE credit hours including four CPE credit hours in ethics and regulation in Washington state and receive a passing grade of ninety percent on the board prepared examination available on the board's web site.

(iii) A military individual may receive an expedited license while completing any specific requirements that are not related to CPE or other board rules.

(b) The previously held status will not become effective until the status has been posted to the board's data base and, therefore, made available to the general public.

(4) **Military spouses.**

(a) A military spouse or state registered domestic partner of an individual in the military may receive an expedited license while completing any specific additional requirements that are not related to training or practice standards for the profession, provided the military spouse or state registered domestic partner:

(i) Holds an unrestricted, active license in another state that has substantially equivalent licensing standards for the same profession to those in Washington; and

(ii) Is not subject to any pending investigation, charges, or disciplinary action by the regulatory body of another state or jurisdiction of the United States.

(b) To receive expedited license treatment, the military spouse or state registered domestic partner of an individual in

the military must provide all required information, documents, and fees to the board either by making application through the board's online application and payment system or on a form provided by the board upon request before the application will be evaluated.

(c) The application for expedited licensing will not be processed until the applicant submits copies to the board of the military individual's orders and official documents to establish the applicant's relationship to the military individual, such as one or more following documents:

(i) The military issued identification card showing the individual's military information and the applicant's relationship to that individual;

(ii) A marriage license; or

(iii) Documentation verifying a state registered domestic partnership.

(d) A military spouse or state registered domestic partner may only use a restricted title and practice public accounting under another state's license without an expedited license issued by this board for ninety days from the date the spouse entered this state for temporary residency during the military individual's transfer to this state.

WSR 14-22-034
PERMANENT RULES
BOARD OF ACCOUNTANCY

[Filed October 28, 2014, 3:27 p.m., effective November 28, 2014]

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

Purpose: WAC 4-30-140 What are the authority, structure, and processes for investigations and sanctions? Rule making is needed to expand the authority, structure, and processes for investigations and sanctions to include the determination of a case, the detailed process of an investigation, and guidelines used for sanctioning.

The changes will incorporate the provisions of Board Policy 2004-1.

Citation of Existing Rules Affected by this Order: Amending WAC 4-30-140 What are the authority, structure, and processes for investigations and sanctions?

Statutory Authority for Adoption: RCW 18.04.045 (7) and (8), 14.04.055 [18.04.055], 18.04.295, 18.04.350(6).

Adopted under notice filed as WSR 14-18-035 on August 27, 2014.

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

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

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

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

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

Date Adopted: October 24, 2014.

Richard C. Sweeney, CPA
Executive Director

AMENDATORY SECTION (Amending WSR 10-24-009, filed 11/18/10, effective 12/19/10)

WAC 4-30-140 What are the authority, structure, and processes for investigations and sanctions?

Authority:

Investigations are responsive to formal complaints or indications of a potential violation of chapter 18.04 RCW and in all proceedings under RCW 18.04.295 or chapter 34.05 RCW.

The board chair may delegate investigative authority and responsibility for initiating and directing investigations to a designee including the executive director of the board (RCW 18.04.045(7)).

Structure:

Investigations must be directed and conducted by individuals sufficiently qualified and knowledgable of the subject matter of an investigation.

((~~The board chair may delegate investigative authority and responsibility for initiating and directing investigations to a designee including the executive director of the board (RCW 18.04.045(7)).~~))

The general responsibilities when directing an investigation are:

(1) Determine whether the complaint or other source of information is within the authority of the board;

(2) Determine the most likely sanction the board might impose if the alleged violation is proven;

(3) Determine the scope and type of evidence needed to reach a conclusion whether a violation occurred;

(4) Monitor communications to the person(s) affected by the investigative process;

(5) Monitor the progress of the evidentiary gathering process to ensure that the scope of inquiry and request for records is limited to that necessary to reach a conclusion whether the violation occurred;

(6) Upon completion of the investigation, evaluate the sufficiency of the evidence to support a conclusion as to whether a violation occurred;

(7) Develop a recommendation for dismissal or sanction for consideration by a consulting board member based upon the accumulated evidence and the board's "fair and equitable" standard for sanctioning.

Processes:

By board delegation, the executive director directs the complaint processes, investigative activities, and case resolution negotiations. The gathering of appropriate evidence should be assigned to staff or contract investigators who have no current or former close relationship to (or with) the complainant or the respondent.

Upon receiving a complaint or otherwise becoming aware of a situation or condition that might constitute a violation of the Public Accountancy Act (Act) or board rules, the executive director will make a preliminary assessment.

If the executive director determines:

• The situation or condition is not within the board's authority, the executive director may dismiss the matter, but a record of the event will be documented and maintained in the board office in accordance with the agency's approved retention schedule. A summary of dismissals will be reported regularly to the board.

• The situation or condition requires further evaluation, the executive director assigns the case to a staff or contract investigator.

Details of the additional evidence gathered and the resulting conclusion by the executive director will be documented. If the executive director determines that:

• Sufficient evidence does not exist to merit board action, the executive director may dismiss the case, but a record of the event will be documented and maintained in the board office in accordance with the agency's approved record retention schedule. A summary of dismissals will be reported regularly to the board.

• Sufficient evidence exists to merit board action and it is the first time an individual or firm is notified of a violation of the Public Accountancy Act or board rule, the executive director may impose administrative sanctions approved by the board for a first-time offense.

• Sufficient evidence exists to merit board consideration but the situation or condition, if proven, is not eligible for administrative sanctions, the executive director will discuss a resolution strategy and settlement parameters with a consulting board member. Once the executive director and consulting board member agree on those matters, the executive director and assigned staff or contract investigator will initiate a discussion for resolution with the respondent consistent with that agreed upon strategy and those settlement parameters.

The executive director may request guidance from a consulting board member and/or the assistance of the assigned prosecuting assistant attorney general at any time during the investigative and/or negotiation processes.

If the respondent is amenable to the suggested resolution and terminology of a negotiated proposal, the executive director will forward the proposal to the respondent for written acceptance. If accepted by the respondent, the proposal will be forwarded to the board for approval.

Upon receiving and considering the formal settlement proposal, the respondent may offer a counterproposal. The executive director and assigned staff or contract investigator will discuss the counterproposal with a consulting board member. The executive director and consulting board member may agree to the counterproposal, offer a counter to the counterproposal, or reject the counterproposal.

If the executive director and consulting board member reject the counterproposal or are unable to negotiate what they consider to be an acceptable alternative proposal with the respondent, the executive director will execute a statement of charges and refer the case to the assigned prosecuting assistant attorney general with the request that an administrative hearing be scheduled and the case prosecuted.

At the same time that the assigned prosecuting assistant attorney general is preparing the case for prosecution, the assigned prosecuting assistant attorney general, working with the executive director and consulting board member, will continue to seek a negotiated settlement (consent agreement) in lieu of a board hearing. If the case goes to hearing before the board, the assigned prosecuting assistant attorney general, with the concurrence of the executive director and consulting board member, will present the team's recommended sanction to the board.

Through this process, the consulting board member, the executive director and, when appropriate, the assigned prosecuting assistant attorney general must individually and jointly act objectively and cooperatively to:

• Draw conclusions as to the allegations based solely on the evidence;

• Develop and present to the respondent a suggested settlement proposal that they believe the board will accept because the proposal is fair and equitable and provides public protection; and

• If the case goes to a hearing before the board, recommend an appropriate sanction or sanctions to the board.

No proposed negotiated settlement is forwarded to the board unless the respondent, the executive director, consulting board member and, when appropriate, the assigned prosecuting assistant attorney general concur that the proposal is an acceptable resolution to the matter.

If the participants in the negotiation concur with the negotiated resolution and terminology of the agreement, a proposed consent agreement is to be signed by the respondent, and signed by the assigned prosecuting assistant attorney general if the settlement was negotiated by the assigned prosecuting assistant attorney general, and forwarded to the board members, along with the executive director's, consulting board member's and, when appropriate, assigned prosecuting assistant attorney general's recommendation to accept the proposal for consideration.

The board is not bound by this recommendation.

All proposed consent agreements must be approved by a majority vote of the board. Five "no" votes mean the proposed settlement has been rejected by the board. In such circumstances, the case will return to the executive director, consulting board member, and assigned prosecuting assistant attorney general who will determine whether the situation merits additional attempts to negotiate a settlement or to immediately schedule the matter for an administrative hearing before the board.

All fully executed consent agreements and board orders become effective the date the document is signed by the board's presiding officer unless otherwise specified in the fully executed consent agreement or board order.

WSR 14-22-055
PERMANENT RULES
DEPARTMENT OF TRANSPORTATION
[Filed October 30, 2014, 10:48 a.m., effective November 30, 2014]

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

Purpose: Amending chapter 468-66 WAC, Highway Advertising Control Act, to reflect 2013 legislative changes to chapter 47.42 RCW by way of SSB 5761 that established an annual permit renewal fee for rental income signs and to provide a better read of the rules by eliminating redundant language.

Citation of Existing Rules Affected by this Order: Amending WAC 468-66-010, 468-66-050, and 468-66-210.

Statutory Authority for Adoption: RCW 47.42.120.

Adopted under notice filed as WSR 14-19-083 on September 16, 2014.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: October 23, 2014.

Kathryn W. Taylor
Assistant Secretary

AMENDATORY SECTION (Amending WSR 06-03-005, filed 1/4/06, effective 2/4/06)

WAC 468-66-010 Definitions. The following terms when used in this chapter shall have the following meanings:

(1) "Abandoned" means a sign for which neither sign owner nor land owner claim any responsibility.

(2) "Act" means the Highway Advertising Act of 1961, as amended and embodied in chapter 47.42 RCW.

(3) "Centerline of the highway" means a line equidistant from the edges of the median separating the main-traveled ways of a divided highway, or the centerline of the main-traveled way of a nondivided highway.

(4) "Commercial and industrial areas" means any area zoned commercial or industrial by a county or municipal code; or, if unzoned or zoned for general uses by a county or municipal code, that area occupied by three or more separate and distinct commercial and/or industrial activities within a space of five hundred feet and the area within five hundred feet of such activities on both sides of the highway. The area shall be measured from the outer edges of the regularly used buildings, parking lots, storage or processing areas of the commercial or industrial activity and not from the property lines of the parcels upon which such activities are located. Measurements shall be along or parallel to the edge of the main-traveled way of the highway. The following shall not be considered commercial or industrial activities:

(a) Agricultural, forestry, grazing, farming, and related activities, including, but not limited to, wayside fresh produce stands;

(b) Transient or temporary activities;

(c) Railroad tracks and minor sidings;

(d) Signs;

(e) Activities more than six hundred and sixty feet from the nearest edge of the right of way;

(f) Activities conducted in a building principally used as a residence. Residences are buildings used as homes, located in areas where individuals and families typically reside. Residence buildings no longer used as homes may be considered commercial or industrial activities, if used for commercial or industrial purposes and located in areas having either mixed or primarily commercial and industrial development.

If any commercial or industrial activity that has been used in defining or delineating an unzoned commercial or industrial area ceases to operate for a period of six continuous months resulting in fewer than three commercial or industrial activities remaining within that area, the unzoned area is deemed to no longer exist. Any signs located within the former unzoned area are declared nonconforming.

(5) "Department" means the Washington state department of transportation.

(6) "Destroyed" means a nonconforming sign shall be considered destroyed if more than fifty percent of the sign structure components are dislocated or damaged to the extent that the sign face has fallen to the ground.

(7) "Discontinued" means a sign shall be considered discontinued if, after receiving notice from the department of absence of advertising content for ninety days, the permit holder fails to put advertising content on the sign within ninety days of the notice. The department may extend the ninety-day compliance time to a maximum of one year, if the sign owner provides documentation of unique circumstances creating involuntary discontinuance and preventing the sign owner from placing advertising content on the sign.

(8) "Electronic sign" means an on-premise advertising sign having a signboard display that can be changed by an electrical, electronic, or computerized process.

(9) "Entrance roadway" means any public road or turning roadway including acceleration lanes, by which traffic may enter the main-traveled way of a limited access highway from the general road system within the state, including rest areas, view points, and sites used by the general public, irrespective of whether traffic may also leave the main-traveled way by such road or turning roadway.

(10) "Erect" means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish.

(11) "Exit roadway" means any public road or turning roadway including deceleration lanes, by which traffic may leave the main-traveled way of a limited access highway to reach the general road system within the state, including rest areas, view points, and sites used by the general public, irre-

spective of whether traffic may also enter the main-traveled way by such road or turning roadway.

(12) "Interstate system" means any state highway that is or becomes part of the national system of interstate and defense highways as described in section 103(e) of Title 23, United States Code.

(13) "Legible" means capable of being read without visual aid by a person of normal visual acuity.

(14) "Limited access highway" means a state highway, or a portion of a state highway, along which the department has acquired access rights as provided by chapter 47.52 RCW. A state highway, or a portion of a state highway, along which the department has not acquired access rights as provided by chapter 47.52 RCW is termed herein as a "nonlimited access highway."

(15) "Maintain" means to allow to exist.

(16) "Main-traveled way" means the traveled way of a highway on which through traffic is carried. In the case of a divided highway, the traveled way of each of the separated roadways for traffic in opposite directions is a main-traveled way. It does not include such facilities as frontage roads, turning roadways, entrance roadways, exit roadways, or parking areas.

(17) "National scenic byway" means any state highway designated as part of the national scenic byway system authorized by the 1991 Intermodal Surface Transportation Efficiency Act.

(18) "Person" means this state or any public or private corporation, firm, partnership, association, as well as any individual, or individuals.

(19) "Primary system" means any state highway which is part of the federal-aid primary system as described in section 103(b) of Title 23, United States Code, in existence on June 1, 1991, as enacted in the 1991 Intermodal Surface Transportation Efficiency Act, and any highway which is not on such system but which is on the national highway system.

(20) "Public service information" means a message on an electronic sign that provides the time, date, temperature, weather, or information about nonprofit activities sponsored by civic or charitable organizations.

(21) "Scenic system" means:

(a) Any state highway within any public park, federal forest area, public beach, public recreation area, or national monument;

(b) Any state highway or portion thereof outside the boundaries of any incorporated city or town designated in RCW 47.42.140 by the legislature as a part of the scenic system; or

(c) Any national scenic byway or state highway or portion thereof, outside the boundaries of any incorporated city or town, designated by the legislature in chapter 47.39 RCW as a part of the scenic and recreational highway system except for the sections of highways specifically excluded in RCW 47.42.025 or located within areas zoned by the governing county for predominantly commercial and industrial uses, and having development visible to the highway as determined by the department.

(22) "Sign" means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended or used to advertise or inform, any part of the advertising or informative contents of which is visible from any place on the main-traveled way of the interstate system or other state highway. The term includes the sign face(s), and the sign structure unless the sign is painted on a building, and applies to portable, temporary, and permanent installations. Signs are further defined by the provisions following:

(a) A single-faced sign may display only one advertised business activity or other activity that may be of interest to motorists.

(b) A double-faced (flanking or side-by-side) sign may only be patterned so that not more than two single-faced signs on one sign structure are visible to traffic approaching from one direction of travel.

(c) A V-type and back-to-back sign displays messages to opposing directions of travel from one sign structure. A V-type and back-to-back sign may only be patterned so that not more than one single-faced sign or double-faced (flanking or side-by-side) sign is visible to traffic approaching from each of the opposing directions of travel.

(d) A nonconforming sign means a sign that was lawfully erected but does not comply with provisions of state law or state regulations passed at a later date, or later fail to comply with the state law or state regulations due to changed conditions.

(e) Illegal signs are those erected or maintained in violation of state law or local law or ordinance.

(f) Pursuant to RCW 47.42.020(8) and 47.36.030(3), the term "sign" does not include signs, banners, or decorations that are devoid of commercial advertising and installed over a state highway to promote a local agency sponsored event.

(g) A "rental income" sign is a permitted Type 4/5 sign actively involved in the business of outdoor advertising. Rental income signs offer advertising display space in exchange for rental fees paid to the sign owner or operator. The term includes signs during periods of vacancy. Pursuant to RCW 47.42.120, permits for rental income signs are subject to an annual renewal fee of one hundred fifty dollars per permit.

(23) "Trade name" shall include brand name, trademark, distinctive symbol, or other similar device or thing used to identify particular products or services.

(24) "Traveled way" means the portion of a roadway for the movement of vehicles, exclusive of shoulders.

(25) "Tri-vision sign" means a sign having a series of three-sided rotating slats arranged side by side, either horizontally or vertically, which are rotated by an electric-mechanical process, capable of displaying a total of three separate and distinct messages, one message at a time.

(26) "Turning roadway" means a connecting roadway for traffic turning between two intersection legs of an interchange.

(27) "Visible" means capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity.

(28) "Visible development area" means a five hundred-foot area along a scenic system state highway, that is zoned for predominantly commercial or industrial uses by the governing county, having three or more commercial or industrial activities within the five hundred-foot area that are visible to

traffic in both directions. The consideration of commercial or industrial activities, and measurements that establish the area shall conform with RCW 47.42.020(9).

AMENDATORY SECTION (Amending WSR 06-03-005, filed 1/4/06, effective 2/4/06)

WAC 468-66-050 Sign classifications and specific provisions. Signs shall be classified and restricted to the provisions following:

(1) Type 1 - Directional or other official signs and notices. Directional or other official signs and notices may be erected and maintained on private property or public property, other than state highway right of way, for the purposes of carrying out an official duty or responsibility. The signs may only be installed by public offices or public agencies within their territorial or zoning jurisdiction and shall follow federal, state, or local law.

(a) Type 1(a) - Directional sign. A directional sign may only be installed in accordance with the provisions following:

(i) Publicly or privately owned places - Directional signs for publicly or privately owned places that feature natural phenomena; historical, cultural, scientific, or educational opportunities; areas of scenic beauty, or outdoor recreation areas:

• Publicly owned places - Directional signs for public places owned or operated by federal, state, or local government, or their agencies;

• Privately owned places - Directional signs for nonprofit privately owned places that feature scenic attractions. The attractions must be nationally or regionally known, or of outstanding interest to travelers.

(ii) A sign message shall be limited to identification of the activity or attraction and directional information. Directional information is limited to that which helps the motorist locate the activity, such as providing mileage to the activity, highway route or exit numbers.

(iii) Descriptive words, phrases, and photographic or pictorial representations of the activity or attraction are prohibited.

(iv) Type 1(a) signs shall not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim but excluding supports.

(v) The department must approve the proposed installation location.

(vi) Along the interstate system and other limited access highways having grade separations (interchanges), a sign shall not be located within two thousand feet of an interchange or rest area, measured from the ramp physical gore, or within two thousand feet of a parkland or scenic area.

(vii) Type 1(a) signs shall not be spaced closer than one mile apart.

(viii) Visible to a state route approaching an activity or attraction, a maximum of three signs per direction of travel are allowed for each activity or attraction.

(ix) Type 1(a) signs located along the interstate system shall be within seventy-five air miles of the activity or attraction.

(x) Type 1(a) signs located along the primary and scenic systems shall be within fifty air miles of the activity or attraction.

(b) Type 1(b) - Official sign. An official sign may be installed subject to the provisions following:

(i) Type 1(b) signs may only be erected and maintained by public offices or public agencies.

(ii) Type 1(b) signs may only be located within the governing jurisdiction of the public office or public agency.

(iii) Type 1(b) signs shall follow federal, state, or local law.

(iv) Type 1(b) sign((~~s have no restrictions on~~)) message content((~~, provided the activity being described~~)) is limited to providing information that furthers an official duty or responsibility.

(v) Type 1(b) signs shall not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim but excluding supports.

(vi) Type 1(b) signs may be historical markers authorized by federal, state, and local law.

(vii) Type 1(b) signs are not regulated by the act with regard to visibility to highways, zoning requirements, number of signs, or spacing.

(c) Type 1(c) - Service activity sign. A service activity sign may be installed subject to the provisions following:

(i) Type 1(c) signs shall contain only the name of a nonprofit organization, its address, and the time of its meeting or service.

(ii) Type 1(c) signs shall not exceed eight square feet in area.

(iii) Type 1(c) signs are not regulated by the act with regard to visibility to highways, zoning requirements, number of signs, or spacing.

(2) Type 2 - For sale or lease sign. A Type 2 sign may only advertise the sale or lease of the parcel of real property upon which the sign is located. The name of the owner of the property offered for sale or lease, or the owner's agent and phone number shall not be displayed more conspicuously than the words "for sale" or "for lease." No other message may be displayed on the sign.

(a) Type 2 signs shall not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim but excluding supports.

(b) Not more than one Type 2 sign may be installed that is visible to traffic proceeding in any one direction on an interstate, primary, or scenic system highway.

(c) The act does not regulate Type 2 signs with regard to zoning requirements or spacing.

(3) Type 3 - On-premise signs.

(a) Type 3(a) - On-premise sign. A Type 3(a) on-premise sign may only advertise an activity conducted on the property upon which the sign is located.

(i) A Type 3(a) on-premise sign shall be limited to advertising the business or the owner, or the products or services offered on the property. A sign consisting mainly of a brand name, trade name, product or service incidental to the main products or services offered on the property, or a sign bringing rental income to the property, is not an on-premise sign.

(ii) A Type 3(a) on-premise sign more than fifty feet from the advertised activity may not exceed twenty feet in

length, width, or height, or one hundred fifty square feet in area, including border and trim but excluding supports. The act does not regulate the size of Type 3(a) on-premise signs located within fifty feet of the advertised activity.

(iii) A Type 3(a) on-premise sign located at a shopping center, mall, or business combination is not authorized more than fifty feet from the individual activity it advertises, unless it is installed together with a Type (3)(b) business complex on-premise sign as described in (b)(i) of this subsection.

((~~(iv) For the purpose of measuring from the advertised activity, the distance shall be measured from the sign to the nearest portion of that building, storage, or other structure or processing area, which is the most regularly used and essential to the conduct of the advertised activity as determined solely by the department.~~))

(b) Type 3(b) - Business complex on-premise sign. A Type 3(b) business complex on-premise sign may display the name of a shopping center, mall, or business combination.

(i) Where a business complex erects a Type 3(b) on-premise sign, the sign structure may display additional individual business signs identifying each of the businesses conducted on the premises. A Type 3(b) on-premise sign structure may also have attached a display area, such as a manually changeable copy panel, reader board, or electronically changeable message center, for advertising on-premise activities and/or presenting public service information.

(ii) Type 3(b) on-premise signs are not regulated by the act with regard to size. Any Type 3(a) on-premise sign and any display area, installed together with a Type 3(b) on-premise sign, may not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area, including border and trim.

(c) Type 3(c) - Future site on-premise sign. A Type 3(c) future site on-premise sign may only display the name of a business activity, or other activity of interest to motorists, planned for the property upon which the sign is located and the anticipated opening date of such activity.

(i) The owner, or owner's representative, shall by letter notify the department at least thirty days prior to the installation of the proposed Type 3(c) future site on-premise sign. Said notice shall include the location, sign message, and installation date.

(ii) Type 3(c) future site on-premise signs may remain until the business activity is operational, but shall not exceed one year from the planned installation date. The sign must be removed at the end of one year after the planned installation date if the business activity is not yet operational.

(iii) Type 3(c) future site on-premise signs shall not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area.

(d) Type 3(d) - Temporary political campaign sign. A Type 3(d) temporary political campaign sign may express a property owner's endorsement of a political candidate or ballot issue.

(i) Type 3(d) temporary political campaign signs are limited to a maximum size of thirty-two square feet.

(ii) Type 3(d) temporary political campaign signs must be removed within ten days after an election. After primary elections, temporary political campaign signs endorsing a successful candidate may remain up to ten days after the succeeding general election.

(e) Not more than one Type 3(a) or 3(b) sign, visible to traffic proceeding in any one direction on an interstate system highway; on a primary system highway outside an incorporated city or town or commercial or industrial area; or on a scenic system highway, may be permitted more than fifty feet from the advertised activity. Not more than one Type 3(c) sign may be installed visible to traffic proceeding in any one direction on an interstate system highway; on a primary system highway outside an incorporated city or town or commercial or industrial area; or on a scenic system highway. The act does not regulate Type 3(d) signs with regard to the number of signs installed, visibility from highways, zoning requirements, or spacing.

(i) For Type 3(a) on-premise signs, the fifty-foot distance from the advertised activity shall be measured from the sign to the nearest portion of that building, storage, or other structure or processing area, which is the most regularly used and essential to the conduct of the advertised activity as determined solely by the department.

(ii) For Type 3(b) on-premise signs, the fifty-foot distance from the advertised activity may be measured in the same manner as for Type 3(a) on-premise signs, or may be measured fifty feet from the nearest portion of a combined parking area.

(f) A Type 3(a) or 3(b) on-premise sign more than fifty feet from the advertised activity shall not be erected or maintained at a greater distance from the advertised activity than one of the options following, as applicable, selected by the owner of the business being advertised:

(i) One hundred fifty feet measured along the edge of the protected highway from the nearest edge of the main entrance to the activity advertised;

(ii) One hundred fifty feet from any outside wall of the main building of the advertised activity; or

(iii) Fifty feet from any outside edge of a regularly used parking lot maintained by, and contiguous to, the advertised activity.

(g) Electronic signs may be used only as Type 3 on-premise signs and/or to present public service information, as follows:

(i) Advertising messages on electronic signboards may contain words, phrases, sentences, symbols, trademarks, and logos. A single message or a message segment must have a static display time of at least two seconds after moving onto the signboard, with all segments of the total message to be displayed within ten seconds. A one-segment message may remain static on the signboard with no duration limit.

(ii) Displays may travel horizontally or scroll vertically onto electronic signboards, but must hold in a static position for two seconds after completing the travel or scroll.

(iii) Displays shall not appear to flash, undulate, or pulse, or portray explosions, fireworks, flashes of light, or blinking or chasing lights. Displays shall not appear to move toward or away from the viewer, expand or contract, bounce, rotate, spin, twist, or otherwise portray graphics or animation as it moves onto, is displayed on, or leaves the signboard.

(iv) Electronic signs requiring more than four seconds to change from one single message display to another shall be turned off during the change interval.

(v) No electronic sign lamp may be illuminated to a degree of brightness that is greater than necessary for adequate visibility. In no case may the brightness exceed 8,000 nits or equivalent candelas during daylight hours, or 1,000 nits or equivalent candelas between dusk and dawn. Signs found to be too bright shall be adjusted as directed by the department.

(h) The act does not regulate Type 3(a), 3(b), 3(c), and 3(d) on-premise signs located along primary system highways inside an incorporated city or town or a commercial or industrial area.

(4) Type 4 - Off-premise signs; and

(5) Type 5 - Off-premise signs. Type 4 off-premise signs are distinguishable from Type 5 off-premise signs only by message content. Type 4 off-premise sign messages are those that do not qualify as Type 5 sign messages described in (b) of this subsection.

(a) A Type 4 sign shall be located within twelve air miles of the advertised activity. A Type 4 sign that displays any trade name which refers to or identifies any service rendered or product sold, used, or otherwise handled more than twelve air miles from such sign shall not be permitted unless the name of the advertised activity, which is within twelve air miles of such sign, is displayed as conspicuously as such trade name.

(b) A Type 5 sign displays a message of specific interest to the traveling public. On Type 5 signs, only information about public places operated by federal, state, or local governments, natural phenomena, historic sites, areas of natural scenic beauty or outdoor recreation, and places for lodging, camping, eating, and vehicle service and repair is deemed to be in the specific interest of the traveling public. A trade name is authorized on a Type 5 sign only if it identifies or represents a place of specific interest to the traveling public; or identifies vehicle service, equipment, parts, accessories, fuels, oils, or lubricants being offered for sale at such place. The display of any other trade name is not permitted on Type 5 signs.

(c) Type 4 and Type 5 signs are restricted in size to the following:

(i) Visible to interstate highways, signs may not exceed twenty feet in length, width, or height, or one hundred fifty square feet in area including border and trim but excluding supports.

(ii) Visible to primary highways, the maximum area for any one sign, except as provided in (c)(iii) of this subsection, shall be six hundred seventy-two square feet with a twenty-five-foot maximum height and a fifty-foot maximum length, including the border and trim but excluding the base or apron, supports, and structural members. Cut-outs and extensions may add up to twenty percent of additional sign area.

(iii) Each sign face of a double-faced (flanking and side-by-side) sign may not exceed three hundred twenty-five square feet.

(d) The spacing of Type 4 and Type 5 signs along interstate highways and visible to traffic traveling in one direction shall be restricted as follows:

(i) Type 4 and Type 5 signs visible to traffic approaching an intersection of the main-traveled way of an interstate highway and an exit roadway may not exceed the number following:

Distance from intersection	Number of signs
0 - 2 miles	0
2 - 5 miles	6
More than 5 miles	Average of one sign per mile

The specified distances shall be measured to the nearest point of intersection of the traveled way of the exit roadway and the main-traveled way of the interstate highway.

(ii) Not more than two such signs may be permitted within any mile distance and no such signs may be permitted less than one thousand feet apart.

(iii) Type 1, 2, and 3 signs shall not be considered in determining compliance with the above spacing requirements.

(iv) Type 4 and Type 5 signs may not be permitted adjacent to interstate highway right of way within the limits of an interchange, including its entrance or exit roadways.

(v) Type 4 and Type 5 signs visible to interstate highway traffic, which has passed an entrance roadway, may not be permitted within one thousand feet of the point where the entrance roadway intersects with the interstate highway. The distance shall be measured from the intersection point farthest from the preceding interchange.

(vi) Not more than one Type 4 or Type 5 sign, advertising activities conducted as a single enterprise or giving information about a single place, may be erected or maintained in such manner as to be visible to traffic moving in any one direction on any one interstate highway.

(e) The spacing of Type 4 and Type 5 signs visible to primary highways shall be restricted as follows:

(i) On limited access highways, no two signs may be spaced less than one thousand feet apart, and no sign may be located within three thousand feet of the center of a grade separated interchange, a safety rest area, or an information center, or within one thousand feet of an at-grade intersection. Not more than a total of five sign structures may be permitted per mile, including both sides of the highway. Double-faced (flanking or side-by-side) signs are prohibited.

(ii) On nonlimited access highways inside the boundaries of incorporated cities or towns, not more than a total of four sign structures, including both sides of the highway, may be permitted within a space of six hundred sixty feet or between platted intersecting streets or highways. There shall also be a minimum of one hundred feet between sign structures, including both sides of the highway.

(iii) On nonlimited access highways outside the boundaries of incorporated cities or towns, the minimum spacing between sign structures on each side of the highway shall be five hundred feet.

(iv) Back-to-back signs and V-type signs shall be considered one sign structure.

(f) The minimum space between sign structures located on the same side of the highway shall be measured between two points along the nearest edge of pavement. The measurement points are established at the origin of lines extending

perpendicular from the edge of pavement to the apparent centers of the sign structures.

(g) The minimum space between sign structures located on opposite sides of the highway shall be measured in the applicable manner following:

(i) Along tangent sections, sign spacing is measured between two points along the edge of pavement in the increasing milepost direction of travel. One measurement point is established at the origin of a line extending perpendicular from the edge of pavement to the apparent center of the sign structure located in the increasing direction of travel. The second measurement point is established at the origin of a line extending perpendicular from the edge of pavement to the apparent center of the sign structure located in the decreasing direction of travel.

(ii) Along horizontal curve sections, sign spacing is measured between two points on the edge of pavement along the arc on the inside of the curve. One measurement point is established at the origin of a line extending perpendicular from the edge of pavement to the apparent center of the sign structure located along the highway in the increasing milepost direction of travel. The second measurement point is established at the origin of a line extending perpendicular from the edge of pavement to the apparent center of the sign structure located along the highway in the decreasing milepost direction of travel.

(h) Type 1, 2, 3, 7, and 8 signs shall not be considered in determining compliance with the above spacing requirements.

(i) Type 4 and Type 5 signs may be permitted within commercial and industrial areas adjacent to interstate and primary highways, provided that spacing is available as specified in (d) and (e) of this subsection.

(j) Type 4 and Type 5 signs are not permitted visible to the scenic system.

(k) Pursuant to the 1991 Intermodal Surface Transportation Efficiency Act, a National Scenic Byway Demonstration Project is established on State Route 101, from the Astoria/Megler Bridge to Fowler Street in Raymond and from the junction with State Route 109 near Queets to the junction with State Route 5 near Olympia. No new Type 4 or Type 5 signs may be permitted within the limits of this project. Type 4 or Type 5 signs installed prior to July 25, 1993, may remain as nonconforming signs.

(6) Type 6 - Landmark signs.

(a) Type 6 signs shall have been lawfully in existence on October 22, 1965, and have historic or artistic significance, including signs on farm structures or natural surfaces.

(b) Historic or artistic significance shall be determined by the department and approved by the Federal Highway Administration.

(c) Within the limits of the National Scenic Byway Demonstration Project identified in (5)(h) of this subsection, Type 6 signs may remain as nonconforming signs.

(7) Type 7 - Public service signs located on school bus stop shelters. Type 7 signs may display safety slogans or messages, and identify the donor, sponsor, or contributor of a school bus stop shelter. No other message(s) may be displayed.

(a) Safety slogans or messages must occupy at least sixty percent of the sign area, and appear more predominant than the name of the donor, sponsor, or contributor.

(b) Type 7 signs may be located on school bus stop shelters only as authorized or approved by state law or regulation, or city or county ordinance or resolution, and may be installed visible to primary and scenic system highways.

(c) Type 7 signs may not exceed thirty-two square feet. A sign shall not protrude above the roofline or beyond the sides of the school bus stop shelter.

(d) Not more than one sign on each shelter may face in any one direction.

(e) The act does not regulate Type 7 signs with regard to zoning requirements or spacing between Type 7 signs and other types of signs.

(8) Type 8 - Temporary agricultural directional signs. Type 8 signs provide directional information to places of business having seasonal agricultural products for sale.

(a) Type 8 signs may display the business name, product(s) for sale, travel direction, and travel distance to the nearest mile from the state highway to the business.

(b) Type 8 signs may not exceed thirty-two square feet.

(c) There shall be at least three hundred feet spacing between Type 8 signs.

(d) Not more than two signs advertising a place of temporary agricultural business may be installed visible to traffic proceeding in one direction of travel on any one state route.

(e) Premises on which the seasonal agricultural products are sold must be within fifteen air miles of the state highway.

(f) Type 8 signs may be posted only during the period of time the seasonal agricultural product(s) is being sold.

(g) Any necessary supplemental follow-through signs along city streets or county roads must be installed before the Type 8 signs may be installed visible to the state highway.

(h) The signs may be installed visible to primary system highways outside incorporated cities or towns, and scenic system highways.

(i) Type 8 signs may not be installed visible to interstate highways, including interstate highways that are also part of the scenic system, or visible to primary system highways within incorporated cities or towns.

(j) The act does not regulate Type 8 signs with regard to zoning requirements or spacing between Type 8 signs and other types of signs.

AMENDATORY SECTION (Amending WSR 06-03-005, filed 1/4/06, effective 2/4/06)

WAC 468-66-210 Permit issuance and maintenance. (1) No signs except Type 1, Type 2, or Type 3 signs, shall be erected or maintained adjacent and visible to interstate system, primary system, or scenic system highways without a permit issued by the department. A permit to erect and maintain a sign that complies with the requirements of this chapter and is adjacent and visible to an interstate system, primary system, or scenic system highway will be issued by the department in accordance with this section. ((~~Subsections (2) through (8) of this section pertain to permits for Types 4, 5, 6, and 7 signs; subsection (9) of this section pertains to permits for Type 8 signs; subsection (10) of this section pertains to~~

~~permits for Types 4, 5, and 8 signs; and subsections (11) and (12) of this section pertain to permits for Types 4, 5, 6, 7, and 8 signs.~~))

(2) Permit applications for Types 4, 5, 6, and 7 signs will be accepted only at the department's headquarters located in Olympia, Washington. Applications transmitted by mail shall be considered received as of the date delivered to the department, rather than the postmarked date of mailing.

(3) Application forms for Type 4, 5, 6, and 7 signs, titled Application - Outdoor Advertising Sign Permit, shall be certified by the sign owner under penalty of perjury under the laws of the state of Washington and contain the information following:

(a) The name and address of the sign owner, with a signed statement that says "I, the undersigned applicant, declare under penalty of perjury under the laws of the state of Washington that the information provided herein, concerning the location of sign, sign description, and property owner/lessee, is accurate and true. I also acknowledge that any discrepancy in such information discovered hereafter is cause for the department of transportation to revoke this sign permit; and further declare that, after permit revocation, I shall remove without compensation any sign erected under such permit." The signature block shall also contain space for the sign owner to list the location, city, county, and state, where the sign owner signs the application.

(b) The statement and signature of the owner of the property on which the sign is to be erected and maintained, which states that the property owner consents to the sign installation and maintenance. A complete and valid lease between the sign owner and the property owner may be accepted in lieu of the property owner's statement and signature.

(c) A statement or site map that describes or shows both the precise location of the proposed sign site and a readily identifiable stake or other marker placed in the ground at the site.

(d) A description of the proposed sign's size, shape, and directional orientation to an identified state route.

(e) A description of the advertising copy or message to be placed on the sign, if the sign is intended to be visible to the interstate system.

(f) Other information that the department may require.

(4) Applications for Type 4, 5, 6, and 7 signs shall be accompanied by a nonrefundable fee of ((~~three hundred~~)) one hundred fifty dollars for each sign structure((~~, except Type 7 signs for which the fee is three hundred dollars for each sign face~~)).

(5) Type 4, 5, 6, and 7 sign permits shall be for the remainder of the calendar year in which they are issued; accompanying fees shall not be prorated for fractions of the year. Permits are renewed annually through the certification process following:

(a) Prior to January 1 of each year the department shall require, through the use of a permit renewal certification form, permit renewal certification from each permit holder.

(i) To renew a permit, the permit holder or the permit holder's representative shall recertify by signature under penalty of perjury under the laws of the state of Washington that all information on the permit is accurate and that the permit holder desires to retain the permit in good standing for the upcoming calendar year.

(ii) Type 4 and 5 rental income signs shall be charged an annual renewal fee of one hundred fifty dollars per permit.

(iii) The completed permit renewal certification shall be returned to the department not later than December 31.

(b) If the department does not receive the required permit renewal certification and any required permit renewal fees by December 31, the permit will automatically terminate, the sign will become an illegal sign, and the department will initiate proceedings as authorized by RCW 47.42.080 to remove the illegal sign. The department shall cause the permit renewal certification form to contain this information.

(6) Changes in size, shape, or position of a permitted sign shall be reported to the department in Olympia at least ten days before a change is to be made. In the case of Type 4 and Type 5 signs permitted along the interstate system, changes in copy shall be reported to the department in Olympia at least ten days before a change is to be made to assure compliance with WAC 468-66-050 (5)(d)(vi).

(7) The department shall be notified when permits in good standing are assigned to another sign owner.

(8) If a permitted sign is intended for relocation, the sign owner must submit a new permit application.

(9)(a) Pursuant to RCW 47.42.130, for every permit issued the department shall also issue ((~~an aluminum~~)) a tag that has the department-assigned permit number stamped on its face. ((~~The maximum size of the tag is sixteen square inches.~~))

(b) The permittee shall fasten the ((~~aluminum~~)) tag to the sign so it is plainly visible to the highway.

(c) The department will replace a lost or otherwise missing ((~~aluminum~~)) tag after the sign owner pays a replacement fee of thirty dollars.

(10) For Type 8 signs, permit application forms, titled Permit Application - Temporary Agricultural Directional Sign, accompanied by a fee of fifty dollars for each sign face must be submitted to the ((~~appropriate region office of the department~~)) department's headquarters located in Olympia, Washington. Submittals must include the same information required by subsection (3)(a) through (f) of this section for Types 4, 5, 6, and 7 signs, and:

(a) An exact description of the location of the temporary agricultural business activity;

(b) A description of the proposed sign copy;

(c) Identification of the products sold;

(d) Expected weeks/months of sales; and

(e) The Uniform Business Identifier number assigned by the Washington state department of licensing.

After the ((~~department's region office~~)) department approves the application, the permit becomes valid. The sign may be erected at the beginning of the sale season and shall be removed at the end of the sale season. The permit shall be valid for five consecutive years from the date of application approval. A new permit application must be submitted and approved by the ((~~department's region office~~)) department prior to erecting a sign at a location where the five-year permit has expired.

(11) Where the number of applications for available Types 4, 5, 6, and 7 sign sites exceeds the number of avail-

able sites, permits shall be awarded on the basis of first received by date and time at the department's headquarters office in Olympia. ((~~Where the number of applications for available Type 8 sign sites exceeds the number of available sites, permits shall be awarded on the basis of first received by date and time at the department's regional office having jurisdiction over the sites.~~)) In the case of a tie between applicants, and upon notification thereof by the department, the department shall determine by lot which applicant shall receive the permit.

(12) A permit issued under this chapter does not relieve the permittee from the duty to comply with all local ordinances or resolutions pertaining to signs and sign structures.

(13) In the event the department has initiated permit revocation proceedings under WAC 468-66-220, the department shall not accept new permit applications for the sign location at issue until such proceedings are concluded and any required signs removed.

WSR 14-22-072
PERMANENT RULES
DEPARTMENT OF TRANSPORTATION

[Filed November 3, 2014, 9:02 a.m., effective December 4, 2014]

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

Purpose: The purpose of the proposed amendments to WAC 468-300-700 Preferential loading, is to update the rules to reflect modifications to Washington state ferries' (WSF) vehicle reservations program. Proposed amendments to such rules are in anticipation of implementing Phase II of WSFs vehicle reservation program in the San Juan Islands in late 2014.

Citation of Existing Rules Affected by this Order: Amending WAC 468-300-700.

Statutory Authority for Adoption: RCW 47.56.030 and 47.60.140.

Adopted under notice filed as WSR 14-19-035 on September 9, 2014.

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: October 23, 2014.

Kathryn W. Taylor
Assistant Secretary

AMENDATORY SECTION (Amending WSR 12-10-034, filed 4/25/12, effective 5/26/12)

WAC 468-300-700 Preferential loading. In order to protect public health, safety and commerce; to encourage more efficient use of the ferry system; and to reduce dependency on single occupant private automobiles:

(1) Preferential loading privileges on vessels operated by Washington state ferries (WSF), exempting vehicles from the standard first-come first-served rule, shall be granted in the order set forth below:

(a) An emergency medical vehicle, medical unit, aid unit, or ambulance dispatched to and returning from an emergency or nonemergency call while in service. Up to one additional vehicle may accompany a qualifying emergency medical vehicle or authorized med-evac when going to, but not when returning from, an emergency.

(b) A public police or fire vehicle only when responding to an emergency call, but not when returning from either an emergency or a nonemergency call. However, these vehicles will receive priority loading when they are returning from either an emergency or nonemergency call to Vashon Island or the San Juan Islands.

(c) A public utility or public utility support vehicle only when responding to an emergency call, but not when returning from either an emergency or a nonemergency call.

(d) Preferential loading may be granted for vehicles carrying passengers needing to accompany a family member who is being transported by an emergency vehicle, which requires the customer's timely access to the vessel's destination.

(e) Specific to routes without reservations where a vehicle occupant states that an extended wait would cause detrimental health risks to a vehicle occupant, that vehicle will be allowed preferential loading whenever the afflicted occupant has provided a medical form certified by a physician that such preferential loading is required.

However, when that vehicle occupant has not submitted the proper medical form, preferential loading will be permissible based upon appropriate terminal staff determination.

(f) Specific to routes with reservations, where a vehicle occupant provides a medical form certified by a physician that the occupant is returning from a medical appointment or has been discharged from the hospital and that an extended wait would cause detrimental health risks, that vehicle will be allowed preferential ((~~treatment~~)) loading.

(g) Specific to routes with reservations (defined in subsections (4) through (10) of this section), a vehicle with a reservation, presenting proof of that reservation.

(h) Specific to routes with reservations where reservations are available to all vehicles from a terminal, vehicles identified in subsection (4)(a)(i) through (v) of this section receive preferential loading only if they have a reservation.

(i) A visibly marked school vehicle owned, operated, or sponsored by a school** when operating on regular schedules preapproved by the WSF or when advance notice is provided to each affected WSF terminal (**as defined in RCW 28A.150.010 (K-12), RCW 28A.150.020 (public schools), RCW 28A.195.010 (K-12 private schools), and RCW 28B.195.070 (secondary schools)).

(j) A visibly marked, preapproved or regularly scheduled publicly or privately owned public transportation vehicle** operating under a Washington state utilities and transportation commission certificate for public convenience and necessity (**as defined in RCW 81.68.010 (regular route/fixed termini), RCW 81.70.010 (charter and excursion)).

(k) A visibly marked nonprofit or publicly supported transportation vehicle** having provided each affected WSF terminal with advance notice and presenting a WSF permit making it readily identifiable as a public transportation vehicle (**as defined in chapter 81.66 RCW (private, nonprofit special needs)).

(l) A visibly marked and randomly scheduled private for profit transportation vehicle** operating under a Washington state utilities and transportation commission certificate for public convenience and necessity traveling on routes where WSF is the only major access for land-based traffic only when that private for profit transportation vehicle has provided each affected WSF terminal with a preapproved schedule and/or advance notice of its proposed sailing(s), (**as defined in chapter 81.68 RCW (regular route/fixed termini), chapter 81.70 RCW (charter and excursion), chapter 81.66 RCW (private nonprofit special needs), chapter 46.72 RCW (private, for hire)).

(m) A ride-sharing vehicle for persons with special transportation needs** transporting a minimum of three elderly and/or disabled riders or two elderly and/or disabled riders and an attendant presenting WSF ride-share registration program permit only when the operator of that vehicle has provided each affected WSF terminal with advance notice of its proposed sailing(s) (**as defined in RCW 46.74.010 (ride sharing for persons with special transportation needs)).

(n) A visibly marked, public ride-share vehicle** owned by a transit agency and leased out to members of the public through the transit agency's registration program only when the operator of that vehicle has provided each affected WSF terminal with advance notice of its proposed sailing(s) (**as defined in RCW 46.74.010 (commuter ride sharing)).

(o) A privately owned commuter ride-share vehicle** that visibly presents WSF approved identification markings readily identifiable by the public. There must be a minimum of three occupants in any such vehicle to receive preferential loading. Any such ride-share vehicle must be registered and in good standing in the WSF ride-share registration program (**as defined by RCW 46.74.010 (commuter ride sharing)).

(p) Specific to the Anacortes-San Juan Islands routes, a vehicle carrying livestock and traveling on routes where Washington state ferries is the only major access for land-based traffic, where such livestock (i) is raised for commercial purposes and is recognized by the department of agriculture, county agriculture soil and conservation service, as raised on a farm; or (ii) is traveling to participate in a 4H event sanctioned by a county extension agent.

(q) Specific to the Anacortes-San Juan Islands routes and until reservations are available for general purpose traffic to and from the San Juan Islands, home health care workers engaged in travel to and from patient visits.

(r) Specific to the Seattle-Bainbridge and Edmonds-Kingston ferry routes, where a vehicle occupant claims that an extended wait would cause detrimental health risks to their livestock en route to veterinarian services not available in the local community, that vehicle will be allowed preferential loading whenever the vehicle occupant has provided a medical form certified by a veterinarian that such preferential loading is required.

(s) Specific to the Fauntleroy-Vashon, Seattle-Bainbridge, Mukilteo-Clinton, and Anacortes-San Juan ferry routes, any mail delivery vehicle with proper documentation from the U.S. Postal Service showing that such vehicle is in the actual process of delivering mail.

(t) Vehicles ((~~20~~)) 22 feet and over in length engaged in the conduct of commerce and/or transportation of passengers where and when WSF management has determined that the sale of vehicle space may promote higher utilization of available route capacity and an increase in revenues.

(u) An oversized or overweight vehicle (((~~20 ft.~~)) 22 feet and over in length, and/or over 8 1/2 ((~~ft.~~)) feet in width, and 80,000 lbs. or greater in weight) requiring transport at special times due to tidal conditions, vessel assignments, or availability of space.

(v) A scheduled bicycle group as determined by WSF only when a representative of that group has provided WSF with advance notice of the proposed travel schedule.

(2) Preferential loading privileges shall be subject to the following conditions:

(a) Privileges shall be granted only where physical facilities are deemed by WSF management to be adequate to allow granting the privilege and achieving an efficient operation.

(b) Subject to specified exceptions, documentation outlining qualifications for preferential loading and details of travel will be required in advance from all agencies, companies, or individuals requesting such privileges.

(c) Privileges may be limited to specified time periods as determined by WSF management.

(d) Privileges may require a minimum frequency of travel, as determined by WSF management.

(e) Privileges may be limited to a specific number of vehicle deck spaces and passenger capacity for any one sailing.

(f) Privileges may require arriving at the ferry terminal at a specified time prior to the scheduled sailing.

(3) To obtain more information about the documentation required and conditions imposed under subsection (2) of this section, call WSF's general information number, 206-464-6400, or a terminal on a route for which the preferential boarding right is requested.

THE REMAINING SUBSECTIONS PROVIDE ADDITIONAL DETAILS ON VEHICLE RESERVATIONS, REFERENCED UNDER SUBSECTION (1) OF THIS SECTION.

(4) Vehicle reservation system intent.

(a) The intent of the vehicle reservation system is:

(i) To reduce queuing and congestion outside of ferry terminals;

(ii) To maximize the use of existing assets;

(iii) To provide enhanced customer service and travel predictability, spontaneity, and flexibility;

(iv) To manage demand by shifting discretionary trips from peak to off-peak sailings;

(v) To recognize the uniqueness of each different route;

(vi) To allow WSF flexibility to manage the system to best balance the needs of customers, communities, and WSF.

(b) Ferry customers are not required to make a reservation in order to travel on a Washington state ferry.

(5) Definitions.

(a) "Business account program" is a reservations program for customers who have an active business account with WSF.

(b) "Business account program member" is an individual or business who has an active business account with WSF.

(c) "Business reservation" is a vehicle reservation made by a business account program member.

(d) "General customer" is an individual or business that has purchased or is planning to purchase a reservation on a Washington state ferry and does not participate in WSF's business, ((~~premier,~~)) carpool, or vanpool reservations account programs.

(e) "General reservation" is a vehicle reservation made by a general customer.

(f) "Operational day" begins at 3:00 a.m. and ends at 2:59 a.m.

(g) ((~~"Premier account program" is a reservations program for customers who travel frequently on the route for which they are seeking a reservation.~~

~~(h) "Premier account program member" is an individual who is currently enrolled in the premier account program.~~

~~(i) "Premier reservation" is a vehicle reservation made by a premier account program member.~~

~~(j)~~)) "Reservation holder" is a ferry customer who has acquired a vehicle reservation.

(((~~k~~))) (h) "Reserved space" is space within the vehicle deck space available for vehicle reservations that has been secured by a customer by making a business, ((~~premier,~~)) or general reservation on that sailing.

(((~~l~~))) (i) "Service interruption" is an event that causes WSF to not be able to run according to the published schedule.

(((~~m~~))) (j) "Terms of use" refers to the agreement customers must read and agree to before their transaction to make a reservation is complete.

(((~~n~~))) (k) "Unreservable space" is all space on a vessel that has not been reserved, or is not available to be reserved.

(((~~o~~))) (l) "Vehicle deck space available for vehicle reservations" is the amount of vehicle deck space on a given vessel that WSF will allow to be reserved. All other space on the vessel is unreservable space.

(6) Modification of these regulations. WSF management reserves the right to add, delete, or modify portions of these regulations including the schedule of reservations charges and the terms of use in accordance with its regulations and applicable laws.

(7) Properties of a vehicle reservation.

(a) A vehicle reservation gives a ferry customer the right to travel at a specific date and time on a specific route with a vehicle of a specific size, as declared at the time of booking, subject to the priority loading conditions set forth in subsections (1) and (2) of this section. This right may be withdrawn at WSF's discretion due to service interruptions; or customer behavior that is inappropriate or dangerous.

(b) A vehicle reservation is not a ticket. Customers with reservations must purchase a ticket at the tollbooth of their departure terminal or online in order to travel on their reserved sailing.

(c) A vehicle reservation is not resalable to third parties.

(8) Vehicle reservation deposits and no-show fees.

(a) Vehicle reservation deposits may be collected or no-show fee may be assessed at levels set by WSF management according to the rules set in WAC 468-300-020 (vehicle under 22((~~'~~)) feet, motorcycle, and stowage ferry tolls), and WAC 468-300-040 (oversize vehicle ferry tolls).

(b) Reservation deposits paid in advance will be applied toward the actual ticket cost for the reserved sailing at the departure terminal tollbooth. However, if a customer who has paid a reservation deposit is denied the ability to purchase a ticket for that reserved sailing due to priority loading conditions identified in subsections (1) and (2) of this section, then the customer may either seek a refund of the deposit, apply the deposit towards a ticket on the next scheduled sailing on the same route, or apply the deposit in accordance with (c) of this subsection. These are the sole and exclusive remedies available to a customer in these situations.

(c) Reservation deposits paid in advance may be applied toward the actual ticket cost of other, nonreserved sailings on the same route, as defined in the terms of use.

(9) Vessel space available for reservations.

(a) WSF has the authority to set the amount of tall and standard height vehicle deck space available for vehicle reservations on each sailing in order to achieve the intentions of the vehicle reservation system.

(b) For any given sailing, WSF may vary the amount of tall and standard height vehicle deck space available for vehicle reservations, depending on factors including, but not limited to:

(i) Time of day;
(ii) Day of week;
(iii) Season of year;
(iv) Direction of travel;
(v) Route;
(vi) Vessel size;
(vii) Level of demand; or
(viii) Level of congestion.

(c) For any given sailing, WSF may vary the distribution of tall and standard height vehicle deck space dedicated for business, ((~~premier,~~)) carpool or vanpool reservations; and dedicated to general reservations, depending on factors including, but not limited to:

(i) Time of day;
(ii) Day of week;
(iii) Season of year;
(iv) Direction of travel;
(v) Route;
(vi) Vessel size;
(vii) Level of demand; or
(viii) Level of congestion.

(d) WSF may change the distribution of unreservable space up until sailing departure.

(e) WSF may release vehicle deck space available for vehicle reservations up to one year in advance of a sailing. WSF may choose to phase the release of space on a particular

sailing over time, as WSF management deems necessary to achieve the intent of the vehicle reservation system listed.

(f) Space may be made available for vehicle reservations for only certain reservation types (business account, ((~~premier account,~~)) carpool, vanpool, or general reservations).

(g) Space may be made available for a tentative sailing schedule if the final sailing schedule is not available.

(i) If departure times on the final sailing schedule are different than those on the tentative schedule, WSF will notify all affected reservation holders.

(ii) If the reserved sailing is canceled, WSF will notify the customer and refund any deposit paid. If no deposit was paid, the customer will not be charged a no-show fee.

(iii) All sailing schedules will be finalized at least six weeks before the schedule would take effect, and customers with affected reservations will be notified as soon as the schedule is final.

(h) Space allocations for specific reservation types (business account, ((~~premier account,~~)) carpool, vanpool, or general reservations) may be changed by WSF at any point in time up until sailing departure.

(10) Reservation system during service interruptions.

(a) During a ferry service interruption, WSF management may temporarily adjust business and operational rules to address the issue until normal service is restored. This may include, but is not limited to:

(i) Canceling existing reservations;

(ii) Not allowing new reservations; or

(iii) Changing existing reservations to other sailings.

(b) Upon canceling or moving a reservation, WSF will notify the affected customers via e-mail or phone.

(c) Customers will not be charged for any changes or cancellations resulting from service interruptions.

(d) If a customer's reserved sailing has been canceled or significantly delayed and the customer can no longer travel that operational day, any deposit paid will be refunded, which shall be the sole and exclusive remedy available to the customer in such situations.

(e) During service interruptions, WSF may turn customers without reservations away from the terminal.

(f) During service interruptions, WSF may not be able to guarantee travel for reservation holders.

WSR 14-22-073
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 3, 2014, 9:08 a.m., effective December 4, 2014]

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

Purpose: Several sections of chapter 392-700 WAC require updating to address the weekly minimum contact time requirement and to provide further clarification for dropout reengagement programs.

After the passage of the 2014 supplemental budget (ESSB 6002), the 2014 legislature added a weekly minimum contact time requirement for dropout reengagement programs. This WAC revision provides rules for this requirement. Further clarification is needed to address student eligibility, program requirements, and reporting process for this program.

Citation of Existing Rules Affected by this Order: Amending WAC 392-700-015, 392-700-035, 392-700-042, 392-700-137, 392-700-155, 392-700-160, 392-700-165, and 392-700-175.

Statutory Authority for Adoption: RCW 28A.175.100.

Adopted under notice filed as WSR 14-16-064 on July 30, 2014.

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 8, Repealed 0.

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

Date Adopted: September 10, 2014.

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

WAC 392-700-015 Definitions. The following definitions in this section apply throughout this chapter:

(1) **"Agency"** means an educational service district, nonprofit community-based organization, or public entity other than a college.

(2) **"Annual average full-time equivalent (AAFTE)"** means the total student monthly full-time equivalent (FTE) reported for each enrolled student in a school year divided by ten ((~~with the maximum being 1.0 per year~~)).

(3) **"Attendance period requirement"** is defined as, at minimum, two hours of face-to-face interaction with a designated program staff for the purpose of instruction, academic counseling, career counseling, or case management contact aggregated over the prior month.

(4) **"CEDARS"** refers to comprehensive educational data and research system, the statewide longitudinal data system of educational data for K-12 student information.

((~~(4)~~)) (5) **"College"** means ((~~community~~)) college or technical college pursuant to chapters 28B.20 through 28B.50 RCW.

((~~(5)~~)) (6) **"Consortium"** means a regional group of organizations that will consist of districts, and agencies and/or colleges who agree to work together to create and operate a program that will serve students from multiple districts and reduce the administrative burden on districts.

(((~~(6)~~))) (7) **"Consortium agreement"** means((~~:~~

~~(a)~~))) the agreement that is signed by the authorized consortium lead and all district((~~s~~)) superintendents or their authorized officials which are part of the consortium and agree to refer eligible students to the consortium's program. This agreement will clearly outline the responsibilities of the consortium lead and those of the referring districts((~~; or~~

~~(b) The agreement that is signed by a district or college that is directly operating a program and all districts which agree to refer eligible students to the program. This agreement will clearly outline the responsibilities of the college or district directly operating the program and those of the referring districts~~)).

(((~~(7)~~))) (8) **"Consortium lead"** means the lead organization in a consortium that will assume the responsibilities outlined in WAC 392-700-042(3).

(((~~(8) **"Contract"** means the document signed by the administrator of a district and the administrator of an agency when the program is operated by an agency on behalf of the district and will receive compensation in accordance with WAC 392-700-165. The contract will specifically outline all the required elements of a program that the agency and the district agree to implement.~~))

(9) **"Count day"** is the instructional day that is used to claim a program's enrollment for state funding pursuant to WAC 392-121-033. For September, the count day is the fourth instructional day. For the remaining months, the count day is the first instructional day.

(10) **"Credential"** is identified as one of the following:

(a) High school equivalency certificate;

(b) High school diploma;

(c) College certificate received after completion of a college program requiring at least forty hours of instruction;

(d) College degree; or

(e) Industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction.

(((~~(10)~~))) (11) **"Enrolled student"** is an eligible student whose enrollment and attendance meets the criteria adopted by the office of superintendent of public instruction (OSPI) specifically for the program and outlined in WAC 392-700-035 and 392-700-160, and is reported as an FTE for state funding.

(((~~(11)~~))) (12) **"ERDC"** refers to education research and data center, which conducts analyses of early learning, K-12, and higher education programs and education issues across the P-20 system that collaborates with legislative evaluation and accountability program and other statutory partner agencies.

(((~~(12)~~))) (13) **"Full-time equivalent (FTE)"** is the measurement of enrollment that an enrolled student can be claimed on a monthly basis with the maximum being 1.0 FTE per month for each student enrolled in a program.

(((~~(13)~~))) (14) **"Indicator of academic progress"** means standard academic benchmarks that are measures of academic performance which are attained by reengagement students. These indicators will be tracked and reported by the program and district for each student and for programs as a whole using definitions and procedures outlined by OSPI. Indicators of academic progress will be reported when a student does one of the following:

(a) Passes one or more high school equivalency certificate measures (each measure may only be claimed once), or other state assessment;

(b) Earns high school credit or college credit.

(c) Makes a significant gain in math and/or reading skills level based on the assessment tool's determination of significant gain (may be claimed multiple times in a year);

(d) Completes approved college readiness course work with documentation of competency attainment;

(e) Completes job search and job retention course work with documentation of competency attainment;

(f) Successfully completes a paid or unpaid work based learning experience of at least forty-five hours. This experience must meet the requirements of WAC 392-410-315(2);

(g) Enrolls in a college level class other than adult basic education (ABE), high school equivalency certificate, or English as a second language (ESL) class; or

(h) Transitions from an ESL class to ABE or high school equivalency certificate class;

(i) Transitions from ABE or high school equivalency certificate class to a below one hundred level math or English class;

(j) Transitions from a below one hundred level math or English class to the next below one hundred level math or English class or from a below one hundred level math or English class to college level math or English class; and

(k) Transitions from ABE or high school equivalency certificate class to a college level class (other than English or math).

(15) **"Instructional staff"** means the following:

(a) For programs operated by ((~~or in partnership with~~)) a district, the instructional staff is a certificated instructional staff pursuant to WAC 392-121-205;

(b) For programs operated by ((~~or in partnership with~~)) a college, the instructional staff is one who is employed or appointed by the college whose required credentials are established by the college; and

(c) For programs operated by ((~~or in partnership with~~)) an agency, the instructional staff is one who is employed or appointed by the agency whose required credentials are established by the agency.

(((~~(14) **"Interlocal agreement"** means the document signed by the administrator of a district and the administrator of a college when the program is operated by a college on behalf of the district and will receive compensation in accordance with WAC 392-700-165. The interlocal agreement will specifically outline all the required elements of a program that the college and the district agree to implement.~~

~~(15)~~))) (16) **"Letter of intent"** means the document signed by the ((~~administrator of a district or college~~)) district, college or lead agency authorized official that specifically outlines to OSPI the required elements of a program that the district ((~~or~~)), college, or agency agree to implement.

(((~~(16) **"Measure of academic progress"** means standard academic benchmarks that are measures of academic performance which are attained by reengagement students in addition to a credential. These measures will be tracked and reported by the program and district for each student and for~~

~~programs as a whole using definitions and procedures outlined by OSPI. Measures of academic progress will be reported when a student does one of the following:~~

~~(a) Passes one or more high school equivalency certificate measures (each measure may only be claimed once);~~

~~(b) Makes a significant gain in math and/or reading skills level as measured by a post-test using a commonly accepted standardized assessment (may be claimed multiple times in a year);~~

~~(c) Completes approved college readiness course work with documentation of competency attainment;~~

~~(d) Completes job search and job retention course work with documentation of competency attainment;~~

~~(e) Successfully completes a paid or unpaid work based learning experience of at least forty-five hours. This experience must meet the requirements of WAC 392-410-315(2);~~

~~(f) Enrolls in postsecondary classes other than adult basic education (ABE), high school equivalency certificate, or English as a second language (ESL); or~~

~~(g) Transitions from ESL to ABE high school equivalency certificate classes;~~

~~(h) Transitions from ABE high school equivalency certificate classes to postsecondary developmental math and English classes (math or English classes below the 101 level);~~

~~(i) Transitions from postsecondary developmental math or English classes to the next level of postsecondary developmental math or English or from postsecondary developmental math or English classes to college level math and English classes (classes at 101 or above); and~~

~~(j) Transitions from ABE high school equivalency certificate classes to college level classes at 101 or above (other than English or math).~~

~~(17) **"Minimum attendance standard"** means the minimum attendance that must be made by a student enrolled in a program in order to be eligible to be claimed on any monthly count day.~~

~~(18)~~)) (17) **"Noninstructional staff"** is any person employed in a position that is not an instructional staff as defined under subsection (13) of this section.

(((~~(19)~~))) (18) **"OSPI"** means the office of superintendent of public instruction.

(((~~(20)~~))) (19) **"Program"** means a statewide dropout reengagement program approved by OSPI, ((~~established through E2SHB 1418, and~~)) pursuant to RCW 28A.175.105.

(20) **"School week"** means any seven-day calendar period starting with Sunday and continuing through Saturday.

(21) **"School year"** is the twelve-month period that begins ((~~in~~)) September 1st and ends ((~~in~~)) August 31st during which instruction is provided and FTE is reported.

(22) **"Scope of work"** means the document signed by district superintendent or their authorized official and the authorized official of a program to be included in a contracted services agreement when the program is operated by a provider on behalf of the district and will receive compensation in accordance with WAC 392-700-165. The scope of work will specifically outline all the required elements of a program that the provider and the district agree to implement.

(23) **"Weekly status check"** means individual communication from a designated program staff to a student. Weekly status check:

(a) Can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication;

(b) Must be for the purposes of instruction, academic counseling, career counseling, or case management;

(c) Must be documented; and

(d) Must occur at least once during a school week.

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

WAC 392-700-035 Student eligibility. (1) Students are eligible to enroll in a program when they meet the following criteria:

(a) Under twenty-one years of age, but at least sixteen years of age, as of September 1st;

(b) Have not yet met the high school graduation requirements of either the district, or the college under RCW 28B.50.535; and

(c) Are significantly behind in credit as outlined below:

(i) Students who, based on their expected graduation date, participated or could have participated in up to two full years of high school must have an earned to attempted credit ratio that is sixty-five percent or less; or

(ii) Students who, based on their expected graduation date, participated or could have participated in more than two full years of high school must have an earned to attempted ratio that is seventy-five percent or less.

(2) If not credit deficient as outlined in subsection (1)(c) of this section, have been:

(a) Recommended for enrollment by case managers from the department of social and health services, the juvenile justice system, district approved school personnel, or staff from community agencies which provide educational advocacy services;

(b) Are not currently enrolled in any high school or other educational program, excluding an approved skill center program or running start program, receiving state basic education funding; and

(c) Released from their district of residence and accepted by the serving district, if the program is operated by a different district.

(3) Once determined eligible for enrolling in the program, a student will retain eligibility, regardless of breaks in enrollment, until the student does one of the following:

(a) Earns a high school diploma;

(b) Earns an associate degree;

(c) Becomes ineligible because of age which occurs when a student is twenty-one years of age as of September 1st.

(4) A student's eligibility does not guarantee enrollment or continued enrollment in specific programs if the program determines that the student does not meet the program's enrollment criteria or if, after enrollment, a student's academic performance or conduct does not meet established program guidelines.

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

WAC 392-700-042 Program operating agreements and OSPI approval. (1) Districts, agencies, and colleges are encouraged to work together to design programs and collaborations that will best serve students. Many models of operation are authorized as part of the statewide dropout reengagement system.

(a) In each of these models, the necessary agreement(s) will address whether the program will only serve students who are residents of the district or whether the program will also serve students who are not residents of the district but who petition for release from the resident district, pursuant to RCW 28A.225.220 through 28A.225.230, in order to attend the program. If the resident district does not participate in an OSPI approved program, another district, agency, or college may petition a district other than the resident district to enroll the eligible students under RCW 28A.225.220 through 28A.225.230 with the petitioning entity to provide a program for the eligible students.

(b) Regardless of the model of operation, the state funding is allocated to the district or direct funded technical college that is reporting the student's enrollment for the program.

(2) A district may enter into one of the following models of operations through the OSPI approval process:

((~~(i) An interlocal agreement with a college;~~

~~(ii) A contract with an agency; or~~

~~(iii) Directly operate a program through a letter of intent.~~

~~In each of these models, the necessary agreement will address whether the program will only serve students who are residents of the district or whether the program will also serve students who are not residents of the district but who petition for release from the resident district, under RCW 28A.225.220 through 28A.225.230, in order to attend the program.~~

~~(b) A district may work with other districts, with regional partner agencies, with colleges in or near the district to form a consortium.~~)) (a) Directly operate a program where the services are provided by the district resources; or

(b) Enter into a partnership with an agency or college that will provide the services through a defined scope of work or contracted services agreement; or

(c) Become part of a consortium with other districts, colleges, and/or agencies by executing a consortium agreement that is signed by all member districts.

(3) The purpose of the consortium will be to create and operate a program that will serve students enrolled in multiple districts and reduce the administrative burden on districts. If such a regional reengagement consortium is implemented, a consortium lead agency will be identified and assume the following responsibilities:

((~~(i)~~)) (a) Take the lead in organizing and managing the regional consortium;

((~~(ii)~~)) (b) Provide information and technical assistance to districts interested in participating in the consortium and providing the opportunity for students from their district to enroll;

((~~(iii) Develop a consortium agreement that is signed by all member districts;~~

~~(iv) Develop interlocal agreements and contracts~~)) (c) Advance scopes of work with agencies and colleges to operate the programs;

((~~(v)~~)) (d) Provide oversight and technical assistance to the program to ((~~ensure compliance~~)) align with all requirements of this chapter and the delivery of quality programming;

((~~(vi)~~)) (e) Assist the program with the preparation of required reports, enrollment data, and course records needed by each district to enroll students, award credit, and report FTE and performance to OSPI;

((~~(vii)~~)) (f) Facilitate data entry of required student data into each district's statewide student information system related to enrollment; and

((~~(viii)~~)) (g) Work with the districts to facilitate the provision of special education and accommodations under Section 504 of the Rehabilitation Act of 1973.

((~~(c)~~)) (4) A technical college receiving direct funding and authorized to enroll students under WAC 392-121-187 may directly operate a program and serve students referred from multiple districts. The technical college will assume the responsibilities of operating the program as described in this chapter and will meet all responsibilities outlined in WAC 392-121-187.

((~~(2)~~)) (5) All programs must be approved by OSPI as follows:

(a) If the program is run by a district, agency or college, the program must be approved.

(b) If the program is run by a consortium, both the program and participating districts must be approved.

((~~(3)~~)) (6) Dependent on the model of operations, OSPI will specify the necessary documentation required for approval.

((~~(4)~~)) (7) OSPI will provide ((~~a~~)) model ((~~interlocal agreement, a model contract, a model letter of intent, and a model consortium agreement~~)) documents that can be modified to include district/college/agency specific language and will indicate which elements of these standard documents must be submitted to OSPI for review and approval.

((~~(5)~~)) (8) Upon initial approval, OSPI will specify the duration of the approval((~~, assign a school code,~~)) and indicate the necessary criteria to obtain reapproval((~~. The school code will be used to uniquely identify this program and all students enrolled in the program in the district's/college's student data system and in CEDARS.~~

~~(6) If a district does not operate a program directly or enter into an interlocal agreement or contract with an agency or college, the agency or college may petition a district other than the resident district to enroll the eligible students under RCW 28A.225.220 through 28A.225.230 and enter into an interlocal agreement or contract with the petitioning entity to provide a program for the eligible students~~)).

((~~(7)~~)) (9) After receiving a notice of approval, each district must request from OSPI the assignment of a school code through the EDS system following current protocol. The school code will be used to uniquely identify this program and all students enrolled in the program in the district's/college's student data system and in CEDARS.

(10) This chapter does not affect the authority of districts, under RCW 28A.150.305 and 28A.320.035, to contract

for educational services other than reengagement programs as defined by WAC 392-700-015(((~~(20)~~))) (19).

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

WAC 392-700-137 Award of credit. (1) For programs operated by districts and agencies, high school credit will be awarded for all course work in which students are enrolled, including high school equivalency certificate preparation, in accordance with the following:

(a) Determination of credit will take place on a quarterly basis with quarters defined as follows:

(i) September through November;

(ii) December through February;

(iii) March through May; and

(iv) June through August.

(b) Credit will be awarded at the end of each quarter, in accordance with the following guidelines, if the student has been enrolled for at least one month of the quarter:

(i) A maximum of 0.5 high school elective credits will be awarded when a student passes one or more standardized high school equivalency certificate pretests during the quarter and the instructional staff has assessed student learning and determined that a course of study has been successfully completed.

(ii) A 0.5 high school elective credit will be awarded when a student makes a statistically significant standardized assessment post-test gain in a specific subject area during the quarter and the following conditions are met:

(A) The student's standardized skills assessment score at the beginning of the quarter demonstrated high school level skills; and

(B) The instructional staff has assessed student learning and determined that a course of study has been successfully completed. A maximum of 1.0 credit may be awarded for such subject gains in a quarter.

(iii) High school elective credit ranging from at least 0.1 credits to no more than 0.25 credits will be awarded for completion of a work readiness or college readiness curriculum in which the student has demonstrated mastery of specific competencies. The district and the agency will determine the amount of credit to be awarded for each course of study based on the competencies to be attained.

(iv) For students taking part in district approved subject-specific credit recovery course work, the amount and type of credit to be awarded will be defined by the district.

(v) The district may elect to award credit for other course work provided by the agency with amount of credit to be awarded determined in advance, based on the agency's instructional staff's recommendation and on a district review of the curriculum and intended learning outcomes. Credit will only be awarded when:

(A) The student's standardized skills assessment score at the start of the quarter demonstrates high school level skills; and

(B) The instructional staff has assessed student learning and determined that the course of study has been successfully completed.

(2) For programs operated by colleges, high school credit will be awarded for course work in which students are enrolled, in accordance with the following:

(a) The district and the college will determine whether the high school diploma will be awarded by the district or by the college as part of the college's high school completion program.

(b) If the college is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of college course work at or above the one hundred level. The college will determine the type of credit;

(ii) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of ((~~college~~)) below one hundred level course work ((~~that is below the one hundred level~~)) at a college but has been determined by the college to be at the ninth grade level or higher. The college will determine the type of credit. College based high school equivalency certificate and adult basic education (ABE) classes will not be included in this category;

(iii) 0.5 elective credits will be awarded for successful completion of every five quarter or three semester hours of high school equivalency certificate course work; and

(iv) ABE courses or other college courses that have been determined to be below the ninth grade level that does not generate high school credit will be counted as part of the program's instructional programming for the purposes of calculating FTE.

(c) If the district is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of ((~~college~~)) below one hundred level course work ((~~at or above the one hundred level~~)) at a college. The district will determine the type of credit;

(ii) 0.5 or 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of ((~~college~~)) below one hundred level course work ((~~that is below the one hundred level~~)) at a college but has been determined by the district to be at the ninth grade level or higher. The district will determine the type and amount of credit for each class. College based high school equivalency certificate and ABE classes will not be included in this category;

(iii) 0.5 elective credits will be awarded for successful completion of every five quarter or three semester hours of high school equivalency certificate course work; and

(iv) ABE courses or other college courses that have been determined to be below the ninth grade level will not generate high school credit but the college credits associated with these courses will be included in the total credit count used to calculate and report student FTE.

(3) The district is responsible for reporting all high school credits earned by students in accordance with OSPI regulations. College transcripts and other student records requested by the district will be provided by the college or agency as needed to facilitate this process.

(4) The district will ensure that the process for awarding high school credits under this ((~~contract~~)) scope of work is implemented as part of the district's policy regarding award of credits per WAC 180-51-050 (5) and (6).

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

WAC 392-700-155 Annual reporting calendar. (1) For programs operated by district and agencies and for below one hundred level classes offered in a college operated program, the following requirements will be met in relation to the school calendar:

(a) ((~~The~~)) A school year begins ((~~in~~)) September 1st and ends ((~~in~~)) August 31st.

(b) The program will provide the reporting district a calendar of the school year prior to the beginning of the program's start date for that school year.

(c) The school year calendar must meet the following criteria:

(i) The specific planned days of instruction will be identified; and

(ii) There must be a minimum of ten instructional months.

(d) The number of hours of instruction as defined in WAC 392-700-065 must meet the following criteria:

(i) The calculation for standard instructional day may not exceed six hours per day even ((~~if~~)) when instruction is provided for more than six hours per day; and

(ii) The standard instructional day may not be less than two hours per day.

(e) The total planned hours of instruction for the school year:

(i) Is the sum of the instructional hours for all instructional months of the school year; and

(ii) Must be at a minimum of nine hundred planned hours of instruction for the school year.

(2) For programs operated by colleges((~~:~~

~~(a)~~)) and for college level classes, the school year calendar shall meet the following criteria:

((~~(i)~~)) (a) The specific planned days of instruction will be identified; and

((~~(ii)~~)) (b) There must be a minimum of ten instructional months.

((~~(b) The count day for each month is the first college instructional day of the month.~~))

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

WAC 392-700-160 Reporting of student enrollment. (1) For all programs, the following will apply when reporting student enrollment for each monthly count day:

(a) Met all eligibility criteria pursuant to WAC 392-700-035;

(b) Been accepted for enrollment by the reporting district or the direct funded technical college;

(c) Enrolled in an approved program pursuant to WAC 392-700-042;

(d) Met the ((~~minimum attendance standard by attending at least one instructional day on count day or during the month prior to count day~~)) attendance period requirement pursuant to WAC 392-700-015(3);

(e) Met the weekly status check requirement pursuant to WAC 392-700-015(23);

(f) Has not withdrawn or been dropped prior to the monthly count day;

((~~(f)~~)) (g) Is not enrolled in course work that has been reported by a college for postsecondary funding;

(h) Is not enrolled at a state institution on count day and reported by a state institution for funding.

(i) Is not enrolled in a high school program, including alternative learning experience or college in the high school, or another reengagement program.

(j) If concurrently enrolled in ((~~any other program for which basic education allocation funding is received, i.e., common high school, running start, alternative learning experience, or college in the high school~~)) a skills center program or running start program, does not exceed the FTE limitation pursuant to WAC 392-121-136;

(((~~(g) Is not enrolled in course work that has been reported by a college for postsecondary funding; and~~

~~(h)~~)) (k) A student's enrollment in the program is limited to the following:

(i) May not exceed 1.0 FTE in any month (including nonvocational and vocational FTE).

(ii) May not exceed 1.00 AAFTE in any school year as defined in WAC 392-700-015(2).

(2) For ((~~programs operated by districts and agencies~~)) all below one hundred level classes, the student enrollment is dependent upon attaining satisfactory progress during any three month period that a student is reported as 1.0 FTE.

(a) Satisfactory progress is defined as the documented attainment of at least one credential identified in WAC 392-700-015(((~~(9)~~)) (10) and/or of at least one ((~~measure~~)) indicator of academic progress identified in WAC 392-700-015 (((~~(16)~~)) (14).

(b) A student who after any three month period of being counted for a 1.0 FTE has not attained a credential or ((~~a measure~~)) an indicator of academic progress cannot be counted until a credential or ((~~measure~~)) an indicator of academic progress is earned.

(i) During this reporting exclusion period, the program may elect to permit the student to continue to attend;

(ii) When the student achieves a credential or ((~~a measure~~)) an indicator of academic progress, the student enrollment may resume to be reported for funding. A new three month period for attaining a credential or ((~~a measure~~)) an indicator of academic progress begins; and

(iii) Rules governing the calculation of the three month period are:

(A) The three month period may occur in two different school years, if the student is enrolled in consecutive school years; and

(B) The three month period is not limited to consecutive months, if there is a break in the student's enrollment((~~; and~~

~~(C) For students claimed less than 1.0 FTE, the three month period is adjusted proportionately to provide additional time to attain a credential or a measure of academic progress~~)).

(3) For ((~~programs operated by districts or agencies~~)) below one hundred level classes, student enrollment will be reported as follows:

(a) ((~~If~~)) When the program's total planned hours of instruction pursuant to WAC 392-700-155 (((~~(1)(d)~~))) for the school year equals or exceeds nine hundred hours:

(i) The program ((~~will be~~)) is considered a full-time program; and

(ii) An enrolled student is a full-time student and is reported as 1.0 FTE on each monthly count day.

(b) ((~~If the program's total planned hours of instruction for the school year totals less than nine hundred hours:~~

~~(i) The program will be considered a part-time program;~~

~~(ii) An enrolled student is a part-time student and is reported as a part-time FTE on each monthly count day; and~~

~~(iii) The part-time FTE is calculated by dividing the program's total planned hours of instruction by nine hundred.~~)) Enrollment in below one hundred level classes is limited to nonvocational funding and the FTE cannot be claimed as vocational.

(4) For ((~~reengagement programs operated by~~)) college((~~s~~)) level classes, student enrollment will be reported as follows:

(a) ((~~For students enrolled in college level classes,~~)) The FTE is determined by the student's enrolled credits on each monthly count day.

(i) Fifteen college credits equal 1.0 FTE;

(ii) A student enrolled in more than fifteen college credits is limited to be reported as 1.0 FTE for that month; and

(iii) If a student is enrolled for less than fifteen college credits, the FTE is calculated by dividing the enrolled college credits by fifteen.

(b) ((~~For students enrolled in classes below college level pursuant to WAC 392-700-065(3), the student must meet the requirement of attaining satisfactory progress during any three month period pursuant to WAC 392-700-160(2) and the program's FTE for each student is based on the program's total planned hours of instruction pursuant to WAC 392-700-160(3).~~)) Enrollment in state approved vocational college level classes and taught by a certified vocational instructor can be claimed for enhanced vocational funding as a vocational FTE.

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

WAC 392-700-165 Funding and reimbursement. (1) OSPI shall apportion funding for an approved program to district or direct funded technical colleges based upon the reported nonvocational and vocational FTE enrollment and the standard reimbursement rates. The standard reimbursement rates are the statewide average annual nonvocational and vocational rates as determined by OSPI pursuant to WAC 392-169-095.

(a) The basic education allocation funded to districts will be as follows:

(i) Monthly payments for the months September through December is based on estimated student enrollment projected by the district.

(ii) Beginning in January, monthly payments shall be adjusted to reflect actual student enrollment.

(b) Direct funded technical colleges will be paid quarterly pursuant to WAC 392-121-187 (7)(c).

(2) Distribution of state funding for programs is as follows:

(a) For programs directly operated by a district, the district will retain one hundred percent of the basic education allocation.

(b) For programs directly operated by a direct funded technical college pursuant to WAC 392-121-187, the technical college will retain one hundred percent of the basic education allocation.

(c) For programs operated by a college or agency under ((~~contract~~)) a scope of work or ((~~interlocal~~)) contracted services agreement with a district:

(i) The district may retain up to seven percent of the basic education allocation; and

(ii) The agency or college will receive the remaining basic education allocation.

(d) For programs operated as part of a consortium with a consortium lead agency:

(i) The district may retain up to five percent of the basic education allocation;

(ii) The consortium lead may retain up to seven percent of the basic education allocation; and

(iii) The operating agency or college will receive the remaining basic education allocation.

(3) In the event that the program closes prior to the end of the school year, the following will occur:

(a) If the planned days of instruction, as provided on the school year calendar are not provided, the ((~~agency~~)) program may make up the scheduled days, as long as the replacement days occur during the school year;

(b) At the end of the school year, prior to the final monthly count day, the ((~~agency~~)) program will report to the district the actual total hours of instruction provided; and

(c) If the program was a full-time program and total hours of instruction provided is less than nine hundred hours of instruction, the amount of basic education funding received by the district and ((~~agency~~)) program will be adjusted retroactively on a proportional status and will be reflected on the final enrollment count((~~; and~~

~~(d) If the program was a part-time program and total hours of instruction provided is less than the total planned hours of instruction, the amount of basic education funding received by the district and agency will be adjusted retroactively on a proportional status and will be reflected on the final enrollment count~~)).

(4) Programs and districts may provide transportation for students but additional funds are not generated or provided.

(5) Reengagement students enrolled in a state-approved K-12 transitional bilingual instructional program pursuant to chapter 392-160 WAC can be claimed by the district for bilingual enhanced funding.

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

WAC 392-700-175 Required documentation and reporting. (1) Student documentation:

(a) The program shall submit to the reporting district or direct funded technical college monthly the program's enrollment and maintain and make available upon request the fol-

lowing documentation to support the monthly enrollment claimed ((~~and make available upon request by the reporting district or direct funded technical college~~)):

(i) Each student's eligibility pursuant to WAC 392-700-035;

(ii) Evidence of each student's enrollment requirements under WAC 392-700-160 to include:

(A) Enrollment in district or direct funded technical college;

(B) Evidence of minimum attendance ((~~standard~~)) period; and

(C) Earned credentials or attained ((~~measure~~)) an indicator of progress.

(D) Evidence of weekly status check.

(iii) Case management support pursuant to WAC 392-700-085.

(b) The district, agency, or college operating the program shall comply with all state and federal laws related to the privacy, sharing, and retention of student records.

(c) Access to all student records will be provided in accordance with the Family Educational Rights and Privacy Act (FERPA).

(2) Student reporting:

(a) The district, agency, or college to which the school code is assigned will ensure that there is accurate and timely data entry of all program student information into its student data system.

(b) The district, agency, or college to which the school code is assigned will transmit student data to CEDARS in accordance with OSPI standards and procedures for reengagement programs.

(3) Annual reporting in addition to meeting CEDARS requirements:

(a) The program will prepare and submit an annual performance report to the district, agency, or college to which the school code is assigned no later than ((~~September~~)) October 1st.

(b) The district, agency, or college to which the school code is assigned will review and submit the annual performance report to OSPI no later than ((~~September 30th~~)) November 1st.

(c) The annual report will include the following:

(i) Program's total number of students by gender, age, and race/ethnicity who were enrolled, who were dismissed by program, and ((~~withdrawn~~)) who voluntarily withdrew.

(ii) Program's total number of students by gender, age, race/ethnicity, and credential type who earned a credential as defined in WAC 392-700-015(10).

(iii) Program's total number of students by gender, age, race/ethnicity, and indicator of academic progress types who attained an indicator of academic progress as defined in WAC 392-700-015(14). For high school and college credit, detail the subject area.

(iv) Total AAFTE and average annual headcount by program reported for the school year.

((~~(iii)~~)) (v) Total number of instructional staff FTE.

(A) For programs operated by a district or agency, report total number of instructional staff assigned to the program.

(B) For programs operated by a college, report the number of instructional staff teaching students for the program.

(((~~(iv) Types and total measures of academic progress completed per AAFTE.~~

~~(v) Types and total credentials earned per AAFTE.~~

~~(vi) Total high school credits earned and high school credits per AAFTE.~~

~~(vii) Total college credits earned and college credits earned per AAFTE.~~))

WSR 14-22-075

PERMANENT RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed November 3, 2014, 11:38 a.m., effective December 4, 2014]

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

Purpose: The department is amending the following WAC sections to clarify the differences and similarities in definitions, eligibility requirements, reporting requirements, and benefit calculation for the Washington state combined application program (WASHCAP) demonstration project and Basic Food: WAC 388-492-0020 What are WASHCAP food benefits and what do I need to know about WASHCAP?, 388-492-0030 Who can get WASHCAP?, 388-492-0080 Where do I report changes?, and 388-492-0100 How is my eligibility for WASHCAP food benefits reviewed?

Citation of Existing Rules Affected by this Order: Amending WAC 388-492-0020, 388-492-0030, 388-492-0080, and 388-492-0100.

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

Other Authority: Title 7 C.F.R. Part 273.

Adopted under notice filed as WSR 14-18-027 on August 26, 2014.

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

Date Adopted: October 31, 2014.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-23-115, filed 11/17/10, effective 12/18/10)

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 Project.

(1) WASHCAP is a simplified food benefits program for most single supplemental security income (SSI) recipients.

(a) WASHCAP uses policy of the supplemental nutrition assistance program (SNAP).

(i) The food and nutrition act of 2008;

(ii) Federal regulations for the SNAP program under Title 7 of the Code of Federal Regulations; and

(iii) The current demonstration project waiver for WASHCAP approved by USDA food and nutrition service (FNS).

(b) Unless specifically stated in ((~~this WAC~~)) chapter 388-492 WAC, WASHCAP food benefits follow all the program requirements of the Basic Food program as described under Title 388 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. You do not have to go to your local community services office (CSO) to apply for WASHCAP.

(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 will electronically ((~~sends~~)) send us the information we need to open and update your WASHCAP food benefits.

(5) When the DSHS and SSA systems match exactly, WASHCAP food benefits begin the first month after the month you apply and are eligible for ongoing SSI and meet WASHCAP program requirements.

(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:

(a) By contacting the customer service center (CSC) at 1-877-501-2233 to request an application be mailed to you;

(b) ((~~Over the internet~~)) Online at washingtonconnection.org;

(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~~))) (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.

(((~~9) While you get WASHCAP food benefits,~~)) (8) We calculate your WASHCAP benefits using the information we receive from SSA. Because of this, you must report all changes to SSA.

(((~~10~~))) (9) You do not have to report changes to your WASHCAP worker. See WAC 388-492-0080.

(10) When the department learns of a change in your circumstances, we may also update your WASHCAP food benefits.

AMENDATORY SECTION (Amending WSR 10-23-115, filed 11/17/10, effective 12/18/10)

WAC 388-492-0030 Who can get WASHCAP? (1) You can ((~~get~~)) receive WASHCAP food benefits if:

(a) You ((~~are eligible to~~)) receive federal SSI benefits; and

(b) You do not have earned income when you apply for WASHCAP; and

(c) You are eighteen years of age or older; and

(((~~c~~))) (i) You live alone, or SSA considers you as a single household; ((~~or~~))

(((~~d~~))) (ii) 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~~))) (iii) You live with others but buy and cook your food separately from them((~~; and~~)).

(((~~f) You do not have earned income when you apply for SSI; or

(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

(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 live with your child who is under 22 years of age that you are responsible for;

(h) You are ineligible for Basic Food benefits ((~~under~~)) for a reason described in WAC 388-400-0040 ((~~(14)(b) and (e)~~)) (12).

(3) If you already receive WASHCAP, and begin receiving earned income, you can continue to receive WASHCAP only if:

(a) You do not have earned income for three or more consecutive months;

(b) SSI removes earned income from the State Data Exchange (SDX) SSA uses to communicate changes to the department; and

(c) You continue to receive SSI.

(4) If you already receive WASHCAP and move to an institution, you can continue to receive WASHCAP if you are in the institution for ninety days or less. We must close WASHCAP benefits earlier than 90 days if you move to an institution, you are not responsible for your own food pur-

chase or preparation, and the change is reported directly the department.

(5) We use ((~~SSA~~)) information from SSA as well as other sources including local, state, and federal agencies to determine your WASHCAP eligibility.

AMENDATORY SECTION (Amending WSR 10-23-115, filed 11/17/10, effective 12/18/10)

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~~)) SSA provides the department the necessary information to update your WASHCAP benefits.

(2) Even if you don't report a change, we use information from SSA as well as other sources including local, state, and federal agencies to determine your WASHCAP eligibility.

(3) SSA will not accept or report shelter costs changes to WASHCAP until SSA does its redetermination.

(((~~3~~))) (4) You do not have to report any changes to your WASHCAP worker.

(((~~4~~))) (5) 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~~))) (6) If you or someone you authorize reports changes to DSHS, we may need proof ((~~may be required~~)) of the change.

(((~~6~~))) (7) 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 10-23-115, filed 11/17/10, effective 12/18/10)

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~~)) may also complete your review for WASHCAP. SSA sends us this information electronically, which we use to update your benefits.

(a) ((~~and we~~)) We will automatically extend your WASHCAP certification period if you are still eligible for benefits.

(b) If SSA's review tells us you are not eligible for WASHCAP, we will end your WASHCAP benefits. You can apply for benefits under the Washington basic food program.

(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 will process your application.

(4) If we get your completed 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~~)) any time during the first month following the end of your certification period; and

(b) You are still eligible for WASHCAP food benefits.

(5) If we get your completed application form ((~~more than thirty days after your benefits end, your~~)) after the end of the month following the end of your certification period 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:

(a) By contacting the customer service center (CSC) at 1-877-501-2233 to request an application be mailed to you;

(b) ((~~Over the internet~~)) Online at washingtonconnection.org;

(c) At any community services office (CSO);

(d) At any home and community services office (HCS); or

(e) At any Social Security ((~~Adminstration [Administration]~~)) Administration (SSA) office.

WSR 14-22-076

PERMANENT RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

(Community Services Division)

[Filed November 3, 2014, 11:44 a.m., effective January 1, 2015]

Effective Date of Rule: January 1, 2015.

Purpose: The department is creating WAC 388-400-0047 Am I eligible for the heat and eat program?, to provide an energy assistance payment to select Basic Food and food assistance program (FAP) for legal immigrant's households who are not eligible for the standard utility allowance income deduction for SNAP, do not receive the maximum monthly benefit for Basic Food or FAP, and are not receiving Basic Food through WASHCAP.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.04.515, 74.08.090, 74.04.500, 74.08A.010, 74.08A.903.

Other Authority: Food and Nutrition Act of 2008 (P.L. 110-246, 7 U.S.C.) as amended by P.L. 113-79.

Adopted under notice filed as WSR 14-17-132 on August 20, 2014.

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

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

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

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

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

Date Adopted: October 31, 2014.

Katherine I. Vasquez
Rules Coordinator

NEW SECTION

WAC 388-400-0047 Am I eligible for the heat and eat program? (1) What is the heat and eat program?

The heat and eat is a special energy assistance program for certain assistance units receiving basic food or the food assistance program for legal immigrants (FAP).

An assistance unit (AU) in heat and eat receives up to $20.01 in federal low income home energy assistance program (LIHEAP) benefits. This LIHEAP benefit makes the AU eligible for the standard utility allowance under WAC 388-450-0195 for twelve months.

(2) Is my assistance unit eligible for heat and eat?

Your AU is eligible for heat and eat if you meet all of the following:

(a) You receive at least $1 in basic food or FAP benefits, prior to any recoupments;

(b) You **do not** receive WASHCAP;

(c) You **do not** receive transitional food assistance (TFA);

(d) You **are not** eligible for the standard utility allowance (SUA) under WAC 388-450-0195 based on having out of pocket costs for heating or cooling;

(e) You have not received a regular LIHEAP benefit amount of more than twenty dollars in the past twelve months; and

(f) You **do not** receive the maximum allotment for your AU size under WAC 388-478-0060 without using the SUA.

(3) How do I receive heat and eat?

If you are eligible for heat and eat, we deposit the benefit on your EBT card. The heat and eat benefit is good for twelve months. After twelve months, we look at your circumstances to see if you are still eligible for heat and eat.

(4) How do I apply for heat and eat?

You do not apply for heat and eat. We will determine if your AU is eligible to receive heat and eat and automatically provide you the benefit.

WSR 14-22-078
PERMANENT RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed November 3, 2014, 12:14 p.m., effective December 4, 2014]

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

Purpose: This department is amending this rule to remove obsolete information that state-funded work study can be categorized under Title IV Higher Education (HEA) or Bureau of Indian Affairs (BIA) sources. The change does not impact cash assistance programs.

The state work study (SWS) 2012-2013 program manual contains information about changes in funding sources for SWS. The federal government eliminated Title IV funding for two federal education assistance programs (Special Leveraging Educational Assistance Partnership (SLEAP) and the Leveraging Educational Assistance Partnership (LEAP)).

- Formerly, the comingling of federal Title IV funds from LEAP and SLEAP with SWS funding exempted student earnings from welfare benefit income control calculations.
- With the elimination of LEAP and SLEAP, SWS earnings no longer can be classified as Title IV and will now be counted as income for Basic Food for SWS students in this category.
- Income from SWS will remain exempt for cash assistance eligibility.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0035.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Other Authority: 7 C.F.R. 273.9(c).

Adopted under notice filed as WSR 14-17-127 on August 20, 2014.

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: October 30, 2014.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-18-007, filed 8/22/13, effective 10/1/13)

WAC 388-450-0035 Educational benefits. This section applies to cash assistance and food assistance.

(1) We do not count:

(a) Educational assistance in the form of grants, loans or work study, issued from Title IV of the Higher Education Amendments (Title IV - HEA) and Bureau of Indian Affairs (BIA) education assistance programs. Examples of Title IV - HEA and BIA educational assistance include but are not limited to:

(i) ((~~College work-study (federal and state);~~

~~(ii)~~)) Pell grants; and

(((~~iii~~))) (ii) BIA higher education grants.

(b) Educational assistance in the form of grants, loans or work-study made available under any program administered by the Department of Education (DOE) to an undergraduate student. Examples of programs administered by DOE include, but are not limited to:

(i) Christa McAuliffe Fellowship Program;

(ii) Jacob K. Javits Fellowship Program; and

(iii) Library Career Training Program.

(2) For assistance in the form of grants, loans or work-study under the Carl D. Perkins Vocational and Applied Technology Education Act, P.L. 101-392:

(a) If you are attending school half-time or more, we subtract the following expenses:

(i) Tuition;

(ii) Fees;

(iii) Costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study;

(iv) Books;

(v) Supplies;

(vi) Transportation;

(vii) Dependent care; and

(viii) Miscellaneous personal expenses.

(b) If you are attending school less than half-time, we subtract the following expenses:

(i) Tuition;

(ii) Fees; and

(iii) Costs for purchase or rental of equipment, materials, or supplies required of all students in the same course of study.

(c) For cash assistance, we also subtract the difference between the appropriate need standard and payment standard for your family size.

(d) Any remaining income is unearned income and budgeted using the appropriate budgeting method for the assistance unit.

(3) If you are participating in WorkFirst work study or state-funded college work study, that work study income is:

(a) Not counted for cash assistance;

(b) Counted as earned income for food assistance.

(4) If you are participating in a work study program that is not excluded in subsection (1), or for cash assistance, under subsection (3) of this section, we count that work study income as earned income:

(a) You get any applicable earned income disregards;

(b) For cash assistance, we also subtract the difference between the need standard and payment standard for your family size as described in chapter 388-478 WAC; and

(c) Budgeting remaining income using the appropriate budgeting method for the assistance unit.

(5) If you get Veteran's Administration Educational Assistance:

(a) All applicable attendance costs ((~~as~~)) is subtracted; and

(b) The remaining unearned income is budgeted using the appropriate budgeting method for the assistance unit.

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

WSR 14-22-079
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 3, 2014, 12:59 p.m., effective December 4, 2014]

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

Purpose: With the emergence of running start classes offered in the high school setting, some sections of the running start WAC chapter require updating to add a month factor to the FTE calculation, to revise the number of months the annual average FTE (AAFTE) will be calculated, and to add a September count day.

WAC 392-169-005 requires joint agreement with office of superintendent of public instruction, state board of community and technical colleges (SBCTC), and Washington student achievement council (WSAC). Both the SBCTC and WSAC have reviewed and approved the proposed changes.

Citation of Existing Rules Affected by this Order: Amending WAC 392-169-025, 392-169-030, 392-169-055, and 392-169-055 [392-169-100].

Statutory Authority for Adoption: RCW 28A.600.390.

Adopted under notice filed as WSR 14-16-065 on July 30, 2014.

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

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

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

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

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

Date Adopted: September 10, 2014.

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

WAC 392-169-025 Full-time equivalent (FTE) running start enrollment—Definition. For the purposes of this chapter and chapter 392-121 WAC, "full-time equivalent (FTE) running start enrollment" (i.e., college or university enrollment) means the FTE of running start students on an enrollment count date when each student's FTE is determined subject to the limitations of WAC 392-169-022, 392-169-055 and 392-169-115 as follows:

(1) ((~~For college or university courses denominated in quarter credits, the quotient of an eligible student's quarter credits of running start enrollment divided by fifteen.~~

~~(2) For college or university courses denominated in semester credits, the quotient of an eligible student's semester credits of running start enrollment divided by fifteen.~~

~~(3) For college or university courses not denominated in quarter or semester credits, the quotient of an eligible student's average hours of running start enrollment per week divided by twenty-five. Hours of enrollment shall be determined pursuant to WAC 392-121-106 through 392-121-183.~~

~~(4)~~)) FTE for running start enrollment is the result of multiplying the quotient of a student's enrolled college credits divided by fifteen and the quotient of three divided by the number of months the running start class is provided. For Washington State University classes offered at the college campus only, the FTE for running start enrollment is the result of dividing a student's enrolled college semester credits by fifteen.

(2) The sum of the results of running start enrollment under subsection((~~s (1), (2) and (3)~~)) (1) of this section at all colleges shall not exceed 1.00 FTE per student on any count day ((~~or~~)) except for the month of January or 1.00 annual average FTE in any school year.

AMENDATORY SECTION (Amending WSR 94-04-095, filed 2/1/94, effective 3/4/94)

WAC 392-169-030 Annual average full-time equivalent (AAFTE) running start enrollment—Definition. For purposes of this chapter and chapter 392-121 WAC, "annual average full-time equivalent (AAFTE) running start enrollment" means:

(1) For running start classes offered at the college campus, the sum of the AAFTE of all running start students for a school year when each running start student's AAFTE equals the sum of the student's running start FTE enrollment on the nine running start count dates divided by nine.

(2) For running start classes offered in the high school setting, the sum of the AAFTE of all running start students for a school year when each running start student's AAFTE equals the sum of the student's running start FTE enrollment on the ten running start count dates divided by ten.

AMENDATORY SECTION (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

WAC 392-169-055 Enrollment—Extent and duration of running start enrollment. Running start program enrollment under this chapter is limited as follows (and as may be further limited for academic reasons under WAC 392-169-057):

(1) An eligible student who enrolls in grade eleven may enroll in an institution of higher education while in the eleventh grade for no more than the course work equivalent to one academic year of enrollment as an annual average full-time equivalent running start student (i.e., three college or university quarters as a full-time equivalent college or university student, ((~~or~~)) two semesters as a full-time equivalent college or university student ((~~or~~)), nine months as a full-time equivalent technical college student, or ten months as a full-time equivalent student taking running start classes in the high school setting).

(2) An eligible student who enrolls in grade twelve may enroll in an institution of higher education while in the twelfth grade for no more than the course work equivalent to one academic year of enrollment as an annual average full-time equivalent running start student (i.e., three college or university quarters as a full-time equivalent community college or university student, ((~~or~~)) two semesters as a full-time equivalent college or university student ((~~and~~)), nine months as a full-time technical college student, or ten months as a full-time equivalent student taking running start classes in the high school setting).

(3) Enrollment in an institution of higher education is limited to the fall, winter and spring quarters, ((~~and~~)) the fall and spring semesters, and the district standard school year (September through June).

(4) As a general rule a student's eligibility for running start program enrollment terminates at the end of the student's twelfth grade regular academic year, notwithstanding the student's failure to have enrolled in an institution of higher education to the full extent permitted by subsections (1) and (2) of this section: Provided, That a student who has failed to meet high school graduation requirements as of the end of the student's twelfth grade regular academic year (September((-)) through June) due to the student's absence, the student's failure of one or more courses, or another similar reason may continue running start program enrollment for the sole and exclusive purpose of completing the particular course or courses required to meet high school graduation requirements, subject to the enrollment limitation established by subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

WAC 392-169-100 Running start enrollment count dates. Enrollment count dates for the running start program shall be as follows:

(1) For community and technical colleges and for Central Washington University and Eastern Washington University classes offered at the college campus, the first college or university day of each of the months of October through June; and

(2) For Washington State University classes offered at the college campus, the first university day of each of the months of September through May.

(3) For running start classes offered at the high school setting, the first instructional day of each of the months September through June.

WSR 14-22-080
PERMANENT RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed November 3, 2014, 1:29 p.m., effective December 4, 2014]

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

Purpose: WAC 392-137-230 requires updating to clarify school district's responsibilities for nonresident students. The nonresident district is responsible for notifying the resident district of a choice transfer's rescindment, and the rescindment is effective upon the date the resident district receives notification. Until the resident district receives the notification, the nonresident district remains responsible for the student's education.

The 2013 legislature, in ESSB 5946, directed the office of superintendent of public instruction (OSPI) to create a standard form for school districts to use when releasing a student from their resident district to a nonresident district for the purpose of enrolling in an online school program. With the implementation of this new standardized transfer system, OSPI updated the expectations for districts around the responsibility for nonresident students who leave the nonresident district prior to the expiration of the transfer. The proposed rule change aligns with the choice transfer rules with the updated policy as outlined in OSPI Bulletin No. B008-14.

Citation of Existing Rules Affected by this Order: Amending WAC 392-137-230.

Statutory Authority for Adoption: RCW 28A.225.230.

Adopted under notice filed as WSR 14-19-025 on September 8, 2014.

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

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

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

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

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

Date Adopted: October 25, 2014.

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 90-19-068, filed 9/17/90, effective 10/18/90)

WAC 392-137-230 Length of acceptance. (1) All acceptances of nonresident students, whether granted by the nonresident district or ordered by the superintendent of public instruction, shall state the length of the acceptance or the condition subsequent which would cause the acceptance to be terminated. The termination of an acceptance, for the purpose of this chapter, shall be adjudicated as per the provisions regarding a denial of acceptance.

(2) School districts enrolling nonresident students are subject to all school district duties and liabilities pertaining to such students until the end of the transfer, including ensuring the student's compulsory attendance pursuant to chapter 28A.225 RCW. If the transfer is rescinded before the end date according to conditions listed in the nonresident school district policy, the resident school district reassumes responsibility for the student upon the date they are notified of the rescindment.

(3) School districts enrolling a nonresident student must inform the resident school district if the student drops out of the school or is otherwise no longer enrolled.

WSR 14-22-096
PERMANENT RULES
MILITARY DEPARTMENT

[Filed November 4, 2014, 12:35 p.m., effective December 5, 2014]

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

Purpose: To clarify when and how the agency will charge for providing records.

Citation of Existing Rules Affected by this Order: Amending WAC 323-10-070 Costs of providing copies of public records.

Statutory Authority for Adoption: RCW 42.56.040.

Adopted under notice filed as WSR 14-18-071 on September 2, 2014.

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

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

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

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

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

Date Adopted: November 4, 2014.

Chris Barnes
Public Records Officer

AMENDATORY SECTION (Amending WSR 12-09-089, filed 4/18/12, effective 5/19/12)

WAC 323-10-070 Costs of providing copies of public records. (1) Costs for paper copies. There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page. Copies in color or larger-sized documents cost will be based on the actual cost to reproduce them at the time of the request.

((~~Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The military department will not charge sales tax when it makes copies of public records.~~))

(2) Costs for electronic records. ((~~The cost of electronic copies of records shall be free for information on a CD-ROM when the information already exists in electronic format and it only has to be copied to a CD.~~)) The cost of scanning existing office paper or other nonelectronic records is six cents per page. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee. The charge for electronic records provided on any medium other than e-mail will be in the amount necessary to reimburse the actual cost to the agency.

(3) Deposits. Before beginning to make copies or scanning responsive records, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying or scanning costs before providing all the records, or the payment of the costs of copying or scanning an installment before providing that installment. The military department will not charge sales tax when it makes copies of or scans public records.

(4) Costs of mailing. The military department may also charge actual costs of mailing, including the cost of the shipping container.

(((~~(4)~~))) (5) Payment. Payment may be made by cash, check, or money order to the military department.

WSR 14-22-100
PERMANENT RULES
RECREATION AND CONSERVATION OFFICE

(Recreation and Conservation Funding Board)

[Filed November 4, 2014, 2:08 p.m., effective December 5, 2014]

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

Purpose: The purpose of the proposal is to revise the recreation and conservation office's procedures for maintaining public records and fulfilling public records requests. The revisions incorporate procedures for electronic public records and change the costs for fulfilling public records requests. The revisions substantially follow the model rules adopted by the attorney general's office.

Citation of Existing Rules Affected by this Order: Amending chapter 286-13 [286-06] WAC, Public records.

Statutory Authority for Adoption: RCW 42.56.040.

Adopted under notice filed as WSR 14-19-116 on September 17, 2014.

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 8, Repealed 0.

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

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

Date Adopted: October 30, 2014.

Leslie Connelly
Natural Resource Policy Specialist
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-06-050 ((~~Public records available.~~)) Authority and purposes. ((~~All public records of the office, as defined in RCW 42.56.070, as now or hereafter amended, are available for public inspection and copying pursuant to this regulation, except as otherwise provided by law, including, but not limited to, RCW 42.56.050 and 42.56.210 and WAC 286-06-100, Exemptions.~~)) (1) RCW 42.56.070(1) of the Public Records Act requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.070(2) also requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

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

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

office will be guided by the provisions of the act describing its purposes and interpretation.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-06-060 ((~~Responsibility.~~)) Agency description—Contact information—Public records officer. ((~~The public records shall be available through a public records officer designated by the director. The public records officer shall be responsible for: Implementation of the rules and regulations regarding release of public records, coordinating the staff of the office in this regard, and generally ensuring compliance with the public records disclosure requirements of chapter 42.56 RCW as now or hereafter amended.~~)) (1) The office manages grant programs to create outdoor recreation opportunities, protect the best of the state's wildlife habitat and farmland, and help return salmon from near extinction. The office also provides staff support to various boards, councils, and working groups as assigned by the governor or the legislature. The office is located at 1111 Washington Street S.E., Olympia, WA 98501. The office does not have field offices.

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

Public Records Officer
Recreation and Conservation Office
P.O. Box 40917
Olympia, WA 98504-0917
360-902-3000
Fax: 360-902-3026
PDandR@rco.wa.gov

Information is also available at the office's web site at www.rco.wa.gov.

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

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-06-070 ((~~Office hours.~~)) Availability of public records. (1) **Hours for inspection of records.** Public records ((~~shall be~~)) are available for inspection and copying during ((~~the office's customary office~~)) normal business hours((~~. Those hours shall be consistent with RCW 42.04.060 and 42.56.090~~)) of the office, from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m., Monday through Friday, excluding legal holidays.

(2) **Records index.**

(a) An index of public records is available for use by members of the public, including:

(i) Archived files;

(ii) Equipment inventory;

(iii) Office and board policies and procedures, including manuals;

(iv) Active project files;

(v) Publications such as brochures and special reports;

(vi) Policy statements entered after June 30, 1990, as defined in RCW 34.05.010, including grant program manuals; and

(vii) Rule-making files, as described in RCW 34.05.370, for each rule proposed for adoption in the Washington State Register and adopted.

(b) Before June 30, 1990, the office did not maintain an index of:

(i) Declaratory orders containing analysis or decisions of substantial importance to the office in carrying out its duties;

(ii) Interpretive statements as defined in RCW 34.05.010; and

(iii) Policy statements as defined in RCW 34.05.010.

(c) The following general records and files are available by reference to topic, and generally arranged alphabetically or chronologically within such topic. Due to volume, costs, and complexity; however, no master index is maintained:

(i) Administrative files;

(ii) Comprehensive park-recreation plans;

(iii) Summaries of office staff meetings;

(iv) Closed or inactive project files;

(v) General correspondence;

(vi) Attorney general opinions;

(vii) Financial records;

(viii) Summaries and memoranda of office and board meetings;

(ix) Final adjudicative proceeding orders entered after June 30, 1990, as defined in RCW 34.05.010 that contain an analysis or decision of substantial importance to the office or board in carrying out its duties (each listed alphabetically by subject with a phrase describing the issue or issues and relevant citations of law);

(x) Declaratory orders entered after June 10, 1990, that contain an analysis or decision of substantial importance to the office or board in carrying out its duties (each listed alphabetically by case name with a phrase describing the issue or issues and relevant citations of law); and

(xi) Interpretive statements as defined in RCW 34.05.010 (each indexed by the office or board program).

(3) **Organization of records.** The office will maintain its records in a reasonably organized manner. The office will take reasonable actions to protect records from damage and disorganization. A requestor shall not take records from the office without the permission of the public records officer or designee. A variety of records is available on the office's web site at www.rco.wa.gov. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

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

(a) Any person wishing to inspect or copy public records of the office should make the request in writing on the office's

request form, or by letter, fax, or e-mail addressed to the public records officer and include the following information:

• Name of requestor;

• Address of requestor;

• Other contact information, including telephone number and any e-mail address;

• Identification of the public records adequate for the public records officer or designee to locate the records; and

• The date and time of day of the request.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit.

(c) A form is available for use by requestors at the office of the public records officer and online at www.rco.wa.gov.

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

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-06-080 ((~~Requests for~~)) Processing of public records requests—General. ((~~Consistent with chapter 42.56 RCW, public records may be inspected or copied or copies of such records may be obtained by members of the public, upon compliance with the following procedures:~~

~~(1) A request shall be made in writing, preferably on a form prescribed by the director, which shall be available at its Olympia office or electronically. The request shall be presented to the public records officer or designee. The request shall include the following information:~~

~~(a) The name of the person requesting the record;~~

~~(b) The calendar date on which the request was made;~~

~~(c) The nature of the request;~~

~~(d) A reference to the requested record as it is described in any current index, if the matter requested is referenced within indexes; and~~

~~(e) An appropriate description of the record requested, if the requested matter is not identifiable in the indexes.~~

~~(2) Whenever a member of the public makes a request, the public records officer or designee shall ensure the request receives a "date received" stamp or equivalent notation and that assistance is provided in promptly identifying the public record requested as defined in RCW 42.56.520. The office shall assist to the maximum extent consistent with ongoing operations, and retains the authority to condition records access to prevent unreasonable invasions of privacy, access to other information protected from disclosure by law, damage/disorganization, and excessive interference with office operations and equipment.~~)) (1) **Providing "fullest assistance."** The office is charged by statute with adopting rules which provide for how it will "provide full access to public records," "protect records from damage or disorganization," "prevent excessive interference with other essential functions of the agency," provide "fullest assistance" to requestors, and provide the "most timely possible action" on public records requests. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

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

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

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

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

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

(e) Deny the request.

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

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

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

(6) **Inspection of records.**

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

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

the same person for the same or almost identical records, which can be processed as a new request.

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

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

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

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

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

NEW SECTION

WAC 286-06-085 Processing of public records requests—Electronic records. (1) **Requesting electronic records.** The process for requesting electronic public records is the same as for requesting paper public records.

(2) **Providing electronic records.** When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the office and is generally commercially available, or in a format that is reasonably translatable from the format in which the office keeps the record. Costs for providing electronic records are governed by WAC 44-14-07003.

(3) **Customized access to data bases.** With the consent of the requestor, the office may provide customized access under RCW 43.41A.130 if the record is not reasonably locatable or not reasonably translatable into the format requested. The office may charge a fee consistent with RCW 43.41A.-130 for such customized access.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-06-090 ((~~Copying.~~)) Costs of providing copies of public records. (((~~(1) No fee shall be charged for the inspection of public records.~~

~~(2) The director shall charge a fee of fifteen cents per page for providing copies of public records and for use of the office's copy equipment. Copying in other formats shall be subject to a fee established by the director. These charges will be the amount necessary to reimburse the office for its actual costs incident to such copying.~~)) (1) **Costs for paper and electronic copies.**

(a) There is no fee for inspecting public records in the office or e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee.

(b) The office will charge an amount necessary to reimburse its costs for providing paper and electronic copies of records, including costs for electronic copies on a CD-ROM and scanning paper or other nonelectronic records.

(c) The fee amounts shall be reviewed from time to time by the office, and shall represent the costs of providing copies of public records and for use of the office's copy equipment, including staff time spent copying records, preparing records for copying, and restoring files. This charge is the amount necessary to reimburse the office for actual costs for copying. The charge for special copy work of nonstandard public records shall reflect the total cost, including the staff time necessary to safeguard the integrity of these records.

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

(e) The office will not charge sales tax when it makes copies of public records unless it uses an outside vendor to make the copies.

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

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

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-06-100 Exemptions. (((~~(1) The director reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 286-06-080 is exempt under the provisions of state or federal law, or chapter 42.56 RCW.~~

~~(2) In addition, pursuant to chapter 42.56 RCW, the director reserves the right to delete identifying details when made available or published in cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy, or would disclose information otherwise protected by law.~~

~~(3) All denials of requests for public records, in whole or part, will be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.~~)) (1) The Public Records Act provides that a number of types of documents are exempt from public

inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions that restrict the availability of some documents held by office for inspection and copying. Exemptions may include:

• **Archaeological site records:** Maps or other information identifying location of site or sites (RCW 42.56.300);

• **Preliminary documents:** Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended unless cited publicly or within an official public record (RCW 42.56.280);

• **Personal information:** Information not related to disciplinary action or performance as a state employee (e.g., payroll records, examination questions, medical condition information, Social Security number, residence address, personal phone numbers, and personal e-mail addresses) (RCW 42.56.230, 42.56.250, 42.56.210(1));

• **Real estate appraisals:** Real estate appraisals relative to the acquisition of property, until the prospective sale is abandoned or completed (RCW 42.56.260); and

• **Farm plans:** Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator, and farm plans developed under chapter 90.48 RCW and not under the federal Clean Water Act, 33 U.S.C. Sec. 1251 et seq. (RCW 42.56.270).

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

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-06-110 Review of denials of public records. (((~~(1) Any person who objects to the denial of a request for a public record may petition the director for review by submitting a written request. The request shall specifically refer to the written statement which constituted or accompanied the denial.~~

~~(2) After receiving a written request for review of a decision denying inspection of a public record, the director, or designee, will either affirm or reverse the denial by the end of the second business day following receipt according to RCW 42.56.520. This shall constitute final action.~~)) (1) **Petition for internal administrative review of denial of access.** Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

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

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

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

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 286-06-045	Office and the salmon recovery funding board.
WAC 286-06-065	Indexes.
WAC 286-06-120	Protection of public records.

WSR 14-22-102
PERMANENT RULES
BENTON CLEAN AIR AGENCY

[Filed November 4, 2014, 2:57 p.m., effective December 5, 2014]

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

Purpose: The changes are primarily housekeeping items such as:

- Aligning sections and wording with the Washington Administrative Code in preparation for submission as part of the state implementation plan.
- Consolidation of rules for fugitive dust in Article 4, and some industrial sources in Article 3.
- Updating outdated references to WAC and/or RCW.
- Clarifying statutory authority citations.
- Aligning language with the current RCW and WAC.
- Updating agricultural burning rule and fees per changes already made to the WAC.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 14-17-096 on October 23 [August 19], 2014.

Changes Other than Editing from Proposed to Adopted Version: Adopted as submitted:

- Adopted Articles 1 through 3, Articles 5 through 7, Articles 9 and 10 as submitted to the Register.
- Adopted Article 4 Section 4.01 and Section 4.02 Paragraph E in their entirety as submitted to the Register.

Took no action on Article 8 and Article 4 Section 4.02 D.

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 23, 2014.

Robin Priddy
Director/Control Officer

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 14-23 issue of the Register.