

**WSR 15-17-055**  
**PERMANENT RULES**  
**NORTHWEST CLEAN**  
**AIR AGENCY**

[Filed August 13, 2015, 4:08 p.m., effective September 13, 2015]

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

Purpose: The goal of this rule making is four-fold. First is to clarify and reconcile the rule language to better match state and federal rules and laws, including several minor clarifications and word changes, new and revised definitions (i.e., greenhouse gases, volatile organic compounds), and incorporation of three minor new source review exemptions. This will remove unnecessary gaps from the state and federal rules and laws that make implementation confusing and inconsistent for both the agency and regulated entities. Second is to update the maximum civil penalty to reflect the adjustment for inflation as allowed by law for the sake of transparency. Third is to newly adopt by reference five National Emissions Standards for Hazardous Air Pollutants. Fourth is to update the effectiveness dates of the list of external regulations that we adopt by reference to enable implementation of the most recent version.

Citation of Existing Rules Affected by this Order: Amending Sections 104, 132, 133, 145, 155, 200, 300, and 470 of the Regulation of the NWCAA.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 15-13-135 on June 17, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: August 13, 2015.

Mark Buford  
Deputy Director

**AMENDATORY SECTION**

**SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES**

104.1 All provisions of State Law that are in effect as of (~~August 6, 2014~~) June 17, 2015, which are pertinent to the operation of the NWCAA, are hereby adopted by reference and made part of the Regulation of the NWCAA. Specifically, there is adopted by reference the portions pertinent to the operation of the NWCAA of the Washington State Clean Air Act (chapter 70.94 RCW), the Administrative Procedure

Act (chapter 34.05 RCW) and chapters 43.21A and 43.21B RCW and the following state rules: chapter 173-400 WAC, (except - 035, -036, -040(1), -075, -099, -100, -101, -102, -103, -104, -105(7), -110, -114, -115, -116, -171, -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-470 WAC, chapter 173-474 WAC, chapter 173-475 WAC, chapter 173-481 WAC, chapter 173-490 WAC, chapter 173-491 WAC, chapter 173-492 WAC, and chapter 173-495 WAC.

104.2 All provisions of the following federal rules that are in effect as of (~~August 6, 2014~~) June 17, 2015 are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 50 (National Primary and Secondary Ambient Air Quality Standards); 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Stationary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, Ga, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK, LLLL, OOOO, and Appendix A - I; and 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF and 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, LLLL, MMMM, NNNN, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, YYYYY, ZZZZ, BBBBB, CCCCC, EEEEE, FFFFF, GGGGG, HHH-HHH, JJJJJ, MMMMM, NNNNN, QQQQQ, SSSSS, TTTTT, VVVVV, WWWWW, XXXXX, ZZZZZ, AAAAAA, DDDDD, EEEEE, and HHHHHH; 40 CFR Part 65 (Consolidated Federal Air Rule); and 40 CFR Parts 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

PASSED: July 8, 1970 AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 9, 2012, March 14, 2013, September 11, 2014, August 13, 2015

AMENDATORY SECTION

## SECTION 132 - CRIMINAL PENALTY

132.1 Any person who knowingly violates any of the provisions of Chapter 70.94 RCW as referenced in NWCAA 104.1 (~~(or 70.120 RCW)~~), or any ordinance, resolution, or regulation in force pursuant thereto, including the Regulation of the NWCAA, is is (~~(shall be)~~) guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ~~((ten thousand dollars -))~~ \$10,000 ~~((-per day per violation))~~, or by imprisonment in the county jail for up to 364 days (~~(not more than one year)~~), or by both for each separate violation.

132.2 Any person who negligently releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is (~~(shall be)~~) guilty of a gross misdemeanor and shall, upon conviction, ~~((thereof shall))~~ be punished by a ~~((maximum))~~ fine of not more (~~(less)~~) than ~~((ten thousand dollars -))~~ \$10,000 ~~((-per day per violation))~~, or by imprisonment for up to 364 days (~~(not more than one year)~~), or both.

132.3 Any person who knowingly releases into the ambient air any substance listed by the Department of Ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is (~~(shall be)~~) guilty of a class C felony and shall, upon conviction, ~~((thereof shall))~~ be punished by a ~~((maximum))~~ fine of not less than ~~((fifty thousand dollars -))~~ \$50,000 ~~((-))~~, or by imprisonment for not more than five years, or both.

132.4 Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 as referenced in NWCAA 104.1 is is (~~(shall be)~~) guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a ~~((maximum))~~ fine of not more than ~~((five thousand dollars -))~~ \$5,000 ~~((-))~~.

132.5 Any person who knowingly renders inaccurate any required monitoring device or method required by chapter (~~(RCW)~~) 70.94 RCW as referenced in NWCAA 104.1, or any ordinance, resolution, or regulation in force pursuant thereto, including the Regulation of the NWCAA is is (~~(shall be)~~) guilty of a crime and shall, upon conviction, ~~((shall))~~ be punished by a fine of not less than ~~((ten thousand dollars -))~~ \$10,000 ~~((-))~~ per day for each separate (~~(per)~~) violation.

132.6 Any person who knowingly makes any false material statement, representation, or certification in any form, in any notice or report required by chapter (~~(RCW)~~) 70.94 RCW as referenced in NWCAA 104.1, or any ordinance, resolution, or regulation, in force pursuant thereto, including the Regulation of the NWCAA is is (~~(shall be)~~) guilty of a crime and shall, upon conviction, ~~((thereof shall))~~ be punished by a ~~((maximum))~~ fine of not less than ~~((ten thousand dollars -))~~ \$10,000 ~~((-))~~ per day for each separate (~~(per)~~) violation.

PASSED: January 6, 1969 AMENDED: April 14, 1993, October 13, 1994, March 13, 1997, November 8, 2007, August 13, 2015

AMENDATORY SECTION

## SECTION 133 - CIVIL PENALTY

133.1 In addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of ~~((€))~~ chapter 70.94 RCW, ~~((Chapter 70.120 RCW,))~~ or any of the rules in force pursuant thereto ~~((under such chapters))~~, including the Regulation of the NWCAA ~~((Northwest Clean Air Agency shall be liable for))~~ may incur a civil penalty in an amount ~~((€))~~ not to exceed ~~((more than fifteen thousand dollars (\$15,000))~~) \$19,000 per day for each ~~((per))~~ violation. Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order shall be liable for a civil penalty of not more than ~~((fifteen thousand dollars (\$15,000))~~) \$19,000 for each day of continued noncompliance.

133.2 The penalty is is (~~(shall become)~~) due and payable 30 days after a notice is served unless an appeal is filed with the Pollution Control Hearings Board (PCHB).

~~((43.24))~~ (A) Within 30 (~~(thirty)~~) days after the Notice is served, the person incurring the penalty may apply in writing to the Control Officer for the remission or mitigation of the penalty. Upon receipt of the application the Control Officer shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstance such as the presence of information or factors not considered in setting the original penalty.

~~((43.22))~~ (B) If such penalty is not paid to the NWCAA within ~~((thirty -))~~ 30 ~~((-))~~ days after such payment is due, the Board or Control Officer may direct the attorney for the NWCAA to bring an action to recover the penalty in Superior Court.

~~((43.23))~~ (C) Any judgment will (~~(shall)~~) bear interest as provided by statute until satisfied.

133.3 Penalties incurred but not paid shall accrue interest, beginning on the 91st (~~(ninety-first)~~) day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020. If penalties are appealed, interest shall not begin to accrue until the 31st (~~(thirty-first)~~) day following final resolution of the appeal.

The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the State Office of the Economic and Revenue Forecast Council.

133.4 In addition to other penalties ~~((provided))~~, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ~~((ninety))~~ 90 days late with such payments, may be subject to a penalty equal to three times the amount of the original fee owed.

133.5 The suspended portion of any civil penalty, issued under Section 133 of this Regulation, shall be due and payable in the event of future penalties against the same person within five years from the date of said (~~(the same))~~ suspension. After five years the suspended portion of the Penalty shall be considered void and of no force or effect.

PASSED: January 8, 1969 AMENDED: November 14, 1984, April 14, 1993, September 8, 1993, October 13, 1994, February 8, 1996, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, August 13, 2015

#### AMENDATORY SECTION

SECTION 145 - (~~RESERVED~~) ((~~MOTOR VEHICLE OWNER RESPONSIBILITY~~))

~~145.1 Whenever an act or omission is declared unlawful under this Regulation, with respect to the operation of a licensed motor vehicle, operating off the public roadways, if the operator of the vehicle is not the owner of such vehicle but is so operating or moving the same with the express consent or implied permission of the owner, then the operator and or owner shall both be subject to the provisions of this Regulation with the primary responsibility to be that of the owner.~~

~~145.2 Whenever an act or omission is declared unlawful with respect to the operation of a non-highway mobile source if the operator of the vehicle is not the owner of such vehicle but is operating or moving the same with the express consent or implied permission of the owner, then the operator and/or owner shall both be subject to the provisions of this Regulation with the primary responsibility to be that of the owner.~~

~~PASSED: February 14, 1973))~~

#### AMENDATORY SECTION

SECTION 155 - STATE ENVIRONMENTAL POLICY ACT

##### 155.1 Authority

~~(A((-)))~~ NWCAA adopts these policies and procedures under State Environmental Policy Act (SEPA), RCW 43.21C.120, and the SEPA Rules, Washington Administrative Code (WAC) 197-11-904, with respect to its performance of or participation in environmental review.

~~(B((-)))~~ The SEPA Rules set forth in Chapter 197-11 WAC must be used in conjunction with these policies and procedures.

##### 155.2 Purpose and Adoption by Reference.

~~(A((-)))~~ NWCAA adopts the following sections of Chapter 197-11 WAC by reference:

WAC 197-11-040: Definitions

-050: Lead Agency

-055: Timing of the SEPA Process

-060: Content of Environmental Review

-070: Limitations on Actions During SEPA Process

-080: Incomplete or Unavailable Information

-090: Supporting Documents

WAC 197-11-100: Information Required of Applicants

-250: SEPA/Model Toxics Control Act Integration

-253: SEPA Lead Agency for MTCA Actions

-256: Preliminary Evaluation

-259: Determination of Nonsignificance for MTCA

Remedial Action

-262: Determination of Significance and EIS for MTCA

Remedial Action

-265: Early Scoping for MTCA Remedial Actions

-268: MTCA Interim Actions

WAC 197-11-300: Purpose of This Part

-305: Categorical Exemptions

-310: Threshold Determination Required

-315: Environmental Checklist

-330: Threshold Determination Process

-335: Additional Information

-340: Determination of Non-Significance (DNS)

-350: Mitigated DNS

-360: Determination of Significance (DS)/Initiation of

Scoping

-390: Effect of Threshold Determination

WAC 197-11-400: Purpose of EIS

-402: General Requirements

-405: EIS Types

-406: EIS Timing

-408: Scoping

-410: Expanded Scoping

-420: EIS Preparation

-425: Style and Size

-430: Format

-435: Cover Letter or Memo

-440: EIS Contents

-442: Contents of EIS on Non-Project Proposals

-443: EIS Contents When Prior Non-Project EIS

-444: Elements of the Environment

-448: Relationship of EIS to Other Considerations

-450: Cost-Benefit Analysis

-455: Issuance of DEIS

-460: Issuance of FEIS

WAC 197-11-500: Purpose of This Part

-502: Inviting Comment

-504: Availability and Cost of Environmental Docu-

ments

-508: SEPA Register

-510: Public Notice

-535: Public Hearings and Meetings

-545: Effect of No Comment

-550: Specificity of Comments

-560: FEIS Response to Comments

-570: Consulted Agency Costs to Assist Lead Agency

WAC 197-11-600: When to Use Existing Environmental

Documents

-610: Use of NEPA Documents

-620: Supplemental Environmental Impact Statement -

Procedures

-625: Addenda - Procedures

-630: Adoption - Procedures

-635: Incorporation by Reference - Procedures

-640: Combining ~~((#))~~ Documents

WAC 197-11-650: Purpose of This Part.

-655: Implementation.

-660: Substantive Authority and Mitigation.

-680: Appeals.

WAC 197-11-700: Definitions

-702: Act

-704: Action

-706: Addendum

-708: Adoption

-710: Affected Tribe

-712: Affecting

-714: Agency  
 -716: Applicant  
 -718: Built Environment  
 -720: Categorical Exemption  
 -722: Consolidated Appeal  
 -724: Consulted Agency  
 -726: Cost-Benefit Analysis  
 -728: County/City  
 -730: Decision-Maker  
 -732: Department  
 -734: Determination of Non-Significance (DNS)  
 -736: Determination of Significance (DS)  
 -738: EIS  
 -740: Environment  
 -742: Environmental Checklist  
 -744: Environmental Document  
 -746: Environmental Review  
 -750: Expanded Scoping  
 -752: Impacts  
 -754: Incorporation by Reference  
 -756: Lands Covered by Water  
 -758: Lead Agency  
 -760: License  
 -762: Local Agency  
 -764: Major Action  
 -766: Mitigated DNS  
 -768: Mitigation  
 -770: Natural Environment  
 -772: NEPA  
 -774: Non-Project  
 -776: Phased Review  
 -778: Preparation  
 -780: Private Project  
 -782: Probable  
 -784: Proposal  
 -786: Reasonable Alternative  
 -788: Responsible Official  
 -790: SEPA  
 -792: Scope  
 -793: Scoping  
 -794: Significant  
 -796: State Agency  
 -797: Threshold Determination  
 -799: Underlying Governmental Action  
 WAC 197-11-800: Categorical Exemptions  
 -880: Emergencies  
 -890: Petitioning DOE to Change Exemptions  
 WAC 197-11-900: Purpose of This Part  
 -902: Agency SEPA Policies  
 -904: Agency SEPA Procedures  
 -916: Application to Ongoing Actions  
 -920: Agencies with Environmental Expertise  
 -922: Lead Agency Rules  
 -924: Determining the Lead Agency  
 -926: Lead Agency for Governmental Proposals  
 -928: Lead Agency for Public and Private Proposals  
 -930: Lead Agency for Private Projects With One Agency With Jurisdiction

-932: Lead Agency for Private Projects Requiring Licenses From More Than One Agency, When One of the Agencies Is a County/City

-934: Lead Agency for Private Projects Requiring Licenses From A Local Agency, Not a City/County, and One or More Than One State Agency

-936: Lead Agency for Private Projects Requiring Licenses From More Than One State Agency

-938: Lead Agencies for Specific Proposals

-940: Transfer of Lead Agency Status to a State Agency

-942: Agreements on Lead Agency Status

-944: Agreements on Division of Lead Agency Duties

-946: DOE Resolution of Lead Agency Disputes

-948: Assumption of Lead Agency Status

WAC 197-11-960: Environmental Checklist

-965: Adoption Notice

-970: Determination of Non-Significance (DNS)

-980: Determination of Significance and Scoping Notice (DS)

-985: Notice of Assumption of Lead Agency Status

-990: Notice of Action

(B(-)) In addition to the definitions contained in WAC 197-11-700 through WAC 197-11-799, when used in these policies and procedures the following terms shall have the following meanings, unless the context indicates otherwise:

SEPA Rules. "SEPA Rules" means Chapter 197-11 WAC.

155.3 Responsible Official Designation and Responsibilities

(A(-)) For all proposals for which NWCAA is the lead agency, the responsible official shall be the Control Officer of NWCAA or the NWCAA employee designated by the Control Officer.

(B(-)) For all proposals for which NWCAA is the lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to "NWCAA," the "lead agency," or "responsible official" by these policies and procedures.

(C(-)) NWCAA shall retain all documents required by these policies and procedures and make them available in accordance with applicable law.

155.4 Lead Agency Determination and Responsibilities

(A(-)) When the NWCAA receives an application for or initiates a proposal that involves a nonexempt action, the NWCAA shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the NWCAA is aware that another agency is in the process of determining the lead agency. When the NWCAA is the lead agency for a proposal, the responsible official shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

(B(-)) When NWCAA is not the lead agency for a proposal, it shall use and consider, as appropriate, the environmental documents of the lead agency in making decisions on the proposal. NWCAA shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead

agency, unless required under WAC 197-11-600. In some cases, the Agency may conduct supplemental environmental review under WAC 197-11-600.

(C(-)) If NWCAA receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination and take such action as authorized by the SEPA Rules.

(D(-)) NWCAA may make agreements as to lead agency status or shared lead agency duties for a proposal as described in WAC 197-11-942 and 197-11-944.

(E(-)) When making a lead agency determination for a private project, NWCAA shall require sufficient information from the applicant to identify which other agencies (if any) have jurisdiction over the proposal.

#### 155.5 Time Limits and Other Considerations Applicable to SEPA Rules

(A(-)) For nonexempt proposals, the DNS, FEIS, and/or such other environmental documentation as the responsible official deems appropriate shall accompany NWCAA's staff recommendation to any appropriate advisory body.

#### 155.6 Use of Exemptions

(A(-)) When NWCAA receives an application for a permit or, in the case of governmental proposals, NWCAA initiates the proposal, NWCAA shall determine whether the permit and/or the proposal is exempt. NWCAA's determination that a permit or proposal is exempt shall be final and not subject to administrative review. If a permit or proposal is exempt, none of the procedural requirements of these policies and procedures apply to the proposal. NWCAA shall not require completion of an environmental checklist for an exempt permit or proposal.

(B(-)) In determining whether or not a proposal is exempt, NWCAA shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and non-exempt actions, NWCAA shall determine the lead agency, even if the license application that triggers NWCAA's consideration is exempt.

(C(-)) If a proposal includes both exempt and non-exempt actions, NWCAA may authorize exempt actions prior to compliance with the procedural requirements of these policies and procedures, except that:

(1(-)) NWCAA shall not give authorization for:

- (a) Any nonexempt action;
- (b) Any action that would have an adverse environmental impact; or
- (c) Any action that would limit the choice of alternatives.

(2(-)) NWCAA may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and

(3(-)) NWCAA may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

#### 155.7 Environmental Checklist

(A(-)) A completed environmental checklist (or a copy) shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically

exempted in these policies and procedures; notwithstanding the preceding, a checklist is not needed if NWCAA and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency. The environmental checklist shall be in the form provided in WAC 197-11-960, except that Section B.2.a. Air, of the checklist shall state: "What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke, greenhouse gases) during construction and when the project is completed? If any, generally describe and give approximate quantities, if known." As used throughout these policies and procedures, environmental checklist means the environmental checklist required by these policies and procedures.

(B(-)) NWCAA shall use the environmental checklist to determine the lead agency and, if NWCAA is the lead agency, for determining the responsible official and for making the threshold determination.

(C(-)) For private proposals, NWCAA will require the applicant to complete the environmental checklist, providing assistance as necessary. For Agency proposals, NWCAA shall complete the environmental checklist. NWCAA may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

(1(-)) NWCAA has technical information on a question or questions that is unavailable to the private applicant; or

(2(-)) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

#### 155.8 Mitigated DNS

(A(-)) As provided in these policies and procedures and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

(B(-)) An applicant may request in writing early notice of whether a DS is likely under WAC 197-11-350. "Early notice" means NWCAA's response to an applicant stating whether it considers issuance of a determination of significance likely for the applicant's proposal. The request must:

(1(-)) Follow submission of a complete permit application and environmental checklist for a nonexempt proposal for which NWCAA is lead agency; and

(2(-)) Precede NWCAA's actual threshold determination for the proposal.

(C(-)) The responsible official should respond to the request for early notice within 30 working days. The response shall:

(1(-)) Be written;

(2(-)) State whether NWCAA currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading NWCAA to consider a DS; and

(3(-)) State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

(D(-)) As much as possible, NWCAA should assist the applicant with identification of impacts to the extent necessary to formulate mitigation measures.

(E(-)) When an applicant submits a changed or clarified proposal, along with a revised or amended environmental checklist, NWCAA shall base its threshold determination on the changed or clarified proposal and shall make the determination within 15 days of receiving the changed or clarified proposal:

(1((-)) If NWCAA indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, NWCAA shall issue and circulate a DNS under WAC 197-11-340(2).

(2((-)) If NWCAA indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, NWCAA shall make the threshold determination, issuing a DNS or DS as appropriate.

(3((-)) The applicant's proposed mitigation measures (clarifications, changes, or conditions) must be in writing and must be specific.

(4((-)) Mitigation measures that justify issuance of a mitigated DNS may be incorporated in the DNS by reference to NWCAA staff reports, studies, or other documents.

(F(-)) A mitigated DNS is issued under WAC 197-11-340(2), requiring a fourteen-day comment period and public notice.

(G(-)) Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by NWCAA.

(H(-)) If NWCAA's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, NWCAA should evaluate the threshold determination to ensure consistency with WAC 197-11-340 (3)(a) (withdrawal of DNS).

(I(-)) NWCAA's early notice under NWCAA ((Section)) 155.8(C) above shall not be construed as determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind NWCAA to consider the clarifications or changes in its threshold determination.

#### 155.9 Preparation of EIS—Additional Considerations

(A(-)) Preparation of a draft and final EIS (DEIS and FEIS) and draft and final supplemental EIS (SEIS) is the responsibility of the responsible official. Before NWCAA issues an EIS, the responsible official shall be satisfied that it complies with these policies and procedures and Chapter 197-11 WAC.

(B(-)) The DEIS and FEIS or draft and final SEIS may be prepared by NWCAA, by outside consultants selected by NWCAA, or by such other person as NWCAA may so direct consistent with the SEPA Rules. The NWCAA retains sole authority to select persons or firms to author, co-author, provide special services, or otherwise participate in preparing required environmental documents. If the NWCAA requires an EIS for a proposal and determines that someone other than the NWCAA will prepare the EIS, the responsible official shall notify the applicant after completion of the threshold

determination. The responsible official shall also notify the applicant of the NWCAA's procedure for EIS preparation, including approval of the DEIS and FEIS prior to distribution.

(C(-)) NWCAA may require an applicant to provide information NWCAA does not possess, including specific investigations or research. However, the applicant may not be required to supply information that is not required under these policies and procedures or that is being requested from another agency. (This does not apply to information NWCAA may request under other authority.) Additional information may be required as set forth in WAC 197-11-100.

#### 155.10 Additional Elements To Be Covered In An EIS

The following additional elements are part of the environment for the purpose of EIS content, but do not add to the criteria for threshold determination or perform any other function or purpose under these policies and procedures:

(A(-)) Economy

(B(-)) Social policy analysis

(C(-)) Cost-benefit analysis

#### 155.11 Public Notice

(A(-)) Whenever the NWCAA issues a DNS under WAC 197-11-340 (2)(b) or a DS under WAC 197-11-360((e)2), the NWCAA shall give public notice as follows:

(1((-)) If public notice is required for a nonexempt permit or decision document, the notice shall state whether a DS or DNS has been issued and when comments are due.

(2((-)) If no public notice is required for the permit or approval, the NWCAA shall give notice of the DNS or DS by:

(a) Written or electronic (email) notice to public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered, and

(b) Posting notice on the NWCAA website.

(3((-)) Whenever the NWCAA issues a DS under WAC 197-11-360(3), the NWCAA shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

(B(-)) Whenever the NWCAA issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by:

(1((-)) Indicating the availability of the DEIS in any public notice required for a nonexempt permit or decision document; and at least one of the following methods:

(2((-)) Posting the property, for site-specific proposals;

(3((-)) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

(4((-)) Notifying public or private groups that have expressed interest in a certain proposal or in the type of proposal being considered;

(5((-)) Notifying the news media;

(6((-)) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals;

(7((-)) Publishing notice in NWCAA newsletters and/or sending notice to NWCAA mailing lists (general lists or specific lists for proposals or subject areas); and/or

(8((-)) Posting notice on the NWCAA website.

{C((-)} Whenever possible, the NWCAA shall integrate the public notice required under these policies and procedures with existing notice procedures for the NWCAA's non-exempt permit(s) or approval(s) required for the proposal.

{D((-)} The NWCAA may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

#### 155.12 Designation of Official to Perform Consulted Agency Responsibilities for NWCAA

{A((-)} The responsible official shall be responsible for the preparation of written comments for NWCAA in response to a consultation request prior to a threshold determination, participation in scoping, and reviewing a DEIS.

{B((-)} The responsible official shall be responsible for the NWCAA's compliance with WAC 197-11-550 whenever the NWCAA is a consulted agency. The responsible official is authorized to develop operating procedures that will ensure that responses to consultation requests are prepared in a timely fashion and include data from the NWCAA. If the nature of the proposal is such that it involves significant impacts on NWCAA's facilities or property, or will require a significant amount of time to provide the information requested to the lead agency, NWCAA may request that the lead agency impose fees upon the applicant to cover the costs of NWCAA's SEPA compliance.

#### 155.13 SEPA Substantive Authority

{A((-)} The policies and goals set forth in this ordinance are supplementary to those in NWCAA's existing authorities.

{B((-)} NWCAA may attach conditions to a permit or approval for a proposal so long as the NWCAA determines that:

{1((-)} Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this ordinance; and

{2((-)} Such conditions are in writing; and

{3((-)} The mitigation measures included in such conditions are reasonable and capable of being accomplished; and

{4((-)} NWCAA has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts; and

{5((-)} Such conditions are based on one or more policies in subsections (D) through (F) of this section and cited in the permit or other decision document.

{C((-)} The NWCAA may deny a permit or approval for a proposal on the basis of SEPA so long as the NWCAA determines that:

{1((-)} The proposal would be likely to result in significant adverse environmental impacts identified in a final or supplemental EIS prepared pursuant to these policies and procedures; and

{2((-)} Reasonable mitigation measures are insufficient to mitigate the identified impact.

{3((-)} The denial is based on one or more policies identified in subsections (D) through (F) of this section and identified in writing in the decision document.

{D((-)} NWCAA designates and adopts by reference the following policies, plans, rules, and regulations as the potential bases for NWCAA's exercise of substantive authority under SEPA, pursuant to this section:

{1((-)} NWCAA shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

{a} Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

{b} Ensure for all people of Washington, safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

{c} Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

{d} Preserve important historic, cultural, and natural aspects of our national heritage;

{e} Maintain, wherever possible, an environment that supports diversity and variety of individual choice;

{f} Achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and

{g} Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

{2((-)} NWCAA recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

{E((-)} NWCAA adopts by reference the policies in the following laws and NWCAA resolutions, regulations, and plans:

{1((-)} Federal and state Clean Air Acts, and regulations adopted thereunder.

{2((-)} The Regulation of the Northwest Clean Air Agency

{3((-)} Resolutions adopted by NWCAA Board of Directors.

{4((-)} Maintenance plans.

{5((-)} Washington State Implementation Plan.

{F((-)} NWCAA establishes the following additional policies:

{1((-)} Air quality

{a} Policy Background

{i} Air pollution can be damaging to human health, plants and animals, visibility, aesthetics, and the overall quality of life.

{ii} NWCAA is responsible for monitoring air quality in the three-county area, setting standards, and regulating certain development activities with the objective of meeting all applicable air quality standards.

{iii} Federal, state, and regional regulations and programs cannot always anticipate or adequately mitigate adverse air quality impacts.

{b} Policies

{i} To minimize or prevent adverse air quality impacts.

{ii} To secure and maintain such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and to property, foster the comfort and convenience of its inhabitants, seek public participation in policy planning and implementation, promote the economic and social development of

the area within our jurisdiction, and facilitate the enjoyment of the natural attractions of the Puget Sound area.

(iii) To eliminate emissions of ozone-depleting chlorofluorocarbons, in the interests of national and global environmental protection; to consider energy efficiency and conservation to reduce greenhouse gases and in addition, to recognize other existing relevant regulatory requirements.

(iv) To reduce woodstove emissions by educating the public about the effects of woodstove emissions, other heating alternatives, and the desirability of achieving better emission performance and heating efficiency from woodstoves pursuant to standards adopted by State and Federal Agencies; and to encourage replacing uncertified woodstoves with cleaner sources of heat.

(v) To reduce outdoor burning to the greatest extent practical.

(vi) To develop and adopt strategies for effectively reducing or eliminating impacts from toxic air contaminants.

(vii) To control volatile organic compound (VOC) emissions in order to meet National Ambient Air Quality Standard for ozone.

(viii) If the responsible official makes a written finding that the applicable federal, state, and/or regional regulations did not anticipate or are inadequate to address the particular impact(s) of a project, the responsible official may condition or deny the proposal to mitigate its adverse impacts.

#### ~~(2((-))~~ Land Use

##### (a) Policy Background

(i) Adverse land use impacts may result when a proposed project or land use policy includes uses that may be consistent with applicable zoning requirements but inconsistent with air quality objectives or regulations.

(ii) Adverse cumulative impacts may result when particular land uses permitted under the zoning code occur in an area to such an extent that they expose sensitive populations to air quality related health and environmental adverse impacts.

##### (b) Policies

(i) To ensure that proposed uses in projects are reasonably compatible with surrounding uses and are consistent with applicable air quality regulations.

(ii) To reduce regional air pollution emissions associated with land uses by promoting clean alternative forms of domestic use fuels, including natural gas, in new single and multifamily housing developments within urban growth areas. In addition, to discourage wood as a source of heat for residential development in low-lying areas susceptible to pollution accumulations.

(iii) To encourage municipal curbside solid and compostable waste collection services at reasonable costs.

#### ~~(3((-))~~ Transportation

##### (a) Policy Background

(i) Excessive traffic can adversely affect regional air quality.

(ii) Substantial traffic volumes associated with major projects may adversely impact air quality in surrounding areas.

##### (b) Policies

(i) To minimize or prevent adverse traffic impacts that would undermine the air quality of a neighborhood or surrounding areas.

(ii) To promote transportation demand and systems management actions designed to reduce vehicle emissions by reducing the use of single occupancy vehicles, reducing traffic congestion, and increasing public transportation services.

(iii) To encourage integrating land use and transportation planning.

(iv) To emphasize the importance of air quality conformity determinations required for proposed transportation plans, programs, and projects.

(v) To pursue and support alternative and clean fuels projects and programs.

(vi) To promote and support land use plans and projects designed to reduce vehicle emissions by reducing the use of single occupant vehicles, number of vehicle miles traveled, and traffic congestion; and supporting the use of public transportation.

(vii) In determining the necessary air quality impact mitigation, the responsible official will examine the mitigation proposed by the local jurisdiction.

#### ~~(4((-))~~ Cumulative Effects

(a) The analysis of cumulative effects shall include a reasonable assessment of:

(i) The capacity of natural systems, such as air, water, light, and land, to absorb the direct and reasonably anticipated indirect impacts of the proposal, and

(ii) The demand upon facilities, services, and natural systems of present, simultaneous, and known future development in the area of the project or action.

(b) An action or project may be conditioned or denied to lessen or eliminate its cumulative effects on the environment:

(i) When considered together with prior, simultaneous, or induced future development; or

(ii) When, taking into account known future development under established zoning or other regulations, it is determined that a project will use more than its share of present and planned facilities, services, and natural systems.

#### 155.14 Administrative Appeals

~~(A((-))~~ NWCAA hereby eliminates, pursuant to WAC 197-11-680(2), appeals to its legislative body of determinations relating to SEPA; and

~~(B((-))~~ NWCAA hereby elects, pursuant to WAC 197-11-680(3), not to provide for administrative appeals of determinations relating to SEPA.

#### 155.15 Notice/Statute of Limitations

~~(A((-))~~ NWCAA, applicant for, or proponent of an action may publish a notice of action pursuant to RCW 43.21C.080 for any action.

~~(B((-))~~ The form of the notice shall be substantially in the form provided in WAC 197-11-990. The notice shall be published by the NWCAA, the city clerk or county auditor, applicant, or proponent pursuant to RCW 43.21C.080.

#### 155.16 Fees

~~(A((-))~~ In addition to the fees set forth in Section 324 of the NWCAA Regulation, the following fees apply:

~~(1((-))~~ Threshold Determination - NWCAA may contract directly with a consultant for preparation of an environ-

mental checklist or other information needed for NWCAA to make a threshold determination, and may bill such costs and expenses directly to the applicant. NWCAA may require the applicant to post bond or otherwise ensure payment of such costs and expenses. In addition, NWCAA may charge a calculated fee from any applicant to cover the costs incurred by NWCAA in preparing an environmental checklist or other information needed for NWCAA to make a threshold determination.

~~(2((-))~~ Environmental Impact Statement

(a) When NWCAA is the lead agency for a proposal requiring an EIS and the responsible official determines that the EIS shall be prepared by employees of NWCAA, NWCAA may charge and collect a reasonable fee from any applicant to cover costs incurred by NWCAA in preparing the EIS.

(b) The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

(c) The responsible official may determine that NWCAA will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than NWCAA and may bill such costs and expenses directly to the applicant. NWCAA may require the applicant to post bond or otherwise ensure payment of such costs.

(d) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under NWCAA (~~(Section)~~) 155.16 (A)(1)(~~(c)~~) and (2) of these policies and procedures that remain after incurred costs are paid.

(e) NWCAA may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of these policies and procedures relating to the applicant's proposal.

(f) NWCAA shall not collect a fee for performing its duties as a consulted agency, except as provided in WAC 197-11-570.

(g) NWCAA may charge any person for copies of any document prepared under this ordinance, and for mailing the document, in a manner provided by chapter 42.56(~~(47)~~) RCW.

155.17 Severability

(A(~~(c)~~)) If any provision of these policies and procedures or their application to any person or circumstance is held invalid, the remainder of these policies and procedures, or the application of such invalid provision to other persons or circumstances, shall not be affected.

PASSED: June 10, 2010 AMENDED: August 13, 2015

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Northwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION

SECTION 200 - DEFINITIONS

...

~~((BEST AVAILABLE RETROFIT TECHNOLOGY (BART) An emission limitation based on the degree of reduction achievable through the application of the best system of continuous~~

~~emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the stationary source, the remaining useful life of the stationary source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.))~~

...

GREENHOUSE GASES (GHGs) - Includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

...

~~((MERCURY ORE A mineral mined specifically for its mercury content.))~~

...

VOLATILE ORGANIC COMPOUND (VOC) - Any carbon compound that participates in atmospheric photochemical reactions.

a) Exceptions. The following compounds are not a VOC: Acetone; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate, methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); perchlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C4F9OCH3); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OCH3); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C4F9OC2H5); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane((CF3)2CFCF2OC2H5); methyl acetate, 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-C3F7OCH3 or HFE-7000); 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE-7500) 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea); methyl formate (HCOOCH3);

1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300); dimethyl carbonate; propylene carbonate; dimethyl carbonate; trans-1,3,3,3-tetrafluoropropene; HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236cal2); HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338pcc13); HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180)); trans 1-chloro-3,3,3-trifluoroprop-1-ene; 2,3,3,3-tetrafluoropropene; 2-amino-2-methyl-1-propanol; and perfluorocarbon compounds that fall into these classes:

1) Cyclic, branched, or linear completely fluorinated alkanes;

2) Cyclic, branched, or linear completely fluorinated ethers with no saturations;

3) Cyclic, branched, or linear completely fluorinated tertiary amines with no saturations; and

4) Sulfur containing perfluorocarbons with no saturations and with sulfur bonds only to carbon and fluorine.

b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where the method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by Ecology, the NWCAA, or EPA.

c) As a precondition to excluding these negligibly-reactive compounds as VOC or at any time thereafter, Ecology or the NWCAA may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of Ecology, ~~(or the)~~ NWCAA, or EPA, the amount of negligibly-reactive compounds in the source's emissions.

d) The following compounds are VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory requirements which apply to VOC and shall be uniquely identified in emission reports, but are not VOC for purposes of VOC emissions limitations or VOC content requirements: Tertiary-butyl acetate.

...

PASSED: January 8, 1969 AMENDED: October 31, 1969, September 3, 1971, June 14, 1972, July 11, 1973, February 14, 1973, January 9, 1974, October 13, 1982, November 14, 1984, ~~(April 14, 1993,)~~ October 13, 1994, February 8, 1996, May 9, 1996, March 13, 1997, November 12, 1998, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, November 17, 2011, March 14, 2013, August 13, 2015

## AMENDATORY SECTION

### SECTION 300 - NEW SOURCE REVIEW

300.1 A Notice of Construction and/or PSD permit application must be filed by the owner or operator and an Order of Approval and/or PSD permit issued by the NWCAA, or other designated permitting agency, prior to the establishment of any new source, except for:

a) Those stationary sources exempt under NWCAA 300.4 (categorical) or NWCAA 300.5 (emission thresholds); and

b) Relocation of any temporary source operating in accordance with NWCAA Section 301.

For purposes of this section "establishment" shall mean to "begin actual construction", as that term is defined in NWCAA Section 200, and "new source" shall include any "modification" to an existing "stationary source", as those terms are defined in NWCAA Section 200.

300.2 Regardless of any other subsection of this section, a Notice of Construction or PSD permit application must be filed and an order of approval or PSD permit issued by the NWCAA prior to establishment of any of the following new sources:

a) Any project that qualifies as construction, reconstruction or modification of an affected facility, within the meaning of 40 CFR Part 60 (New Source Performance Standards), except Subpart AAA (Wood stoves) and such provisions of Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines;

b) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants), except for asbestos demolition and renovation projects subject to 40 CFR 61.145;

c) Any project that qualifies as a new source within the meaning of 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories), except Subpart M (Dry Cleaning Facilities) pertaining to area source perchloroethylene dry cleaners, and Subpart ZZZZ pertaining to emergency and limited-use stationary reciprocating internal combustion engines;

d) Any project that qualifies as a new major stationary source, or a major modification;

e) Any modification to a stationary source that requires an increase either in a plant-wide cap or in a unit specific emission limit.

300.3 New source review of a modification shall be limited to the emission unit or units proposed to be added to an existing stationary source or modified and the air contaminants whose emissions would increase as a result of the modification; provided, however, that review of a major modification must comply with WAC 173-400-112 and/or 173-400-113, as applicable.

300.4 Emission unit and activity exemptions.

Except as provided in NWCAA 300.1 and 300.2 of this section, establishment of a new emission unit that falls within one of the categories listed below is exempt from new source review. Modification of any emission unit listed below is exempt from new source review, provided that the modified unit continues to fall within one of the listed categories. The installation or modification of a unit exempt under this subsection does not require the filing of a Notice of Construction application.

a) Maintenance/construction:

1) Cleaning and sweeping of streets and paved surfaces;

2) Concrete application, and installation;

3) Dredging wet spoils handling and placement;

4) Paving application and maintenance, excluding asphalt plants;

5) Plant maintenance and upkeep activities (grounds keeping, general repairs, routine house-keeping, routine plant

painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);

6) Plumbing installation, plumbing protective coating application and maintenance activities;

7) Roofing application;

8) Insulation application and maintenance, excluding products for resale;

9) Janitorial services and consumer use of janitorial products.

b) Storage tanks:

Note: It can be difficult to determine requirements for storage tanks therefore it is recommended that the owner or operator contact the NWCAA to determine the exemption status of storage tanks prior to their installation.

1) Lubricating oil storage tanks except those facilities that are wholesale or retail distributors of lubricating oils;

2) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

3) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;

4) Process and white water storage tanks;

5) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260 gallon capacity (35 cft);

6) Operation, loading and unloading of storage tanks, less than or equal to 1100 gallon capacity, with lids or other appropriate closure, not for use with materials containing toxic air pollutants, as defined in chapter 173-460 WAC, max. VP 550 mm Hg @21° C;

7) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons;

8) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.

c) A project with combined aggregate heat input capacity from combustion units, less than or equal to any of the following:

1) Less than or equal to 500,000 Btu/hr coal with less than or equal to 0.5% sulfur or other fuels with less than or equal to 0.5% sulfur;

2) Less than or equal to 500,000 Btu/hr used oil, per the requirements of RCW 70.94.610;

3) Less than or equal to 400,000 Btu/hr wood waste or paper;

4) Less than 1,000,000 Btu/hr kerosene, #1, or #2 fuel oil and with less than or equal to 0.05% sulfur;

5) Less than or equal to 10,000,000 Btu/hr natural gas, propane, or LPG.

Note: the heat input capacity of each combustion unit shall be based on the higher heating value of fuel to be used.

d) Material handling:

1) Continuous digester chip feeders;

2) Grain elevators not licensed as warehouses or dealers by either the Washington State Department of Agriculture or the U.S. Department of Agriculture;

3) Storage and handling of water based lubricants for metal working where organic content of the lubricant is less than or equal to 10%;

4) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon, material with initial atmospheric boiling point not less than 150°C or vapor pressure not more than 5 mm Hg @21°C, with lids or other appropriate closure.

e) Water treatment:

1) Septic sewer systems, not including active wastewater treatment facilities;

2) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease;

3) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

4) Process water filtration system and demineralizer vents;

5) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;

6) Demineralizer tanks;

7) Alum tanks;

8) Clean water condensate tanks.

f) Environmental chambers and laboratory equipment:

1) Environmental chambers and humidity chambers not using toxic air pollutant gases, as regulated under chapter 173-460 WAC;

2) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;

3) Installation or modification of a single laboratory fume hood;

4) Laboratory calibration and maintenance equipment.

g) Monitoring/quality assurance/testing:

1) Equipment and instrumentation used for quality control/assurance or inspection purpose;

2) Hydraulic and hydrostatic testing equipment;

3) Sample gathering, preparation and management;

4) Vents from continuous emission monitors and other analyzers.

h) Dry Cleaning: Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers and carbon absorption to recover the cleaning solvent.

i) Emergency Stationary Compression Ignition (CI) Internal Combustion Engines (ICE): Any stationary internal combustion engine whose operation is limited to emergency situations and required testing and maintenance and operating less than 500 hours a year. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary ICE used to pump water in the case of fire or flood, etc. Stationary CI ICE used to supply power to an electric grid or that supply power as part of a financial arrangement with another entity are not considered to be emergency engines.

j) Miscellaneous:

1) Single-family residences and duplexes;

2) Plastic pipe welding;

- 3) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;
- 4) Comfort air conditioning;
- 5) Flares used to indicate danger to the public;
- 6) Natural and forced air vents and stacks for bathroom/toilet activities;
- 7) Personal care activities;
- 8) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;
- 9) Tobacco smoking rooms and areas;
- 10) Noncommercial smokehouses;
- 11) Blacksmith forges for single forges;
- 12) Vehicle maintenance activities, not including vehicle surface coating;
- 13) Vehicle or equipment washing (see c) of this subsection for threshold for boilers);
- 14) Wax application;
- 15) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;
- 16) Ozone generators and ozonation equipment;
- 17) Solar simulators;
- 18) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;
- 19) Electrical circuit breakers, transformers, or switching equipment installation or operation;
- 20) Pulse capacitors;
- 21) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;
- 22) Fire suppression equipment;
- 23) Recovery boiler blow-down tank;
- 24) Screw press vents;
- 25) Drop hammers or hydraulic presses for forging or metal working;
- 26) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;
- 27) Kraft lime mud storage tanks and process vessels;
- 28) Lime grits washers, filters and handling;
- 29) Lime mud filtrate tanks;
- 30) Lime mud water;
- 31) Stock cleaning and pressurized pulp washing down process of the brown stock washer;
- 32) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;
- 33) Nontoxic air pollutant, as defined in chapter 173-460 WAC, solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm Hg @21°C;
- 34) Surface coating, aqueous solution or suspension containing less than or equal to 1% (by weight) VOCs, and/or toxic air pollutants as defined in chapter 173-460 WAC;
- 35) Cleaning and stripping activities and equipment using solutions having less than or equal to 1% VOCs (by weight); on metallic substances, acid solutions are not exempt;

36) Dip coating operations, using materials less than 1% VOCs (by weight) and/or toxic air pollutants as defined in chapter 173-460 WAC.

37) Gasoline dispensing facilities subject to chapter 173-491 WAC are exempt from toxic air pollutant analysis pursuant to chapter 173-460 WAC.

#### 300.5 Exemptions Based on Emissions Thresholds

a) Except as provided in NWCAA 300.1 and 300.2 of this section and in this subsection:

1) A new emissions unit that has an uncontrolled potential to emit below each of the threshold levels listed in the table contained in (d) of this subsection is exempt from new source review provided that the conditions of (b) of this subsection are met.

2) A modification to an existing emissions unit that increases the unit's actual emissions by less than each of the threshold levels listed in the table contained in (d) of this subsection is exempt from new source review provided that the conditions of (b) of this subsection are met.

b) The owner or operator seeking to exempt a project from new source review under this section shall notify, and upon request, file a brief project summary with the NWCAA thirty (30) days prior to beginning actual construction on the project. If the NWCAA determines that the project will have more than a de Minimus impact on air quality as defined in 300.5 d), the NWCAA shall require the filing of a Notice of Construction or PSD permit application. The NWCAA may require the owner or operator to demonstrate that the emissions increase from the new emissions unit is smaller than all of the thresholds listed below. In accordance with NWCAA 324.2, a filing and NOC applicability determination fee shall apply when the NWCAA issues a written determination that a project is exempt for new source review.

c) The owner or operator may begin actual construction on the project thirty-one (31) days after the NWCAA receives the project summary, unless the NWCAA notifies the owner or operator within thirty (30) days that the proposed new source requires a Notice of Construction or PSD permit application.

#### d) Exemption threshold table:

POLLUTANT THRESHOLD LEVEL (ton per year)

1) Total Suspended Particulates: 1.25

2) PM10: 0.75

3) PM2.5: 0.5

~~((3))~~ 4) Sulfur Oxides: 2.0

~~((4))~~ 5) Nitrogen Oxides: 2.0

~~((5))~~ 6) Volatile Organic Compounds: total 2.0

~~((6))~~ 7) Carbon Monoxide: 5.0

~~((7))~~ 8) Lead: 0.005

~~((8))~~ 9) Ozone Depleting Substances: total 1.0 (in effect on July 1, 2000)

~~((9))~~ 10) Toxic Air Pollutants: as specified in chapter 173-460 WAC.

(e) Greenhouse gas emissions are exempt from new source review under this section except to the extent required under WAC 173-400-720, prevention of significant deterioration. The owner or operator of a source or emissions unit may request that NWCAA impose emission limits and/or operation limitations for greenhouse gas in any new source review Order of Approval.

300.6 The Control Officer may require that a new source, that would otherwise be exempt under this section, submit a Notice of Construction application and be granted approval as specified in this section. This discretionary determination shall be based on the nature of air pollution emissions from the stationary source and its potential effect on health, economic and social factors, or physical effects on property. Upon request, the proponent shall submit to the Control Officer, appropriate information as necessary to make this determination.

300.7 Notice of Construction - Submittal Requirements

Each Notice of Construction application shall:

- a) be submitted on forms provided by the NWCAA;
- b) be accompanied by the appropriate fee specified in NWCAA 324.2;
- c) be accompanied by a completed State Environmental Policy Act (SEPA) checklist consistent with NWCAA 155; and
- d) include a "top down" BACT analysis, as defined at the time of submittal, except where the Federal Clean Air Act requires LAER; and
- e) An applicant filing a Notice of Construction application for a project described in WAC 173-400-117(2), Special protection requirements for Class I areas, shall send a copy of the application to the responsible federal land manager.

300.8 Notice of Construction - Completeness Determination.

- a) Within thirty (30) days after receiving a Notice of Construction or PSD permit application, the NWCAA shall either notify the applicant in writing that the application is complete or notify the applicant in writing of additional information necessary to complete the application.
- b) For a project subject to the Special protection requirements for federal Class I areas in WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3).
- c) For a project subject to PSD review under WAC 173-400-720 through -750, a completeness determination includes a determination that the application provides all information required to conduct the PSD review.

300.9 Notice of Construction - Final Determination

- a) Within sixty (60) days of receipt of a complete Notice of Construction or PSD permit application, the NWCAA shall either issue a final decision on the application or initiate public notice under NWCAA Section 305 on a proposed decision, followed as promptly as possible by a final decision.
- b) A person seeking approval to construct or modify a stationary source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW 70.94.161 and the Notice of Construction or PSD permit application required by this section. A Notice of Construction or PSD permit application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC. A PSD permit application under WAC 173-400-720 through -750, a notice of nonattainment area construction application for a major modification in a nonattainment area, or a Notice of Construction applica-

tion for a major stationary source in a nonattainment area must also comply with WAC 173-400-171.

c) Every final determination on a Notice of Construction or PSD permit application shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the NWCAA.

d) If the new source is a major stationary source or the change is a major modification, the application shall be processed in accordance with the applicable sections of WAC 173-400-112, 113, 117 and 171. The permitting agency shall:

- 1) Submit any control technology determination included in a final Order of Approval or PSD permit to the RACT/BACT/LAER clearinghouse maintained by EPA; and
- 2) Send a copy of the final Order of Approval or PSD permit to EPA.

300.10 Order of Approval - Appeals

An Order of Approval or PSD permit, any conditions contained in an Order of Approval or PSD permit, or the denial of a Notice of Construction or PSD permit application may be appealed to the Pollution Control Hearings Board as provided in chapter 43.21B RCW. The NWCAA shall promptly mail copies of each order approving or denying a Notice of Construction or PSD permit application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the Pollution Control Hearings Board.

300.11 Order of Approval - Time Limitations.

An Order of Approval or PSD permit becomes invalid if construction is not commenced within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The NWCAA may extend the eighteen-month period upon a satisfactory showing that an extension is justified. An extension for a project operating under a PSD permit must also comply with public notice requirements in WAC 173-400-171. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commencement date.

300.12 Order of Approval - Change of Conditions.

a) The owner or operator may request, at any time, a change in conditions of an Order of Approval or PSD permit and the NWCAA may approve the request provided the NWCAA finds that:

- 1) The change in conditions will not cause the stationary source to exceed an emissions standard;
- 2) No ambient air quality standard or PSD increment will be exceeded as a result of the change;
- 3) The change will not adversely impact the ability of Ecology or the NWCAA to determine compliance with an emissions standard;
- 4) The revised order will continue to require BACT, as defined at the time of the original approval, for each new source approved by the order except where the Federal Clean Air Act requires LAER; and

5) The revised order meets the requirements of this section and WAC 173-400-110, 173-400-112, 173-400-113 and 173-400-720 through -750, as applicable.

b) Actions taken under this subsection are subject to the public involvement provisions of NWCAA Section 305 or WAC 173-400-171 as applicable.

c) This rule does not prescribe the exact form such requests must take. However, if the request is filed as a Notice of Construction application, that application must be acted upon using the timelines found in NWCAA 300.8 and NWCAA 300.9 and the fee schedule found in NWCAA 324.

300.13 Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source.

a) Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source or emission unit shall file a Notice of Construction application with the NWCAA. Replacement or substantial alteration of control technology does not include routine maintenance, repair or similar parts replacement.

b) For projects not otherwise reviewable under NWCAA Section 300, the NWCAA may:

1) Require that the owner or operator employ RACT for the affected emission unit;

2) Prescribe reasonable operation and maintenance conditions for the control equipment; and

3) Prescribe other requirements as authorized by chapter 70.94 RCW.

c) Within thirty (30) days of receipt of a Notice of Construction application under this section the NWCAA shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty (30) days of receipt of a complete Notice of Construction application under this section the NWCAA shall either issue an Order of Approval or a proposed RACT determination for the proposed project.

d) Construction shall not "commence," as defined in NWCAA Section 200, on a project subject to review under this section until the NWCAA issues a final Order of Approval. However, any Notice of Construction application filed under this section shall be deemed to be approved without conditions if the NWCAA takes no action within thirty (30) days of receipt of a complete Notice of Construction application.

e) Approval to replace or substantially alter emission control technology shall become invalid if construction is not commenced within eighteen months after receipt of such approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The NWCAA may extend the eighteen-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date.

300.14 ~~(RESERVED)~~ ~~((Adoption of State NSR Regulations~~

~~In order to facilitate complete implementation of this section, WAC 173-400-112, -113, -117, -700, -710, -720, -730, -740, and -750 are hereby incorporated by reference.))~~

300.15 Order of Approval - Requirements to Comply

It shall be unlawful for an owner or operator of a source or emission unit to not abide by the operating and reporting conditions in the Order of Approval.

PASSED: January 8, 1969 ~~((November 12, 1998))~~ AMENDED: July 8, 1970, February 14, 1973, July 11, 1973, August 9, 1978, October 12, 1989, February 14, 1990, April 14, 1993, November 12, 1998, November 12, 1999, March 9, 2000, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011, August 13, 2015

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Northwest Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

## AMENDATORY SECTION

SECTION 470 - ~~(RESERVED)~~ ~~((FLUORIDES - FORAGE~~

~~470.1 The fluorides content of forage calculated on a dry weight basis shall not exceed:~~

~~470.11 40 parts per million fluoride ion average for any twelve (12) consecutive months.~~

~~470.12 60 parts per million fluoride ion each month for more than two (2) consecutive months.~~

~~470.13 80 parts per million fluoride ion for more than one (1) month annually.~~

~~470.2 In areas where cattle are not grazed continually but are fed cured forage, as hay for part of the year, the fluoride content of this hay shall be used as the forage fluoride content for as many months as it is fed to establish the yearly average. Computation of the yearly average shall take into consideration periods when cattle may have been grazed outside the area.~~

~~470.3 In as much as the standards set forth in 470.1 are intended to protect livestock, all forage samples analyzed to determine compliance with such standards shall be representative of forage actually consumed by livestock in the area. Also, in determining compliance in particular cases, consideration shall be given to the supplemental food of the livestock involved.~~

~~470.4 Forage levels higher than those specified in Section 470.1 shall be permitted to exist in an area where unavoidable due to local conditions and where such higher levels do not or will not be expected to result in significant adverse effects. Similarly, levels lower than those specified in Section 470.1 shall be maintained in particular cases where significant adverse effects have occurred or can be expected to occur at the specific levels.~~

~~470.5 Cured forage grown for sale as livestock feed shall not exceed 40 parts per million fluoride ion by dry weight after curing or preparing for sale.~~

PASSED: January 8, 1969)

**WSR 15-17-094**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed August 18, 2015, 11:43 a.m., effective September 18, 2015]

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

Purpose: The department is updating chapter 388-825 WAC to provide the latest information and verbiage related to processes, policies, and information on eligibility.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-825-061, 388-825-062, 388-825-063, 388-825-066, 388-825-069, 388-825-071 and 388-825-088; and amending WAC 388-825-058, 388-825-072, 388-825-074, 388-825-081, 388-825-084, 388-825-0871, 388-825-089, 388-825-091, 388-825-093, 388-825-094, 388-825-097, 388-825-098, 388-825-100, 388-825-101, 388-825-102, 388-825-103, 388-825-104, 388-825-105, 388-825-120, 388-825-125, 388-825-130, 388-825-135, 388-825-150, 388-825-165, 388-825-201, 388-825-206, 388-825-211, 388-825-300, and 388-825-360.

Statutory Authority for Adoption: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW.

Adopted under notice filed as WSR 15-12-073 on May 29, 2015.

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 29, Repealed 7.

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 29, Repealed 7.

Date Adopted: August 7, 2015.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

**WAC 388-825-058 What services does ~~((DDD))~~ DDA authorize? ~~((DDD authorizes))~~ The department authorizes services through programs that are designed to help you remain in the community. DDA may authorize the following services if you meet programmatic eligibility and funding is available:**

- (1) Medicaid state plan services;
- (2) ~~((Infant toddler early intervention program (ITEIP) services;~~
- ~~((3))~~ Home and community based services (HCBS) waiver services; ~~((and~~

~~((4))~~ (3) Roads to community living services; and

~~((4))~~ State-only funded services.

Participation in all DDA paid services is voluntary. Clients or their legal representatives have the right to decline or terminate services at any time.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

**WAC 388-825-072 Where do I find information on ~~((DDD))~~ DDA's home and community based services (HCBS) waiver services, eligibility rules and definitions?** Home and community based services (HCBS) waiver eligibility, the scope of services provided by each waiver, the definitions of the services, the limitations of the service, and qualified providers for the service are contained in chapter 388-845 WAC.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

**WAC 388-825-074 Am I eligible for state-only funded services?** You are eligible to receive available state-only funded services if you have been approved for funding for that service, and all of the following conditions apply:

- (1) You have a current ~~((DDD))~~ DDA assessment that identifies the need for the service;
- (2) You meet the programmatic and financial eligibility requirements for the specific service or program;
- (3) Your need cannot be met through medicaid state plan services;
- (4) You are not enrolled in a ~~((DDD))~~ DDA home and community based services (HCBS) waiver;
- (5) You do not receive SSP as a replacement for the requested service;
- (6) The program or service is funded by the legislature.

AMENDATORY SECTION (Amending WSR 10-02-101, filed 1/6/10, effective 2/6/10)

**WAC 388-825-081 Can I receive state-only funded services that are not available in a ~~((DDD))~~ DDA HCBS waiver?** You may be authorized to receive state-only funded services that are ~~((available))~~ described in other DSHS rules as defined below:

- (1) Adult day care (WAC ~~((388-106-0800))~~ 388-825-082);
- (2) Attendant care (WAC 388-825-082);
- (3) ~~((Childcare for foster children (chapter 388-826 WAC);~~
- ~~((4))~~ Chore services (chapter 388-106 WAC);
- ~~((5))~~ (4) Individual and family assistance by the county (WAC 388-825-082);
- ~~((6) Information and education by the county (WAC 388-825-082);~~
- ~~((7))~~ (5) Medical and dental services (WAC 388-825-082);
- ~~((8))~~ (6) Psychological counseling (WAC 388-825-082);

~~((9))~~ Reimbursement through the individual and family support program to families for the purchase of approved items or service (chapter 388-832 WAC);

~~(40))~~ (7) State supplementary payments (chapter 388-827 WAC); and

~~((44))~~ (8) Transportation reimbursement for an escort (WAC 388-825-082).

AMENDATORY SECTION (Amending WSR 10-02-101, filed 1/6/10, effective 2/6/10)

**WAC 388-825-084 What are the limitations of state-only funded services or programs?** In addition to any limitations for state-only funded services or programs that are contained in the program specific rules, the following limitations apply to state-only funded services and programs.

(1) All state-only funded services are limited by available funding.

(2) The following programs are closed to ~~((new admissions))~~ clients not currently receiving the service:

(a) Adult day care; ~~((and))~~

(b) Attendant care(-); and

~~((3))~~ (c) Chore services ~~((are limited to persons who were receiving the service in 1998 and who have continued to receive this service monthly))~~.

AMENDATORY SECTION (Amending WSR 12-22-037, filed 11/1/12, effective 12/2/12)

**WAC 388-825-0871 ~~((Does DDD provide))~~ What out-of-home residential services ~~((that address the special needs of persons with developmental disabilities))~~ does DDA provide?** ~~((DDD))~~ DDA provides the following out-of-home residential services that address the special needs of adults and children with developmental disabilities:

(1) Contracted and ~~((DDD))~~ DDA-certified community based residential services for adults;

(2) Contracted community based services for children; and

(3) Residential habilitation centers (RHC) for a person who requires ICF/ID or nursing facility care.

(a) On a short-term basis for those ages sixteen through twenty; or

(b) On a short or long-term basis if age twenty-one or older.

AMENDATORY SECTION (Amending WSR 12-22-037, filed 11/1/12, effective 12/2/12)

**WAC 388-825-089 What is a residential habilitation center (RHC)?** A residential habilitation center ~~((or))~~ (RHC) is a state-operated facility certified to provide ICF/ID services (see chapter 388-837 WAC) and/or nursing facility services (chapter 388-97 WAC) for persons who are eligible ~~((clients of DDD))~~ as specified in WAC 388-825-091. RHCs include:

(1) Rainier School in Buckley, Washington;

(2) Fircrest School in Shoreline, Washington;

(3) Yakima Valley School in Selah, Washington; and

(4) Lakeland Village in Medical Lake, Washington.

AMENDATORY SECTION (Amending WSR 12-22-037, filed 11/1/12, effective 12/2/12)

**WAC 388-825-091 Am I eligible for residential habilitation center (RHC) services?** ~~((You))~~ (1) If you are twenty-one years of age or over, you are eligible to receive residential habilitation center (RHC) services if:

~~((1))~~ (a) You ~~((are currently DDD eligible))~~ have been determined to meet DDA eligibility criteria;

~~((2))~~ (b) You choose to receive services in the RHC;

~~((3))~~ (c) You need the level of care provided at the RHC; and

~~((4))~~ (d) ~~((DDD))~~ DDA has determined that you can be supported safely in an RHC environment and will not pose a danger to other residents of the RHC; ~~((and))~~ or

~~((5-You))~~ (2) If you are sixteen through twenty years ~~((old or older))~~ of age, and meet (1)(a) through (1)(d) above you may not be admitted to receive services at a residential habilitation center unless there are no service options available in the community to appropriately meet your needs. Such admission is limited to the provision of short-term respite or crisis stabilization services.

(3) If you are under age sixteen you are not eligible to receive services at a residential habilitation center.

(4) Admission to a nursing facility at a RHC also requires completion of pre-admission screening and resident review (PASRR) requirements as described in chapter 388-97 WAC.

AMENDATORY SECTION (Amending WSR 12-22-037, filed 11/1/12, effective 12/2/12)

**WAC 388-825-093 Can I receive a short term stay at a residential habilitation center (RHC)?** If there is capacity at a residential habilitation center (RHC), the vacancies may be available for short term stays.

(1) Short term stays are limited by available vacancies;

(2) Short term stays must be included in your individual support plan;

(3) Short term stays in excess of thirty days in a calendar year require approval by the ~~((director of the division))~~ assistant secretary of the developmental disabilities administration or designee; and

(4) You are sixteen years ~~((old))~~ of age or older.

~~((a))~~ If you are sixteen through twenty years of age your stay will only be for short-term respite or crisis stabilization purposes.

AMENDATORY SECTION (Amending WSR 12-22-037, filed 11/1/12, effective 12/2/12)

**WAC 388-825-094 ~~((Can I request))~~ What is the process to receive services in an RHC?** You may request to receive services in an RHC at any time. RHC admissions are not considered permanent.

(1) Your case/resource manager will update your ~~((DDD))~~ DDA assessment and gather other information.

(2) ~~((Admission))~~ Long term admission to an RHC requires approval by the ~~((director))~~ assistant secretary of the ~~((division of))~~ developmental disabilities administration or designee.

(3) You must be twenty-one years old or older to be admitted as a long-term resident.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

**WAC 388-825-097 Are any of my expenses deducted from the income available to pay for my care in a licensed facility?** After you pay for your room and board costs, some expenses may be deducted from the income available to pay for the cost of your care.

(1) If you have SSI related eligibility the cost of your payee or guardianship service may be deducted as described in chapter 388-79 WAC and WAC (~~(388-475-0800(5))~~) 182-512-0800(5).

(2) If you are enrolled in a (~~(DDDD)~~) DDA HCBS waiver refer to WAC (~~(388-515-1510)~~) 182-512-1510 for rules used to determine allowable deductions.

(3) If you are not enrolled in a (~~(DDDD)~~) DDA HCBS waiver refer to WAC 388-106-0225 for rules used to determine allowable deductions.

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

**WAC 388-825-098 Does (~~(DDDD)~~) DDA provide guardianship services?** DDA does not provide or pay for the cost of guardianship services. If it appears that you require a guardian to make legal, medical, and/or services decisions and to exercise your appeal rights to department decisions, and there is no other individual able and willing to seek guardianship on your behalf, the (~~(division's)~~) administration's field services may request that an assistant attorney general initiate and/or assist in guardianship proceedings. (~~(The state does not pay the cost of guardianship fees.)~~)

AMENDATORY SECTION (Amending WSR 10-02-101, filed 1/6/10, effective 2/6/10)

**WAC 388-825-100 How will I be notified of decisions made by (~~(DDDD)~~) DDA?** (1) Whenever possible, (~~(DDDD)~~) DDA will notify (~~(all parties affected by)~~) you or your legal representative by phone or in person of the decision (~~(by phone or in person.)~~) and;

(2) If you are under the age of eighteen, written notifications will be mailed to:

- (a) Your parent; or
- (b) Your (~~(guardian or other)~~) legal representative.

(3) If you are age eighteen or older, written notifications will be mailed to you and:

- (a) Your (~~(guardian or other)~~) legal representative; or
- (b) A person identified by you to receive (~~(these)~~) notices (~~(in addition to yourself)~~) if you do not have a (~~(guardian or)~~) legal representative. Unless the person identified by you is a relative of yours, he or she cannot be an employee of (~~(DDDD)~~) DDA, a contractor with (~~(DDDD)~~) DDA or an employee of a contractor with (~~(DDDD)~~) DDA.

AMENDATORY SECTION (Amending WSR 08-16-122, filed 8/5/08, effective 9/5/08)

**WAC 388-825-101 Why does (~~(DDD need to)~~) DDA send my notices and correspondence to someone else?** (~~(DDD)~~) DDA sends your notices and correspondence to someone else to assist you to understand the information and your appeal rights to department decisions.

AMENDATORY SECTION (Amending WSR 08-16-122, filed 8/5/08, effective 9/5/08)

**WAC 388-825-102 What if I do not want my (~~(DDD)~~) DDA notices and correspondence sent to anyone else?** (1) If you are age eighteen or older and do not have a legal guardian, you may request in writing that your (~~(DDD)~~) DDA notices and correspondence be given only to you.

(2) (~~(DDDD)~~) DDA will review your request and comply with your request unless it determines (~~(there to be a)~~) that you are at risk of (your) losing legal rights.

(3) You have the right to appeal a denial of this request.

AMENDATORY SECTION (Amending WSR 10-02-101, filed 1/6/10, effective 2/6/10)

**WAC 388-825-103 When will I receive written notice of decisions made by (~~(DDDD)~~) DDA?** You will receive written notice from (~~(DDDD of)~~) DDA when the following decisions are made:

(1) The denial or termination of eligibility for services under WAC 388-825-057;

(2) Denial or termination of the provider of your choice for any reason listed in WAC 388-825-375 through 388-825-390;

(3) The authorization, denial, reduction, or termination of services or the payment of SSP set forth in chapter 388-827 WAC that are authorized by (~~(DDDD)~~) DDA;

(4) The admission or readmission to, or discharge from a residential habilitation center set forth in WAC 388-825-155; or

(5) Disenrollment from a (~~(DDDD)~~) DDA home and community based services waiver under WAC 388-845-0060, including a disenrollment from a waiver and enrollment in a different waiver.

AMENDATORY SECTION (Amending WSR 04-15-093, filed 7/16/04, effective 8/16/04)

**WAC 388-825-104 What information will the notice include?** The notice from (~~(DDDD)~~) DDA will include:

- (1) The decision;
- (2) The reason and authority for the decision;
- (3) The effective date of the action;
- (4) Appeal rights to the decision; and
- (5) The name and phone number of a department person you can contact for further information.

AMENDATORY SECTION (Amending WSR 06-10-055, filed 5/1/06, effective 6/1/06)

**WAC 388-825-105 Am I given any advance notice of termination, ~~((or))~~ reduction, or eligibility ~~((or))~~ for services?** (1) (~~((DDD))~~) DDA will provide you at least ten-days advance notice, as described in WAC 388-458-0040 (1), (2) and (3), of any action to terminate your eligibility, or terminate or reduce your services.

(2) (~~((DDD))~~) DDA will provide you at least thirty-days advance notice prior to transferring you from a residential habilitation center to the community under RCW 71A.20.080.

AMENDATORY SECTION (Amending WSR 12-22-037, filed 11/1/12, effective 12/2/12)

**WAC 388-825-120 When can I appeal department decisions through an administrative hearing process?** (1) Administrative hearings are governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 71A.10.050, the rules in this chapter and by chapters 388-02 and 182-526 WAC. If any provision in this chapter conflicts with chapters 388-02 or 182-526 WAC or WAC 388-440-0001(3), the provision in this chapter shall prevail.

(2) A client, former client, or applicant acting on the applicant's own behalf or through an authorized representative has the right to an administrative hearing.

(3) You have the right to an administrative hearing to dispute the following department actions:

(a) Authorization, denial, reduction, or termination of services;

(b) Reduction or termination of a service that was initially approved through an exception to rule;

(c) Authorization, denial, or termination of eligibility;

(d) Authorization, denial, reduction, or termination of payment of SSP authorized by (~~((DDD))~~) DDA set forth in chapter 388-827 WAC;

(e) Admission or readmission to, or discharge from, a residential habilitation center set forth in WAC 388-825-155;

(f) Refusal to abide by your request that we not (~~((to))~~) send notices to any other person;

(g) Refusal to comply with your request to consult only with you;

(h) A decision to move you to a different type of residential service;

(i) Denial or termination of the provider of your choice or the denial of payment for any reason listed in WAC 388-825-375 through (~~((388-825-390))~~) 388-825-395;

(j) An unreasonable delay to act on an application for eligibility or service;

(k) A claim the client, former client, or applicant owes an overpayment debt.

(4) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited to (~~((the decision that you are not eligible to have your request documented in a statewide data base because you do not need ICF/ID level of care per WAC 388-845-0070, 388-828-8040 or 388-828-8060))~~) those identified in WAC 388-845-4005.

(5) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited to those identified in WAC 388-845-4005.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-125 How do I request an administrative hearing?** (1) Your notice of the department decision will include instructions on how to file a request for an administrative hearing, where to send (~~((#))~~) the request, and the length of time you have to file for a hearing.

(2) Your request may be made orally or in writing.

(3) You may request assistance in requesting an administrative hearing by calling (~~((DDD))~~) DDA staff as stated in WAC 388-825-135.

AMENDATORY SECTION (Amending WSR 06-10-055, filed 5/1/06, effective 6/1/06)

**WAC 388-825-130 How long do I have to file a request for an administrative hearing?** (1) The following rules apply to all situations except a decision to transfer you from a state residential habilitation center (RHC) to the community under RCW 71A.20.080. The rules for administrative hearings regarding the department's decision to transfer you from an RHC to the community are contained in WAC 388-825-155.

(2) You have to request an administrative hearing within ninety days of receipt of the notification of the decision you are disputing.

(3) You must request an administrative hearing within the ten-day notice period, as described in WAC 388-458-0040 (1), (2) and (3), if you wish to maintain current services during the appeal process per WAC 388-825-145.

(4) The notification sent to you will include the date that the ten-day notice period ends.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-135 What if I need help to request an administrative hearing?** (1) You or someone on your behalf may call the department staff person listed in your notification letter and tell them you want to appeal the decision. The department staff person will notify the office of administrative hearings on your behalf.

(2) An oral request for an administrative hearing is complete if it contains enough information to identify the person making the request, the (~~((DDD action))~~) DDA decision, and the (~~((ease involved in the hearing request))~~) name of the individual affected by the decision.

(3) The effective date of an oral request for an administrative hearing is the date that you or someone on your behalf makes a complete oral request for hearing to any (~~((DDD))~~) DDA representative in person or by leaving a message on the automated voice mail system of any (~~((DDD))~~) DDA field office.

AMENDATORY SECTION (Amending WSR 07-06-055, filed 3/5/07, effective 4/5/07)

**WAC 388-825-150 When can the department proceed to take action during my appeal?** The department will proceed to take action during your appeal if:

(1) It is an eligibility denial and you are not currently an eligible client.

(2) Your (~~DDA~~) DDA eligibility has expired, per WAC 388-823-0010 and 388-823-1040.

(3) There is no longer funding for the state-only funded service you have been receiving.

(4) Your current services are terminated or transferred in order to (~~meet the legislative intent of and~~) comply with (~~sections 205 and 207, chapter 371, Laws of 2002~~) state law.

(5) The state-only funded service no longer exists, the Medicaid state plan has been amended, or the HCBS waiver agreement with the federal Centers for Medicare and Medicaid has been amended.

(6) The administrative law judge or review judge rules that you have caused unreasonable delay in the proceedings.

(7) You are in imminent jeopardy.

(8) Your provider is no longer qualified to provide services due to:

(a) A lack of a contract;

(b) Decertification;

(c) Failure to complete training or certification requirements;

(d) Revocation or suspension of a license; or

(~~(e)~~) (e) Lack of required registration, certification, or licensure.

(9) (~~The parent of a person~~) If you are under the age of eighteen and your parent or (~~the~~) legal (~~guardian~~) representative approves the department's decision.

(10) You did not file your request for an administrative hearing within the ten-day notice period, as described in chapter 388-458 WAC.

(11) You or your legal representative:

(a) Tell us in writing that you do not want continued benefits;

(b) Withdraw your administrative hearing request in writing; or

(c) Do not follow through with the administrative hearing process.

AMENDATORY SECTION (Amending WSR 10-02-101, filed 1/6/10, effective 2/6/10)

**WAC 388-825-165 Where can I find additional information about the appeal process?** You may find additional information governing the appeal process in chapters 388-02 and 182-526 WAC.

#### NEW SECTION

**WAC 388-825-168 How do I complain to DDA about my services or treatment?** If you have a complaint about any DDA services or treatment other than actions listed in WAC 388-825-120(3), or you do not want to appeal a DDA

action through an administrative hearing but you still wish to express your concerns, follow these steps in this order:

(1) First, contact your case resource manager or social worker by phone, in writing, e-mail, or in person and explain your problem.

(2) If you are not happy with the results from speaking with your case resource manager or social worker, you may ask to speak with their supervisor.

(3) If steps in subsections (1) and (2) of this section do not solve your problem, you should submit your complaint in writing to the regional office.

(4) If you do not reach a solution with the regional office, you can request that your complaint be forwarded to the DDA headquarters in Olympia.

AMENDATORY SECTION (Amending WSR 12-22-037, filed 11/1/12, effective 12/2/12)

**WAC 388-825-201 What (~~is the purpose of~~) are enhanced respite services?** Enhanced respite services are services designed to enable (~~DDA~~) DDA enrolled children and youth, who meet specific criteria, access to short term respite in a (~~DDA~~) DDA contracted and licensed staffed residential setting.

AMENDATORY SECTION (Amending WSR 12-22-037, filed 11/1/12, effective 12/2/12)

**WAC 388-825-206 Who is eligible to receive enhanced respite services?** (1) To be eligible for enhanced respite services, the following conditions must be met at a minimum:

(a) The child has been determined eligible for (~~DDA~~) DDA services per RCW 71A.10.020(3);

(b) The child is at least eight years of age and under age eighteen;

(c) The child is at high risk of institutionalization and/or out-of-home placement; and

(d) The parents/caregivers have demonstrated they have accessed alternative appropriate and available services to meet the unmet need.

(2) The enhanced respite services committee will also consider the following factors when reviewing requests for services:

(a) The child is experiencing school placement disruption and/or a shortened school day due to his/her behavior;

(b) There is a current family emergency;

(c) The child has had behavioral incident(s), which resulted in injury to self or others that required more than first aid;

(d) The child is awake at night, resulting in the child and/or the caregivers receiving less than five hours of uninterrupted sleep per night;

(e) The child is exhibiting behaviors such as aggression with significant injury, elopement, and challenging repetitive behaviors;

(f) The child's behavior acuity level is high per WAC 388-828-5640, the ICF/ID score is eligible per WAC 388-828-4400, and the caregiver's risk score is medium, high, or immediate per WAC 388-828-5300; and/or

(g) The child has assessed needs that exceed the scope of current services and/or is currently not eligible to receive any paid services.

AMENDATORY SECTION (Amending WSR 12-22-037, filed 11/1/12, effective 12/2/12)

**WAC 388-825-211 How long am I eligible to receive enhanced respite services?** ~~((The maximum length of stay the child/youth may access services is))~~ You may receive enhanced respite services for up to thirty days total in a calendar year.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-300 What is the purpose of WAC 388-825-300 through 388-825-400?** A client/legal representative may choose a qualified individual, agency, or licensed provider. The intent of WAC 388-825-300 through 388-825-400 is to describe:

(1) Qualifications for individuals and agencies providing ~~((DDD))~~ DDA services in the client's residence or the provider's residence or other setting; and

(2) Conditions under which the department will pay for the services of an individual provider or a home care agency provider or other provider.

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

**WAC 388-825-360 How does an individual terminate employment as a provider?** State law makes it a crime to abandon a vulnerable adult. "Abandon" means leaving a person without the means or ability to obtain any of the basic necessities of life.

(1) If an individual wishes to "quit" or terminate employment as a provider, the individual must:

(a) Give at least two weeks' ~~((written))~~ notice;

(b) Notify the client or the client's ~~((to his/her employer, their))~~ representative ~~((if applicable) and the DDD))~~ in writing; and

(c) Notify the client's case manager.

(2) The individual will be expected to continue working until the termination date unless otherwise determined by DSHS.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-825-061 What service am I eligible for if I am under the age of three?
- WAC 388-825-062 What is infant toddler early intervention program (ITEIP)?
- WAC 388-825-063 What services can infant toddler early intervention program (ITEIP) provide?

WAC 388-825-066 Where do I find the program eligibility rules and service definitions for infant toddler early intervention program (ITEIP)?

WAC 388-825-069 What services are provided under a home and community based services (HCBS) waiver?

WAC 388-825-071 What services am I eligible for if I am enrolled in a DDD home and community based services (HCBS) waiver?

WAC 388-825-088 Where can I find more information about DDD contracted residential services?

### **WSR 15-18-002**

#### **PERMANENT RULES**

#### **TRANSPORTATION COMMISSION**

[Filed August 19, 2015, 2:14 p.m., effective October 1, 2015]

Effective Date of Rule: October 1, 2015.

Purpose: The purpose of the WAC rule amendments is to (i) increase ferry tolls and ferry charter rates; and (ii) modify certain fare categories, all within the specified WAC. The revisions follow the annual review of WSF's fares and policies.

Citation of Existing Rules Affected by this Order: Amending WAC 468-300-010, 468-300-020, 468-300-040, and 468-300-220.

Statutory Authority for Adoption: RCW 47.56.030 and 47.60.315.

Adopted under notice filed as WSR 15-14-110 on June 30, 2015.

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 4 [0], Amended 0 [4], Repealed 0.

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

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

Date Adopted: August 4, 2015.

Reema Griffith  
Executive Director

AMENDATORY SECTION (Amending WSR 13-18-019, filed 8/26/13, effective 9/26/13)

WAC 468-300-010 Ferry passenger tolls.

EFFECTIVE 03:00 A.M. October 1, (~~2013~~) 2015

ROUTES	Full Fare <sup>(40)</sup> 2	Senior/ Disabled, Youth <sup>(40)</sup> 2	Multiride Media 20 Rides <sup>1</sup> . <sup>(40)</sup> 2	Monthly Pass <sup>5</sup> . <sup>(40)</sup> 2	Bicycle Surcharge <sup>2</sup>
Via Auto Ferry					
*Fautleroy-Southworth	<del>((5.80))</del> 6.05	<del>((2.75))</del> 2.90	<del>((46.40))</del> 48.40	<del>((74.25))</del> 77.45	1.00
*Seattle-Bremerton					
*Seattle-Bainbridge Island					
*Edmonds-Kingston	<del>((7.60))</del> 7.85	<del>((3.65))</del> 3.80	<del>((60.80))</del> 62.80	<del>((97.30))</del> 100.50	1.00
Port Townsend-Coupeville	<del>((2.90))</del> 3.00	<del>((1.30))</del> 1.35	<del>((46.40))</del> 48.40	<del>((74.25))</del> 77.45	0.50
*Fautleroy-Vashon					
*Southworth-Vashon					
*Pt. Defiance-Tahlequah	<del>((4.85))</del> 5.00	<del>((2.30))</del> 2.35	<del>((38.80))</del> 40.00	<del>((62.10))</del> 64.00	1.00
*Mukilteo-Clinton	<del>((4.50))</del> 4.60	<del>((2.10))</del> 2.15	<del>((36.00))</del> 36.80	<del>((57.60))</del> 58.90	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor	<del>((12.45))</del> 12.85	<del>((6.10))</del> 6.30	<del>((80.95))</del> 83.55	N/A	2.00 <sup>6</sup>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>4</sup>	N/C	N/C	N/C	N/A	N/C
Anacortes to Sidney and Sidney to all destinations	<del>((18.45))</del> 19.00	<del>((9.10))</del> 9.35	N/A	N/A	4.00 <sup>7</sup>
From Lopez, Shaw, Orcas and Friday Harbor to Sidney	<del>((6.65))</del> 11.80	<del>((3.20))</del> 5.70	N/A	N/A	<del>((1.00))</del> 2.00 <sup>8</sup>
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>3</sup>	<del>((25.10))</del> 23.60	<del>((12.30))</del> 11.65	N/A	N/A	<del>((5.00<sup>9</sup>))</del> 4.00 <sup>7</sup>

All fares rounded to the next multiple of \$0.05.

\*These routes operate as a one-point toll collection system.

<sup>1</sup>MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the tickets shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery times.

<sup>2</sup>BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare. Customers using multiride media and monthly passes are exempt from the bicycle surcharge. On all routes except Anacortes/San Juan Island/Sidney, B.C., customers paying with the ePurse or the ORCA card are exempt from the bicycle surcharge.

<sup>3</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the Islands served.

<sup>4</sup>INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

<sup>5</sup>PASSES - Passenger passes are available for all routes except Anacortes/San Juan Island/Sidney. Passes are valid for the period printed on the pass and will be presented to Washington state ferries staff or scanned through an automated turnstile whenever a passenger fare is collected. This pass is based on 16 days of passenger travel with a 20% discount. A \$1.00 retail/shipping and handling fee will be added to the price of the pass.

A combination ferry-transit pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 16 days of passenger travel per month at a 20% discount.

The monthly pass is valid for a maximum of 31 round trips per month, is nontransferable, is nonreproducible, and is intended for a single user. Monthly passes purchased through the regional SmartCard program are also nontransferable and intended for a single user, but allow for unlimited usage.

<sup>6</sup>BICYCLE SURCHARGE - This becomes \$4.00 during peak season (May 1 through September 30).

<sup>7</sup>BICYCLE SURCHARGE - This becomes \$6.00 during peak season.

<sup>8</sup>BICYCLE SURCHARGE - This becomes ~~\$(2.00))~~ 3.00 during peak season.

~~(<sup>9</sup>BICYCLE SURCHARGE - This becomes \$8.00 during peak season.))~~

~~(<sup>(40)</sup> 2~~CAPITAL SURCHARGE - There will be an additional \$0.25 capital surcharge on each single passenger fare collected. On all multiride cards except for Port Townsend/Coupeville, there will be an additional capital surcharge of \$2.50. For Port Townsend/Coupeville, the additional capital surcharge will be \$5.00 on multiride cards. On all monthly passes except Port Townsend/Coupeville, there will be an additional \$4.00 capital surcharge. For Port Townsend/Coupeville, the additional capital surcharge will be \$8.00 on monthly passes.

CHILDREN/YOUTH - Children under six years of age will be carried free when accompanied by parent or guardian. Children/youths six through eighteen years of age will be charged the youth fare, which will be 50% of full fare rounded to the next multiple of \$0.05.

SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected.

PERSONS OF DISABILITY - Any individual who, by reason of illness, injury, congenital malfunction, or other incapacity or disability is unable without special facilities or special planning or design to utilize ferry system services, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route. In addition, those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such

endorsement shall allow the attendant to travel free as a passenger.

**BUS PASSENGERS** - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate.

**MEDICARE CARD HOLDERS** - Any person holding a medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

**IN-NEED ORGANIZATIONS** - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates. Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximately based on the discount rates offered to multiride media users applicable on the date of travel.

**PROMOTIONAL TOLLS** - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount in order to enhance total revenue and effective only at designated times on designated routes. A promotional fare product may also be established to support tourism or other special events. The promotional fare or product may be bundled and sold as part of a multiparty promotional program.

Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Snohomish and Kitsap counties. The rate(s) may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount not to exceed fifty percent of full fare.

**SCHOOL GROUPS** - Passengers traveling in authorized school groups for institution-sponsored activities will be charged a flat rate of \$1 per walk-on group or per vehicle of students and/or advisors and staff. All school groups require a letter of authorization and prior notification. Notification shall be made no less than 72

hours before the scheduled departure and will include the expected number of school-age children and adults that will be traveling to ensure WSF can satisfy U.S. Coast Guard lifesaving equipment requirements. Failure to provide adequate notification may result in delayed travel. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is \$2 on routes where one-point toll systems are in effect.

**BUNDLED SINGLE FARE BOOKS** - WSF may bundle single fare types into multiride media as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days for delivery times.

**FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION** - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

**GROUP OR VOLUME SALES** - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

**SPECIAL EVENTS** - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

**EFFECTIVE 03:00 A.M. May 1, (~~2014~~) 2016**

ROUTES	Full Fare <sup>8</sup>	Multiride Media		Bicycle Surcharge <sup>2</sup>	
		Senior/ Disabled, Youth <sup>8</sup>	20 Rides <sup>1, 8</sup>		Monthly Pass <sup>5, 8</sup>
Via Auto Ferry					
*Fauntleroy-Southworth	<del>((6.00))</del> <u>6.10</u>	<del>((2.85))</del> <u>2.90</u>	<del>((48.00))</del> <u>48.80</u>	<del>((76.80))</del> <u>78.10</u>	1.00
*Seattle-Bremerton					
*Seattle-Bainbridge Island					
*Edmonds-Kingston	<del>((7.75))</del> <u>7.95</u>	<del>((3.75))</del> <u>3.85</u>	<del>((62.00))</del> <u>63.60</u>	<del>((99.20))</del> <u>101.80</u>	1.00
Port Townsend-Coupeville	<del>((3.00))</del> <u>3.05</u>	<del>((1.35))</del> <u>1.40</u>	<del>((48.00))</del> <u>48.80</u>	<del>((76.80))</del> <u>78.10</u>	0.50
*Fauntleroy-Vashon					
*Southworth-Vashon					
*Pt. Defiance-Tahlequah	<del>((4.95))</del> <u>5.05</u>	<del>((2.35))</del> <u>2.40</u>	<del>((39.60))</del> <u>40.40</u>	<del>((63.40))</del> <u>64.65</u>	1.00
*Mukilteo-Clinton	<del>((4.55))</del> <u>4.65</u>	<del>((2.15))</del> <u>2.20</u>	<del>((36.40))</del> <u>37.20</u>	<del>((58.25))</del> <u>59.55</u>	1.00
*Anacortes to Lopez, Shaw, Orcas or Friday Harbor	<del>((12.70))</del> <u>13.00</u>	<del>((6.20))</del> <u>6.35</u>	<del>((82.55))</del> <u>84.50</u>	N/A	2.00 <sup>6</sup>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>4</sup>	N/C	N/C	N/C	N/A	N/C

ROUTES	Full Fare <sup>8</sup>	Senior/ Disabled, Youth <sup>8</sup>	Multiride Media 20 Rides <sup>1, 8</sup>	Monthly Pass <sup>5, 8</sup>	Bicycle Surcharge <sup>2</sup>
Anacortes to Sidney and Sidney to all destinations	((18.80)) <u>19.20</u>	((9.25)) <u>9.45</u>	N/A	N/A	4.00 <sup>7</sup>
From Lopez, Shaw, Orcas and Friday Harbor to Sidney	((11.65)) <u>11.90</u>	((5.65)) <u>5.75</u>	N/A	N/A	2.00 <sup>8</sup>
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>3</sup>	((23.30)) <u>23.80</u>	((11.50)) <u>11.75</u>	N/A	N/A	4.00 <sup>7</sup>

All fares rounded to the next multiple of \$0.05.

\*These routes operate as a one-point toll collection system.

<sup>1</sup>MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the tickets shall not be accepted for passage. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery times.

<sup>2</sup>BICYCLE SURCHARGE - Is an addition to the appropriate passenger fare. Customers using multiride media and monthly passes are exempt from the bicycle surcharge. On all routes except Anacortes/San Juan Islands/Sidney, B.C., customers paying with the ePurse on the ORCA card are exempt from the bicycle surcharge.

<sup>3</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the Islands served.

<sup>4</sup>INTER-ISLAND FARES - Passenger fares included in Anacortes tolls.

<sup>5</sup>PASSES - Passenger passes are available for all routes except Anacortes/San Juan Island/Sidney. Passes are valid for the period printed on the pass and will be presented to Washington state ferries staff or scanned through an automated turnstile whenever a passenger fare is collected. This pass is based on 16 days of passenger travel with a 20% discount. A \$1.00 retail/shipping and handling fee will be added to the price of the pass.

A combination ferry-transit pass may be available for a particular route when determined by Washington state ferries and a local public transit agency to be a viable fare instrument. The WSF portion of the fare is based on 16 days of passenger travel per month at a 20% discount.

The monthly pass is valid for a maximum of 31 round trips per month, is nontransferable, is nonreproducible, and is intended for a single user. Monthly passes purchased through the regional SmartCard program are also nontransferable and intended for a single user, but allow for unlimited usage.

<sup>6</sup>BICYCLE SURCHARGE - This becomes \$4.00 during peak season (May 1 through September 30).

<sup>7</sup>BICYCLE SURCHARGE - This becomes \$6.00 during peak season.

<sup>8</sup>BICYCLE SURCHARGE - This becomes \$3.00 during peak season.

<sup>9</sup>CAPITAL SURCHARGE - There will be an additional \$0.25 capital surcharge on each single passenger fare collected. On all multiride cards except for Port Townsend/Coupeville, there will be an additional capital surcharge of \$2.50. For Port Townsend/Coupeville, the additional capital surcharge will be \$5.00 on multiride cards. On all monthly passes except Port Townsend/Coupeville, there will be an additional \$4.00 capital surcharge. For Port Townsend/Coupeville, the additional capital surcharge will be \$8.00 on monthly passes.

CHILDREN/YOUTH - Children under six years of age will be carried free when accompanied by parent or guardian. Children/youths six through eighteen years of age will be charged the youth fare, which will be 50% of full fare rounded to the next multiple of \$0.05.

SENIOR CITIZENS - Passengers age 65 and over, with proper identification establishing proof of age, may travel at half-fare passenger tolls on any route where passenger fares are collected.

PERSONS OF DISABILITY - Any individual who, by reason of illness, injury, congenital malfunction, or other incapacity or disability is unable without special facilities or special planning or design to utilize ferry system services, upon presentation of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes a disability may travel at half-fare passenger tolls on any route. In addition, those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant to travel free as a passenger.

BUS PASSENGERS - Passengers traveling on public transit buses pay the applicable fare. Passengers traveling in private or commercial buses will be charged the half-fare rate.

MEDICARE CARD HOLDERS - Any person holding a medicare card duly issued to that person pursuant to Title II or Title XVIII of the Social Security Act may travel at half-fare passenger tolls on any route upon presentation of a WSF Disability Travel Permit or a Regional Reduced Fare Permit at time of travel.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates. Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximately based on the discount rates offered to multiride media users applicable on the date of travel.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount in order to enhance total revenue and effective only at designated times on designated routes. A promotional fare product may also be established to support tourism or other special events. The promotional fare or product may be bundled and sold as part of a multiparty promotional program.

Special passenger fare rate(s) may be established for a pilot program in conjunction with the Central Puget Sound Regional Fare Integration project on ferry route(s) serving King, Pierce, Snohomish and Kitsap counties. The rate(s) may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specific discount not to exceed fifty percent of full fare.

SCHOOL GROUPS - Passengers traveling in authorized school groups for institution-sponsored activities will be charged a flat rate of \$1 per walk-on group or per vehicle of students and/or advisors

and staff. All school groups require a letter of authorization and prior notification. Notification shall be made no less than 72 hours before the scheduled departure and will include the expected number of school-age children and adults that will be traveling to ensure WSF can satisfy U.S. Coast Guard lifesaving equipment requirements. Failure to provide adequate notification may result in delayed travel. Vehicles and drivers will be charged the fare applicable to vehicle size. The special school rate is \$2 on routes where one-point toll systems are in effect.

**BUNDLED SINGLE FARE BOOKS** - WSF may bundle single fare types into multiride media as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days for delivery times.

**FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION** - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en

route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

**GROUP OR VOLUME SALES** - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

**SPECIAL EVENTS** - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

AMENDATORY SECTION (Amending WSR 13-18-019, filed 8/26/13, effective 9/26/13)

**WAC 468-300-020 Vehicle under 22', motorcycle, and stowage ferry tolls.**

**EFFECTIVE 03:00 A.M. October 1, (~~2013~~) 2015**

ROUTES	Vehicle Under 14' Incl. Driver One Way <sup>7</sup>	Vehicle Under 14' w/Sr Citizen or Disabled Driver <sup>4, 7</sup>	((Vehicle Under 14' Over Height Charge <sup>3</sup> ))	Vehicle under 14' Multiride Media 20 Rides <sup>2, 7</sup>
Fauntleroy-Southworth Port Townsend/Coupeville	((8.05)) 8.45	((6.50)) 6.85	((8.05))	((128.80)) 135.20
Seattle-Bainbridge Island Seattle-Bremerton				
Edmonds-Kingston	((10.45)) 11.00	((8.45)) 8.95	((10.45))	((167.20)) 176.00
*Fauntleroy-Vashon				
*Southworth-Vashon				
*Pt. Defiance-Tahlequah	((13.35)) 14.05	((10.80)) 11.40	((13.35))	((106.80)) 112.40
Mukilteo-Clinton	((6.15)) 6.45	((4.95)) 5.20	((6.15))	((98.40)) 103.20
10 Rides - 5 Round Trips				
*Anacortes to Lopez	((24.45)) 25.65	((18.10)) 19.10	((24.45))	((91.70)) 96.20
*Shaw, Orcas	((29.40)) 30.90	((23.05)) 24.35	((29.40))	((110.25)) 115.90
*Friday Harbor	((34.90)) 36.70	((28.55)) 30.15	((34.90))	((130.90)) 137.65
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	((14.35)) 15.10	((14.35)) 15.10	((14.35))	((57.40)) 60.40
<i>International Travel</i>				
Anacortes to Sidney and Sidney to all destinations	((40.25)) 42.15	((30.90)) 32.50	((40.25))	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((11.95)) 26.10	((8.50)) 20.00	((11.95))	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>5</sup>	((52.25)) 52.20	((39.45)) 40.00	((52.25))	N/A

ROUTES	Vehicle 14' to Under 22' Incl. Driver One Way <sup>7</sup>	Vehicle 14' to Under 22' w/Sr Citizen or Disabled Driver <sup>4, 7</sup>	((Vehicle 14' to Under 22' Over Height Charge <sup>3</sup> ))	Vehicle 14' to Under 22' Multiride Media 20 Rides <sup>2, 7</sup>
Fauntleroy-Southworth Port Townsend/Coupeville	((40.25)) 10.80	((8.70)) 9.20	((40.25))	((164.00)) 172.80
Seattle-Bainbridge Island Seattle-Bremerton				
Edmonds-Kingston	((13.30)) 14.00	((11.30)) 11.95	((13.30))	((212.80)) 224.00
*Fauntleroy-Vashon				
*Southworth-Vashon				
*Pt. Defiance-Tahlequah	((17.00)) 17.90	((14.45)) 15.25	((17.00))	((136.00)) 143.20
Mukilteo-Clinton	((7.85)) 8.25	((6.65)) 7.00	((7.85))	((125.60)) 132.00

ROUTES	Vehicle 14' to Under 22' Incl. Driver One Way <sup>7</sup>	Vehicle 14' to Under 22' w/Sr Citizen or Disabled Driver <sup>4, 7</sup>	(Vehicle 14' to Under 22' Over-Height Charge <sup>5</sup> )	Vehicle 14' to Under 22' Multiride Media 20 Rides <sup>2, 7</sup>
10 Rides - 5 Round Trips				
*Anacortes to Lopez	((30.60)) <u>32.20</u>	((24.25)) <u>25.65</u>	((30.60))	((114.75)) <u>120.75</u>
*Shaw, Orcas	((36.70)) <u>38.65</u>	((30.35)) <u>32.10</u>	((36.70))	((137.65)) <u>144.95</u>
*Friday Harbor	((43.60)) <u>45.90</u>	((37.25)) <u>39.35</u>	((43.60))	((163.50)) <u>172.15</u>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	((20.50)) <u>21.55</u>	((20.50)) <u>21.55</u>	((20.50))	((82.00)) <u>86.20</u>
<i>International Travel</i>				
Anacortes to Sidney and Sidney to all destinations	((49.60)) <u>52.10</u>	((40.25)) <u>42.45</u>	((49.60))	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((14.25)) <u>32.25</u>	((10.80)) <u>26.15</u>	((14.25))	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>5</sup>	((63.85)) <u>64.50</u>	((51.05)) <u>52.30</u>	((63.85))	N/A

**EFFECTIVE 03:00 A.M. October 1, ((2013)) 2015**

ROUTES	Motorcycle <sup>5</sup> Incl. Driver Stowage <sup>1, 7</sup> One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage <sup>1, 7</sup> One Way	Motorcycle Frequent User Commuter 20 Rides <sup>2, 7</sup>
Fauntleroy-Southworth Port Townsend/Coupeville	((4.40)) <u>4.65</u>	((2.85)) <u>3.05</u>	((70.40)) <u>74.40</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((5.70)) <u>6.00</u>	((3.70)) <u>3.95</u>	((91.20)) <u>96.00</u>
*Fauntleroy-Vashon			
*Southworth-Vashon			
*Pt. Defiance-Tahlequah	((7.30)) <u>7.60</u>	((4.75)) <u>4.95</u>	((58.40)) <u>60.80</u>
Mukilteo-Clinton	((3.40)) <u>3.50</u>	((2.20)) <u>2.25</u>	((54.40)) <u>56.00</u>
*Anacortes to Lopez	((16.10)) <u>16.75</u>	((9.75)) <u>10.20</u>	((120.75)) <u>125.65</u>
*Shaw, Orcas	((17.30)) <u>18.05</u>	((10.95)) <u>11.50</u>	((129.75)) <u>135.40</u>
*Friday Harbor	((18.70)) <u>19.50</u>	((12.35)) <u>12.95</u>	((140.25)) <u>146.25</u>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	((5.75)) <u>6.05</u>	((5.75)) <u>6.05</u>	N/A
Anacortes to Sidney and Sidney to all destinations	((24.70)) <u>25.65</u>	((15.35)) <u>16.00</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((8.20)) <u>15.90</u>	((4.75)) <u>9.80</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>5</sup>	((32.90)) <u>31.80</u>	((20.10)) <u>19.60</u>	N/A

All fares rounded to the next multiple of \$0.05.

\*These routes operate as a one-point toll collection system.

<sup>1</sup>SIZE - Vehicles up to 14' in length ((and under 7'6" in height)) shall pay the vehicle under 14' toll. All vehicles from 14' to under 22' in length ((and under 7'6" in height)) shall pay the 14' to 22' toll. ((All vehicles up to 22' but over 7'6" in height shall pay an over-height charge of 100% of the vehicle full fare.)) Motorcycles towing a trailer and vehicles licensed as motorcycles with three or more wheels that are 8'0" or longer shall pay the appropriate length-based vehicle fare. ((Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, the height charge will be waived for vehicles equipped with wheel chair lift or other mechanism designed to accommodate the person with disability.))

<sup>2</sup>MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the media shall not be accepted for passage. Remaining value will not be eligible for refund. For mail order deliveries, WSF may add additional days to allow for delivery time. The vehicle/driver multiride card may be used for passage for an attendant driver plus one disabled driver.

<sup>3</sup>INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is

free of charge. Transfers shall be valid for 24 hours from time of purchase.

<sup>4</sup>SENIOR CITIZEN, DISABLED DRIVER OR DISABLED ATTENDANT DRIVER - Half fare discount applies to driver portion of the vehicle-driver fare and only when the driver is eligible. Those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant, when driving, to have the driver portion of the vehicle fare waived.

<sup>5</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

<sup>6</sup>VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advance vehicle reservations may be established at a level of from 25 to 100 percent of the applicable fare. This is a deposit toward the fare and not an additional fee, and applies only to those routes where the legislature has approved the use of a reservation system. Where it is operationally necessary (routes where vehicle fares are collected in only one direction or to increase operational efficiency at the terminal) a reservation no-show fee may be used in lieu of a deposit. The no-show fee will be limited to 25 to 100 percent of the equivalent one-way fare and will be charged if the customer does not travel within the same business day as their reserved sailing. Refunds may be available under certain circumstances.

<sup>7</sup>CAPITAL SURCHARGE - There will be an additional \$0.25 capital surcharge on each single vehicle/driver fare collected. On all multiride cards except for routes serving Vashon Island and the San Juan Islands, there will be an additional capital surcharge of \$5.00. For Vashon Island routes, the additional capital surcharge will be \$2.50 on multiride cards. For motorcycles in the San Juan Islands, the capital surcharge on multiride cards will be \$2.50. For vehicles under 22' in the San Juan Islands, the capital surcharge on multiride cards will be \$1.25.

RIDE SHARE VEHICLES - A commuter ride share vehicle which carries five or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$20 fee, a permit valid for one year valid only during the hours shown on the permit. The \$20.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the minimum total paid for all passengers in the van shall not be less than four times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

PEAK SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from May 1 through September 30 except those using multiride media. A 35% surcharge shall be applied on vehicle fares from Anacortes to Lopez, Shaw, Orcas and Friday Harbor, except those using multiride media. The resulting fare is rounded to the nearest \$0.05 if required.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written

report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates (20% off base season rates, except for Anacortes to San Juan Islands where it is 35% off base season end of week rates). Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximate based on the discount rates offered to multiride media users applicable on the date of travel.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specified discount in order to enhance total revenue and effective only at designated times on designated routes. A promotional fare product may also be established to support tourism or other special events. The promotional fare or product may be bundled and sold as part of a multiparty promotional program.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

BUNDLED SINGLE FARE MEDIA - WSF may bundle single fare types into multiple trip books as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery time.

**EFFECTIVE 03:00 A.M. May 1, (~~2014~~) 2016**

ROUTES	Vehicle Under 14' Incl. Driver One Way <sup>7</sup>	Vehicle Under 14' w/Sr Citizen or Disabled Driver <sup>4, 7</sup>	(Vehicle Under 14' Over Height Charge <sup>4, 7</sup> )	Vehicle Under 14' Multiride Media 20 Rides <sup>2, 7</sup>
Fauntleroy-Southworth Port Townsend/Coupeville	((8.25)) 8.65	((6.65)) 7.05	((8.25))	((132.00)) 138.40
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((10.70)) 11.25	((8.70)) 9.20	((10.70))	((171.20)) 180.00
*Fauntleroy-Vashon				
*Southworth-Vashon				
*Pt. Defiance-Tahlequah	((13.70)) 14.35	((11.40)) 11.70	((13.70))	((109.60)) 114.80
Mukilteo-Clinton	((6.30)) 6.60	((5.10)) 5.35	((6.30))	((100.80)) 105.60
10 Rides - 5 Round Trips				
*Anacortes to Lopez	((25.05)) 26.30	((18.55)) 19.65	((25.05))	((93.95)) 98.65

ROUTES	Vehicle Under 14' Incl. Driver One Way <sup>7</sup>	Vehicle Under 14' w/Sr Citizen or Disabled Driver <sup>4, 7</sup>	(Vehicle Under 14' Over Height Charge <sup>1, 7</sup> )	Vehicle Under 14' Multiride Media 20 Rides <sup>2, 7</sup>
*Shaw, Orcas	((30.15)) <u>31.60</u>	((23.65)) <u>24.95</u>	((30.15))	((113.05)) <u>118.50</u>
*Friday Harbor	((35.80)) <u>37.50</u>	((29.30)) <u>30.85</u>	((35.80))	((134.25)) <u>140.65</u>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	((14.70)) <u>15.45</u>	((14.70)) <u>15.45</u>	((14.70))	((58.80)) <u>61.80</u>
<i>International Travel</i>				
Anacortes to Sidney and Sidney to all destinations	((41.25)) <u>43.15</u>	((31.70)) <u>33.40</u>	((41.25))	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((25.55)) <u>26.75</u>	((19.65)) <u>20.60</u>	((25.55))	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>5</sup>	((51.05)) <u>53.50</u>	((39.25)) <u>41.20</u>	((51.05))	N/A

**EFFECTIVE 03:00 A.M. May 1, (~~2014~~) 2016**

ROUTES	Vehicle 14' to Under 22' Incl. Driver One Way <sup>7</sup>	Vehicle 14' to Under 22' w/Sr Citizen or Disabled Driver <sup>4, 7</sup>	(Vehicle 14' to Under 22' Over Height Charge <sup>1, 7</sup> )	Vehicle 14' to Under 22' Multiride Media 20 Rides <sup>2, 7</sup>
Fauntleroy-Southworth Port Townsend/Coupeville <sup>6</sup>	((40.50)) <u>11.05</u>	((8.90)) <u>9.45</u>	((40.50))	((168.00)) <u>176.80</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((13.65)) <u>14.35</u>	((11.65)) <u>12.30</u>	((13.65))	((218.40)) <u>229.60</u>
*Fauntleroy-Vashon				
*Southworth-Vashon				
*Pt. Defiance-Tahlequah	((17.45)) <u>18.35</u>	((14.85)) <u>15.70</u>	((17.45))	((139.60)) <u>146.80</u>
Mukilteo-Clinton	((8.05)) <u>8.45</u>	((6.85)) <u>7.20</u>	((8.05))	((128.80)) <u>135.20</u>
10 Rides - 5 Round Trips				
*Anacortes to Lopez <sup>6</sup>	((31.40)) <u>33.00</u>	((24.90)) <u>26.35</u>	((31.40))	((117.75)) <u>123.75</u>
*Shaw, Orcas <sup>6</sup>	((37.65)) <u>39.60</u>	((31.15)) <u>32.95</u>	((37.65))	((141.20)) <u>148.50</u>
*Friday Harbor <sup>6</sup>	((44.75)) <u>47.05</u>	((38.25)) <u>40.40</u>	((44.75))	((167.80)) <u>176.45</u>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	((21.00)) <u>22.10</u>	((21.00)) <u>22.10</u>	((21.00))	((84.00)) <u>88.40</u>
<i>International Travel</i>				
Anacortes to Sidney and Sidney to all destinations <sup>6</sup>	((50.85)) <u>53.40</u>	((41.30)) <u>43.65</u>	((50.85))	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((31.50)) <u>33.10</u>	((25.60)) <u>26.95</u>	((31.50))	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>6</sup>	((62.95)) <u>66.20</u>	((51.15)) <u>53.90</u>	((62.95))	N/A

**EFFECTIVE 03:00 A.M. May 1, (~~2014~~) 2016**

ROUTES	Motorcycle <sup>5</sup> Incl. Driver Stowage <sup>1, 7</sup> One Way	Motorcycle w/Sr Citizen or Disabled Driver Stowage <sup>1, 7</sup> One Way	Motorcycle Frequent User Commuter 20 Rides <sup>2, 7</sup>
Fauntleroy-Southworth Port Townsend/Coupeville <sup>6</sup>	((4.50)) <u>4.65</u>	((2.90)) <u>3.05</u>	((72.00)) <u>74.40</u>
Seattle-Bainbridge Island Seattle-Bremerton Edmonds-Kingston	((5.90)) <u>6.10</u>	((3.90)) <u>4.05</u>	((94.40)) <u>97.60</u>
*Fauntleroy-Vashon			
*Southworth-Vashon			
*Pt. Defiance-Tahlequah	((7.45)) <u>7.75</u>	((4.85)) <u>5.10</u>	((59.60)) <u>62.00</u>
Mukilteo-Clinton	((3.50)) <u>3.60</u>	((2.30)) <u>2.35</u>	((56.00)) <u>57.60</u>
*Anacortes to Lopez <sup>6</sup>	((16.45)) <u>17.00</u>	((9.95)) <u>10.35</u>	((123.40)) <u>127.50</u>
*Shaw, Orcas <sup>6</sup>	((17.70)) <u>18.35</u>	((11.20)) <u>11.70</u>	((132.75)) <u>137.65</u>
*Friday Harbor <sup>6</sup>	((19.15)) <u>19.85</u>	((12.65)) <u>13.20</u>	((143.65)) <u>148.90</u>
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	((5.95)) <u>6.15</u>	((5.95)) <u>6.15</u>	N/A
Anacortes to Sidney and Sidney to all destinations <sup>6</sup>	((25.25)) <u>26.05</u>	((15.70)) <u>16.30</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((15.65)) <u>16.15</u>	((9.75)) <u>10.00</u>	N/A
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>6</sup>	((31.25)) <u>32.30</u>	((19.45)) <u>20.00</u>	N/A

All fares rounded to the next multiple of \$0.05.

\*These routes operate as a one-point toll collection system.

<sup>1</sup>SIZE - Vehicles up to 14' in length ((and under 7'6" in height)) shall pay the vehicle under 14' toll. Vehicles from 14' to under 22' ((and under 7'6" in height)) shall pay the 14' to 22' toll. ((All vehicles up to 22' but over 7'6" in height shall pay an overweight charge of 100% of the vehicle full fare.)) Motorcycles towing a trailer and vehicles licensed as motorcycles with three or more wheels that are 8'0" or longer shall pay the appropriate length-based vehicle fare. ((Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, the height charge will be waived for vehicles equipped with wheel chair lift or other mechanism designed to accommodate the person with disability.))

<sup>2</sup>MULTIRIDE MEDIA - Shall be valid only for 90 days from date of purchase after which time the media shall not be accepted for passage. Remaining value will not be eligible for refund. For mail order deliveries, WSF may add additional days to allow for delivery time. The vehicle/driver multiride card may be used for passage for an attendant driver plus one disabled passenger.

<sup>3</sup>INTER-ISLAND FARES - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

<sup>4</sup>SENIOR CITIZEN, DISABLED DRIVER OR DISABLED ATTENDANT DRIVER - Half fare discount applies to driver portion of the vehicle-driver fare and only when the driver is eligible. Those persons with disabilities who require attendant care while traveling on the ferries, and are so certified by their physician, may obtain an endorsement on their WSF Disability Travel Permit and such endorsement shall allow the attendant, when driving, to have the driver portion of the vehicle fare waived.

<sup>5</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

<sup>6</sup>VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advance vehicle reservations may be established at a level of from 25 to 100 percent of the applicable fare. This is a deposit toward the fare and not an additional fee, and applies only to those routes where the legislature has approved the use of a reservation system. Where it is operationally necessary (routes where vehicle fares are collected in only one direction or to increase operational efficiency at the terminal) a reservation no-show fee may be used in lieu of a deposit. The no-show fee will be limited to 25 to 100 percent of the equivalent one-way fare and will be charged if the customer does not travel within the same business day as their reserved sailing. Refunds may be available under certain circumstances.

<sup>7</sup>CAPITAL SURCHARGE - There will be an additional \$0.25 capital surcharge on each single vehicle/driver fare collected. On all multiride cards except for routes serving Vashon Island and the San Juan Islands, there will be an additional capital surcharge of \$5.00. For Vashon Island routes, the additional capital surcharge will be \$2.50 on multiride cards. For motorcycles in the San Juan Islands, the capital surcharge on multiride cards will be \$2.50. For vehicles under 22' in the San Juan Islands, the capital surcharge on multiride cards will be \$1.25.

RIDE SHARE VEHICLES - A commuter ride share vehicle which carries five or more persons on a regular and expense-sharing basis for the purpose of travel to and from work or school and which is certified as such by a local organization approved by the Washington state ferry system, may purchase for a \$20 fee, a permit valid for one year valid only during the hours shown on the permit. The \$20.00 fee shall include the driver. Remaining passengers shall pay the applicable passenger fare. Except that the min-

imum total paid for all passengers in the van shall not be less than four times the applicable passenger fare. Carpools of three or more registered in WSF's preferential loading program must also pay a \$20.00 yearly permit fee.

STOWAGE - Stowage carry-on items including kayaks, canoes and other items of comparable size which are typically stowed on the vehicle deck of the vessel shall be charged at the motorcycle rate. This rate includes the walk-on passenger carrying on the item to be stowed.

PEAK SEASON SURCHARGE - A 25% surcharge shall be applied to vehicles from May 1 through September 30 except those using multiride media. A 35% surcharge shall be applied on vehicle fares from Anacortes to Lopez, Shaw, Orcas and Friday Harbor, except those using multiride media. The resulting fare is rounded up to the next \$0.05 if required.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

IN-NEED ORGANIZATIONS - For qualified organizations serving in-need clients by providing tickets for transportation on WSF at no cost to clients, program would offer a monthly discount to approximate appropriate multiride media discount rates (20% off base season rates, except for Anacortes to San Juan Islands where it is 35% off base season end of week rates). Appointing bodies (those that appoint Ferry Advisory Committees) will nominate to the Washington State Transportation Commission those organizations that meet the criteria of the program. The Commission will review such nominations and certify those organizations that qualify. The following criteria will be used for nominating and certifying in-need organizations: Nongovernmental and not-for-profit organizations whose primary purpose is one or more of the following: Help clients with medical issues; provide clients with low-income social services; help clients suffering from domestic violence; provide clients with employment-seeking services; and/or help clients with Social Security. Travel will be initially charged based on full fare and billed monthly. The credits will be approximate based on the discount rates offered to multiride media users applicable on the date of travel.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

PROMOTIONAL TOLLS - A promotional rate may be established at the discretion of the WSF Assistant Secretary, Executive Director for a specified discount in order to enhance total revenue and effective only at designated times on designated routes. A promotional fare product may also be established to support tourism or other special events. The promotional fare or product may be bundled and sold as part of multiparty promotional program.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiride media or offer passes for

high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares

in exchange for the opportunity to participate in the income generated by the event.

BUNDLED SINGLE FARE MEDIA - WSF may bundle single fare types into multiple trip books as a customer convenience. Remaining value will not be eligible for refund or exchange. For mail order deliveries, WSF may add additional days to allow for delivery time.

**AMENDATORY SECTION** (Amending WSR 13-18-019, filed 8/26/13, effective 9/26/13)

**WAC 468-300-040 Oversize vehicle ferry tolls.**

**EFFECTIVE 03:00 A.M. October 1, ((2013)) 2015**

ROUTES	Oversize Vehicle Ferry Tolls <sup>1</sup>							Cost Per Ft. Over 80' @
	Overall Unit Length - Including Driver							
	22' To Under 30' Under 7'6" High <sup>5</sup>	22' To Under 30' Over 7'6" High <sup>5</sup>	30' To Under 40' <sup>5</sup>	40' To Under 50' <sup>5</sup>	50' To Under 60' <sup>5</sup>	60' To under 70' <sup>5</sup>	70' To and include 80' <sup>5</sup>	
Fauntleroy-Southworth	((15.90))	((31.80))	((42.55))	((53.30))	((64.05))	((74.85))	((85.60))	((1.10))
Port Townsend/Coupeville	16.75	33.50	44.80	56.15	67.50	78.85	90.20	1.15
Seattle-Bainbridge Island								
Seattle/Bremerton	((20.65))	((41.25))	((55.20))	((69.15))	((83.15))	((97.10))	((111.05))	((1.40))
Edmonds-Kingston	21.70	43.40	58.10	72.80	87.50	102.20	116.90	1.45
*Fauntleroy-Vashon								
*Southworth-Vashon	((26.35))	((52.70))	((70.55))	((88.40))	((106.25))	((124.10))	((141.95))	((1.80))
*Pt. Defiance-Tahlequah	27.75	55.50	74.30	93.10	111.90	130.65	149.45	1.90
	((12.20))	((24.35))	((32.60))	((40.80))	((49.05))	((57.30))	((65.55))	((0.80))
Mukilteo-Clinton	12.80	25.55	34.25	42.90	51.55	60.25	68.90	0.85
	((47.45))	((94.85))	((127.00))	((159.10))	((191.25))	((223.40))	((255.50))	((3.20))
*Anacortes to Lopez <sup>2</sup>	49.90	99.80	133.65	167.45	201.25	235.05	268.85	3.40
	((56.90))	((113.75))	((152.30))	((190.85))	((229.40))	((267.90))	((306.45))	((3.85))
*Anacortes to Shaw, Orcas <sup>2</sup>	59.90	119.80	160.40	201.00	241.55	282.15	322.75	4.05
	((67.60))	((135.15))	((180.95))	((226.70))	((272.50))	((318.30))	((364.05))	((4.60))
*Anacortes to Friday Harbor	71.15	142.30	190.50	238.70	286.90	335.05	383.25	4.80
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	((31.80))	((63.55))	((85.10))	((106.60))	((128.15))	((149.65))	((171.15))	N/A
	33.40	66.80	89.45	112.05	134.70	157.30	179.95	
<i>International Travel</i>	((77.65))	((77.65))	((103.95))	((130.25))	((156.55))	((182.85))	((209.15))	((2.65))
Anacortes to Sidney to all destinations	81.55	81.55	109.20	136.80	164.45	192.05	219.70	2.75
Lopez, Shaw, Orcas and Friday Harbor to Sidney	((22.30))	((22.30))	((29.85))	((37.40))	((45.00))	((52.55))	((60.10))	((0.75))
	50.50	50.50	67.60	84.70	101.80	118.90	136.00	1.70
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>4</sup>	((99.95))	((99.95))	((133.80))	((167.65))	((201.55))	((235.40))	((269.25))	
	101.00	101.00	135.20	169.40	203.60	237.80	272.00	3.40

<sup>1</sup>OVERSIZE VEHICLES - Includes all vehicles 22 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 22' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles wider than 8'6" pay double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, vehicles 22-30 feet in length and over 7'6" in height shall be charged the 22-30 foot length and under 7'6" in height fare for vehicles equipped with wheelchair lift or other ((mechanism)) feature designed to accommodate the person with the disability.

<sup>2</sup>TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may purchase a single intermediate transfer when first purchasing the appropriate fare. The transfer is valid for a 24-hour period and is priced as follows: \$((61.00)) 64.40 base season, \$((82.25)) 86.80 peak season.

<sup>3</sup>INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

<sup>4</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

<sup>5</sup>CAPITAL SURCHARGE - There will be an additional \$0.25 capital surcharge on each single vehicle/driver fare collected.

BULK NEWSPAPERS - Per 100 lbs. \$2.85 (Shipments exceeding 60,000 lbs. in any month shall be assessed \$1.42 per 100 lbs.). Daily newspapers, in bundles, to be received and delivered without receipt and subject to owner's risk, will be transported between ferry terminals on regular scheduled sailings.

VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advanced reservations may be established at a level of from 25 to

100 percent of the applicable fare. This is a deposit toward the fare and not an additional fee, and applies only to those routes where the legislature has approved the use of a reservation system. Where it is operationally necessary (routes where vehicle fares are collected in only one direction or to increase operational efficiency at the terminal) a reservation no-show fee may be used in lieu of a deposit. The no-show fee will be limited to 25 to 100 percent of the equivalent one-way fare and will be charged if the customer does not travel within the same business day as their reserved sailing. Refunds may be available under certain special circumstances.

**PEAK SEASON SURCHARGE** - A peak season surcharge shall apply to all oversized vehicles from May 1 through September 30. The oversized fare shall be determined based on the peak-season car-and-driver fare and the analogous oversized vehicle fare, calculated with the same factor as the oversized base seasons fares are to the base season under 20 foot fare. The senior citizen discount shall apply to the driver of an oversized vehicle. The resulting fare is rounded up to the next \$0.05 if required.

**SENIOR CITIZEN DISCOUNTS** - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate. The senior citizen discount shall apply to the driver of an oversized vehicle.

**PENALTY CHARGES** - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

**DISCOUNT FROM REGULAR TOLL** - Effective June 1, 2005, through fall of 2005, oversized vehicles making 12 or more, one-way crossings per week (Sunday through Saturday) will qualify for a 10% discount from the regular ferry tolls. With the implementation of EFS in spring 2006, WSF will provide a commercial account program that will be prepaid and offer access to volume discounts based on travel, revenue or other criteria in accordance with WSF business rules. On an annual basis, commercial accounts will pay a \$50 nonrefundable account maintenance fee.

**GROUP OR VOLUME SALES** - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF

will have discretion to set appropriate volume discounts based on a case-by-case basis.

**SPECIAL EVENTS** - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

**FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION** - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

**EMERGENCY TRIPS DURING NONSERVICE HOURS** - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

**DISCLAIMER** - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

**EFFECTIVE 03:00 A.M. May 1, (~~2014~~) 2016**

ROUTES	Oversize Vehicle Ferry Tolls <sup>1</sup>							
	Overall Unit Length - Including Driver							
	22' To Under 30' Under ((7'6"))	22' To Under 30' Over ((7'6"))	30' To Under 40' <sup>5</sup>	40' To Under 50' <sup>5</sup>	50' To Under 60' <sup>5</sup>	60' To under 70' <sup>5</sup>	70' To and include 80' <sup>5</sup>	Cost Per Ft. Over 80' @
	7'2" High <sup>5</sup>	7'2" High <sup>5</sup>						
Fauntleroy-Southworth	((16.30))	((32.55))	((43.60))	((54.60))	((65.65))	((76.65))	((87.65))	((1.10))
Port Townsend/Coupeville	17.15	34.25	45.85	57.45	69.05	80.65	92.25	1.15
Seattle-Bainbridge Island								
Seattle/Bremerton	((21.15))	((42.30))	((56.65))	((71.00))	((85.30))	((99.65))	((114.00))	((1.45))
Edmonds-Kingston	22.25	44.50	59.55	74.60	89.70	104.75	119.80	1.50
*Fauntleroy-Vashon								
*Southworth-Vashon	((27.05))	((54.10))	((72.40))	((90.75))	((109.05))	((127.40))	((145.70))	((1.85))
*Pt. Defiance-Tahlequah	28.45	56.90	76.15	95.40	114.70	133.95	153.20	1.95
Mukilteo-Clinton	((12.50))	((24.95))	((33.40))	((41.85))	((50.30))	((58.75))	((67.20))	((0.85))
	13.10	26.20	35.05	43.95	52.80	61.70	70.55	0.90
*Anacortes to Lopez <sup>2</sup>	((48.70))	((97.35))	((130.30))	((163.30))	((196.25))	((229.20))	((262.20))	((3.30))
	51.15	102.30	136.95	171.60	206.25	240.90	275.55	3.45
*Anacortes to Shaw, Orcas <sup>2</sup>	((58.35))	((116.70))	((156.25))	((195.80))	((235.30))	((274.85))	((314.40))	((3.95))
	61.40	122.75	164.35	205.90	247.50	289.10	330.65	4.15
*Anacortes to Friday Harbor	((69.35))	((138.70))	((185.70))	((232.70))	((279.70))	((326.70))	((373.65))	((4.70))
	72.90	145.85	195.25	244.65	294.05	343.45	392.85	4.95

Oversize Vehicle Ferry Tolls<sup>1</sup>

Overall Unit Length - Including Driver

ROUTES	22' To Under 30' Under ((76"))	22' To Under 30' Over ((76"))	30' To Under 40' <sup>5</sup>	40' To Under 50' <sup>5</sup>	50' To Under 60' <sup>5</sup>	60' To under 70' <sup>5</sup>	70' To and include 80' <sup>5</sup>	Cost Per Ft. Over 80' @
	7'2" High <sup>5</sup>	7'2" High <sup>5</sup>						
Between Lopez, Shaw, Orcas and Friday Harbor <sup>3</sup>	<del>((32.55))</del> 34.25	<del>((65.10))</del> 68.50	<del>((87.15))</del> 91.70	<del>((109.20))</del> 114.90	<del>((131.25))</del> 138.15	<del>((153.30))</del> 161.35	<del>((175.35))</del> 184.55	N/A
<i>International Travel</i>	<del>((79.60))</del>	<del>((79.60))</del>	<del>((106.55))</del>	<del>((133.55))</del>	<del>((160.50))</del>	<del>((187.45))</del>	<del>((214.40))</del>	<del>((2.70))</del>
Anacortes to Sidney to all destinations	83.60	83.60	111.90	140.25	168.55	196.85	225.15	2.85
Lopez, Shaw, Orcas and Friday Harbor to Sidney	<del>((49.30))</del> 51.80	<del>((49.30))</del> 51.80	<del>((66.00))</del> 69.35	<del>((82.65))</del> 86.85	<del>((99.35))</del> 104.40	<del>((116.05))</del> 121.95	<del>((132.70))</del> 139.45	<del>((1.70))</del> 1.75
Lopez, Shaw, Orcas and Friday Harbor to Sidney (round trip) <sup>4</sup>	<del>((98.55))</del> 103.60	<del>((98.55))</del> 103.60	<del>((131.95))</del> 138.70	<del>((165.30))</del> 173.70	<del>((198.70))</del> 208.80	<del>((232.05))</del> 243.90	<del>((265.45))</del> 278.90	<del>((3.35))</del> 3.50

<sup>1</sup>OVERSIZE VEHICLES - Includes all vehicles 22 feet in length and longer regardless of type: Commercial trucks, recreational vehicles, vehicles under 22' pulling trailers, etc. Length shall include vehicle and load to its furthest extension. Overheight charge is included in oversize vehicle toll. Vehicles wider than 8'6" may double the fare applicable to their length. Private and commercial passenger buses or other passenger vehicles pay the applicable oversize vehicle tolls. Public transit buses and drivers shall travel free upon display of an annual permit which may be purchased for \$10. Upon presentation by either the driver or passenger of a WSF Disability Travel Permit, Regional Reduced Fare Permit, or other identification which establishes disability, vehicles 22-30 feet in length and over ((76")) 7'2" in height shall be charged the 22-30 foot length and under ((76")) 7'2" in height fare for vehicles equipped with wheelchair lift or other ((mechanism)) feature designed to accommodate the person with the disability.

<sup>2</sup>TRANSFERS - Tolls collected westbound only. Oversize vehicles traveling westbound from Anacortes may purchase a single intermediate transfer when first purchasing the appropriate fare. The transfer is valid for a 24-hour period and is priced as follows: ~~\$(62.85))~~ 66.00 base season, ~~\$(84.70))~~ 88.95 peak season.

<sup>3</sup>INTER-ISLAND - Tolls collected westbound only. Vehicles traveling between islands may request a single transfer ticket good for one transfer at an intermediate island. The transfer may only be obtained when purchasing the appropriate vehicle fare for inter-island travel (westbound at Lopez, Shaw, or Orcas) and is free of charge. Transfers shall be valid for 24 hours from time of purchase.

<sup>4</sup>ROUND TRIP - Round trip passage for international travel available for trips beginning or ending on one of the islands served.

<sup>5</sup>CAPITAL SURCHARGE - There will be an additional \$0.25 capital surcharge on each single vehicle/driver fare collected.

BULK NEWSPAPERS - Per 100 lbs. \$2.85 (Shipments exceeding 60,000 lbs. in any month shall be assessed \$1.42 per 100 lbs.). Daily newspapers, in bundles, to be received and delivered without receipt and subject to owner's risk, will be transported between ferry terminals on regular scheduled sailings.

VEHICLE RESERVATION DEPOSIT - Nonrefundable deposits for advanced reservations may be established at a level of from 25 to 100 percent of the applicable fare. This is a deposit toward the fare and not an additional fee, and applies only to those routes where the legislature has approved the use of a reservation system. Where it is operationally necessary (routes where vehicle fares are collected in only one direction or to increase operational efficiency at the terminal) a reservation no-show fee may be used in lieu of a deposit. The no-show fee will be limited to 25 to 100 percent of the equivalent one-way fare and will be charged if the customer does not travel within the same business day as their reserved sailing. Refunds may be available under certain special circumstances.

PEAK SEASON SURCHARGE - A peak season surcharge shall apply to all oversize vehicles from May 1 through September 30. The oversize fare shall be determined based on the peak-season car-and-driver fare and the analogous oversize vehicle fare, calculated with the same factor as the oversize base seasons fares are to the base season under 20 foot fare. The senior citizen discount shall apply to the driver of an oversize vehicle. The resulting fare is rounded up to the next \$0.05 if required.

SENIOR CITIZEN DISCOUNTS - Discounts of 50% for the driver of the above vehicles shall apply. Senior citizen discount is determined by subtracting full-fare passenger rate and adding half-fare passenger rate. The senior citizen discount shall apply to the driver of an oversize vehicle.

PENALTY CHARGES - Owner of vehicle without driver will be assessed a \$100.00 penalty charge.

DISCOUNT FROM REGULAR TOLL - Effective June 1, 2005, through fall of 2005, oversize vehicles making 12 or more, one-way crossings per week (Sunday through Saturday) will qualify for a 10% discount from the regular ferry tolls. With the implementation of EFS in spring 2006, WSF will provide a commercial account program that will be prepaid and offer access to volume discounts based on travel, revenue or other criteria in accordance with WSF business rules. On an annual basis, commercial accounts will pay a \$50 nonrefundable account maintenance fee.

GROUP OR VOLUME SALES - In order to increase total revenues, WSF may develop full fare or discounted customer packages or bundle single fare types into multiple trip books or offer passes for high volume or group users. In pricing these packages, WSF will have discretion to set appropriate volume discounts based on a case-by-case basis.

SPECIAL EVENTS - In order to increase total revenues, WSF may develop, create or participate in special events that may include, but not be limited to, contributing or packaging discounted fares in exchange for the opportunity to participate in the income generated by the event.

FIRE DEPARTMENT AND FIRE DISTRICT FARE CONSIDERATION - At the discretion of the WSF Assistant Secretary, WSF may authorize no-fare or discounted fare passage on scheduled and/or special ferry sailings for fire departments and fire districts that provide contracted fire protection services for WSF ferry terminals and/or other WSF facilities within their jurisdiction. Such passage shall be considered full and complete consideration for such fire protection services, in lieu of annual payments for such services, to be so noted in such fire protection agreements. The scope of such authorization includes designated fire department and fire district vehicles (see below), drivers and passengers en route to and from an emergency call, on ferry routes with a WSF terminal and/or other WSF facility served by a fire department or fire district pursuant to a WSF fire protection service agreement. Authorized vehicles may include public fire department and fire district medical aid units, fire trucks, incident command and/or other vehicles dispatched to and returning from an emergency

call. WSF may implement such ferry passage on a pilot project basis to assess the operational, financial and administrative impact on WSF. By June 30, 2011, WSF shall submit a written report to the Transportation Commission identifying such impacts with a recommendation whether to make such passage authorization a permanent component of the WSF ferry toll schedule.

**EMERGENCY TRIPS DURING NONSERVICE HOURS** - While at locations where crew is on duty charge shall be equal to the cost of fuel consumed to make emergency trip. Such trips shall only be offered as a result of official requests from an emergency services agency and only in the case of no reasonable alternative.

**DISCLAIMER** - Under no circumstances does Washington state ferries warrant the availability of ferry service at a given date or time; nor does it warrant the availability of space on board a vessel on a given sailing.

**AMENDATORY SECTION** (Amending WSR 13-18-019, filed 8/26/13, effective 9/26/13)

**WAC 468-300-220 Calculation of charter rates for vessels owned by the Washington state ferry system.** Pursuant to chapter 323, Laws of 1997, vessels owned by the Washington state ferry system may be made available for charter subject to operational availability. Execution of a charter agreement as set forth in the statute must precede a commitment to charter. The following actual hourly vessel operating costs have been calculated for establishing the rates to be charged for vessel charters from July 1, ~~((2013))~~ 2015, through June 30, ~~((2014))~~ 2016:

Vessel Class	Deck Crew On Overtime	Deck Crew On Straight Time
Jumbo Mark II	<del>\$(1,782.00)</del> <u>1,785.00</u>	<del>\$(1,731.00)</del> <u>1,690.00</u>
Jumbo	<del>((1,677.00))</del> <u>1,680.00</u>	<del>((1,626.00))</del> <u>1,588.00</u>
Super	<del>((1,629.00))</del> <u>1,633.00</u>	<del>((1,579.00))</del> <u>1,542.00</u>
Evergreen	<del>((1,074.00))</del> <u>1,082.00</u>	<del>((1,035.00))</del> <u>1,011.00</u>
Issaquah	<del>((1,181.00))</del> <u>1,189.00</u>	<del>((1,138.00))</del> <u>1,111.00</u>
Kwa-di-Tabil	<del>((1,042.00))</del> <u>1,051.00</u>	<del>((1,003.00))</del> <u>980.00</u>
Hiyu	<del>((633.00))</del> <u>624.00</u>	<del>((607.00))</del> <u>581.00</u>

The rate for an individual charter will be calculated by:

(1) Multiplying the actual operating cost set forth above for the vessel that is chartered by the number of hours, or fraction thereof, for which the vessel is chartered;

(2) Adding labor costs, mileage and per diem expenses to determine the total actual costs if the particular charter requires a crew callout; and

(3) Increasing the total actual costs calculated pursuant to subsections (1) and (2) of this section by an appropriate profit margin based on market conditions, and rounding to the nearest fifty dollars.

In the case of charters for the transport of hazardous materials, the transporter is required to pay for all legs necessary to complete the charter, even if the vessel is simultaneously engaged in an operational voyage on behalf of the Washington state ferry system.

**WSR 15-18-012  
PERMANENT RULES  
DEPARTMENT OF  
NATURAL RESOURCES**

[Filed August 21, 2015, 11:30 a.m., effective September 21, 2015]

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

Purpose: Commercial geoduck harvesting techniques expose divers to a wide range of occupational health and safety hazards. 2SHB 1764 requires the department of natural resources (DNR) to adopt rules establishing a geoduck diver safety program. The proposed rule establishes mandatory safety training requirements for all divers participating in the state managed wildstock geoduck fishery. Mandated safety requirements are intended to mitigate the inherent hazards associated with working in hyperbaric conditions and reduce the probability of diver related accidents. Increased safety requirements will reduce risk exposure for geoduck divers, as well for other individuals that provide emergency response in the event of a dive related accident.

Statutory Authority for Adoption: RCW 43.30.560.

Adopted under notice filed as WSR 15-14-133 on July 1, 2015.

A final cost-benefit analysis is available by contacting Matthew Goehring, DNR, 1111 Washington Street S.E., Mailstop 47027, Olympia, WA 98504-7027, phone (360) 902-1090, fax (360) 902-1786, e-mail matt.goehring@dnr.wa.gov.

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

Date Adopted: August 18, 2015.

Megan Duffy  
Deputy Supervisor  
Aquatics and  
Environmental Protection

NEW SECTION**WAC 332-30-172 Geoduck diver safety program.** (1) General.

(a) Beginning January 1, 2015, divers shall annually demonstrate compliance with the geoduck diver safety program established in this section prior to being identified on a department geoduck harvest agreement plan of operations.

(b) Applicants may submit applicable documents and certifications beginning October 1st of each year to verify compliance for the subsequent calendar year. The department will not consider incomplete and/or illegible materials. The department shall review materials in the order they are received and notify divers of their compliance status within thirty-days of receipt of all required documentation.

(c) Applicants may submit applicable materials to the department by certified mail or electronically by e-mail or fax. The department will not accept materials submitted in person.

(d) The department will maintain an electronic database documenting annual compliance with the program. Compliance verification shall expire at the end of a calendar year.

(e) If a plan of operations spans portions of two calendar years, the department shall only verify diver compliance for the calendar year the diver is initially identified on the plan of operations.

(2) Training qualifications. Divers shall provide evidence of the following qualifications:

(a) Cardiopulmonary resuscitation (CPR) and first-aid certification;

(b) Emergency oxygen administration certification;

(c) Washington state boater education card; and

(d) Annual self-attestation confirming applicant possesses a combination of training and experience necessary to conduct harvest diving in a safe and healthful manner. The department shall develop and make available a template for applicant signature. Divers shall maintain, at a minimum, competency in the following subject areas:

(i) Diving physiology and physics;

(ii) Diving operations and emergency procedures;

(iii) Tools, equipment, and techniques relevant to geoduck harvesting;

(iv) U.S. Coast Guard vessel safety requirements; and

(v) Any additional subject matter areas as identified in "Qualifications of Dive Team" within federal Occupational Safety and Health Standards for Commercial Diving Operations (C.F.R. 1910.410(a)).

**WSR 15-18-024****PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed August 25, 2015, 10:00 a.m., effective September 25, 2015]

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

Purpose: The community services division is amending WAC 388-310-0800 WorkFirst—Support services, to allow

transportation allotments for other approved WorkFirst activities.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-0800.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057.

Adopted under notice filed as WSR 15-13-094 on June 15, 2015.

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

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

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

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

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

Date Adopted: August 21, 2015.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-10-046, filed 4/30/14, effective 6/1/14)

**WAC 388-310-0800 WorkFirst—Support services.****(1) Who can get support services?**

People who can get support services include:

(a) WorkFirst participants who receive a TANF cash grant;

(b) Sanctioned WorkFirst participants during the required participation before the sanction is lifted or applicants who were terminated while in noncompliance sanction who are doing activities required to reopen cash assistance (WAC 388-310-1600);

(c) TANF/SFA applicants as needed to meet the WorkFirst orientation requirements under WAC 388-400-0005(2) or 388-400-0010(3);

(d) Unmarried or pregnant minors who are income eligible to receive TANF and are:

(i) Living in a department approved living arrangement (WAC 388-486-0005) and are meeting the school requirements (WAC 388-486-0010); or

(ii) Are actively working with a social worker and need support services to remove the barriers that are preventing them from living in a department approved living arrangement and/or meeting the school requirements.

(e) American Indians who receive a TANF cash grant and have identified specific needs due to location or employment.

**(2) Why do I receive support services?**

Although not an entitlement, you may receive support services for the following reasons:

(a) To help you participate in work and WorkFirst activities that lead to independence.

(b) To help you to participate in job search, accept a job, keep working, advance in your job, and/or increase your wages.

(c) You can also get help in paying your child care expenses through the working connections child care assistance program. (Chapter 170-290 WAC describes the rules for this child care assistance program.)

**(3) What type of support services may I receive and what limits apply?**

There is a limit of three thousand dollars per person per program year (July 1st to June 30th) for WorkFirst support

services you may receive. Some types of support services have dollar limit restrictions.

The chart below shows the types of support services that are available for the different activities (as indicated by an "x") and the restrictions that apply.

Definitions:

- Work-related activities include looking for work or participating in workplace activities, such as community jobs or a work experience position.

- Safety-related activities include meeting significant or emergency family safety needs, such as dealing with family violence.

- Some support services are available if you need them for other required activities in your IRP.

Type of Support Service	Restrictions	• Work	•• Safety	••• Other
Reasonable accommodation for employment		x		
Clothing/uniforms		x		
Diapers		x		
Haircut		x		
Lunch	Same rate as established by OFM for state employees	x		
Personal hygiene		x		
Professional, trade, association, union and bonds		x		
Relocation related to employment (can include rent, housing, and deposits)		x		
Short-term lodging and meals in connection with job interviews/tests	Same rate as established by OFM for state employees	x		
Tools/equipment		x		
Car repair needed to restore car to operable condition		x	x	
License/fees		x	x	
Mileage reimbursement	Same rate as established by OFM for state employees	x	x	
Transportation allotment		x	x	x
Counseling		x	x	x
Educational expenses		x		x
Medical exams (not covered by medicaid)		x	x	x
Public transportation		x	x	x
Testing-diagnostic		x	x	x

**(4) What are the other requirements to receive support services?**

Other restrictions on receiving support services are determined by the department or its agents. They will consider whether:

- (a) It is within available funds; and
- (b) It does not assist, promote, or deter religious activity; and
- (c) There is no other way to meet the cost.

**(5) What happens to my support services if I do not participate as required?**

The department will give you ten days notice, following the rules in WAC 388-310-1600, then discontinue your support services until you participate as required.

**WSR 15-18-026**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed August 25, 2015, 11:32 a.m., effective September 25, 2015]

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

Purpose: The department is amending these rules to comply with and be consistent with federal law related to the preadmission screening and resident review (PASRR) process in accordance with 42 C.F.R. § 483.100-138. In addition, the department is adding new WAC sections, including WAC 388-97-1910 Definitions related with PASRR, 388-97-1915 PASRR requirements prior to the admission of new residents, and 388-97-1975 PASRR requirements after admission of a resident.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-97-1920, 388-97-1940, 388-97-1960 and 388-97-1980; and amending WAC 388-97-2000.

Statutory Authority for Adoption: Chapters 18.51 and 74.42 RCW.

Other Authority: 42 C.F.R. § 483.100-138.

Adopted under notice filed as WSR 15-12-096 on June 2, 2015.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-97-1910, reference to WAC 388-97-1920 (2)(a) was removed from definition of "exempted hospital discharge."

WAC 388-97-1975(1), the word "the" was removed.

WAC 388-97-2000 (2)(c), the words "In" and "of" were added, and the word "for" was removed.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 3, Amended 1, Repealed 4.

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 3, Amended 1, Repealed 4.

Date Adopted: August 21, 2015.

Katherine I. Vasquez  
Rules Coordinator

**NEW SECTION**

**WAC 388-97-1910 Definitions related with PASRR**  
**"AAA"** means area agency on aging.

**"Advance categorical determination"** means a determination by a mental health or DDA PASRR evaluator that an individual may be admitted to a nursing facility on a temporary basis. The PASRR evaluator will do an abbreviated

evaluation that is sufficient to determine that the individual has an intellectual disability or related condition and that the individual meets nursing facility level of care, but does not need specialized services at that time. The potential reasons are:

- (1) Protective services stay of not more than seven days;
- (2) Respite in a nursing facility for not more than thirty days; and
- (3) Delirium (full level II evaluation required when condition improves).

**"DDA"** means the developmental disabilities administration within the department.

**"Exempted hospital discharge"** means the process by which an individual who meets the criteria may be admitted to a nursing facility without a PASRR level II evaluation, even though he or she may have a serious mental illness or an intellectual disability or related condition.

**"HCS"** means home and community services within the department.

**"Intellectual disability or related condition"** means a condition as defined in 42 CFR §483.102(b)(3) and 42 CFR §435.1010 or successor laws.

**"Preadmission screening and resident review process"** or **"PASRR process"** means the process required by federal law to determine if placement in a nursing facility is appropriate for an individual who has a serious mental illness, an intellectual disability or related condition, or both, and if so, to determine whether specialized services are necessary. The PASRR process includes the following steps:

(1) A "PASRR level I" screening is conducted by a referring provider, such as a hospital or physician, or by designated HCS, AAA or DDA staff, to identify whether an individual may have a mental illness, an intellectual disability or related condition, or both. Under the limited circumstances described in this chapter, a nursing facility may conduct the screening. The standardized form and guidelines developed by the department's PASRR program must be used to conduct the Level I screening.

(2) A "PASRR level II" evaluation is conducted by the DDA or mental health PASRR evaluator, or both, as appropriate. This evaluation is performed with individuals who, based upon the PASRR level I screening, are suspected of having a mental illness, an intellectual disability or related condition, or both. The level II evaluator determines:

- (a) Whether the individual has a serious mental illness and/or an intellectual disability or related condition;
- (b) If so, whether nursing facility placement is appropriate; and
- (c) If so, whether the individual requires specialized services while residing at the nursing facility.

**"Resident review"** means a PASRR level II evaluation of a resident with serious mental illness and/or intellectual disability or related condition after that resident has experienced a significant change in physical or mental condition, as defined in this section.

**"Serious mental illness"** means a condition as defined in 42 CFR §483.102 (b)(1) or successor laws.

**"Significant change in physical or mental condition"** for PASRR purpose means a deterioration or improvement in the physical or mental condition of a resident with serious

mental illness or intellectual disability or related condition such that:

(1) The resident may reasonably require new, different, or fewer specialized services than the resident had been receiving; or

(2) Community placement is a reasonable consideration for the resident.

**"Specialized services"** are services provided or arranged for by the department as described in 42 CFR §483.120 or successor laws, which are additional to services the nursing facility is required to provide. The PASRR level II evaluation identifies the specialized services needed by the resident.

#### NEW SECTION

**WAC 388-97-1915 PASRR requirements prior to admission of new residents** Prior to every admission of a new resident, the nursing facility must:

(1) Verify that a PASRR level I screening has been completed, and deny admission until that screening has been completed.

(2) Verify that a PASRR level II evaluation has been completed when the individual's PASRR level I screening indicates that the individual may have serious mental illness and/or intellectual disability or related condition, and deny admission until that evaluation has been completed, unless all three of the following criteria apply and are documented in the PASRR level I screening:

(a) The individual is admitted directly from a hospital after receiving acute inpatient care;

(b) The individual requires nursing facility services for the condition for which he or she received care in the hospital; and

(c) The individual's attending physician has certified that the individual is likely to require fewer than thirty days of nursing facility services.

(3) Decline to admit any individual whose PASRR level II evaluation determines that he or she does not require nursing facility services or that a nursing facility placement is otherwise inappropriate.

(4) Coordinate with PASRR evaluators to the maximum extent practicable in order to avoid duplicative assessments and effort, and to ensure continuity of care for nursing facility residents with a serious mental illness and/or an intellectual disability or related condition.

#### NEW SECTION

**WAC 388-97-1975 PASRR requirements after admission of a resident** Following a resident's admission, the nursing facility must:

(1) Review all level I screening forms for accuracy. If at any time the facility finds that the previous level I screening was incomplete, erroneous or is no longer accurate, the facility must immediately complete a new screening using the department's standardized level I form, following the directions provided by the department's PASRR program. If the corrected level I screening identifies a possible serious mental illness or intellectual disability or related condition, the

facility must notify DDA and/or the mental health PASRR evaluator so a level II evaluation can be conducted.

(2) Record the evidence of the level I screening and level II determinations (and any subsequent changes) in the resident assessment in accordance with the schedule required under WAC 388-97-1000.

(3) Maintain the level I form and the level II evaluation report in the resident's active clinical record.

(4) Immediately complete a level I screening using the department's standardized form if the facility discovers that a resident does not have a level I screening in his or her clinical record, following directions provided by the department's PASRR program. If the level I screening identifies a possible serious mental illness or intellectual disability or related condition, notify the DDA and/or mental health PASRR evaluator so a level II evaluation can be conducted.

(5) Notify the DDA and/or mental health PASRR evaluator when a resident who was admitted on an exempted hospital discharge appears likely to need nursing facility services for more than thirty days, so a level II evaluation can be performed. This notification must occur as soon as the nursing facility anticipates that the resident may require more than 30 days of nursing facility services, and no later than the twenty-fifth day after admission unless good cause is documented for later notification.

(6) Notify the DDA and/or mental health PASRR evaluator when a resident who was admitted with an advance categorical determination appears likely to need nursing facility services for longer than the period specified by DDA and/or the mental health PASRR evaluator, so that a full assessment of the individual's need for specialized services can be performed. This notification must occur as soon as the nursing facility anticipates that the resident will require more than the number of days of nursing facility services authorized for the specific advance categorical determination and no later than five days before expiration of the period (three days for protective services) unless good cause is documented for later notification.

(7) Immediately notify the DDA and/or mental health PASRR evaluator for a possible resident review when there has been a significant change in the physical or mental condition, as defined in WAC 388-97-1910, of any resident who has been determined to have a serious mental illness or intellectual disability or related condition. Complete a new level I screening for the significant change.

(8) Provide or arrange for the provision of any services recommended by a PASRR level II evaluator that are within the scope of nursing facility services. If the facility believes that the recommended service either cannot or should not be provided, the facility must document the reason(s) for not providing the service and communicate the reason(s) to the level II evaluator.

(9) Immediately complete a new level I screening using the department's standardized form if the facility finds that a resident, not previously determined to have a serious mental illness, develops symptoms of a serious mental illness, and refer the resident to the mental health PASRR evaluator for further evaluation.

(10) Provide services and interventions that complement, reinforce and are consistent with any specialized ser-

vices recommended by the level II evaluator. The resident's plan of care must specify how the facility will integrate relevant activities to achieve this consistency and the enhancement of the PASRR goals.

(11) Discharge, in accordance with WAC 388-97-0120, any resident with a serious mental illness or intellectual disability or related condition who does not meet nursing facility level of care, unless the resident has continuously resided in the facility for at least thirty months and requires specialized services. The nursing facility must cooperate with DDA and/or mental health PASRR evaluator as it prepares the resident for a safe and orderly discharge.

**AMENDATORY SECTION** (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

**WAC 388-97-2000 Preadmission screening and resident review (PASRR) determination and appeal rights.**

(1) The resident has the right to choose to remain in the nursing facility and receive specialized services if:

(a) He or she has continuously resided in a nursing facility since October 1, 1987; and

(b) The department determined, in 1990, that the resident required specialized services for a serious mental illness or developmental disability but did not require nursing facility services.

(2) ~~((In the event that residents chose to remain in the nursing facility as outlined in subsection (1) above, the department, or designee, will clarify the effect on eligibility for medicaid services under the state plan if the resident chooses to leave the facility, including its effect on readmission to the facility.~~

~~(3) An individual applying for admission to a nursing facility or a) A nursing facility resident who has been adversely impacted by a PASRR determination may appeal the department's determination that the individual is:~~

~~(a) Not in need of nursing facility care as defined under WAC 388-106-0350 through 388-106-0360;~~

~~(b) Not in need of specialized services as defined under WAC ((388-97-1960)) 388-97-1910; or~~

~~(c) In need ((for)) of specialized services as defined under WAC ((388-97-1960)) 388-97-1910.~~

~~((4)) (3) The nursing facility must assist ((the individual applying for admission or)) a resident, as needed, in requesting a hearing to appeal the department's PASRR determination.~~

~~((5) If the department's PASRR determination requires that a resident be transferred or discharged, the department will:~~

~~(a) Provide the required notice of transfer or discharge to the resident, the resident's surrogate decision maker, and if appropriate, a family member or the resident's representative thirty days or more before the date of transfer or discharge;~~

~~(b) Attach a hearing request form to the transfer or discharge notice;~~

~~(c) Inform the resident, in writing in a language and manner the resident can understand, that:~~

~~(i) An appeal request may be made any time up to ninety days from the date the resident receives the notice of transfer or discharge;~~

~~(ii) Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date of transfer or discharge set forth in the written transfer or discharge notice; and~~

~~(iii) The resident will be ineligible for medicaid nursing facility payment:~~

~~(A) Thirty days after the receipt of written notice of transfer or discharge; or~~

~~(B) If the resident appeals under subsection (1)(a) of this section, thirty days after the final order is entered upholding the department's decision to transfer or discharge a resident.~~

~~(6) The department's home and community services may pay for the resident's nursing facility services after the time specified in subsection (5)(c)(iii) of this section, if the department determines that a location appropriate to the resident's medical and other needs is not available.~~

~~(7) The department will:~~

~~(a) Send a copy of the transfer/discharge notice to the resident's attending physician, the nursing facility and, where appropriate, a family member or the resident's representative;~~

~~(b) Suspend transfer or discharge:~~

~~(i) If the office of administrative hearings receives an appeal on or before the date set for transfer or discharge or before the resident is actually transferred or discharged; and~~

~~(ii) Until the office of appeals makes a determination; and~~

~~(c) Provide assistance to the resident for relocation necessitated by the department's PASRR determination.~~

~~(8) Resident appeals of PASRR determinations will be in accordance with 42 C.F.R. § 431 Subpart E, chapter 388-02 WAC, and the procedures defined in this section. In the event of a conflict between a provision in this chapter and a provision in chapter 388-02 WAC, the provision in this chapter will prevail.))~~

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 388-97-1920 Preadmission screening—Level I.

WAC 388-97-1940 Advanced categorical determinations, not subject to preadmission screening—Level II.

WAC 388-97-1960 Preadmission screening—Level II.

WAC 388-97-1980 Resident review.

**WSR 15-18-029**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 15-281—Filed August 25, 2015, 2:05 p.m., effective September 8, 2015]

Effective Date of Rule: September 8, 2015.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Pursuant to RCW 34.05.380 (3)(c), the Washington department of fish and wildlife finds that an effective date earlier than the normal thirty-one day time period following the filing of this rule is needed to avoid imminent peril to the public welfare. In the agency's determination, there are significant direct and indirect economic impacts to Willapa Bay fishermen, their families, and that portion of the local economy supported through their activities, that would accrue if the contemplated fishery is not opened on September 8, 2015.

In support of this finding, the agency estimates that the exvessel value lost in delaying the start of the commercial fishery for thirty-one days following filing with the code reviser would be approximately \$300,000, or nearly sixty percent of the total exvessel value of the fishery. In addition to that direct economic loss, there would very likely be indirect, but nonetheless very real, economic losses to the local economy.

If days lost through a delay in starting the commercial fishery were redistributed via a reconfiguration of the September season using emergency rules or modifying the current proposed rules in conformity with RCW 34.05.240, a small portion of the loss might be recovered, yielding a net direct loss of approximately \$270,000, or approximately fifty-three percent of the estimated exvessel value. Additional indirect losses would also remain. In addition, compression of the commercial fishery into early September would further result in unanticipated and unintended consequences for the recreational fishery and the economic benefits that the local economy is expected to receive from that fishery. These losses are not an acceptable alternative and would not fully address the imminent peril to public welfare. For these reasons, an earlier effective date of September 8, 2015, is established as necessary by these findings.

Purpose: Amends rules for commercial salmon fishing in Willapa Bay. These rules incorporate recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council for taking harvestable numbers of salmon during the commercial salmon fisheries in Willapa Bay, while protecting species of fish listed as endangered.

Citation of Existing Rules Affected by this Order: Amending WAC 220-40-021 and 220-40-027.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 15-12-115 on May 21, 2014 [2015], and WSR 15-14-124 on July 1, 2014 [2015].

Changes Other than Editing from Proposed to Adopted Version: In WAC 220-40-027 filed in WSR 15-14-124, the adopted regulations move one opening from September 9 to September 10 as requested by commercial fishers at the public hearing.

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

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

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

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

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

Date Adopted: August 24, 2015.

J. W. Unsworth  
Director

AMENDATORY SECTION (Amending WSR 14-15-052, filed 7/11/14, effective 8/11/14)

**WAC 220-40-021 Willapa Bay salmon—Summer fishery.** From July 5 through August 15, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes (~~except~~:

**Fishing periods:**

~~(1) Gillnet gear may be used to fish for coho salmon, chum salmon, and Chinook salmon:~~

Time:	Areas:
<del>6:00 a.m. August 12 through 6:00 p.m. August 15.</del>	<del>Area 2N, Area 2T (except those waters north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green), then northeasterly to the power transmission pole located at 46°43.1907'N; 123°50.83134'W), and Area 2U</del>

**Gear:**

~~(2) Gillnet gear restrictions—All areas:~~

~~(a) Drift gillnet gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.~~

~~It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transit through Willapa Bay, provided the net is properly stored. A properly~~

stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

(b) Mesh size must not exceed nine inches.

**Other:**

(3) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(14), reports must be made by 10:00 a.m. the day following landing.

(4) Retention of any species other than coho salmon, chum salmon, and Chinook salmon, is prohibited.

(5) Report ALL encounters of green sturgeon and steelhead (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and have encounters included with each day's quick reporting.

(6) Do NOT remove tags from white sturgeon. Please obtain available information from tags without removing the tags. Submit tag information to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563.

(7) It is unlawful to fish with gillnet gear in Areas 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department issued certification card.

(8) Fishers must take department observers if requested by department staff when participating in these openings. Fishers also must provide notice of intent to participate by contacting quick reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on July 28).

AMENDATORY SECTION (Amending WSR 14-15-052, filed 7/11/14, effective 8/11/14)

**WAC 220-40-027 Salmon—Willapa Bay fall fishery.** From August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

**Fishing periods:**

(1) Gillnet gear may be used to fish for coho salmon, chum salmon, and Chinook salmon:

((Time:	Area:
7:00 p.m. August 25 through	<b>2N and 2U</b>
7:00 a.m. August 26;	
7:00 p.m. September 1 through	
7:00 a.m. September 2;	
7:00 p.m. September 7 through	
7:00 a.m. September 8;	
7:00 p.m. September 8 through	
7:00 a.m. September 9;	
7:00 p.m. September 9 through	
7:00 a.m. September 10;	

((Time: Area:

7:00 p.m. September 10 through  
7:00 a.m. September 11;

AND

7:00 p.m. September 14 through  
7:00 a.m. September 15;

6:00 p.m. September 15 through  
6:00 p.m. September 19;

**2M, 2N, 2R, and 2T**  
(except those waters of 2T north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green), then northeasterly to the power transmission pole located at 46°43.1907'N; 123°50.83134'W)

6:00 p.m. September 22 through  
6:00 p.m. September 26;

AND

6:00 p.m. September 28 through  
6:00 p.m. September 30;

6:00 p.m. September 15 through  
6:00 p.m. September 18;

**2U**

6:00 p.m. September 22 through  
6:00 p.m. September 25;

AND

6:00 p.m. September 28 through  
6:00 p.m. October 2;

6:00 p.m. September 30 through  
6:00 p.m. October 3.

**2M, 2N, 2R, and 2T**

6:00 p.m. October 4 through  
6:00 p.m. October 7;

**2M, 2N, 2R, 2T, and 2U**

12:00 a.m. November 2 through  
11:59 p.m. November 7;

12:00 a.m. November 10  
through 11:59 p.m. November  
14;

AND

12:00 a.m. November 17  
through 11:59 p.m. November  
19.))

<u>Area</u>	<u>Time</u>	<u>Date(s)</u>	<u>Maximum Mesh Size</u>
<u>2M, 2N, 2R</u>	<u>6:00 a.m. through 6:00 p.m.</u>	<u>9/8, 9/10</u>	<u>6.5"</u>
<u>2T</u>	<u>6:00 a.m. through 6:00 p.m.</u>	<u>9/16, 9/17, 9/18, 9/19</u>	<u>6.5"</u>
<u>2M, 2N, 2R</u>	<u>6:00 a.m. through 6:00 p.m.</u>	<u>9/13, 9/14, 9/15, 9/16, 9/17, 9/18, 9/19</u>	<u>6.5"</u>
<u>2U</u>	<u>6:00 a.m. through 6:00 p.m.</u>	<u>9/16, 9/17, 9/18, 9/19</u>	<u>4.25"</u>
<u>2T</u>	<u>6:30 a.m. through 6:30 p.m.</u>	<u>9/21, 9/22, 9/23, 9/24, 9/25, 9/26,</u>	<u>6.5"</u>
<u>2U</u>	<u>6:30 a.m. through 6:30 p.m.</u>	<u>9/20, 9/21, 9/22</u>	<u>4.25"</u>
<u>2U</u>	<u>6:30 a.m. through 6:30 p.m.</u>	<u>9/24, 9/25, 9/26,</u>	<u>6.5"</u>
<u>2M, 2N, 2R</u>	<u>6:30 a.m. through 6:30 p.m.</u>	<u>9/20, 9/21, 9/22, 9/23, 9/24, 9/25, 9/26,</u>	<u>6.5"</u>
<u>2T</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/28, 9/29, 9/30, 10/1, 10/2, 10/3,</u>	<u>6.5"</u>
<u>2U</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/27, 9/28, 9/29,</u>	<u>4.25"</u>
<u>2U</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/1, 10/2, 10/3,</u>	<u>6.5"</u>
<u>2M, 2N, 2R</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/28, 9/29, 9/30, 10/1, 10/2, 10/3,</u>	<u>6.5"</u>
<u>2U</u>	<u>7:30 a.m. through 7:30 p.m.</u>	<u>10/5</u>	<u>6.5"</u>
<u>2M, 2N</u>	<u>7:30 a.m. through 7:30 p.m.</u>	<u>10/5, 10/6, 10/7, 10/8, 10/9</u>	<u>6.5"</u>
<u>2R</u>	<u>7:30 a.m. through 7:30 p.m.</u>	<u>10/5, 10/6</u>	<u>6.5"</u>
<u>2M, 2N, 2R, 2T, 2U</u>	<u>12:01 a.m through 11:59 p.m.</u>	<u>11/2, 11/3, 11/4, 11/5, 11/6</u>	<u>6.5"</u>
<u>2M, 2N, 2R, 2T, 2U</u>	<u>12:01 a.m through 11:59 p.m.</u>	<u>11/9, 11/10, 11/11, 11/12, 11/13</u>	<u>6.5"</u>
<u>2M, 2N, 2R, 2T, 2U</u>	<u>12:01 a.m through 11:59 p.m.</u>	<u>11/16, 11/17, 11/18, 11/19, 11/20</u>	<u>6.5"</u>
<u>2M, 2N, 2R, 2T, 2U</u>	<u>12:01 a.m through 11:59 p.m.</u>	<u>11/23, 11/24, 11/25, 11/26, 11/27</u>	<u>6.5"</u>

Note: Those waters of 2T north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green), then northeasterly to the power transmission pole located at 46°43.1907'N; 123°50.83134'W are closed through September 30.

#### **Gear:**

(2) Gillnet gear restrictions - All areas:

(a)(i) Drift gillnet gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

(ii) It is unlawful to use a gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Willapa Bay, provided the net is properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

~~(b) ((From August 16 through 12:00 p.m., September 8: Mesh size must not exceed nine inches stretched.~~

~~(e)) From 12:01 ((p.m.)) a.m. September 8 through November 30: Mesh size must not exceed six and one-half inches stretched, except mesh size must not exceed four and one-quarter inches stretched in Area 2U on September 16, 17, 18, 19, 20, 21, 22, 27, 28, and 29.~~

#### **Other:**

(3) Recovery boxes and soak time limits described in this section are required from 12:01 ((~~p.m.~~) a.m. September 8 through ((~~12:00 p.m. (noon) September 22~~)) 11:59 p.m. October 10:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa Bay Areas 2M, 2N, 2R, 2T, and 2U.

(i) Each box and chamber must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(B) The inside width measurements must be at or within 8 to 10 inches; and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches

above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(b) All steelhead and wild (unmarked) Chinook must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (c) of this subsection. From September 8 through October 3, all chum must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (c) of this subsection.

(c) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river/bay prior to landing or docking.

(d) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(14), reports must be made by 10:00 a.m. the day following landing.

(5) Retention prohibitions:

(a) ~~((From August 16 through November 30,))~~ All green and white sturgeon and all steelhead, except as provided in subsection (3) of this section, must be handled with care to minimize injury to the fish and must be released immediately to the river/bay.

(b) ~~((From August 16 through 12:00 p.m. September 8,))~~ Retention of any species other than coho salmon, chum salmon, or Chinook is prohibited.

(c) From 12:01 ~~((p.m.))~~ a.m. September 8 through ~~((12:00 p.m. (noon) September 22))~~ 11:59 p.m. October 3, retention of any species other than coho salmon ~~((chum salmon,))~~ or hatchery Chinook marked by a healed scar at the site of the adipose fin is prohibited.

(d) From ~~((6:00 p.m. September 22 through November 30))~~ 12:01 a.m. October 4 through 11:59 p.m. October 10, retention of any species other than coho salmon, chum salmon, ~~((and Chinook is prohibited))~~ or hatchery Chinook marked by a healed scar at the site of the adipose fin is prohibited.

(6) Report ALL encounters of green sturgeon, steelhead, and wild (unmarked) Chinook (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and have encounters included with each day's quick reporting.

(7) Do NOT remove tags from white sturgeon. Please obtain available information from tags without removing tags. Submit tag information to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563.

(8) It is unlawful to fish with gillnet gear in Areas 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a

"Fish Friendly" best fishing practices workshop and has in their possession a department-issued certification card.

(9) Fishers must take department observers if requested by department staff when participating in these openings. Fishers also must provide notice of intent to participate by contacting quick reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on ~~((August 12))~~ September 1.

(10) Fishers must provide notice of intent to participate in 2U on September 16, 17, 18, 19, 20, 21, 22, 27, 28, and 29 by contacting quick reporting by phone, fax, or e-mail. Notice of intent must be given prior to 12:00 p.m. on September 1. Fishers must take department observers when participating in these openings.

### WSR 15-18-032

#### PERMANENT RULES

#### DEPARTMENT OF

#### FISH AND WILDLIFE

[Order 15-275—Filed August 25, 2015, 3:30 p.m., effective September 25, 2015]

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

Purpose: The purpose of this rule making includes amendments to migratory waterfowl seasons for 2016 to provide for recreational activity and resource conservation. Repeal of WAC 232-16-790 Hayton Game Reserve (Skagit County), is required in response to a request from the owner of the game reserve property, because an agreement to keep the property in game reserve status is no longer active.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-16-790; and amending WAC 232-12-289 and 232-28-436.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.047, and 77.32.070.

Adopted under notice filed as WSR 15-14-123 on July 1, 2015.

Changes Other than Editing from Proposed to Adopted Version: **WAC 232-28-436 Migratory waterfowl seasons and regulations:**

The daily bag and possession limits for canvasback were increased based on new information on population status and federal guidelines, which allow for increased recreational opportunity on this species in 2015-16.

Includes white-fronted geese in the bag limits for the Oct. 17, 2015 - Jan. 31, 2016, season for snow, Ross', and blue geese in Goose Management Area 1, because the current three year average for Pacific white-fronted geese is 565,403, above the flyway objective of 300,000.

For Goose Management Areas 2A and 2B seasons, the testing requirements were changed to apply only to new hunters and those who did not maintain a valid 2014-15 authorization, because of licensing limitations to require retesting of all hunters in 2015-16.

For Goose Management Areas 2A and 2B seasons, requirements were clarified for hunters to comply with the directions of authorized department personnel related to the collection of goose subspecies information and invalidate authorizations for noncompliance, to satisfy requirements to

provide harvest information to the United States Fish and Wildlife Service.

Fish and Wildlife Commission

For Goose Management Areas 2A and 2B seasons, the penalty for taking one dusky Canada goose was reduced from a misdemeanor to an infraction and other penalties were explicitly detailed in rule language to recognize the difficulties in distinguishing Canada goose subspecies and improve rule enforcement capabilities.

**WAC 232-12-289 Official hunting hours for game birds—Migratory game birds, upland birds, and wild turkeys:**

The hunting hour table ending dates were standardized to March 10 to conform to federal framework ending dates. February and March hunting hours were corrected to conform to leap year dates and daylight savings times.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 1.

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

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

Date Adopted: August 8, 2015.

Brad Smith, Chair

AMENDATORY SECTION (Amending WSR 13-02-043, filed 12/21/12, effective 1/21/13)

**WAC 232-12-289 Official hunting hours for game birds—Migratory game birds, upland birds, and wild turkeys.** (1) A person may hunt for migratory game birds (duck, goose, coot, snipe, mourning dove, and band-tailed pigeon); upland birds (pheasant, quail, partridge); and turkey during established seasons. The tables below in subsections ~~((4))~~ (3) through (9) of this section contain~~((s))~~ the legal hunting hours for migratory game birds, upland birds, and wild turkeys. For leap years (2016, 2020, 2024, 2028, etc.), dates after February 28 are shown in parentheses.

(2) Exceptions to legal hunting hours for migratory game birds~~(-)~~, upland birds, and wild turkeys:

(a) Western Washington - Pheasant and quail hunting hours are 8:00 a.m. to 4:00 p.m. in all areas.

(b) Clark ~~((except areas south of the Washougal River))~~, Cowlitz, Grays Harbor, Pacific, and Wahkiakum counties - Goose hunting hours ~~((are 8:00 a.m. to 4:00 p.m., except that during the September goose season the hunting hours are 1/2 hour before sunrise to sunset; and during the late goose season, the hunting hours are 7:00 a.m. to 4:00 p.m.))~~ during October through March are 30 minutes after the start of official hunting hours to 30 minutes before the end of official hunting hours.

(c) Hunting hours for falconry seasons (except migratory game bird seasons) are exempt from the hunting hours in subsection (3) of this section, except on designated pheasant release sites.

(3) OFFICIAL HUNTING HOURS

WHEN THE SEPTEMBER 1 - ~~((JANUARY 31))~~ MARCH 10 PERIOD BEGINS ON SUNDAY

Dates (Inclusive)				Western Washington from A.M. to P.M.		Eastern Washington from A.M. to P.M.		
				Daylight Savings Time				
Sun.	Sept. 1	-	Sun.	Sept. 8	6:00	7:45	5:45	7:30
Mon.	Sept. 9	-	Sun.	Sept. 15	6:10	7:30	6:00	7:15
Mon.	Sept. 16	-	Sun.	Sept. 22	6:20	7:15	6:10	7:00
Mon.	Sept. 23	-	Sun.	Sept. 29	6:30	7:00	6:20	6:45
Mon.	Sept. 30	-	Sun.	Oct. 6	6:40	6:45	6:30	6:35
Mon.	Oct. 7	-	Sun.	Oct. 13	6:50	6:30	6:40	6:20
Mon.	Oct. 14	-	Sun.	Oct. 20	7:00	6:20	6:50	6:05
Mon.	Oct. 21	-	Sun.	Oct. 27	7:10	6:05	7:00	5:55
Mon.	Oct. 28	-	Sat.	Nov. 2	7:20	5:55	7:10	5:50
				Pacific Standard Time				
			Sun.	Nov. 3	6:20	4:55	6:10	4:50
Mon.	Nov. 4	-	Sun.	Nov. 10	6:30	4:45	6:20	4:30
Mon.	Nov. 11	-	Sun.	Nov. 17	6:40	4:35	6:30	4:20
Mon.	Nov. 18	-	Sun.	Nov. 24	6:50	4:25	6:40	4:15

Dates (Inclusive)				Western Washington from A.M. to P.M.		Eastern Washington from A.M. to P.M.	
Mon.	Nov. 25	-	Sun.	Dec. 1	7:00	4:20	6:50 4:10
Mon.	Dec. 2	-	Sun.	Dec. 8	7:10	4:20	7:00 4:10
Mon.	Dec. 9	-	Sun.	Dec. 15	7:15	4:20	7:05 4:10
Mon.	Dec. 16	-	Sun.	Dec. 22	7:20	4:20	7:10 4:10
Mon.	Dec. 23	-	Sun.	Dec. 29	7:25	4:25	7:10 4:15
Mon.	Dec. 30	-	Sun.	Jan. 5	7:25	4:30	7:15 4:15
Mon.	Jan. 6	-	Sun.	Jan. 12	7:25	4:35	7:15 4:25
Mon.	Jan. 13	-	Sun.	Jan. 19	7:20	4:45	7:10 4:35
Mon.	Jan. 20	-	Sun.	Jan. 26	7:15	4:55	7:05 4:45
Mon.	Jan. 27	-	<del>((Fri.))</del> <u>Sun.</u>	<del>((Jan. 31))</del> <u>Feb. 2</u>	7:10	5:05	<del>((7:00))</del> <u>6:55</u>
<u>Mon.</u>	<u>Feb. 3</u>	=	<u>Sun.</u>	<u>Feb. 9</u>	<u>7:00</u>	<u>5:20</u>	<u>6:45</u> <u>5:05</u>
<u>Mon.</u>	<u>Feb. 10</u>	=	<u>Sun.</u>	<u>Feb. 16</u>	<u>6:50</u>	<u>5:30</u>	<u>6:35</u> <u>5:15</u>
<u>Mon.</u>	<u>Feb. 17</u>	=	<u>Sun.</u>	<u>Feb. 23</u>	<u>6:35</u>	<u>5:40</u>	<u>6:25</u> <u>5:25</u>
<u>Mon.</u>	<u>Feb. 24</u>	=	<u>Sun.</u>	<u>Mar. 2 (Mar. 1)</u>	<u>6:25</u>	<u>5:50</u>	<u>6:10</u> <u>5:40</u>
<u>Mon.</u>	<u>Mar. 3 (Mar. 2)</u>	=	<u>Sat.</u>	<u>Mar. 8 (Mar. 7)</u>	<u>6:10</u>	<u>6:05</u>	<u>5:55</u> <u>5:50</u>
<u>Daylight Savings Time</u>							
<u>Sun.</u>	<u>Mar. 9 (Mar. 8)</u>	=	<u>Mon.</u> <u>(Tues.)</u>	<u>Mar. 10</u>	<u>7:00</u>	<u>7:10</u>	<u>6:45</u> <u>6:55</u>

(4) OFFICIAL HUNTING HOURS  
WHEN THE SEPTEMBER 1 - ((JANUARY 31)) MARCH 10 PERIOD BEGINS ON MONDAY

Dates (Inclusive)				Western Washington from A.M. to P.M.		Eastern Washington from A.M. to P.M.	
Daylight Savings Time							
Mon.	Sept. 1	-	Sun.	Sept. 7	6:00	7:45	5:45 7:30
Mon.	Sept. 8	-	Sun.	Sept. 14	6:10	7:30	5:50 7:20
Mon.	Sept. 15	-	Sun.	Sept. 21	6:20	7:15	6:10 7:05
Mon.	Sept. 22	-	Sun.	Sept. 28	6:30	7:00	6:15 6:50
Mon.	Sept. 29	-	Sun.	Oct. 5	6:40	6:45	6:30 6:35
Mon.	Oct. 6	-	Sun.	Oct. 12	6:50	6:30	6:40 6:25
Mon.	Oct. 13	-	Sun.	Oct. 19	7:00	6:20	6:50 6:10
Mon.	Oct. 20	-	Sun.	Oct. 26	7:10	6:10	7:00 5:55
Mon.	Oct. 27	-	Sat.	Nov. 1	7:20	5:55	7:15 5:45
Pacific Standard Time							
			Sun.	Nov. 2	6:20	4:55	6:15 4:45
Mon.	Nov. 3	-	Sun.	Nov. 9	6:30	4:45	6:20 4:30
Mon.	Nov. 10	-	Sun.	Nov. 16	6:40	4:35	6:30 4:25
Mon.	Nov. 17	-	Sun.	Nov. 23	6:50	4:30	6:40 4:15
Mon.	Nov. 24	-	Sun.	Nov. 30	7:00	4:20	6:50 4:10
Mon.	Dec. 1	-	Sun.	Dec. 7	7:10	4:20	7:00 4:10
Mon.	Dec. 8	-	Sun.	Dec. 14	7:15	4:20	7:05 4:05

				Western Washington from A.M. to P.M.		Eastern Washington from A.M. to P.M.	
Dates (Inclusive)							
Mon.	Dec. 15	-	Sun.	Dec. 21	7:20	4:20	7:10 4:10
Mon.	Dec. 22	-	Sun.	Dec. 28	7:25	4:25	7:10 4:10
Mon.	Dec. 29	-	Sun.	Jan. 4	7:25	4:30	7:15 4:15
Mon.	Jan. 5	-	Sun.	Jan. 11	7:25	4:35	7:15 4:25
Mon.	Jan. 12	-	Sun.	Jan. 18	7:25	4:45	7:10 4:35
Mon.	Jan. 19	-	Sun.	Jan. 25	7:20	4:55	7:05 4:45
Mon.	Jan. 26	-	<del>((Fri.))</del> <u>Sun.</u>	<del>((Jan. 31))</del> <u>Feb. 2</u>	7:10	<del>((5:00))</del> <u>5:05</u>	<del>((7:00))</del> <u>6:55</u>
<u>Mon.</u>	<u>Feb. 2</u>	=	<u>Sun.</u>	<u>Feb. 8</u>	<u>7:00</u>	<u>5:15</u>	<u>6:45 5:05</u>
<u>Mon.</u>	<u>Feb. 9</u>	=	<u>Sun.</u>	<u>Feb. 15</u>	<u>6:50</u>	<u>5:30</u>	<u>6:35 5:15</u>
<u>Mon.</u>	<u>Feb. 16</u>	=	<u>Sun.</u>	<u>Feb. 22</u>	<u>6:40</u>	<u>5:40</u>	<u>6:25 5:25</u>
<u>Mon.</u>	<u>Feb. 23</u>	=	<u>Sun.</u>	<u>Mar. 1 (Feb. 29)</u>	<u>6:25</u>	<u>5:50</u>	<u>6:10 5:35</u>
<u>Mon.</u>	<u>Mar. 2 (Mar. 1)</u>	=	<u>Sat.</u> <u>(Sun.)</u>	<u>Mar. 7</u>	<u>6:10</u>	<u>6:00</u>	<u>6:00 5:50</u>
<u>(Mon.)</u>	<u>(Mar. 8)</u>	=	<u>(Wed.)</u>	<u>(Mar. 10)</u>	<u>6:05</u>	<u>6:05</u>	<u>6:50 6:00</u>
<u>Daylight Savings Time</u>							
<u>Sun.</u>	<u>Mar. 8</u>	=	<u>Tues.</u>	<u>Mar. 10</u>	<u>7:05</u>	<u>7:05</u>	<u>6:50 7:00</u>

(5) OFFICIAL HUNTING HOURS  
WHEN THE SEPTEMBER 1 - ((JANUARY 31)) MARCH 10 PERIOD BEGINS ON TUESDAY

				Western Washington from A.M. to P.M.		Eastern Washington from A.M. to P.M.	
Dates (Inclusive)							
Daylight Savings Time							
Tues.	Sept. 1	-	Sun.	Sept. 6	6:00	7:45	5:50 7:35
Mon.	Sept. 7	-	Sun.	Sept. 13	6:10	7:35	6:00 7:20
Mon.	Sept. 14	-	Sun.	Sept. 20	6:20	7:20	6:05 7:05
Mon.	Sept. 21	-	Sun.	Sept. 27	6:30	7:05	6:15 6:50
Mon.	Sept. 28	-	Sun.	Oct. 4	6:40	6:50	6:25 6:35
Mon.	Oct. 5	-	Sun.	Oct. 11	6:45	6:35	6:35 6:25
Mon.	Oct. 12	-	Sun.	Oct. 18	6:55	6:20	6:45 6:10
Mon.	Oct. 19	-	Sun.	Oct. 25	7:05	6:10	6:55 6:00
Mon.	Oct. 26	-	Sat.	Oct. 31	7:20	5:55	7:05 5:45
Pacific Standard Time							
			Sun.	Nov. 1	6:20	4:55	6:05 4:45
Mon.	Nov. 2	-	Sun.	Nov. 8	6:30	4:45	6:15 4:35
Mon.	Nov. 9	-	Sun.	Nov. 15	6:40	4:35	6:30 4:25
Mon.	Nov. 16	-	Sun.	Nov. 22	6:50	4:30	6:40 4:15
Mon.	Nov. 23	-	Sun.	Nov. 29	7:00	4:25	6:45 4:10
Mon.	Nov. 30	-	Sun.	Dec. 6	7:10	4:20	6:55 4:10
Mon.	Dec. 7	-	Sun.	Dec. 13	7:15	4:20	7:05 4:05
Mon.	Dec. 14	-	Sun.	Dec. 20	7:20	4:20	7:10 4:10
Mon.	Dec. 21	-	Sun.	Dec. 27	7:25	4:20	7:15 4:10

					Western Washington from A.M. to P.M.		Eastern Washington from A.M. to P.M.	
Dates (Inclusive)								
Mon.	Dec. 28	-	Sun.	Jan. 3	7:30	4:30	7:15	4:15
Mon.	Jan. 4	-	Sun.	Jan. 10	7:25	4:35	7:15	4:25
Mon.	Jan. 11	-	Sun.	Jan. 17	7:25	4:45	7:10	4:30
Mon.	Jan. 18	-	Sun.	Jan. 24	7:20	4:55	7:05	4:40
Mon.	Jan. 25	-	<del>((Sat.))</del> <u>Sun.</u>	Jan. 31	7:10	<del>((5:00))</del> <u>5:05</u>	<del>((7:00))</del> <u>6:55</u>	4:50
<u>Mon.</u>	<u>Feb. 1</u>	=	<u>Sun.</u>	<u>Feb. 7</u>	<u>7:00</u>	<u>5:15</u>	<u>6:50</u>	<u>5:05</u>
<u>Mon.</u>	<u>Feb. 8</u>	=	<u>Sun.</u>	<u>Feb. 14</u>	<u>6:50</u>	<u>5:25</u>	<u>6:40</u>	<u>5:15</u>
<u>Mon.</u>	<u>Feb. 15</u>	=	<u>Sun.</u>	<u>Feb. 21</u>	<u>6:40</u>	<u>5:40</u>	<u>6:25</u>	<u>5:25</u>
<u>Mon.</u>	<u>Feb. 22</u>	=	<u>Sun.</u>	<u>Feb. 28</u>	<u>6:25</u>	<u>5:50</u>	<u>6:15</u>	<u>5:35</u>
<u>Mon.</u>	<u>Mar. 1 (Feb. 29)</u>	=	<u>Sun.</u>	<u>Mar. 7 (Mar. 6)</u>	<u>6:15</u>	<u>6:00</u>	<u>6:00</u>	<u>5:45</u>
<u>Mon.</u>	<u>Mar. 8 (Mar. 7)</u>	=	<u>Wed.</u> <u>(Thurs.)</u>	<u>Mar. 10</u>	<u>6:05</u>	<u>6:05</u>	<u>5:50</u>	<u>5:55</u>

(6) OFFICIAL HUNTING HOURS  
WHEN THE SEPTEMBER 1 - ((JANUARY 31)) MARCH 10 PERIOD BEGINS ON WEDNESDAY

					Western Washington from A.M. to P.M.		Eastern Washington from A.M. to P.M.	
Dates (Inclusive)								
Daylight Savings Time								
Wed.	Sept. 1	-	Sun.	Sept. 5	6:00	7:45	5:50	7:35
Mon.	Sept. 6	-	Sun.	Sept. 12	6:10	7:35	5:55	7:20
Mon.	Sept. 13	-	Sun.	Sept. 19	6:15	7:20	6:05	7:10
Mon.	Sept. 20	-	Sun.	Sept. 26	6:25	7:05	6:15	6:55
Mon.	Sept. 27	-	Sun.	Oct. 3	6:35	6:50	6:25	6:40
Mon.	Oct. 4	-	Sun.	Oct. 10	6:45	6:40	6:35	6:25
Mon.	Oct. 11	-	Sun.	Oct. 17	6:55	6:25	6:45	6:10
Mon.	Oct. 18	-	Sun.	Oct. 24	7:05	6:10	6:55	6:00
Mon.	Oct. 25	-	Sun.	Oct. 31	7:15	6:00	7:05	5:45
Mon.	Nov. 1	-	Sat.	Nov. 6	7:25	5:50	7:15	5:35
Pacific Standard Time								
			Sun.	Nov. 7	6:25	4:50	6:15	4:35
Mon.	Nov. 8	-	Sun.	Nov. 14	6:40	4:40	6:25	4:25
Mon.	Nov. 15	-	Sun.	Nov. 21	6:50	4:30	6:35	4:20
Mon.	Nov. 22	-	Sun.	Nov. 28	7:00	4:25	6:45	4:10
Mon.	Nov. 29	-	Sun.	Dec. 5	7:05	4:20	6:55	4:10
Mon.	Dec. 6	-	Sun.	Dec. 12	7:15	4:20	7:05	4:05
Mon.	Dec. 13	-	Sun.	Dec. 19	7:20	4:20	7:10	4:05
Mon.	Dec. 20	-	Sun.	Dec. 26	7:25	4:20	7:15	4:10
Mon.	Dec. 27	-	Sun.	Jan. 2	7:25	4:25	7:15	4:15
Mon.	Jan. 3	-	Sun.	Jan. 9	7:25	4:35	7:15	4:20
Mon.	Jan. 10	-	Sun.	Jan. 16	7:25	4:40	7:10	4:30
Mon.	Jan. 17	-	Sun.	Jan. 23	7:20	4:50	7:10	4:40

				Western Washington from A.M. to P.M.		Eastern Washington from A.M. to P.M.	
Dates (Inclusive)							
Mon.	Jan. 24	-	<del>((Mon.))</del> <u>Sun.</u>	Jan. <del>((31))</del> <u>30</u>	7:10	5:00	7:00 4:50
<u>Mon.</u>	<u>Jan. 31</u>	=	<u>Sun.</u>	<u>Feb. 6</u>	<u>7:05</u>	<u>5:15</u>	<u>6:50</u> <u>5:00</u>
<u>Mon.</u>	<u>Feb. 7</u>	=	<u>Sun.</u>	<u>Feb. 13</u>	<u>6:55</u>	<u>5:25</u>	<u>6:40</u> <u>5:15</u>
<u>Mon.</u>	<u>Feb. 14</u>	=	<u>Sun.</u>	<u>Feb. 20</u>	<u>6:40</u>	<u>5:35</u>	<u>6:25</u> <u>5:25</u>
<u>Mon.</u>	<u>Feb. 21</u>	=	<u>Sun.</u>	<u>Feb. 27</u>	<u>6:30</u>	<u>5:45</u>	<u>6:15</u> <u>5:35</u>
<u>Mon.</u>	<u>Feb. 28</u>	=	<u>Sun.</u>	<u>Mar. 6 (Mar. 5)</u>	<u>6:15</u>	<u>5:55</u>	<u>6:00</u> <u>5:45</u>
<u>Mon.</u>	<u>Mar. 7 (Mar. 6)</u>	=	<u>Thurs.</u> <u>(Fri.)</u>	<u>Mar. 10</u>	<u>6:05</u>	<u>6:05</u>	<u>5:50</u> <u>5:55</u>

(7) OFFICIAL HUNTING HOURS  
WHEN THE SEPTEMBER 1 - ~~((JANUARY 31))~~ MARCH 10 PERIOD BEGINS ON THURSDAY

				Western Washington from A.M. to P.M.		Eastern Washington from A.M. to P.M.	
Dates (Inclusive)							
Daylight Savings Time							
Thur.	Sept. 1	-	Sun.	Sept. 4	6:00	7:45	5:45 7:35
Mon.	Sept. 5	-	Sun.	Sept. 11	6:05	7:35	5:55 7:25
Mon.	Sept. 12	-	Sun.	Sept. 18	6:15	7:20	6:05 7:10
Mon.	Sept. 19	-	Sun.	Sept. 25	6:25	7:10	6:10 6:55
Mon.	Sept. 26	-	Sun.	Oct. 2	6:35	6:55	6:25 6:40
Mon.	Oct. 3	-	Sun.	Oct. 9	6:45	6:40	6:35 6:25
Mon.	Oct. 10	-	Sun.	Oct. 16	6:55	6:25	6:45 6:15
Mon.	Oct. 17	-	Sun.	Oct. 23	7:05	6:10	6:55 6:00
Mon.	Oct. 24	-	Sun.	Oct. 30	7:15	6:00	7:05 5:50
Mon.	Oct. 31	-	Sat.	Nov. 5	7:25	5:50	7:15 5:35
Pacific Standard Time							
			Sun.	Nov. 6	6:25	4:50	6:15 4:35
Mon.	Nov. 7	-	Sun.	Nov. 13	6:35	4:40	6:25 4:25
Mon.	Nov. 14	-	Sun.	Nov. 20	6:45	4:30	6:35 4:20
Mon.	Nov. 21	-	Sun.	Nov. 27	6:55	4:25	6:45 4:10
Mon.	Nov. 28	-	Sun.	Dec. 4	7:05	4:20	6:55 4:10
Mon.	Dec. 5	-	Sun.	Dec. 11	7:15	4:20	7:00 4:05
Mon.	Dec. 12	-	Sun.	Dec. 18	7:20	4:20	7:10 4:05
Mon.	Dec. 19	-	Sun.	Dec. 25	7:25	4:20	7:10 4:10
Mon.	Dec. 26	-	Sun.	Jan. 1	7:25	4:25	7:15 4:15
Mon.	Jan. 2	-	Sun.	Jan. 8	7:25	4:30	7:15 4:20
Mon.	Jan. 9	-	Sun.	Jan. 15	7:25	4:40	7:10 4:30
Mon.	Jan. 16	-	Sun.	Jan. 22	7:20	4:50	7:10 4:40
Mon.	Jan. 23	-	Sun.	Jan. 29	7:15	5:00	7:00 4:50
Mon.	Jan. 30	-	<del>((Tues.))</del> <u>Sun.</u>	<del>((Jan. 31))</del> <u>Feb. 5</u>	<del>((7:10))</del> <u>7:05</u>	<del>((5:05))</del> <u>5:15</u>	<del>((6:55))</del> <u>6:50</u> <u>5:00</u>
<u>Mon.</u>	<u>Feb. 6</u>	=	<u>Sun.</u>	<u>Feb. 12</u>	<u>6:55</u>	<u>5:25</u>	<u>6:40</u> <u>5:10</u>

Dates (Inclusive)				Western Washington from A.M. to P.M.		Eastern Washington from A.M. to P.M.		
<u>Mon.</u>	<u>Feb. 13</u>	-	<u>Sun.</u>	<u>Feb. 19</u>	<u>6:45</u>	<u>5:35</u>	<u>6:30</u>	<u>5:20</u>
<u>Mon.</u>	<u>Feb. 20</u>	-	<u>Sun.</u>	<u>Feb. 26</u>	<u>6:30</u>	<u>5:45</u>	<u>6:15</u>	<u>5:35</u>
<u>Mon.</u>	<u>Feb. 27</u>	-	<u>Sun.</u>	<u>Mar. 5 (Mar. 4)</u>	<u>6:15</u>	<u>5:55</u>	<u>6:00</u>	<u>5:45</u>
<u>Mon.</u>	<u>Mar. 6 (Mar. 5)</u>	-	<u>Fri.</u> <u>(Sat.)</u>	<u>Mar. 10</u>	<u>6:05</u>	<u>6:05</u>	<u>5:50</u>	<u>5:50</u>

(8) OFFICIAL HUNTING HOURS  
WHEN THE SEPTEMBER 1 - ((JANUARY 31)) MARCH 10 PERIOD BEGINS ON FRIDAY

Dates (Inclusive)				Western Washington from A.M. to P.M.		Eastern Washington from A.M. to P.M.		
				Daylight Savings Time				
Fri.	Sept. 1	-	Sun.	Sept. 3	6:00	7:50	5:45	7:35
Mon.	Sept. 4	-	Sun.	Sept. 10	6:05	7:40	5:55	7:25
Mon.	Sept. 11	-	Sun.	Sept. 17	6:15	7:25	6:05	7:10
Mon.	Sept. 18	-	Sun.	Sept. 24	6:25	7:10	6:10	7:00
Mon.	Sept. 25	-	Sun.	Oct. 1	6:35	6:55	6:20	6:45
Mon.	Oct. 2	-	Sun.	Oct. 8	6:45	6:40	6:30	6:30
Mon.	Oct. 9	-	Sun.	Oct. 15	6:55	6:25	6:40	6:15
Mon.	Oct. 16	-	Sun.	Oct. 22	7:05	6:15	6:50	6:00
Mon.	Oct. 23	-	Sun.	Oct. 29	7:10	6:05	7:00	5:50
Mon.	Oct. 30	-	Sat.	Nov. 4	7:25	5:50	7:10	5:40
				Pacific Standard Time				
			Sun.	Nov. 5	6:25	4:50	6:10	4:40
Mon.	Nov. 6	-	Sun.	Nov. 12	6:35	4:40	6:25	4:30
Mon.	Nov. 13	-	Sun.	Nov. 19	6:45	4:30	6:35	4:20
Mon.	Nov. 20	-	Sun.	Nov. 26	6:55	4:25	6:45	4:15
Mon.	Nov. 27	-	Sun.	Dec. 3	7:05	4:20	6:55	4:10
Mon.	Dec. 4	-	Sun.	Dec. 10	7:15	4:20	7:00	4:05
Mon.	Dec. 11	-	Sun.	Dec. 17	7:20	4:20	7:10	4:05
Mon.	Dec. 18	-	Sun.	Dec. 24	7:25	4:20	7:10	4:10
Mon.	Dec. 25	-	Sun.	Dec. 31	7:25	4:25	7:15	4:10
Mon.	Jan. 1	-	Sun.	Jan. 7	7:30	4:30	7:15	4:20
Mon.	Jan. 8	-	Sun.	Jan. 14	7:25	4:40	7:15	4:30
Mon.	Jan. 15	-	Sun.	Jan. 21	7:20	4:50	7:10	4:40
Mon.	Jan. 22	-	Sun.	Jan. 28	7:15	5:00	7:00	4:50
Mon.	Jan. 29	-	<del>((Wed.))</del> <u>Sun.</u>	<del>((Jan. 31))</del> <u>Feb. 4</u>	<del>((7:10))</del> <u>7:05</u>	<del>((5:05))</del> <u>5:10</u>	<del>((6:55))</del> <u>6:50</u>	<del>((4:50))</del> <u>5:00</u>
<u>Mon.</u>	<u>Feb. 5</u>	-	<u>Sun.</u>	<u>Feb. 11</u>	<u>6:55</u>	<u>5:20</u>	<u>6:40</u>	<u>5:10</u>
<u>Mon.</u>	<u>Feb. 12</u>	-	<u>Sun.</u>	<u>Feb. 18</u>	<u>6:45</u>	<u>5:35</u>	<u>6:30</u>	<u>5:20</u>
<u>Mon.</u>	<u>Feb. 19</u>	-	<u>Sun.</u>	<u>Feb. 25</u>	<u>6:35</u>	<u>5:45</u>	<u>6:20</u>	<u>5:30</u>
<u>Mon.</u>	<u>Feb. 26</u>	-	<u>Sun.</u>	<u>Mar. 4 (Mar. 3)</u>	<u>6:20</u>	<u>5:55</u>	<u>6:05</u>	<u>5:40</u>
<u>Mon.</u>	<u>Mar. 5 (Mar. 4)</u>	-	<u>Sat.</u>	<u>Mar. 10 (Mar. 9)</u>	<u>6:05</u>	<u>6:05</u>	<u>5:50</u>	<u>5:50</u>

						Western Washington from A.M. to P.M.		Eastern Washington from A.M. to P.M.
Dates (Inclusive)								
				<u>Daylight Savings Time</u>				
			<u>(Sun.)</u>	<u>(Mar. 10)</u>		<u>7:00</u>	<u>7:10</u>	<u>6:50</u> <u>6:55</u>
(9) OFFICIAL HUNTING HOURS WHEN THE SEPTEMBER 1 - ((JANUARY 31)) MARCH 10 PERIOD BEGINS ON SATURDAY								

						Western Washington from A.M. to P.M.		Eastern Washington from A.M. to P.M.
Dates (Inclusive)								
				<u>Daylight Savings Time</u>				
Sat.	Sept. 1	-	Sun.	Sept. 2		6:00	7:50	5:45   7:40
Mon.	Sept. 3	-	Sun.	Sept. 9		6:05	7:40	5:50   7:30
Mon.	Sept. 10	-	Sun.	Sept. 16		6:15	7:25	6:00   7:15
Mon.	Sept. 17	-	Sun.	Sept. 23		6:20	7:10	6:10   7:00
Mon.	Sept. 24	-	Sun.	Sept. 30		6:30	6:55	6:20   6:45
Mon.	Oct. 1	-	Sun.	Oct. 7		6:40	6:45	6:30   6:30
Mon.	Oct. 8	-	Sun.	Oct. 14		6:50	6:30	6:40   6:15
Mon.	Oct. 15	-	Sun.	Oct. 21		7:00	6:15	6:50   6:05
Mon.	Oct. 22	-	Sun.	Oct. 28		7:10	6:05	7:00   5:50
Mon.	Oct. 29	-	Sat.	Nov. 3		7:20	5:50	7:10   5:40
				<u>Pacific Standard Time</u>				
			Sun.	Nov. 4		6:20	4:50	6:10   4:40
Mon.	Nov. 5	-	Sun.	Nov. 11		6:35	4:40	6:20   4:30
Mon.	Nov. 12	-	Sun.	Nov. 18		6:45	4:35	6:30   4:20
Mon.	Nov. 19	-	Sun.	Nov. 25		6:55	4:25	6:40   4:15
Mon.	Nov. 26	-	Sun.	Dec. 2		7:05	4:20	6:50   4:10
Mon.	Dec. 3	-	Sun.	Dec. 9		7:10	4:20	7:00   4:05
Mon.	Dec. 10	-	Sun.	Dec. 16		7:20	4:20	7:05   4:05
Mon.	Dec. 17	-	Sun.	Dec. 23		7:25	4:20	7:10   4:05
Mon.	Dec. 24	-	Sun.	Dec. 30		7:25	4:25	7:15   4:10
Mon.	Dec. 31	-	Sun.	Jan. 6		7:25	4:30	7:15   4:20
Mon.	Jan. 7	-	Sun.	Jan. 13		7:25	4:40	7:15   4:25
Mon.	Jan. 14	-	Sun.	Jan. 20		7:20	4:45	7:10   4:35
Mon.	Jan. 21	-	Sun.	Jan. 27		7:15	4:55	7:05   4:45
Mon.	Jan. 28	-	<del>((<u>Thu.</u>))</del>	<del>((<u>Jan. 31</u>))</del>		<del>((<u>7:10</u>))</del>	<del>((<u>5:05</u>))</del>	<del>((<u>7:00</u>))</del> 4:55
			<u>Sun.</u>	<u>Feb. 3</u>		<u>7:05</u>	<u>5:10</u>	<u>6:55</u>
<u>Mon.</u>	<u>Feb. 4</u>	=	<u>Sun.</u>	<u>Feb. 10</u>		<u>7:00</u>	<u>5:20</u>	<u>6:45</u> <u>5:10</u>
<u>Mon.</u>	<u>Feb. 11</u>	=	<u>Sun.</u>	<u>Feb. 17</u>		<u>6:45</u>	<u>5:30</u>	<u>6:35</u> <u>5:20</u>
<u>Mon.</u>	<u>Feb. 18</u>	=	<u>Sun.</u>	<u>Feb. 24</u>		<u>6:35</u>	<u>5:40</u>	<u>6:20</u> <u>5:30</u>
<u>Mon.</u>	<u>Feb. 25</u>	=	<u>Sun.</u>	<u>Mar. 3 (Mar. 2)</u>		<u>6:20</u>	<u>5:55</u>	<u>6:10</u> <u>5:40</u>
<u>Mon.</u>	<u>Mar. 4 (Mar. 3)</u>	=	<u>Sat.</u>	<u>Mar. 9 (Mar. 8)</u>		<u>6:10</u>	<u>6:05</u>	<u>5:55</u> <u>5:50</u>
				<u>Daylight Savings Time</u>				
<u>(Sun.)</u>	<u>(Mar. 9)</u>	=	<u>Sun.</u>	<u>Mar. 10</u>		<u>7:05</u>	<u>7:05</u>	<u>6:50</u> <u>6:55</u>
			<u>(Mon.)</u>					

AMENDATORY SECTION (Amending WSR 14-17-081, filed 8/18/14, effective 9/18/14)

**WAC 232-28-436 ((2014-))2015-2016 Migratory waterfowl seasons and regulations.**

**DUCKS**

**Statewide:** Oct. ((11-15, 2014 and Oct. 18, 2014 - Jan. 25, 2015)) 17-21, 2015 and Oct. 24, 2015 - Jan. 31, 2016; except scaup season closed Oct. ((11-31, 2014)) 17 - Nov. 6, 2015.

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. ((20-21, 2014)) 19-20, 2015.

Daily Bag Limit: 7 ducks, to include not more than 2 hen mallard, 2 pintail, 3 scaup, ((+)) 2 canvasback, and 2 redhead statewide; and to include not more than 1 harlequin, 2 scoter, 2 long-tailed duck, and 2 goldeneye in Western Washington.

Possession Limit for Regular Season: 21 ducks, to include not more than 6 hen mallard, 6 pintail, 9 scaup, ((3)) 6 canvasback, and 6 redhead statewide; and to include not more than 1 harlequin, 6 scoter, 6 long-tailed duck, and 6 goldeneye in Western Washington.

Possession Limit for Youth Hunting Weekend: 14 ducks, to include not more than 4 hen mallard, 4 pintail, 6 scaup, ((2)) 4 canvasback, and 4 redhead statewide; and to include not more than 1 harlequin, 4 scoter, 4 long-tailed duck, and 4 goldeneye in Western Washington.

Season Limit: 1 harlequin in Western Washington.

**AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT SEA DUCKS**

Hunters must possess a special ((2014-15)) 2015-16 hunting authorization and harvest record card for sea ducks when hunting harlequin, scoter, long-tailed duck, and goldeneye in Western Washington. A hunter who has not previously possessed a sea duck harvest report card must submit an application form to Washington state department of fish and wildlife (WDFW). Immediately after taking a sea duck into possession, hunters must record in ink the information required on the harvest record card.

**COOT (Mudhen)**

Same areas, dates (including youth hunting weekend), and shooting hours as the general duck season.

Daily Bag Limit: 25 coots.

Possession Limit: 75 coots.

**SNIFE**

Same areas, dates (except youth hunting weekend), and shooting hours as the general duck season.

Daily Bag Limit: 8 snipe.

Possession Limit: 24 snipe.

**GEESE (except Brant)**

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. ((20-21, 2014)) 19-20, 2015, statewide except Western Washington Goose Management Areas 2A and 2B.

Daily Bag Limit: 4 Canada geese.

Possession Limit: 8 Canada geese.

**Western Washington Goose Seasons**

Goose Management Area 1: Island, Skagit, Snohomish counties. Oct. ((11, 2014 - Jan. 25, 2015)) 17, 2015 - Jan. 31, 2016 for snow, Ross', ((and)) blue, and white-fronted geese. Oct. ((11-23, 2014 and Nov. 1, 2014 - Jan. 25, 2015)) 17-29, 2015 and Nov. 7, 2015 - Jan. 31, 2016 for other geese (except brant).

Daily Bag Limit: 4 geese.

Possession Limit: 12 geese.

**AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT SNOW GEESE**

Hunters must possess a special ((2014-15)) 2015-16 migratory bird hunting authorization and harvest record card for snow geese when hunting snow, Ross', and blue geese in Goose Management Area 1. A hunter who has not previously possessed a snow goose harvest report card must submit an application form to Washington state department of fish and wildlife (WDFW). Immediately after taking a snow, Ross', or blue goose into possession, hunters must record in ink the information required on the harvest record card.

**SKAGIT COUNTY SPECIAL RESTRICTIONS**

It is unlawful to discharge a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County or to discharge a firearm for the purpose of hunting snow geese within 100 feet of any paved public road in other areas of Skagit County.

While hunting snow geese, if a hunter is convicted of (a) trespass; (b) shooting from, across, or along the maintained part of any public highway; (c) discharging a firearm for the purpose of hunting waterfowl within 100 feet of any paved public road on Fir Island in Skagit County or discharging a firearm within 100 feet of any paved public road for the purpose of hunting snow geese in other areas of Skagit County; or (d) exceeding the daily bag limit for geese, authorization will be invalidated for the remainder of the current snow goose season and an authorization will not be issued for the subsequent snow goose season.

**Goose Management Area 2A**

Clark, Cowlitz, and Wahkiakum counties((, and that part of Clark County north of the Washougal River)): Open in all areas except Ridgefield NWR from ((8:00 a.m. to 4:00 p.m.)) 30 minutes after the start of official hunting hours to 30 minutes before the end of official hunting hours, Saturdays, Sundays, and Wednesdays only, ((Nov. 8-30, 2014 and Dec. 10, 2014 - Jan. 25, 2015)) Nov. 14, 2015 - Dec. 6, 2015; Dec. 16,

2015 - Jan. 31, 2016; and Feb. 10, 2016 - Mar. 9, 2016. During Feb. 10, 2016 - Mar. 9, 2016, public lands are closed to goose hunting in Goose Management Area 2A. Ridgefield NWR open from ((8:00 a.m. to 4:00 p.m.)) 30 minutes after the start of official hunting hours to 30 minutes before the end of official hunting hours, Tuesdays, Thursdays, and Saturdays only, Nov. ((8-29, 2014 and Dec. 11, 2014 - Jan. 24, 2015; except closed Nov. 11, Nov. 27, and Dec. 25, 2014; and Jan. 1, 2015)) 14, 2015 - Dec. 5, 2015; and Dec. 17, 2015 - Jan. 30, 2016.

Bag Limits for Goose Management Area 2A:

Daily Bag Limit: 4 geese, ~~((to include not more than 1))~~ except for dusky Canada ~~((goose))~~ geese.

Possession Limit: 12 geese, ~~((to include not more than 1))~~ except for dusky Canada ~~((goose))~~ geese.

~~((Season Limit: 1))~~ Dusky Canada ~~((goose))~~ geese: SEASON CLOSED.

### Goose Management Area 2B

~~((Pacific County: Open from 8:00 a.m. to 4:00 p.m., Saturdays and Wednesdays only, Oct. 11-25, 2014 and Nov. 1, 2014 - Jan. 17, 2015.))~~ Grays Harbor and Pacific County: Open from 30 minutes after the start of official hunting hours to 30 minutes before the end of official hunting hours, Saturdays, Sundays, and Wednesdays only, Oct. 17-25, 2015; Nov. 14, 2015 - Jan. 10, 2016; and Feb. 14, 2016 - Mar. 9, 2016. During Feb. 14, 2016 - Mar. 9, 2016, public lands are closed to goose hunting in Goose Management Area 2B.

Bag Limits for Goose Management Area 2B:

Daily Bag Limit: 4 geese, ~~((to include not more than 1))~~ except for dusky Canada ~~((goose, and 1 Aleutian goose))~~ geese.

Possession Limit: 12 geese, ~~((to include not more than 1))~~ except for dusky Canada ~~((goose, and 3 Aleutian))~~ geese.

~~((Season Limit: 1))~~ Dusky Canada ~~((goose))~~ geese: SEASON CLOSED.

### Special Provisions for Goose Management Areas 2A and 2B:

A dusky Canada goose is defined as a dark-breasted (as shown in the Munsell color chart 10 YR, 5 or less) Canada goose with a culmen (bill) length of 40-50 mm. ~~((A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.~~

~~The goose season for Goose Management Areas 2A and 2B will be closed early if dusky Canada goose harvests exceed area quotas which collectively total 80 geese. The fish and wildlife commission has authorized the director to implement emergency area closures in accordance with the following quotas: A total of 80 dusky, to be distributed 15 for Zone 1 (Ridgefield NWR); 25 for Zone 2 (Cowlitz County south of the Kalama River); 20 for Zone 3 (Clark County except Ridgefield NWR); 10 for Zone 4 (Cowlitz County north of the Kalama River and Wahkiakum County); and 10 for Zone 5 (Pacific County). Quotas may be shifted to other zones~~

~~during the season to optimize use of the statewide quota and minimize depredation.))~~

Hunters must possess a valid special ~~((2014-15))~~ 2015-16 migratory bird hunting authorization ~~((and harvest record card))~~ for Goose Management Area 2A/2B when hunting geese in Goose Management Areas 2A and 2B. New hunters and those who did not maintain a valid ~~((2013-14))~~ 2014-15 authorization must review goose identification training materials and score a minimum of 80% on a goose identification test to receive authorization. Hunters who fail a test must wait 28 days before retesting, and will not be issued a reciprocal authorization until that time.

~~((Immediately after taking any goose into possession, hunters must record in ink the information required on the harvest record card. Hunters must go directly to the nearest check station and have geese tagged when leaving a hunt site, before 6:00 p.m. All geese shall be presented intact and fully feathered at the check station. If a hunter takes the season bag limit of 1 dusky Canada goose or does not comply with requirements listed above regarding checking of birds and recording harvest on the harvest record card))~~ It is unlawful for hunters in Goose Management Areas 2A and 2B to fail to comply with the directions of authorized department personnel related to the collection of goose subspecies information pursuant to RCW 77.12.071. A person who prevents department personnel from collecting samples of tissue or other bodily parts is subject to prosecution under RCW 77.15.360 Unlawful interfering in department operations—Penalty. If a hunter takes a dusky Canada goose or does not comply with requirements listed above regarding WDFW collection of subspecies information, authorization will be invalidated by the department and the hunter will not be able to hunt geese in Goose Management Areas 2A and 2B for the remainder of the season ~~((and the special late goose season))~~. It is unlawful to fail to comply with all provisions listed above for Goose Management Areas 2A and 2B. Taking one dusky Canada goose is punishable as an infraction under RCW 77.15.160 (5)(b). Other violations of Area 2A or 2B goose hunting rules are punishable as an infraction under RCW 77.15.160 (2)(e) or as a misdemeanor or gross misdemeanor under RCW 77.15.400 unlawful hunting of wild birds, depending on the circumstances of the violation.

### ~~((Special Late Goose Season for Goose Management Area 2A:~~

~~Open to WDFW master hunter program graduates and youth hunters (15 years of age or under, who are accompanied by a master hunter) possessing a valid special 2014-15 migratory bird hunting authorization for Goose Management Area 2A/2B and daily goose harvest record card, in areas with goose damage in Goose Management Area 2A on the following days, from 7:00 a.m. to 4:00 p.m.: Saturdays and Wednesdays only, Feb. 4 - Mar. 8, 2015.~~

Daily Bag Limit: 4 geese, to include not more than 1 dusky Canada goose.

Possession Limit: 12 geese, to include not more than 1 dusky Canada goose.

Season Limit: 1 dusky Canada goose.

A dusky Canada goose is defined as a dark-breasted Canada goose (as shown in the Munsell color chart 10 YR, 5 or less) with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

Hunters qualifying for the season will be placed on a list for participation in this hunt. WDFW will assist landowners with contacting qualified hunters to participate in damage control hunts on specific lands incurring goose damage. Participation in this hunt will depend on the level of damage experienced by landowners. The special late goose season will be closed by emergency action if the harvest of dusky Canada geese exceeds 85 for the regular and late seasons. All provisions listed above for Goose Management Area 2A regarding authorization, harvest reporting, and checking requirements also apply to the special late season; except hunters must confirm their participation at least 24 hours in advance by calling the goose hunting hotline (listed on hunting authorization), and hunters must check out by 5:00 p.m. on each hunt day regardless of success. It is unlawful to fail to comply with all provisions listed above for the special late season in Goose Management Area 2A.)

### Goose Management Area 3

Includes all parts of Western Washington not included in Goose Management Areas 1, 2A, and 2B: Oct. ~~((11-23, 2014 and Nov. 1, 2014 - Jan. 25, 2015))~~ 17-29, 2015 and Nov. 7, 2015 - Jan. 31, 2016.

Daily Bag Limit: 4 geese.

Possession Limit: 12 geese.

### Eastern Washington Goose Seasons

#### Goose Management Area 4

Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla counties: Saturdays, Sundays, and Wednesdays only during Oct. ~~((11, 2014 - Jan. 18, 2015; Nov. 11, 27, and 28, 2014; Dec. 25, 26, 29, and 30, 2014; Jan. 1, 2015; and every day Jan. 19-25, 2015))~~ 17, 2015 - Jan. 24, 2016; Nov. 11, 26, and 27, 2015; Dec. 25, 28, 29, and 31, 2015; Jan. 1 and 18, 2016; and every day Jan. 25-31, 2016.

#### Goose Management Area 5

Includes all parts of Eastern Washington not included in Goose Management Area 4: Oct. ~~((11-13, 2014))~~ 17-19, 2015 and every day from Oct. ((18, 2014 - Jan. 25, 2015)) 24, 2015 - Jan. 31, 2016.

Bag Limits for all Eastern Washington Goose Management Areas:

Daily Bag Limit: 4 geese.

Possession Limit: 12 geese.

### BRANT

Open in Skagit County only on the following dates: Jan. 9, 10, ((11, 14, 17, 18, 21, 24, and 25, 2015)) 13, 16, 17, 20, 23, and 24, 2016.

If the 2015-16 preseason brant population in Skagit County is 3,000-6,000 (as determined by the midwinter waterfowl survey), the brant season in Skagit County will be open only on the following dates: Jan. 9, 13, and 16, 2016.

If the ~~((2014-15))~~ 2015-16 preseason brant population in Skagit County is below ~~((6,000))~~ 3,000 (as determined by the midwinter waterfowl survey), the brant season in Skagit County will be canceled.

Open in Pacific County only on the following dates: Jan. 2, 3, ((4, 6, 8, 10, 11, 13, 15, 17, and 18, 2015)) 5, 7, 9, 10, 12, 14, 16, and 17, 2016.

### AUTHORIZATION AND HARVEST RECORD CARD REQUIRED TO HUNT BRANT

Hunters must possess a special ~~((2014-15))~~ 2015-16 migratory bird hunting authorization and harvest record card for brant when hunting brant. A hunter who has not previously possessed a brant harvest report card must submit an application form to Washington state department of fish and wildlife (WDFW). Immediately after taking a brant into possession, hunters must record in ink the information required on the harvest record card.

Bag Limits for Skagit and Pacific counties:

Daily Bag Limit: 2 brant.

Possession Limit: 6 brant.

### SWANS

Season closed statewide.

### ~~((MANDATORY REPORTING FOR MIGRATORY BIRD HARVEST RECORD CARDS~~

~~Hunters must report 2014-15 harvest information from band-tailed pigeon harvest record cards to WDFW by Sept. 30, 2014, and harvest information from brant, sea duck, and snow goose harvest record cards to WDFW by Feb. 15, 2015. Every person issued a migratory bird hunting authorization and harvest record card must return the entire card to WDFW or report the card information at the designated internet site listed on the harvest record card. Any hunter failing to report by the deadline will be in noncompliance of reporting requirements. Hunters who have not reported hunting activity by the reporting deadline for any harvest record card acquired in 2014-15 will be required to pay a \$10 administrative fee before any new 2015-16 migratory bird authorization and harvest record card will be issued. A hunter may only be penalized a maximum of \$10 during a license year.))~~

### FALCONRY SEASONS

### DUCKS, COOTS, ~~((AND))~~ SNIPE, AND GEESE (EXCEPT BRANT) (Falconry)

~~((Bag limits include geese and mourning doves.))~~

~~Oct. 11-15, 2014 and Oct. 18, 2014 – Jan. 25, 2015 statewide; except seaup season closed Oct. 11-31, 2014.) Same season dates for each species in each area as listed above.~~

Daily Bag Limit: 3, straight or mixed bag ~~((with)), including ducks, coots, snipe,~~ geese, and mourning doves during established seasons.

~~((Possession Limit: 9, straight or mixed bag with geese and mourning doves during established seasons.~~

#### ~~GEESE (Falconry)~~

~~(Bag limits include ducks, coot, snipe, and mourning doves.)~~

~~Goose Management Area 1: Oct. 11, 2014 – Jan. 25, 2015 for snow, Ross', or blue geese. Oct. 11-23, 2014 and Nov. 1, 2014 – Jan. 25, 2015 for other geese.~~

~~Goose Management Area 2A: Saturdays, Sundays, and Wednesdays only, Nov. 8-23, 2014 and Dec. 3, 2014 – Jan. 25, 2015.~~

~~Goose Management Area 2B: Saturdays and Wednesdays only, Oct. 11-25, 2014 and Nov. 1, 2014 – Jan. 17, 2015.~~

~~Goose Management Areas 3, 4, and 5: Oct. 11-12, 2014 and Nov. 1, 2014 – Jan. 25, 2015.~~

~~Daily Bag Limit for All Areas: 3 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.~~

~~Possession Limit for All Areas: 9 geese (except brant), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.)~~

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-16-790 Hayton Game Reserve (Skagit County).

### WSR 15-18-040 PERMANENT RULES LIQUOR AND CANNABIS BOARD

[Filed August 26, 2015, 4:02 p.m., effective September 26, 2015]

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

Purpose: The board was asked by stakeholders to open the rule making to look at possible revisions to the rules to explore additional allowances under the license. Revisions have been made to provide clarity to the rules and allow additional areas of alcohol consumption under the sports/entertainment facility license.

Citation of Existing Rules Affected by this Order: Amending WAC 314-02-057 and 314-02-058.

Statutory Authority for Adoption: RCW 66.24.570, 66.08.030.

Adopted under notice filed as WSR 15-13-057 on June 10, 2015.

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

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

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

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

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

Date Adopted: August 26, 2015.

Jane Rushford  
Chairman

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

**WAC 314-02-057 Definitions.** (1) **Premises** - Buildings, parking lots, and any open areas that are adjacent to and owned, leased, or managed by the licensee and under the licensee's control.

(2) **Event categories** - Types of events that the licensee expects to hold on the premises:

(a) **Professional sporting event** - A contest involving paid athletes and sanctioned by a professional sports organization that regulates the specific sport.

~~((i) A preapproved level of alcohol service will be applied to the professional sporting events of baseball, football, basketball, soccer, tennis, volleyball, horse racing, hockey, and track and field events (relay races, dashes, pole vaulting, etc.).~~

~~((ii) For all other professional sporting events, the board will determine the level of alcohol service on a case-by-case basis, as approved in the operating plan.)~~

(b) **Amateur sporting event** - A contest or demonstration involving athletes who receive no monetary compensation that is sanctioned by a national or regional amateur athletic regulatory organization.

(c) **Entertainment event** - A concert~~((:))~~ involving a live musician, a live comedy act, or similar event intended for the entertainment of the audience. Broadcast television or background videos or music does not qualify as live entertainment.

~~((public/private event to large too be held in a separate banquet or meeting room within the facility))~~ like public event with prior approval.

(e) **Private event** - An event not open to the public such as a wedding, private party, or business meeting, where the facility or a portion of the facility where the event is held is not accessible to the general public during the time of the private event.

(3) **Hawking** - The practice of selling alcohol in seating areas by roving servers who carry the beverages with them, as outlined in WAC 314-02-058(4). Because of row seating arrangements, servers normally do not have direct access to customers. Therefore, service usually requires that drinks, money, and identification be passed down rows, involving other spectators.

(4) **Club seats** - A specifically designated and controlled seating area that is distinct from general seating with food and beverage service provided by servers directly to the customer.

AMENDATORY SECTION (Amending WSR 11-01-133, filed 12/21/10, effective 1/21/11)

**WAC 314-02-058 Sports/entertainment facility licenses—Operating plans. (1) What ~~((rules))~~ requirements govern the submission of operating plans?**

(a) To receive a license, a sports/entertainment facility must submit an operating plan for board approval.

(b) Once approved, the plan remains in effect until the licensee requests a change or the board determines that a change is necessary due to demonstrated problems or conditions not previously considered or adequately addressed in the original plan.

(c) The plan must be submitted in a format designated by the board.

(d) The plan must contain all of the following elements:

(i) How the sports/entertainment facility will prevent the sale and service of alcohol to persons under twenty-one years of age and those who appear to be intoxicated.

(ii) The ratio of alcohol service staff and security staff to the size of the audiences at events where alcohol is being served. The minimum ratio allowed is one staff person to fifty attendees at the event.

(iii) Training provided to staff who serve, regulate, or supervise the service of alcohol. Mandatory alcohol server training is required for all staff.

(iv) The facility's policy on the number of alcoholic beverages that will be served to an individual patron during one transaction. Two alcoholic beverages is the maximum number allowed to be sold and served to an individual patron during one transaction.

(v) An explanation of the alcoholic beverage containers that will be used to ensure they are significantly different from containers utilized from nonalcoholic beverages.

~~((v))~~ (vi) A list of event categories (see WAC 314-02-057(2)) to be held in the facility at which alcohol service is planned, along with a request for the level of alcohol service at each event.

~~((vi))~~ (vii) The date must be included in the operating plan.

~~((vii))~~ (viii) The pages must be numbered in the operating plan.

~~((viii))~~ (ix) The operating plan must be signed by a principal of the licensed entity.

(e) Prior to the first of each month, the licensee must provide a schedule of events for the upcoming month to the facility's local liquor enforcement office. This schedule must show the date and time of each event during which alcohol

service is planned. The licensee must notify the local enforcement office at least seventy-two hours in advance of any events where alcohol service is planned that were not included in the monthly schedule. Notice of private events is not required when the event is being held in conjunction with a professional or amateur sporting event, an entertainment event, or a special event as outlined in WAC 314-02-057(2).

(2) **May the liquor control board impose any other mandatory standards as a part of an operating plan?** Yes. To prevent persons who are under twenty-one years of age or who appear intoxicated from gaining access to alcohol, the board may impose the following standards as part of an operating plan:

(a) The board may require that an operating plan include additional mandatory requirements if it is judged by the board that the plan does not effectively prevent violations of liquor laws and regulations, particularly those that prevent persons under twenty-one years of age or who are apparently intoxicated from obtaining alcohol.

(b) To permit alcohol servers to establish the age of patrons and to prevent over-service, sports/entertainment facilities must meet minimum lighting requirements established by WAC 314-11-055 in any area where alcohol is served or consumed. For the purpose of establishing a permanent technical standard, an operating plan may include a lighting standard measured in foot candles, so long as the candle power of the lighting is, at all times, sufficient to permit alcohol servers to establish the validity of documents printed in eight point type.

(3) **Where will spirits, beer, and wine be allowed in a sports/entertainment facility?** The purpose of the following matrix is to outline where and when alcohol service will normally be permitted. Due to the unique nature of each facility, the board will determine the permitted alcohol service based on the facility's approved operating plan.

(a) If alcohol service is requested outside of the parameters listed below, a special request with justification for the alcohol service area must be submitted with the operating plan for consideration by the board.

Type of event as defined in WAC 314-02-057	Beer, wine, and spirits may be sold and served in approved restaurants, lounges, private suites, and club rooms	Beer, wine, and spirits may be sold and served in temporary lounges, beer gardens, or other approved service areas	<u>Spirits, beer, and wine</u> may be served and consumed in club seats during events	Beer and wine may be consumed throughout seating areas during events	Hawking - beer may be served throughout seating areas, subject to the provisions of WAC 314-02-058(4)
Professional sporting events of baseball, football, basketball, soccer, tennis, volleyball, horse racing, hockey, and track and field events	x	x	x	x	x
All other professional sporting events <u>including</u> <u>WWE, UFC, rodeo, motorcross, national auto racing, and monster truck events</u> (level of alcohol service will be determined on a case-by-case basis per the approved operating plan)	x	x	x	x	
Amateur sporting events ( <u>nonpaid athletes</u> )	x	x			
Entertainment events	x	x			
Special events ( <u>trade shows, conventions</u> )	x	x			

(b) For private events, beer, wine, and spirits may be served in the area where the event is held. This area may be a separate meeting or banquet room or the entire facility.

(c) In order to minimize youth access to alcohol, the board may prohibit or restrict the service of alcohol at events where the attendance is expected to be over thirty percent persons under twenty-one years of age. This restriction will not apply to the professional sporting events outlined in WAC 314-02-057 (2)(a).

(4) **Will hawking be allowed at sports/entertainment facilities?** Subject to the provisions of this rule, hawking may be permitted in general seating areas for the sale and consumption of beer, at the professional sporting events of baseball, football, basketball, soccer, tennis, volleyball, horse racing, hockey, and track and field events only, as defined by WAC 314-02-057 (2)(a).

(a) An operating plan must include procedures for hawkers to verify the age of purchasers and to prevent service to apparently intoxicated persons.

(b) During hawking, any patron may decline to handle alcoholic beverages, either on behalf of themselves and for any person under their supervision. When a patron objects to handling alcohol, hawkers must accommodate the objection. The facility operating plan will address how hawking will be managed, including how hawkers will respond to patron objections to handling alcohol.

~~((c) Each facility's hawking authorization will be reviewed by the board one year after the facility commences hawking under these rules and then every two years. This review, which will take no more than ninety days, will recommend the continuation, modification, or repeal of the hawking authorization. The decision to continue hawking will be based on:~~

~~(i) The facility's demonstrated record of preventing service of liquor to persons under twenty-one years of age and to persons who appear intoxicated; and~~

~~(ii) Public input submitted to the board. The licensee must post written notices to its patrons at fixed points of alcohol sales on the premises and in programs at events where hawking occurs for at least sixty days prior to the review period, stating that the facility's hawking authorization is up for review by the board, and directing comment to the board. The wording and method of notice must be approved by the board.))~~

### WSR 15-18-042

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed August 26, 2015, 4:17 p.m., effective September 26, 2015]

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

Purpose: The department is amending WAC 388-444-0030 Do I have to work to be eligible for Basic Food benefits if I am an able-bodied adult without dependents (ABAWD)?, to extend the date for which the ABAWD waiver applies. The amendments also align rules with the Code of Federal Regulations (C.F.R.), specifically regarding living with a minor, participating at least twenty hours in a variety of activities, and replacing the Job Training Partnership Act terminology with the Workforce Innovation and Opportunity Act of 2014.

These rule changes are not expected to impact eligibility and benefits for the Washington Basic Food program and the state-funded food assistance program (FAP) for legal immigrants as these rules and procedures are already in effect and being applied to Basic Food eligibility decisions. Under RCW 74.08A.120, rules for FAP shall follow exactly the rules of the federal food stamp program (SNAP) except for the provisions pertaining to immigrant status.

Citation of Existing Rules Affected by this Order: Amending WAC 388-444-0030.

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. 273.24.

Adopted under notice filed as WSR 15-14-074 on June 26, 2015.

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

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

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

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

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

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

Date Adopted: August 26, 2015.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-18-028, filed 8/26/14, effective 9/26/14)

**WAC 388-444-0030 ((Do I have to work)) What additional work requirements and time limits is an able-bodied adult without dependents (ABAWD) subject to in order to be eligible for Basic Food ((benefits if I am an able-bodied adult without dependents (ABAWD)))? (1) An able-bodied adult without dependents (ABAWD) is a person who:**

**(a) Is ((physically and mentally able to work)) required to register for work under WAC 388-444-0005; and**

**(b) Is age eighteen through forty-nine; and**

**(c) ((Has no child in the household)) Does not live with any minor children.**

**(2) If you are an ABAWD, you must participate in employment and training activities under subsection (4) unless you are exempt from ABAWD requirements under WAC 388-444-0035.**

**(3) Nonexempt ABAWDs who fail to participate may continue to receive food assistance until ((September 30)) December 31, 2015.**

**(4) Beginning ((October 1, 2015)) January 1, 2016, ((an)) a nonexempt ABAWD is not eligible to receive food assistance for more than three full months in a thirty-six month period, ((except as provided in WAC 388-444-0035.)) unless that person participates in at least twenty hours a week averaged monthly in any of the following:**

**(a) ((Is exempt from ABAWD requirements under WAC 388-444-0035;**

**(b) Works at least twenty hours a week averaged monthly)) Paid work;**

**((c) Participates in on)) (b) On the job training (OJT), which may include paid work and classroom training time((; for at least twenty hours a week));**

**((d) Participates in)) (c) An unpaid work program as provided in WAC 388-444-0040; or**

**((e)) (d) Participates in ((and meets the requirements of)) one of the following work programs and is meeting the requirements of that work program:**

**(i) The ((Job Training Partnership)) Workforce Innovation and Opportunity Act ((JTPA)) of 2014;**

**(ii) Section 236 of the Trade Act of 1974; or**

**(iii) A state-approved employment and training program.**

### WSR 15-18-044

#### PERMANENT RULES

#### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed August 27, 2015, 9:05 a.m., effective September 27, 2015]

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

Purpose: The agency is amending this rule to clarify the exception to rule process. A client or provider must request an exception to rule before the requested service is rendered. The agency is also making editorial changes to improve clarity.

Citation of Existing Rules Affected by this Order: Amending WAC 182-501-0160.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 15-15-166 on July 22, 2015.

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

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

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

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

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

Date Adopted: August 27, 2015.

Wendy Barcus  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 13-18-035, filed 8/28/13, effective 9/28/13)

**WAC 182-501-0160 Exception to rule—Request for a noncovered health care service.** A client ~~((and/))~~ or the client's provider may request that the Medicaid agency or its designee ~~((to))~~ pay for a noncovered health care service. This is called an exception to rule (ETR). The request for ETR must be made before the service is rendered.

(1) The agency's medical director or designee evaluates and considers requests on a case-by-case basis. The agency's medical director has final authority to approve or deny a request for ETR.

(2) The agency or its designee cannot approve an ~~((exception to rule))~~ ETR if the requested service is excluded under state statute.

~~((2) The))~~ (3) Any item or service ~~((s))~~ for which an ~~((exception))~~ ETR is requested must ~~((be of a type and nature which falls))~~:

(a) Fall within accepted standards and precepts of good medical practice;

~~((3) All exception requests must))~~ (b) Represent cost-effective ~~((utilization of medical assistance program funds as determined by the agency or its designee;~~

(4) A request for an exception to rule must)) use of public funds; and

(c) Be submitted to the agency or its designee in writing within ninety days of the date of the written notification denying authorization for the noncovered service.

(4) For the agency or its designee to consider the ~~((exception to rule))~~ ETR request:

(a) The client ~~((and/))~~ or the client's health care provider must submit sufficient client-specific information and documentation to the agency's medical director or designee which demonstrate that the client's clinical condition is so different from the majority that there is no equally effective, less costly covered service or equipment that meets the client's need ~~((s))~~.

(b) The client's health care ~~((professional))~~ provider must certify that medical treatment or items of service which are covered under the client's ~~((medical assistance))~~ Washington apple health program and which, under accepted standards of medical practice, are indicated as appropriate for the treatment of the illness or condition, have been found to be:

(i) Medically ineffective in the treatment of the client's condition; or

(ii) Inappropriate for that specific client.

(5) Within fifteen business days of receiving the request, the agency or its designee must send ~~((s))~~ written notification to the provider and the client:

(a) Approving the ~~((exception to rule))~~ ETR request;

(b) Denying the ~~((exception to rule))~~ ETR request; or

(c) Requesting additional information.

(i) The additional information must be received by the agency or its designee within thirty days of the date the information was requested.

(ii) The agency or its designee must approve ~~((s or denies the exception to rule))~~ or deny the ETR request within five business days of receiving the additional information.

(iii) If the requested information is insufficient or not provided within thirty days, the agency or its designee denies the ~~((exception to rule))~~ ETR request.

(6) ~~((The agency's medical director or designee evaluates and considers requests on a case-by-case basis. The agency's medical director has final authority to approve or deny a request for exception to rule.~~

(7) ~~Client do))~~ A client does not have a right to a fair hearing on ~~((exception to rule))~~ ETR decisions.

**WSR 15-18-054**  
**PERMANENT RULES**  
**CENTRALIA COLLEGE**

[Filed August 27, 2015, 11:02 a.m., effective September 27, 2015]

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

Purpose: Amend, repeal and adopt WAC related to the discrimination and harassment complaint process and the Centralia College student rights and responsibilities code.

Citation of Existing Rules Affected by this Order: Repealing WAC 132L-300-020, 132L-300-030, 132L-300-040, 132L-300-050, 132L-300-060, 132L-300-070, 132L-300-080, 132L-300-085, 132L-300-090, 132L-300-100, 132L-300-110, and chapter 132L-120 WAC in its entirety (WAC 132L-120-010, 132L-120-015, 132L-120-020, 132L-120-030, 132L-120-040, 132L-120-070, 132L-120-080, 132L-120-090, 132L-120-100, 132L-120-110, 132L-120-120, 132L-120-130, 132L-120-140, 132L-120-150, 132L-120-160, 132L-120-170, 132L-120-180, 132L-120-190,

132L-120-200, 132L-120-210 and 132L-120-220); amending WAC 132L-300-010; and adopting WAC 132L-300-015, 132L-350-005, 132L-350-010, 132L-350-015, 132L-350-020, 132L-350-030, 132L-350-040, 132L-350-070, 132L-350-080, 132L-350-090, 132L-350-100, 132L-350-110, 132L-350-120, 132L-350-130, 132L-350-140, 132L-350-150, 132L-350-160, 132L-350-170, 132L-350-180, 132L-350-190, 132L-350-200, 132L-350-210, 132L-350-220, 132L-350-230, 132L-350-240, 132L-350-250, 132L-350-260, and 132L-350-270.

Statutory Authority for Adoption: RCW 28B.50.140 and chapter 34.05 RCW.

Adopted under notice filed as WSR 15-15-013 on July 6, 2015.

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 28, Amended 1, Repealed 32.

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: August 27, 2015.

Dr. Robert A. Frost  
President

AMENDATORY SECTION (Amending WSR 04-19-062, filed 9/15/04, effective 10/16/04)

**WAC 132L-300-010 ((General)) Discrimination and harassment policy.** ~~((It is the policy of Centralia College to assure equal opportunity and nondiscrimination on the basis of race or ethnicity, creed, color, national origin, sex, marital status, sexual orientation, age, religion, the presence of any sensory, mental or physical disability, and status as a disabled veteran or Vietnam-era veteran or veteran of a uniformed service.))~~ Centralia College (college) provides equal opportunity and access in education and employment and does not discriminate on the basis of race, color, national origin, age, disability, sex, sexual orientation, marital status, creed, religion, or status as a veteran of war as required by Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act and Washington state's law against discrimination, chapter 49.60 RCW and their implementing regulations.

The college has enacted policies prohibiting discrimination and harassment of members of these protected classes. Any individual found to be in violation of these policies will

be subject to disciplinary action up to and including dismissal from the college or from employment.

#### NEW SECTION

**WAC 132L-300-015 Discrimination and harassment procedure.** Any employee, student, or visitor who believes that he or she has been the subject of discrimination or harassment should report the incident or incidents to the college's Title IX/Equal Opportunity (EO) officer identified below. The college encourages the timely reporting of any incidents of discrimination or harassment. If the complaint is against that officer, the complainant should report the matter to the president's office for referral to an alternate designee.

Name: Vice-president of human resources & legal affairs, Title IX/EO officer or designee.

Office: Hanson administration building, human resources office room 101.

Contact Info: 600 Centralia College Blvd, Centralia, WA 98531; phone 360-736-9391, ext. 285.

The Title IX/EO officer, or designee:

- Will accept all complaints and referrals from college employees, students, and visitors.
- Will keep accurate records of all complaints and referrals for the required time period.
- May conduct investigations or assign and oversee investigations conducted by others.
- May impose interim remedial measures to protect parties during investigations of discrimination or harassment.
- Will make findings of fact on investigations completed.
- May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate action.

The college encourages the timely reporting of any incident of discrimination or harassment.

#### (1) **Definitions.**

(a) **Complainant:** Employee(s), applicant(s), student(s), or visitor(s) of the college who allege that she or he has been subjected to discrimination or harassment due to membership in a protected class.

(b) **Complaint:** A description of facts that allege violation of the college's policy against discrimination or harassment. (The college has an official form as part of this procedure.)

(c) **Consent:** Knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(d) **Discrimination:** Unfavorable treatment of a person based on that person's membership or perceived membership in a protected class.

(e) **Harassment:** The unwelcome and unauthorized patterns of conduct, based on a person(s) race, color, religious belief, sex, marital status, sexual orientation, gender identity or expression, national origin, disability, veteran status, or age, and which:

(i) The harasser either knows, or should know, will have the effect of making the college environment hostile, intimidating, or demeaning to the victim; and

(ii) In fact, is sufficiently, severe, persistent, or pervasive to substantially deny or limit that person's ability to benefit from or fully participate in educational programs or activities or employment opportunities.

(f) **Protected class:** Persons who are protected under state or federal civil rights laws, including laws that prohibit discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal.

(g) **Resolution:** The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of discipline.

(h) **Respondent:** Person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons.

(i) **Sexual harassment:** A form of discrimination consisting of unwelcome, gender-based verbal, written, electronic, and/or physical conduct. Sexual harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's gender. There are two types of sexual harassment:

(i) Hostile environment sexual harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs.

(ii) Quid pro quo sexual harassment occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors.

(j) **Sexual violence:** Is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal) however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts,

groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(2) **Who may file a complaint.** Any employee, applicant, student, or visitor of the college may file a complaint. Complaints may be submitted in writing or verbally. The college encourages the timely reporting of any incidents of discrimination or harassment.

(3) **Confidentiality and right to privacy.** The college will seek to protect the privacy of the complainant to the full extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as the college policies and procedures. The college cannot guarantee complete confidentiality.

(4) **Confidentiality requests and sexual violence complaints.** The Title IX/EO coordinator will obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks that his or her name not be revealed to the respondent or that the college not investigate the allegation, the Title IX/EO coordinator will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations. If the complainant still insists that his or her name not be disclosed or that the college not investigate, the Title IX/EO coordinator will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant.

If the college is unable to honor a complainant's request for confidentiality, the Title IX/EO officer will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the Title IX/EO officer will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.

(5) **Investigation procedure.** Upon receiving a discrimination complaint, the college shall commence an impartial investigation. The Title IX/EO officer shall be responsible for overseeing all investigations. Investigations may be con-

ducted by the Title IX/EO officer, or designee. If the investigation is assigned to someone other than the Title IX/EO officer, the Title IX/EO officer shall inform the complainant and respondent(s) of the appointment of an investigator.

**Interim measures.** The Title IX/EO officer may impose interim measures to protect the complainant and/or respondent pending the conclusion of the investigation.

**Investigation.** Complaints shall be thoroughly and impartially investigated. The investigation shall be concluded within a reasonable time, normally sixty days barring exigent circumstances.

At the conclusion of the investigation the investigator shall set forth his or her findings and recommendations in writing. If the investigator is a designee, the investigator shall send a copy of the findings and recommendations to the Title IX/EO officer.

Investigation findings and recommendations involving students may also result in student conduct violations and result in discipline under the student conduct code. Investigation findings and recommendations involving employees may result in discipline. The findings and recommendations shall be considered based on the preponderance of the evidence standard, in determining whether a violation of the discrimination and harassment policy occurred, and if so, what steps will be taken to resolve the complaint, remedy the effects on the victim(s), and prevents its recurrence.

**Written notice of decision.** The Title IX/EO officer will provide each party and the appropriate administrator or appointing authority with written notice of the investigative findings and of actions taken. The complainant shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint, if any, only to the extent that such findings, actions or recommendations directly relate to the complainant, such as a finding that the accused not contact the complainant. The complainant may be notified generally that the matter has been referred for disciplinary action. The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action. Both the complainant and the respondent are entitled to review any final findings, conclusions, and recommendations, subject to any FERPA confidentiality requirements.

**Informal dispute resolution.** Informal dispute resolution processes, like mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

**Final decision/reconsideration.** Either the complainant or the respondent may seek reconsideration of the decision by the Title IX/EO officer. Requests for reconsideration shall be submitted in writing to the Title IX/EO officer within seven days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If no request for reconsideration is

received within seven days, the decision becomes final. The Title IX/EO coordinator shall either deny the request or, if the Title IX/EO coordinator determines that the request for reconsideration has merit, issue an amended decision. Any amended decision is final and no further reconsideration is available.

(6) **Limits to authority.** Nothing in this procedure shall prevent the college president or designee from taking immediate disciplinary action in accordance with the college policies and procedures, and federal, state, and municipal rules and regulations.

(7) **Nonretaliation, intimidation and coercion.** Retaliation by, for, or against any participant (including complainant, respondent, witness, Title IX/EO officer, or investigator) is expressly prohibited. Retaliatory action of any kind taken against individuals as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation or any resulting disciplinary proceedings is prohibited and is conduct subject to discipline. Any person who thinks he/she has been the victim of retaliation should contact the Title IX/EO coordinator immediately.

(8) **Other discrimination complaint options.** Discrimination complaints may also be filed with the following federal and state agencies:

Washington state human rights commission, <http://www.hum.wa.gov/index.html>.

U.S. Department of Education Office for Civil Rights, <http://www2.ed.gov/about/offices/list/ocr/index.html>.

Equal Employment Opportunity Commission, <http://www.eeoc.gov/>.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132L-300-020 Applicability.

WAC 132L-300-030 Right to complain.

WAC 132L-300-040 Protection from retaliation.

WAC 132L-300-050 Informal complaint procedure.

WAC 132L-300-060 Outcomes of the informal complaint process.

WAC 132L-300-070 Time limit for formal complaint procedures.

WAC 132L-300-080 Formal complaint procedures against students.

WAC 132L-300-085 Formal complaint procedures against employees and/or agents of the college.

WAC 132L-300-090 Outcomes of the formal complaint process.

WAC 132L-300-100 Complainant appeal process.

WAC 132L-300-110 Responsibilities of the equal opportunity officer.

## Chapter 132L-350 WAC

## CENTRALIA COLLEGE—STUDENT RIGHTS AND RESPONSIBILITIES CODE

NEW SECTION

**WAC 132L-350-005 Authority.** The board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice-president of student services, or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

**WAC 132L-350-010 Student responsibilities.** Centralia College is a dynamic learning community that promotes growth and development by offering opportunities to gain knowledge, entrance skills, examine values, and pursue learning options. The college is committed to quality life-long learning through its values of respect, responsibility, and responsiveness. To that end, Centralia College maintains a strong commitment to providing a civil and nondisruptive learning environment. Students are reminded that they assume certain responsibilities of performance and conduct which have been reasonably established in order to accomplish Centralia College's education goals. Therefore, the college expects that students will conduct themselves as responsible members of the college community, will comply with the rules and regulations of the college, will maintain high standards of integrity and honesty, and will respect the rights, privileges, and property of other members of the college community.

NEW SECTION

**WAC 132L-350-015 Purpose.** The purpose of these rules is to prescribe standards of conduct for students of Centralia College. Violations of these standards may be cause for disciplinary action as described in this code.

NEW SECTION

**WAC 132L-350-020 Definitions.** (1) As used in this chapter, the following words and phrases shall mean:

(a) "ASCC" refers to the associated students of Centralia College, the official student government association.

(b) "Assembly" means any overt activity engaged in by three or more persons, the object of which is to gain publicity, advocate a view, petition for a cause, or disseminate information to any person, persons, or group of persons.

(c) "Board of trustees" or "board" means the board members appointed by the governor of the state of Washington who have final authority for the governance of Centralia College.

(d) "College" means Centralia College, or any additional community college hereafter established with Community

College District 12, state of Washington, and collectively, those responsible for its control and operation.

(e) "College community" means trustees, students, employees, and guests on college-owned or controlled facilities.

(f) "College facilities" means and includes any or all property controlled and/or operated by the college.

(g) "College official" includes any person employed by the college performing assigned duties.

(h) "College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

(i) "Complainant" means any person who submits a charge alleging that a student violated the code of student conduct.

(j) "Conduct review officer" is the vice-president of student services or other college administrator designated by the president to be responsible for receiving and reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(k) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

(l) "Day" means a calendar day, except the effective day, of any provision of this chapter shall be the day following a Saturday, Sunday, or holiday.

(m) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(n) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student code officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(o) "Faculty member" and "instructor" means any employee of Community College District No. 12 who is employed on a full-time or part-time basis as a teacher, instructor, counselor, or librarian.

(p) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(i) Hand delivery of the document to the specified college official or college official's assistant; or

(ii) By sending the document by e-mail and first class mail to the specified college official's office and college e-mail address.

(q) "Living group" means a fraternity, sorority, or other similar off-campus student organization officially recognized by Centralia College.

(r) "President" means the chief executive officer of the college appointed by the board of trustees, and for the purposes of this chapter includes "acting president" or the delegated authority in the absence of the president.

(s) "RCW" means Revised Code of Washington which can be accessed at <http://apps.leg.wa.gov/rcw/>.

(t) "Respondent" is the student against whom disciplinary action is initiated.

(u) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(i) Hand delivery of the document to the party; or

(ii) By sending the document by e-mail and by certified mail or first-class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed and deposited in the mail.

(v) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(w) "Student conduct officer" is a college administrator designated by the president or vice-president of student services to be responsible for implementing and enforcing the student conduct code. The president or vice-president of student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

(x) "Student group" means a number of students who are not officially recognized as a student organization.

(y) "Student organization" means a number of students who have complied with the formal requirements of college recognition as provided by the ASCC.

(z) "Summary hearing" means a short, concise, and immediate hearing.

(2) All other terms have their natural meaning unless the context dictates otherwise.

#### NEW SECTION

**WAC 132L-350-030 Jurisdiction.** The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on

a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off-campus.

#### NEW SECTION

**WAC 132L-350-040 General policies.** (1) Centralia College is an agency of the state of Washington and adheres to all local, state, and federal laws. The college is obligated to demonstrate respect for laws by cooperating in their enforcement.

(2) Centralia College cannot and will not establish regulations that would abridge constitutional rights.

(3) Proper procedures are established to maintain conditions helpful to the effective function of the college, to protect individual students from unfair penalties, and to assure due process. Centralia College is granted the right by law to adopt rules to govern its operations.

(4) If these rules are broken, the college has the right and the obligation to take that action which is in the best interest of the entire college.

(5) Centralia College reserves the right to impose the provisions of this code and provide further sanctions before or after law enforcement agencies, courts, or other agencies have imposed penalties or otherwise disposed of a case. College hearings are not subject to challenge on the ground that criminal or civil charges involving the same incident have been dismissed or reduced or in which the defendant has been found not guilty or otherwise not liable. In addition, the college reserves the right to refer incidents to the appropriate civilian authorities or law enforcement agencies.

(6) The ASCC has the right to participate in the formulation and review of all policies and rules pertaining to student conduct and in the enforcement of all such rules as provided by this chapter.

(7) This code will be printed and made available to students.

#### NEW SECTION

**WAC 132L-350-070 Student rights.** As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) **Academic freedom.**

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college curricula, programs, and

services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

**(2) Due process.**

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

**NEW SECTION**

**WAC 132L-350-080 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, attempts to commit, aids, abets, incites, encourages or assists another person or persons to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruption.** Obstruction or disruption of (a) any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity, or (b) any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

(4) **Assault, intimidation, harassment.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking, or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is severe or pervasive physical or verbal abuse involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communication directly or through spyware, sending threatening e-mails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other member of the college community or organization; or

(d) Possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Carrying, exhibiting, displaying or drawing any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) Alcohol. The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) Marijuana. The use, possession, delivery, sale or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) Drugs. The use, possession, delivery, sale or being observably under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) Tobacco, electronic cigarettes, and related products. Smoking is prohibited on campus except in designated smoking areas. "Smoke" or "smoking" means carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment; the use of any tobacco or nicotine product; or the use of any facsimile of a tobacco or nicotine product, including electronic cigarettes. Nicotine gum, patches, or like products are permissible.

(11) **Lewd conduct.** Conduct which is lewd or obscene.

(12) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) Sexual harassment. Sexual harassment is a form of discrimination consisting of unwelcome, gender-based verbal, written, electronic and/or physical conduct. Sexual harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's gender. There are two types of sexual harassment:

(i) Hostile environment sexual harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs.

(ii) Quid pro quo sexual harassment occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit upon granting of sexual favors.

The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) Sexual violence. "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual inter-

course, nonconsensual sexual conduct, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breast, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such intent.

(vi) Consent means knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact, actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

(A) A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct.

(B) Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(14) **Harassment.** The unwelcome and unauthorized patterns of conduct, based on a person(s) race, color, religious belief, sex, marital status, sexual orientation, gender identity or expression, national origin, disability, veteran status, or age, and which:

(a) The harasser either knows, or should know, will have the effect of making the college environment hostile, intimidating, or demeaning to the victim; and

(b) In fact, is sufficiently, severe, persistent or pervasive to substantially deny or limit that person's ability to benefit from or fully participate in educational programs or activities or employment opportunities.

(15) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations, or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provision prohibiting discrimination and harassment.

(16) **Misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operations of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the college's electronic use policy.

(17) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(18) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(19) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule or regulation or other college rules or policies, including college traffic and parking rules.

(20) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

#### NEW SECTION

**WAC 132L-350-090 Disciplinary sanctions.** (1) The board of trustees acting in accordance with Washington state statutes delegates to the president of the college authority to administer disciplinary action. In addition, the board of trustees authorizes the college administration to promulgate rules and provide for sanctions that provide a civil and nondisruptive learning environment.

(2) Administration of the disciplinary procedure is the responsibility of the student conduct officer. The student conduct officer shall serve as the principal investigator and prosecutor for alleged violations of this code.

(3) In situations of apparent misconduct or apparent unauthorized presence in a college facility, it may be necessary for properly identified college personnel to ask a person to produce evidence of being a currently enrolled student at the college. Failure to comply with a legitimate request for identification from properly identified college personnel is a violation of this code and may result in a disciplinary action if the person is found to be a student. In emergency situations, cases of misconduct, or where there is a substantial danger to the college community or college property, failure to produce identification by a student may result in the assumption by college personnel that the person questioned is not a student and may result in direct civil or criminal action.

(4) The instructor is responsible for conduct in the classroom or any course-related activity or event and is authorized to take such steps as are necessary when behavior of the student disrupts the normal classroom procedure. Instructors may remove a student for the single class session in which such disruptive behavior occurs. When such behavior results in expulsion from a class session, the instructor must report the infraction in writing to the student conduct officer at the earliest opportunity. The student is automatically permitted to return to the next class session pending the outcome of any investigation or disciplinary hearings by the student conduct officer. If the student repeats behavior in any class session that again disrupts the normal classroom procedure, the student may be removed again for that class session by the instructor who shall again report the infraction to the student conduct officer in writing. In all cases involving classroom disruption, the student conduct officer will proceed with the investigation and/or disciplinary hearings in the quickest possible time consistent with the procedural requirements established in this code.

(5) The person in charge of any college office, department, or facility is responsible for conduct in that office, department, or facility and is authorized to take such steps as are necessary when behavior of the student disrupts the normal office procedure. The person in charge may remove a student for the single day in which such disruptive behavior occurs. When such behavior results in expulsion from an office, department, or facility, the person in charge must report the infraction in writing to the student conduct officer at the earliest opportunity. The student is automatically permitted to return the next day pending the outcome of any investigation or disciplinary hearings by the student conduct officer. If the student repeats behavior at any time in the future that again disrupts the normal office procedure, the student may be removed again for a single day by the person in charge who shall again report the infraction to the student conduct officer in writing. In all cases involving office disruption, the student conduct officer will proceed with the investigation and/or disciplinary hearings in the quickest possible time consistent with the procedural requirements established in this code.

(6) The student has the right to appeal any disciplinary action of an instructor or college employee to the student con-

duct officer in accordance with the procedures set forth in this code.

(7) A student formally charged or under investigation for a violation of this code may not excuse himself or herself from disciplinary hearings by withdrawing from the college.

(8) In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

#### NEW SECTION

##### **WAC 132L-350-100 Definition of disciplinary action.**

In accordance with the procedures outline in this code, the following disciplinary actions may be imposed upon students found to be in violation of this code:

(1) Warning: Notice in writing that the student has violated one or more term of this code of conduct and that continuation or repetition of the same or similar may be cause for more severe disciplinary action. This sanction is not subject to appeal.

(2) Disciplinary probation: Formal action placing specific conditions upon the student's continued attendance and warning the student that further misconduct may subject the student to suspension or dismissal. Probation may be for a limited period or may be for the duration of the student's attendance at the college.

(3) Restitution: Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an initial investigation. This may take the form of appropriate service or other compensation. Failure to make restitution, or to make in writing college-approved arrangement to pay, will result in suspension for an indefinite period provided that the student may be reinstated upon payment.

(4) Change of grade: Applies only to violations regarding cheating, fabrication, facilitating academic dishonesty, multiple submission, and plagiarism. The college in accordance with the grading policy of the college assigns students grades. Instructors as part of the professional academic judgment and evaluation of the instructor ordinarily assign students grades. In the case of a finding of cheating, fabrication, facilitating academic dishonesty, or plagiarism as defined in this code, and only as a result of the official disciplinary processes as outlined in this code, the student conduct officer may authorize an instructor to change the grade, or may record a change in grade, for the academic exercise in which academic dishonesty occurred or for the entire course in which academic dishonesty occurred. This penalty may be imposed in addition to other authorized penalties as outlined in this code. Instructors may issue an "incomplete" ("I") grade pending the outcome of any investigation or disciplinary hearing by the student conduct officer related to academic dishonesty.

(5) Summary suspension: Immediate exclusion from classes and other privileges or activities in accordance with this code.

(6) Suspension: Dismissal from the college and from status as a student for a stated period of time. The notice suspending the student will state in writing the term of the suspension and any condition(s) that must be met before readmission is granted. The student so suspended must demonstrate that the conditions for readmission have been met. There is to be no refund of tuition or fees for the quarter in which the action is taken, but tuition and fees paid in advance for a subsequent quarter are to be refunded. Suspension may also include withdrawal and/or limitations in one or more courses, services, or programs without revocation of student status.

(7) Deferred suspension: Notice of suspension from the college with the provision that the student may remain enrolled contingent on meeting any conditions(s) specified. Not meeting the contingency shall immediately invoke the suspension for the period of time and under the conditions originally imposed.

(8) Dismissal: The surrender of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There is to be no refund of tuition or fees for the quarter in which the action is taken, but tuition and fees paid in advance for a subsequent quarter are to be refunded.

(9) Forfeiture of state-funded financial aid: Applies only to violations regarding hazing. The forfeiture of any entitlement to state-funded grants, scholarships, or awards for a specified period.

(10) Withdrawal of official recognition: Any student organization, association, or student living group that knowingly permits hazing to be conducted by its members or by others subject to its direction or control shall be deprived of any official recognition or approval granted by Centralia College. In addition, any organization, association, or student living group that knowingly permits hazing is strictly liable for harm caused to persons or property resulting from hazing. If the organization, association, or living group is a corporation, whether for profit or nonprofit, the individual directors of the corporation may be held individually liable for damages. Withdrawal of official recognition may also be applied to any organization, association, or living group for other violations of Centralia College policies, rules, or regulations concerning such organizations.

(11) Disqualification from athletics: Any student found by the college to have violated this code related to the use, possession, sale, or delivery of controlled substances is subject to additional sanctions, including disqualification from college-sponsored athletic events.

(12) College or community service: Assignment of labor or responsibilities to any student or student organization with the college or local community. May also include mandatory attendance at educational programs or courses or other assignments.

(13) Fines: Monetary fines up to five thousand dollars for any student organization or up to five hundred dollars for any student. Restitution may be added as an additional monetary sanction.

(14) Protective or no-contact order: Prohibition of direct or indirect physical and/or verbal contact with another indi-

vidual or group. Any form of communication may be limited. Restrictions on locations or specified minimum distances may be imposed. Other reasonable restrictions to protect the safety and welfare of others may also be imposed. An immediate, protective or no-contact order may also be issued by the student conduct officer or his or her representative prior to any disciplinary hearing upon the sworn or affirmed written and signed testimony of any complainant that the complainant is in reasonable fear of intimidation, harassment, physical or emotional abuse, or harm, provided that the subject of such order is duly notified in writing either in person or by first class mail and is provided the opportunity to appeal such an order at an initial disciplinary hearing within seven days after notification to the student conduct officer in writing of intent to appeal. An appeal may be combined with the normal disciplinary action of an initial disciplinary hearing if charges have also been filed.

(15) Professional evaluation: Referral for drug, alcohol, psychiatric, psychological, or medical evaluation may be required. Recommendations as part of any such evaluation may become part of any sanction. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until and unless future evaluation recommends that the student is capable of reentering the college. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student shall pay for the cost of the evaluation. The college reserves the right to send a student to a professional of its own choosing at cost to the college.

(16) Hold on awarding of degree or issuance of official transcript: In the event that the conditions of other sanctions such as, but not limited to, fines, restitution, and community service, are not fulfilled, the college may place a hold on the issuance of a degree or certificate and may place a hold on the issuance of an official transcript. In addition, the college may prevent further registration. These holds will be lifted upon fulfillment of the terms and conditions of the imposed sanction.

#### NEW SECTION

##### **WAC 132L-350-110 Initiation of disciplinary action.**

(1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student

conduct officer may take disciplinary action based upon the available information.

(3) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings.

(b) Impose a disciplinary sanction(s), as described in WAC 132L-350-090.

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

#### NEW SECTION

##### **WAC 132L-350-120 Appeal from disciplinary action.**

(1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by the preponderance of the evidence.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspension of ten instructional days or less;

(b) Disciplinary probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

#### NEW SECTION

**WAC 132L-350-130 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party (a) an opportunity to be informed of the agency's view of the matter and (b) an opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both the parties within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of service the initial decision shall be deemed the final decision.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

#### NEW SECTION

**WAC 132L-350-140 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

#### NEW SECTION

**WAC 132L-350-150 Student conduct committee.** (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president; and

(c) One faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

#### NEW SECTION

**WAC 132L-350-160 Procedure and evidence for hearings.** Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model rules of procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(1) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree and also may continue the hearing to a later time for good cause shown.

(2) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decision concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(3) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the commit-

tee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(4) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline (or referral to the committee) and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(5) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(6) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(7) Communications between committee members and other hearing participants regarding any issue in the proceedings, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(8) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by the assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

#### NEW SECTION

**WAC 132L-350-170 Student conduct committee hearing proceedings.** Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either (a) proceed with the hearing and issuance of its decision or (b) serve a decision of default in accordance with RCW 34.05.440.

(1) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(2) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for

inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(3) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(4) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(5) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

#### NEW SECTION

**WAC 132L-350-180 Student conduct committee—Initial decision.** (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions (if any) as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

#### NEW SECTION

**WAC 132L-350-190 Appeal from student conduct committee initial decision.** (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the

appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within forty-five days after receipt of notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

#### NEW SECTION

**WAC 132L-350-200 Summary suspension.** (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible while an investigation and/or formal disciplinary procedure are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

- (a) Has violated any provision of the code of conduct; and
- (b) Presents an immediate danger to the health, safety or welfare of members of the college community; or
- (c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral and written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

- (a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;
- (b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5)(a) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of decision to all persons or offices who may be bound or protected by it.

#### NEW SECTION

**WAC 132L-350-210 Readmission after dismissal.** A student dismissed from the college may be readmitted only on written petition to the president. Petitions must indicate reasons that support reconsideration. The president may use whatever review procedures are at the president's disposal in consideration of readmission. The president shall convey a decision in writing to the student within thirty days after completion of the review process.

#### NEW SECTION

**WAC 132L-350-220 Brief adjudicative proceedings—Authorized.** This rule is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

- (1) Parking violations.<sup>1</sup>
- (2) Outstanding debts owed by students or employees.
- (3) Use of college facilities.
- (4) Residency determinations.
- (5) Use of library—Fines.
- (6) Challenges to contents of education records.
- (7) Loss of eligibility for participation in institution sponsored athletic events.
- (8) Student conduct appeals involving the following disciplinary actions:

- (a) Suspensions of ten instructional days or less;
- (b) Disciplinary probation;
- (c) Written reprimands;
- (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and
- (e) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to respondent.

(9) Appeals of decisions regarding mandatory tuition and fee waivers.

Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter.

<sup>1</sup> Subsections (1)-(7) and (9) are the types of issues that colleges typically use a brief adjudicative proceeding to resolve and are included here merely for illustrative purposes.

#### NEW SECTION

**WAC 132L-350-230 Brief adjudicative proceedings—Agency record.** The agency record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

#### NEW SECTION

**WAC 132L-350-240 Review of rules.** These rules will be reviewed annually by the student conduct officer. The student conduct officer, upon determining a need to revise this code, shall convene a review committee to make recommendations for change in the code.

#### NEW SECTION

**WAC 132L-350-250 Supplemental discipline procedures for sexual misconduct cases.** Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132L-350-010 through 132L-350-210. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

#### NEW SECTION

**WAC 132L-350-260 Supplemental complaint process for sexual misconduct.** The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(1) The college's Title IX coordinator or designee, shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(2) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(3) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(4) The student conduct officer, within a reasonable amount of time after the disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that prompt notice of the protective disciplinary sanctions and/or conditions.

#### NEW SECTION

**WAC 132L-350-270 Supplemental appeal rights for sexual misconduct cases.** (1) The following actions by the student conduct officer may be appealed by the complainant:

- (a) The dismissal of a sexual misconduct complaint; or
- (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 132L-350-120. The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

- (a) Exoneration and dismissal of the proceedings;
- (b) A disciplinary warning;
- (c) A written reprimand;
- (d) Disciplinary probation;
- (e) Suspensions of ten instructional days or less; and/or

(f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.

(10) The chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights.

(11) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

(12) The president, within a reasonable amount of time after final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

### WSR 15-18-065

#### PERMANENT RULES

#### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed August 27, 2015, 3:05 p.m., effective September 27, 2015]

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

Purpose: The agency is making housekeeping rule changes to correct agency names, program names, rule numbers, and to make other clarifications that do not change the effect of the rules.

Citation of Existing Rules Affected by this Order: Amending WAC 182-550-1000, 182-550-1100, 182-550-1300, 182-550-1350, 182-550-1400, 182-550-1500, 182-550-1600, 182-550-1900, 182-550-2100, 182-550-2200, 182-550-2301, 182-550-2400, 182-550-2431, 182-550-2500, 182-550-2501, 182-550-2531, 182-550-2541, 182-550-2561, 182-550-2565, 182-550-2575, 182-550-2580, 182-550-2585, 182-550-2590, 182-550-2595, 182-550-2596, 182-550-2598, 182-550-2600, 182-550-3470, 182-550-4200, 182-550-4550, 182-550-4690, 182-550-4700, 182-550-4925, 182-550-4935, 182-550-5000, 182-550-5130, 182-550-5200, 182-550-5210, 182-550-5220, 182-550-5410, 182-550-5425, 182-550-5500, 182-550-5550, 182-550-5600, 182-550-5700, 182-550-5800, 182-550-6000, 182-550-6100, 182-550-6150, 182-550-6200, 182-550-6250, 182-550-6300, 182-550-6400, 182-550-6450, 182-550-6500, and 182-550-6600.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 15-15-090 on July 15, 2015.

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 56, 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 56, Repealed 0.

Date Adopted: August 27, 2015.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-1000 Applicability.** The ((department)) medicaid agency pays for hospital services provided to eligible clients when:

(1) The eligible client is a patient in an acute care hospital and the hospital meets the definition of hospital or psychiatric hospital in RCW 70.41.020, ((WAC 388-500-0005 or 388-550-1050)) chapter 182-500 or WAC 182-550-1050;

(2) The services are medically necessary as defined under WAC ((388-500-0005)) 182-500-0070; and

(3) The conditions, exceptions and limitations in this chapter are met.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-1100 Hospital care—General.** (1) The ~~((department))~~ medicaid agency:

(a) Pays for the admission of an eligible ~~((medical assistance))~~ Washington apple health (WAH) client to a hospital only when the client's attending physician orders admission and when the admission and treatment provided:

(i) Are covered according to WAC ~~((388-501-0050, 388-501-0060 and 388-501-0065))~~ 182-501-0050, 182-501-0060 and 182-501-0065;

(ii) Are medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070;

(iii) Are determined according to WAC ~~((388-501-0165))~~ 182-501-0165 when prior authorization is required;

(iv) Are authorized when required under this chapter; and

(v) Meet applicable state and federal requirements.

(b) For hospital admissions, defines "attending physician" as the client's primary care provider, or the primary provider of care to the client at the time of admission.

(2) Medical record documentation of hospital services must meet the requirements in WAC ~~((388-502-0020))~~ 182-502-0020.

(3) The ~~((department))~~ agency:

(a) Pays for a hospital covered service provided to an eligible ~~((medical assistance))~~ WAH client enrolled in ~~((a department))~~ an agency-contracted managed care organization (MCO) plan, under the fee-for-service program if the service is excluded from the MCO's capitation contract with the ~~((department))~~ agency and meets prior authorization requirements. (See WAC ~~((388-550-2600))~~ 182-550-2600 for inpatient psychiatric services.)

(b) Does not pay for nonemergency services provided to a ~~((medical assistance))~~ WAH client from a nonparticipating hospital in a selective contracting area (SCA) unless exclusions in WAC ~~((388-550-4600 and 388-550-4700))~~ 182-550-4700 apply. The ~~((department's))~~ agency's selective contracting program and selective contracting payment limitations end for hospital claims with dates of admission before July 1, 2007.

(4) The ~~((department))~~ agency pays up to twenty-six days of inpatient hospital care for hospital-based detoxification, medical stabilization, and drug treatment for chemical dependent pregnant clients eligible under the chemical-using pregnant (CUP) women program.

See WAC ~~((388-533-0701 through 388-533-0730))~~ 182-533-0701 through 182-533-0730.

(5) The ~~((department))~~ agency pays for inpatient hospital detoxification of acute alcohol or other drug intoxication when the services are provided to an eligible client:

(a) In a detoxification unit in a hospital that has a detoxification provider agreement with the ~~((department))~~ agency to perform these services and the services are approved by the division of alcohol and substance abuse (DASA); or

(b) In an acute hospital and all ~~((of))~~ the following criteria are met:

(i) The hospital does not have a detoxification specific provider agreement with DASA;

(ii) The hospital provides the care in a medical unit;

(iii) Nonhospital based detoxification is not medically appropriate for the client;

(iv) The client does not require medically necessary inpatient psychiatric care and it is determined that an approval from a regional support network (RSN) or a mental health division (MHD) designee as an inpatient stay is not indicated;

(v) The client's stay qualifies as an inpatient stay;

(vi) The client is not participating in the ~~((department's))~~ agency's chemical-using pregnant (CUP) women program; and

(vii) The client's principal diagnosis meets the ~~((department's))~~ agency's medical inpatient detoxification criteria listed in the ~~((department's))~~ agency's published billing instructions.

(6) The ~~((department))~~ agency covers medically necessary dental-related services provided to an eligible client in a hospital-based dental clinic when the services:

(a) Are provided ~~((in accordance with chapter 388-535))~~ under chapter 182-535 WAC; and

(b) Are billed on the American Dental Association (ADA) or health care financing administration (HCFA) claim form.

(7) The ~~((department))~~ agency pays a hospital for covered dental-related services, including oral and maxillofacial surgeries, that are provided in the hospital's operating room, when:

(a) The covered dental-related services are medically necessary and provided ~~((in accordance with chapter 388-535))~~ under chapter 182-535 WAC;

(b) The covered dental-related services are billed on a UB claim form; and

(c) At least ~~((one))~~ one of the following is true:

(i) The dental-related service(s) is provided to an eligible ~~((medical assistance))~~ WAH client on an emergency basis;

(ii) The client is eligible under the division of developmental disability program;

(iii) The client is age eight or younger; or

(iv) The dental service is prior authorized by the ~~((department))~~ agency.

(8) For inpatient voluntary or involuntary psychiatric admissions, see WAC ~~((388-550-2600))~~ 182-550-2600.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-1300 Revenue code categories and subcategories.** (1) Revenue code categories and subcategories listed in this chapter are published in the UB-92 ~~((and/))~~ or UB-04 National Uniform Billing Data Element Specifications Manual.

(2) The ~~((department))~~ medicaid agency requires a hospital provider to report and bill all hospital services provided to ~~((medical assistance))~~ Washington apple health clients using the appropriate revenue codes published in the manual referenced in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-1350 Revenue code categories and subcategories—CPT and HCPCS reporting requirements for outpatient hospitals.** (1) The ~~((department))~~ medicaid agency requires an outpatient hospital provider to report the appropriate current procedural terminology (CPT) or health care common procedure coding system (HCPCS) codes in addition to the required revenue codes on an outpatient claim line when using any of the following revenue code categories and subcategories:

- (a) "IV therapy," only subcategories "general classification" and "infusion pump";
- (b) "Medical/surgical supplies and devices," only subcategory "other supplies/devices";
- (c) "Oncology";
- (d) "Laboratory";
- (e) "Laboratory pathological";
- (f) "Radiology - Diagnostic";
- (g) "Radiology - Therapeutic and/or chemotherapy administration";
- (h) "Nuclear medicine";
- (i) "CT scan";
- (j) "Operating room services," only subcategories "general classification" and "minor surgery";
- (k) "Blood and blood components";
- (l) "Administration, processing, and storage for blood components";
- (m) "Other imaging services";
- (n) "Respiratory services";
- (o) "Physical therapy";
- (p) "Occupational therapy";
- (q) "Speech therapy - Language pathology";
- (r) "Emergency room," only subcategories "general classification" and "urgent care";
- (s) "Pulmonary function";
- (t) "Audiology";
- (u) "Cardiology";
- (v) "Ambulatory surgical care";
- (w) "Clinic," only subcategories "general classification" and "other clinic";
- (x) "Magnetic resonance technology (MRT)";
- (y) "Medical/surgical supplies - Extension," only subcategory "surgical dressings";
- (z) "Pharmacy - Extension" subcategories "Erythropoietin (EPO) less than ten thousand units," "Erythropoietin (EPO) ten thousand or more units," "drugs requiring detailed coding," and "self-administrable drugs";
- (aa) "Labor room/delivery," only subcategories "general classification," "labor," "delivery," and "birthing center";
- (bb) "EKG/ECG (electrocardiogram)";
- (cc) "EEG (electroencephalogram)";
- (dd) "Gastro-intestinal services";
- (ee) "Specialty room - Treatment/observation room," only subcategory "treatment room and observation room";
- (ff) "Telemedicine," only subcategory "other telemedicine";
- (gg) "Extra-corporeal shock wave therapy (formerly lithotripsy)";

(hh) "Acquisition of body components," only subcategories "general classification" and "cadaver donor";

(ii) "Hemodialysis - Outpatient or home," only subcategory "general classification";

(jj) "Peritoneal dialysis - Outpatient or home," only subcategory "general classification";

(kk) "Continuous ambulatory peritoneal dialysis (CAPD) - Outpatient or home," only subcategory "general classification";

(ll) "Continuous cycling peritoneal dialysis (CCPD) - Outpatient or home," only subcategory "general classification";

(mm) "Miscellaneous dialysis," only subcategories "general classification" and "ultrafiltration";

(nn) "Behavioral health treatments/services," only subcategory "electroshock therapy";

(oo) "Other diagnostic services";

(pp) "Other therapeutic services," only subcategories "general classification," "cardiac rehabilitation," and "other therapeutic service"; and

(qq) Other revenue code categories and subcategories identified and published by the ~~((department))~~ agency.

(2) For an outpatient claim line requiring a CPT or HCPCS code ~~((+))~~, the ~~((department))~~ agency denies payment if the required code is not reported on the line.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-1400 Covered and noncovered revenue codes categories and subcategories for inpatient hospital services.** Subject to the limitations and restrictions listed, this section identifies covered and noncovered revenue code categories and subcategories for inpatient hospital services.

(1) The ~~((department))~~ medicaid agency pays for an inpatient hospital covered service in the following revenue code categories and subcategories when the hospital provider accurately bills:

(a) "Room & board - Private (one bed)," only subcategories "general classification," "medical/surgical/gyn," "OB," "pediatric," and "oncology";

(b) "Room & board - Semi-private (two bed)," only subcategories "general classification," "medical/surgical/gyn," "OB," "pediatric," and "oncology";

(c) "Room & board - Semi-private - (three and four beds)," only subcategories "general classification," "medical/surgical/gyn," "OB," "pediatric," and "oncology";

(d) "Room & board - Deluxe private," only subcategories "general classification," "medical/surgical/gyn," "OB," "pediatric," and "oncology";

(e) "Nursery," only subcategories "general classification," "newborn - level I," "newborn - level II," "newborn - level III," and "newborn - level IV";

(f) "Intensive care unit," only subcategories "general classification," "surgical," "medical," "pediatric," "intermediate ICU," "burn care," and "trauma";

(g) "Coronary care unit," only subcategories "general classification," "myocardial infarction," "pulmonary care," and "intermediate CCU";

- (h) "Pharmacy," only subcategories "general classification," "generic drugs," "nongeneric drugs," "drugs incident to other diagnostic services," "drugs incident to radiology," "nonprescription," and "IV solutions";
- (i) "IV therapy," only subcategories "general classification," "infusion pump," "IV therapy/pharmacy services," "IV therapy/drug/supply delivery" and "IV therapy/supplies";
- (j) "Medical/surgical supplies and devices," only subcategories "general classification," "nonsterile supply," "sterile supply," "pacemaker," "intraocular lens," and "other implant";
- (k) "Oncology," only subcategory "general classification";
- (l) "Laboratory," only subcategories "general classification," "chemistry," "immunology," "nonroutine dialysis," "hematology," "bacteriology & microbiology," and "urology";
- (m) "Laboratory pathology," only subcategories "general classification," "cytology," "histology," and "biopsy";
- (n) "Radiology - Diagnostic," only subcategories "general classification," "angiocardiology," "arthrography," "arteriography," and "chest X ray";
- (o) "Radiology - Therapeutic and/or chemotherapy administration," only subcategories "general classification," "chemotherapy administration - injected," "chemotherapy administration - oral," "radiation therapy," and "chemotherapy administration - IV";
- (p) "Nuclear medicine," only subcategories "general classification," "diagnostic," "therapeutic," "diagnostic radiopharmaceuticals," and "therapeutic radiopharmaceuticals";
- (q) "CT scan," only subcategories "general classification," "head scan," and "body scan";
- (r) "Operating room services," only subcategories "general classification" and "minor surgery";
- (s) "Anesthesia," only subcategories "general classification," "anesthesia incident to radiology," and "anesthesia incident to other diagnostic services";
- (t) "Administration, processing and storage for blood and blood component," only subcategories "general classification" and "administration";
- (u) "Other imaging services," only subcategories "general classification," "diagnostic mammography," "ultrasound," and "positron emission tomography";
- (v) "Respiratory services," only subcategories "general classification," "inhalation services" and "~~((hyperbaric))~~ hyperbaric oxygen therapy";
- (w) "Physical therapy," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";
- (x) "Speech therapy - Language pathology," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";
- (y) "Emergency room," only subcategories "general, urgent care classification" and "urgent care";
- (z) "Pulmonary function," only subcategory "general classification";
- (aa) "Cardiology," only subcategories "general classification," "cardiac cath lab," "stress test," and "echocardiology";
- (bb) "Ambulatory surgical care," only subcategory "general classification";
- (cc) "Outpatient services," only subcategory "general classification";
- (dd) "Magnetic resonance technology (MRT)," only subcategories "general classification," "MRI - Brain (including brainstem)," "MRI - Spinal cord (including spine)," "MRI-other," "MRA - Head and neck," "MRA - Lower extremities," and "MRA-other";
- (ee) "Medical/surgical supplies - Extension," only subcategories "supplies incident to radiology," "supplies incident to other diagnostic services," and "surgical dressings";
- (ff) "Pharmacy-extension," only subcategories "single source drug," "multiple source drug," "restrictive prescription," "erythropoietin (EPO) less than ten thousand units," "erythropoietin (EPO) ten thousand or more units," "drugs requiring detailed coding," and "self-administrable drugs";
- (gg) "Cast room," only subcategory "general classification";
- (hh) "Recovery room," only subcategory "general classification";
- (ii) "Labor room/delivery," only subcategory "general classification," "labor," "delivery," and "birthing center";
- (jj) "EKG/ECG (Electrocardiogram)," only subcategories "general classification," "holter monitor," and "telemetry";
- (kk) "EEG (Electroencephalogram)," only subcategory "general classification";
- (ll) "Gastro-intestinal services," only subcategory "general classification";
- (mm) "Treatment/observation room," only subcategories "general classification," "treatment room," and "observation room";
- (nn) "Extra-corporeal shock wave therapy (formerly lithotripsy)," only subcategory "general classification";
- (oo) "Inpatient renal dialysis," only subcategories "general classification," "inpatient hemodialysis," "inpatient peritoneal (non-CAPD)," "inpatient continuous ambulatory peritoneal dialysis (CAPD)," and "inpatient continuous cycling peritoneal dialysis (CCPD)";
- (pp) "Acquisition of body components," only subcategories "general classification," "living donor," and "cadaver donor";
- (qq) "Miscellaneous dialysis," only subcategory "ultra filtration";
- (rr) "Other diagnostic services," only subcategories "general classification," "peripheral vascular lab," "electromyelogram," and "pregnancy test"; and
- (ss) "Other therapeutic services," only subcategory "general classification."
- (2) The ~~((department))~~ agency pays for an inpatient hospital covered service in the following revenue code subcategories only when the hospital provider is approved by the ~~((department))~~ agency to provide the specific service:
- (a) "All-inclusive rate," only subcategory "all-inclusive room & board plus ancillary";
- (b) "Room & board - Private (one bed)," only subcategory "psychiatric";

(c) "Room & board - Semi-private (two beds)," only subcategories "psychiatric," "detoxification," "rehabilitation," and "other";

(d) "Room & board - Semi-private three and four beds," only subcategories "psychiatric" and "detoxification";

(e) "Room & board - Deluxe private," only subcategory "psychiatric";

(f) "Room & board - Ward," only subcategories "general classification" and "detoxification";

(g) "Room & board - Other," only subcategories "general classification" and "other";

(h) "Intensive care unit," only subcategory "psychiatric";

(i) "Coronary care unit," only subcategory "heart transplant";

(j) "Operating room services," only subcategories "organ transplant-other than kidney" and "kidney transplant";

(k) "Occupational therapy," only subcategories "general classification," "visit charge," "hourly charge," "group rate" and "evaluation or reevaluation";

(l) "Clinic," only subcategory "chronic pain clinic";

(m) "Ambulance," only subcategory "neonatal ambulance services";

(n) "Behavioral health treatment/services," only subcategory "electroshock treatment"; and

(o) "Behavioral health treatment/services - Extension," only subcategory "rehabilitation."

(3) The ((~~department~~)) agency pays revenue code category "occupational therapy," subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation" when:

(a) A client is in an acute PM&R facility;

(b) A client is age twenty or younger; or

(c) The diagnosis code is listed in the ((~~department's~~)) agency's published billing instructions.

(4) The ((~~department~~)) agency does not pay for inpatient hospital services in the following revenue code categories and subcategories:

(a) "All-inclusive rate," subcategory "all-inclusive room and board";

(b) "Room & board - Private (one bed)" subcategories "hospice," "detoxification," "rehabilitation," and "other";

(c) "Room & board - Semi-private (two bed)," subcategory "hospice";

(d) "Room & board - Semi-private - (three and four beds)," subcategories "hospice," "rehabilitation," and "other";

(e) "Room & board - Deluxe private," subcategories "hospice," "detoxification," "rehabilitation," and "other";

(f) "Room & board - Ward," subcategories "medical/surgical/gyn," "OB," "pediatric," "psychiatric," "hospice," "oncology," "rehabilitation," and "other";

(g) "Room & board - Other," subcategories "sterile environment," and "self care";

(h) "Nursery," subcategory "other nursery";

(i) "Leave of absence";

(j) "Subacute care";

(k) "Intensive care unit," subcategory "other intensive care";

(l) "Coronary care unit," subcategory "other coronary care";

(m) "Special charges";

(n) "Incremental nursing charge";

(o) "All-inclusive ancillary";

(p) "Pharmacy," subcategories "take home drugs," "experimental drugs," and "other pharmacy";

(q) "IV therapy," subcategory "other IV therapy";

(r) "Medical/surgical supplies and devices," subcategories "take home supplies," "prosthetic/orthotics devices," "oxygen - take home," and "other supplies/devices";

(s) "Oncology," subcategory "other oncology";

(t) "Durable medical equipment (other than renal)";

(u) "Laboratory," subcategories "renal patient (home)," and "other laboratory";

(v) "Laboratory pathology," subcategory "other laboratory - pathological";

(w) "Radiology - Diagnostic," subcategory "other radiology - diagnostic";

(x) "Radiology - Therapeutic," subcategory "other radiology - therapeutic";

(y) "Nuclear medicine," subcategory "other nuclear medicine";

(z) "CT scan," subcategory "other CT scan";

(aa) "Operating room services," subcategory "other operating room services";

(bb) "Anesthesia," subcategories "acupuncture," and "other anesthesia";

(cc) "Blood and blood components";

(dd) "Administration, processing and storage for blood and blood components," subcategory "other processing and storage";

(ee) "Other imaging services," subcategories "screening mammography," and "other imaging services";

(ff) "Respiratory services," subcategory "other respiratory services";

(gg) "Physical therapy," subcategory "other physical therapy";

(hh) "Occupational therapy," subcategory "other occupational therapy";

(ii) "Speech therapy - Language pathology," subcategory "other speech-language pathology";

(jj) "Emergency room," subcategories "EMTALA emergency medical screening services," "ER beyond EMTALA screening," and "other emergency room";

(kk) "Pulmonary function," subcategory "other pulmonary function";

(ll) "Audiology";

(mm) "Cardiology," subcategory "other cardiology";

(nn) "Ambulatory surgical care," subcategory "other ambulatory surgical care";

(oo) "Outpatient services," subcategory "other outpatient service";

(pp) "Clinic," subcategories "general classification," "dental clinic," "psychiatric clinic," "OB-gyn clinic," "pediatric clinic," "urgent care clinic," "family practice clinic," and "other clinic";

(qq) "Free-standing clinic";

(rr) "Osteopathic services";

(ss) "Ambulance," subcategories "general classification," "supplies," "medical transport," "heart mobile," "oxy-

gen," "air ambulance," "pharmacy," "telephone transmission EKG," and "other ambulance";

(tt) "Home health (HH) skilled nursing";

(uu) "Home health (HH) medical social services";

(vv) "Home health (HH) - Aide";

(ww) "Home health (HH) - Other visits";

(xx) "Home health (HH) - Units of service";

(yy) "Home health (HH) - Oxygen";

(zz) "Magnetic resonance technology (MRT)," subcategory "other MRT";

(aaa) "Medical" "medical/surgical supplies - extension," subcategory "FDA investigational devices";

(bbb) "Home IV therapy services";

(ccc) "Hospice services";

(ddd) "Respite care";

(eee) "Outpatient special residence charges";

(fff) "Trauma response";

(ggg) "Cast room," subcategory "other cast room";

(hhh) "Recovery room," subcategory "other recovery room";

(iii) "Labor room/delivery," subcategories "circumcision" and "other labor room/delivery";

(jjj) "EKG/ECG (Electrocardiogram)," subcategory "other EKG/ECG";

(kkk) "EEG (Electroencephalogram)," subcategory "other EEG";

(lll) "Gastro-intestinal services," subcategory "other gastro-intestinal";

(mmm) "Specialty room - Treatment/observation room," subcategory "other ((~~speciality~~) specialty rooms";

(nnn) "Preventive care services";

(ooo) "Telemedicine";

(ppp) "Extra-corporeal shock wave therapy (formerly lithotripsy)," subcategory "other ESWT";

(qqq) "Inpatient renal dialysis," subcategory "other inpatient dialysis";

(rrr) "Acquisition of body components," subcategories "unknown donor," "unsuccessful organ search - donor bank charges," and "other donor";

(sss) "Hemodialysis - Outpatient or home";

(ttt) "Peritoneal dialysis - Outpatient or home";

(uuu) "Continuous ambulatory peritoneal dialysis (CAPD) - Outpatient or home";

(vvv) "Continuous cycling peritoneal dialysis (CCPD) - Outpatient or home";

(www) "Miscellaneous dialysis," subcategories "general classification," "home dialysis aid visit," and "other miscellaneous dialysis";

(xxx) "Behavioral health treatments/services," subcategories "general classification," "milieu therapy," "play therapy," "activity therapy," "intensive outpatient services - psychiatric," "intensive outpatient services - chemical dependency," "community behavioral health program (day treatment)";

(yyy) "Behavioral health treatment/services" - (extension), subcategories "rehabilitation," "partial hospitalization - less intensive," "partial hospitalization - intensive," "individual therapy," "group therapy," "family therapy," "bio feedback," "testing," and "other behavioral health treatment/services";

(zzz) "Other diagnostic services," subcategories "general classification," "pap smear," "allergy test," and "other diagnostic service";

(aaaa) "Medical rehabilitation day program";

(bbbb) "Other therapeutic services," subcategories "recreational therapy," "cardiac rehabilitation," "drug rehabilitation," "alcohol rehabilitation," "complex medical equipment - routine," "complex medical equipment - ancillary," and "other therapeutic services";

(cccc) "Other therapeutic services - extension," subcategories "athletic training" and "kinesiotherapy";

(dddd) "Professional fees";

(eeee) "Patient convenience items"; and

(ffff) Revenue code categories and subcategories that are not identified in this section.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-1500 Covered and noncovered revenue code categories and subcategories for outpatient hospital services.** (1) The ((~~department~~)) medicaid agency pays for an outpatient hospital covered service in the following revenue code categories and subcategories when the hospital provider accurately bills:

(a) "Pharmacy," only subcategories "general classification," "generic drugs," "nongeneric drugs," "drugs incident to other diagnostic services," "drugs incident to radiology," "nonprescription," and "IV solutions";

(b) "IV therapy," only subcategories "general classification," "infusion pump," "IV therapy/pharmacy services," "IV therapy/drug/supply delivery," and "IV therapy/supplies";

(c) "Medical/surgical supplies and devices," only subcategories "general classification," "nonsterile supply," "sterile supply," "pacemaker," "intraocular lens," and "other implant," and "other supplies/devices";

(d) "Oncology," only subcategory "general classification";

(e) "Durable medical equipment (other than renal)," only subcategory "general classification";

(f) "Laboratory," only subcategories "general classification," "chemistry," "immunology," "renal patient (home)," "nonroutine dialysis," "hematology," "bacteriology and microbiology," and "urology";

(g) "Laboratory pathology," only subcategories "general classification," "cytology," "histology," and "biopsy";

(h) "Radiology - Diagnostic," only subcategories "general classification," "angiocardiology," "arthrography," "arteriography," and "chest X ray";

(i) "Radiology - Therapeutic and/or chemotherapy administration," only subcategories "general classification," "chemotherapy - injected," "chemotherapy - oral," "radiation therapy," and "chemotherapy - IV";

(j) "Nuclear medicine," only subcategories "general classification," "diagnostic," and "therapeutic," "diagnostic radiopharmaceuticals," and "therapeutic radiopharmaceuticals";

(k) "CT scan," only subcategories "general classification," "head scan," and "body scan";

- (l) "Operating room services," only subcategories "general classification" and "minor surgery";
- (m) "Anesthesia," only subcategories "general classification," "anesthesia incident to radiology," and "anesthesia incident to other diagnostic services";
- (n) "Administration, processing and storage for blood and blood components," only subcategories "general classification" and "administration";
- (o) "Other imaging," only subcategories "general classification," "diagnostic mammography," "ultrasound," "screening mammography," and "positron emission tomography";
- (p) "Respiratory services," only subcategories "general classification," "inhalation services," and "~~((hyper-baric))~~ hyperbaric oxygen therapy";
- (q) "Physical therapy," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";
- (r) "Occupational therapy," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";
- (s) "Speech therapy - Language pathology," only subcategories "general classification," "visit charge," "hourly charge," "group rate," and "evaluation or reevaluation";
- (t) "Emergency room," only subcategories "general classification" and "urgent care";
- (u) "Pulmonary function," only subcategory "general classification";
- (v) "Audiology," only subcategories "general classification," "diagnostic," and "treatment";
- (w) "Cardiology," only subcategories "general classification," "cardiac cath lab," "stress test," and "echocardiology";
- (x) "Ambulatory surgical care," only subcategory "general classification";
- (y) "Magnetic resonance technology (MRT)," only subcategories "general classification," "MRI - Brain (including brainstem)," "MRI - Spinal cord (including spine)," "MRI-other," "MRA - Head and neck," "MRA - Lower extremities" and "MRA-other";
- (z) "Medical/surgical supplies - Extension," only subcategories "supplies incident to radiology," "supplies incident to other diagnostic services," and "surgical dressings";
- (aa) "Pharmacy - Extension," only subcategories "single source drug," "multiple source drug," "restrictive prescription," "erythropoietin (EPO) less than ten thousand units," "erythropoietin (EPO) ten thousand or more units," "drugs requiring detailed coding," and "self-administrable drugs";
- (bb) "Cast room," only subcategory "general classification";
- (cc) "Recovery room," only subcategory "general classification";
- (dd) "Labor room/delivery," only subcategories "general classification," "labor," "delivery," and "birthing center";
- (ee) "EKG/ECG (Electrocardiogram)," only subcategories "general classification," "holter monitor," and "telemetry";
- (ff) "EEG (Electroencephalogram)," only subcategory "general classification";
- (gg) "Gastro-intestinal services," only subcategory "general classification";
- (hh) "Specialty room - Treatment/observation room," only subcategories "treatment room," and "observation room";
- (ii) "Telemedicine," only subcategory "other telemedicine";
- (jj) "Extra-corporeal shock wave therapy (formerly lithotripsy)," subcategory "general classification";
- (kk) "Acquisition of body components," only subcategories "general classification," "living donor," and "cadaver donor";
- (ll) "Hemodialysis - Outpatient or home," only subcategory "general classification";
- (mm) "Peritoneal dialysis - Outpatient or home," only subcategory "general classification";
- (nn) "Continuous ambulatory peritoneal dialysis (CAPD) - Outpatient or home," only subcategory "general classification";
- (oo) "Continuous cycling peritoneal dialysis (CCPD) - Outpatient or home," only subcategory "general classification";
- (pp) "Miscellaneous dialysis," only subcategories "general classification," and "ultra filtration";
- (qq) "Behavioral health treatments/services," only subcategory "electroshock treatment"; and
- (rr) "Other diagnostic services," only subcategories "general classification," "peripheral vascular lab," "electromyogram," "pap smear," and "pregnancy test."
- (2) The ~~((department))~~ agency pays for an outpatient hospital covered service in the following revenue code subcategories only when the outpatient hospital provider is approved by the ~~((department))~~ agency to provide the specific service~~((s))~~:
- (a) "Clinic," subcategories "general classification," "dental clinic," and "other clinic"; and
- (b) "Other therapeutic services," subcategories, "general classification," "education/training," "cardiac rehabilitation," and "other therapeutic service."
- (3) The ~~((department))~~ agency does not pay for outpatient hospital services in the following revenue code categories and subcategories:
- (a) "All-inclusive rate";
- (b) "Room & board - Private (one bed)";
- (c) "Room & board - Semi-private (two beds)";
- (d) "Room & board - Semi-private (three and four beds)";
- (e) "Room & board - Deluxe private";
- (f) "Room & board - Ward";
- (g) "Room & board - Other";
- (h) "Nursery";
- (i) "Leave of absence";
- (j) "Subacute care";
- (k) "Intensive care unit";
- (l) "Coronary care unit";
- (m) "Special charges";
- (n) "Incremental nursing charge rate";
- (o) "All-inclusive ancillary";
- (p) "Pharmacy," subcategories "take home drugs," "experimental drugs," and "other pharmacy";
- (q) "IV therapy," subcategory "other IV therapy";

- (r) "Medical/surgical supplies and devices," subcategories "take home supplies," "prosthetic/orthotic devices," and "oxygen - take home";
- (s) "Oncology," subcategory "other oncology";
- (t) "Durable medical equipment (other than renal)," subcategories "rental," "purchase of new DME," "purchase of used DME," "supplies/drugs for DME effectiveness (home health agency only)," and "other equipment";
- (u) "Laboratory," subcategory "other laboratory";
- (v) "Laboratory pathology," subcategory "other laboratory pathological";
- (w) "Radiology - Diagnostic," subcategory "other radiology - diagnostic";
- (x) "Radiology - Therapeutic and/or chemotherapy administration," subcategory "other radiology - therapeutic";
- (y) "Nuclear medicine," subcategory "other nuclear medicine";
- (z) "CT scan," subcategory "other CT scan";
- (aa) "Operating room services," subcategories "organ transplant - other than kidney," "kidney transplant," and "other operating room services";
- (bb) "Anesthesia," subcategories "acupuncture" and "other anesthesia";
- (cc) "Blood and blood components";
- (dd) "Administration, processing and storage for blood and blood component," subcategory "other processing and storage";
- (ee) "Other imaging," subcategory "other imaging service";
- (ff) "Respiratory services," subcategory "other respiratory services";
- (gg) "Physical therapy services," subcategory "other physical therapy";
- (hh) "Occupational therapy services," subcategory "other occupational therapy";
- (ii) "Speech therapy - Language pathology," subcategory "other speech-language pathology";
- (jj) "Emergency room," subcategories "EMTALA emergency medical screening services," "ER beyond EMTALA screening" and "other emergency room";
- (kk) "Pulmonary function," subcategory "other pulmonary function";
- (ll) "Audiology," subcategory "other audiology";
- (mm) "Cardiology," subcategory "other cardiology";
- (nn) "Ambulatory surgical care," subcategory "other ambulatory surgical care";
- (oo) "Outpatient services";
- (pp) "Clinic," subcategories "chronic pain center," "psychiatric clinic," "OB-GYN clinic," "pediatric clinic," "urgent care clinic," and "family practice clinic";
- (qq) "Free-standing clinic";
- (rr) "Osteopathic services";
- (ss) "Ambulance";
- (tt) "Home health (HH) - Skilled nursing";
- (uu) "Home health (HH) - Medical social services";
- (vv) "Home health (HH) - Aide";
- (ww) "Home health (HH) - Other visits";
- (xx) "Home health (HH) - Units of service";
- (yy) "Home health (HH) - Oxygen";
- (zz) "Magnetic resonance technology (MRT)," subcategory "other MRT";
- (aaa) "Medical/surgical supplies - Extension," only subcategory "FDA investigational devices";
- (bbb) "Home IV therapy services";
- (ccc) "Hospice services";
- (ddd) "Respite care";
- (eee) "Outpatient special residence charges";
- (fff) "Trauma response";
- (ggg) "Cast room," subcategory "other cast room";
- (hhh) "Recovery room," subcategory "other recovery room";
- (iii) "Labor room/delivery," subcategories "circumcision" and "other labor room/delivery";
- (jjj) "EKG/ECG (Electrocardiogram)," subcategory "other EKG/ECG";
- (kkk) "EEG (Electroencephalogram)," subcategory "other EEG";
- (lll) "Gastro-intestinal services," subcategory "other gastro-intestinal";
- (mmm) "Speciality room - Treatment/observation room," subcategories "general classification" and "other speciality rooms";
- (nnn) "Preventive care services";
- (ooo) "Telemedicine," subcategory "general classification";
- (ppp) "Extra-corporal shock wave therapy (formerly lithotripsy)," subcategory "other ESWT";
- (qqq) "Inpatient renal dialysis";
- (rrr) "Acquisition of body components," subcategories "unknown donor," "unsuccessful organ search - donor bank charges," and "other donor";
- (sss) "Hemodialysis - Outpatient or home," subcategories "hemodialysis/composite or other rate," "home supplies," "home equipment," "maintenance one hundred percent (home)," "support services (home)," and "other outpatient hemodialysis (home)";
- (ttt) "Peritoneal dialysis - Outpatient or home," subcategories "peritoneal/composite or other rate," "home supplies," "home equipment," "maintenance one hundred percent (home)," "support services (home)," and "other outpatient peritoneal dialysis (home)";
- (uuu) "Continuous ambulatory peritoneal dialysis (CAPD) - Outpatient or home," subcategories "CAPD/composite or other rate," "home supplies," "home equipment," "maintenance one hundred percent (home)," "support services (home)," and "other outpatient CAPD (home)";
- (vvv) "Continuous cycling peritoneal dialysis (CCPD) - Outpatient or home," subcategories "CCPD/composite or other rate," "home supplies," "home equipment," "maintenance one hundred percent (home)," "support services (home)," and "other outpatient CCPD (home)";
- (www) "Miscellaneous dialysis," subcategories "home dialysis aid visit" and "other miscellaneous dialysis";
- (xxx) "Behavioral health treatments/services," subcategories "general classification," "milieu therapy," "play therapy," "activity therapy," "intensive outpatient services - psychiatric," "intensive outpatient services - chemical dependency," and "community behavioral health program (day treatment)";

(yyy) "Behavioral health treatment/services (extension)";

(zzz) "Other diagnostic services," subcategories "allergy test" and "other diagnostic services";

(aaaa) "Medical rehabilitation day program";

(bbbb) "Other therapeutic services - extension," subcategories "recreational therapy," "drug rehabilitation," "alcohol rehabilitation," "complex medical equipment - routine," "complex medical equipment - ancillary," "athletic training," and "kinesiotherapy";

(cccc) "Professional fees";

(dddd) "Patient convenience items"; and

(eeee) Revenue code categories and subcategories that are not identified in this section.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-1600 Specific items/services not covered.** The ~~((department))~~ medicaid agency does not pay for an inpatient or outpatient hospital service, treatment, equipment, drug, or supply that is not listed or referred to as a covered service in this chapter. The following list of noncovered items and services is not intended to be all-inclusive. Non-covered items and services include, but are not limited to:

(1) Personal care items such as, but not limited to, slippers, toothbrush, comb, hair dryer, and make-up;

(2) Telephone/telegraph services or television/radio rentals;

(3) Medical photographic or audio/videotape records;

(4) Crisis counseling;

(5) Psychiatric day care;

(6) Ancillary services, such as respiratory and physical therapy, performed by regular nursing staff assigned to the floor or unit;

(7) Standby personnel and travel time;

(8) Routine hospital medical supplies and equipment such as bed scales;

(9) Handling fees and portable X-ray charges;

(10) Room and equipment charges ("rental charges") for use periods concurrent with another room or similar equipment for the same client;

(11) Cafeteria charges; and

(12) Services and supplies provided to nonpatients, such as meals and "father packs."

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-1900 Transplant coverage.** (1) The ~~((department))~~ medicaid agency pays for medically necessary transplant procedures only for eligible ~~((medical assistance))~~ Washington apple health clients who are not otherwise subject to a managed care organization (MCO) plan. Clients eligible under the alien emergency medical (AEM) program are not eligible for transplant coverage.

(2) The ~~((department))~~ agency covers the following transplant procedures when the transplant procedures are performed in a hospital designated by the ~~((department))~~ agency as a "center of excellence" for transplant procedures and meet

that hospital's criteria for establishing appropriateness and the medical necessity of the procedures:

(a) Solid organs involving the heart, kidney, liver, lung, heart-lung, pancreas, kidney-pancreas, and small bowel;

(b) Bone marrow and peripheral stem cell (PSC);

(c) Skin grafts; and

(d) Corneal transplants.

(3) For procedures covered under subsections (2)(a) and (b) of this section, the ~~((department))~~ agency pays facility charges only to those hospitals that meet the standards and conditions:

(a) Established by the ~~((department))~~ agency; and

(b) Specified in WAC ~~((388-550-2100 and 388-550-2200))~~ 182-550-2100 and 182-550-2200.

(4) The ~~((department))~~ agency pays for skin grafts and corneal transplants to any qualified hospital, subject to the limitations in this chapter.

(5) The ~~((department))~~ agency deems organ procurement fees as being included in the payment to the transplant hospital. The ~~((department))~~ agency may make an exception to this policy and pay these fees separately to a transplant hospital when an eligible medical ~~((medical))~~ client is covered by a third-party payer ~~((which))~~ that will pay for the organ transplant procedure itself but not for the organ procurement.

(6) The ~~((department))~~ agency, without requiring prior authorization, pays for up to fifteen matched donor searches per client approved for a bone marrow transplant. The ~~((department))~~ agency requires prior authorization for matched donor searches in excess of fifteen per bone marrow transplant client.

(7) The ~~((department))~~ agency does not pay for experimental transplant procedures. In addition, the ~~((department))~~ agency considers as experimental those services including, but not limited to, the following:

(a) Transplants of three or more different organs during the same hospital stay;

(b) Solid organ and bone marrow transplants from animals to humans; and

(c) Transplant procedures used in treating certain medical conditions for which use of the procedure has not been generally accepted by the medical community or for which its efficacy has not been documented in peer-reviewed medical publications.

(8) The ~~((department))~~ agency pays for a solid organ transplant procedure only once per client's lifetime, except in cases of organ rejection by the client's immune system during the original hospital stay.

(9) The ~~((department))~~ agency pays for bone marrow, PSC, skin grafts, and corneal transplants when medically necessary.

(10) The ~~((department))~~ agency may conduct a post-payment retrospective utilization review as described in WAC ~~((388-550-1700))~~ 182-550-1700, and may adjust the payment if the ~~((department))~~ agency determines the criteria in this section are not met.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2100 Requirements—Transplant hospitals.** This section applies to requirements for hospitals that perform the ~~((department))~~ medicaid agency-approved transplants described in WAC ~~((388-550-1900))~~ 182-550-1900(2).

(1) The ~~((department))~~ agency requires in-state transplant hospitals to meet the following requirements ~~((in order))~~ to be paid for transplant services provided to ~~((medical assistance))~~ Washington apple health clients. A hospital must have:

(a) An approved certificate of need (CON) from the state department of health (DOH) for the type~~((s))~~ of transplant procedure~~((s))~~ to be performed, except that the ~~((department))~~ agency does not require CON approval for a hospital that provides peripheral stem cell (PSC), skin graft or corneal transplant services;

(b) Approval from the United Network of Organ Sharing (UNOS) to perform transplants, except that the ~~((department))~~ agency does not require UNOS approval for a hospital that provides PSC, skin graft, or corneal transplant services; and

(c) Been approved by the ~~((department))~~ agency as a center of excellence transplant center for the specific organ~~((s))~~ or procedure~~((s))~~ the hospital proposes to perform.

(2) The ~~((department))~~ agency requires an out-of-state transplant center, including bordering city and critical border hospitals, to be a medicare-certified transplant center in a hospital participating in that state's medicaid program. All out-of-state transplant services, excluding those provided in ~~((department))~~ agency-approved centers of excellence (COE) in bordering city and critical border hospitals, must be prior authorized.

(3) The ~~((department))~~ agency considers a hospital for approval as a transplant center of excellence when the hospital submits to the ~~((department))~~ agency a copy of its DOH-approved CON for transplant services, or documentation that it has, at a minimum:

(a) Organ-specific transplant physicians for each organ or transplant team. The transplant surgeon and other responsible team members must be experienced and board-certified or board-eligible practitioners in their respective disciplines, including, but not limited to, the fields of cardiology, cardiovascular surgery, anesthesiology, hemodynamics and pulmonary function, hepatology, hematology, immunology, oncology, and infectious diseases. The ~~((department))~~ agency considers this requirement met when the hospital submits to the ~~((department))~~ agency a copy of its DOH-approved CON for transplant services;

(b) Component teams which are integrated into a comprehensive transplant team with clearly defined leadership and responsibility. Transplant teams must include, but not be limited to:

(i) A team-specific transplant coordinator for each type of organ;

(ii) An anesthesia team available at all times; and

(iii) A nursing service team trained in the hemodynamic support of the patient and in managing immunosuppressed patients.

(c) Other resources that the transplant hospital must have include:

(i) Pathology resources for studying and reporting the pathological responses of transplantation;

(ii) Infectious disease services with both the professional skills and the laboratory resources needed to identify and manage a whole range of organisms; and

(iii) Social services resources.

(d) An organ procurement coordinator;

(e) A method ensuring that transplant team members are familiar with transplantation laws and regulations;

(f) An interdisciplinary body and procedures in place to evaluate and select candidates for transplantation;

(g) An interdisciplinary body and procedures in place to ensure distribution of donated organs in a fair and equitable manner conducive to an optimal or successful patient outcome;

(h) Extensive blood bank support;

(i) Patient management plans and protocols; and

(j) Written policies safeguarding the rights and privacy of patients.

(4) In addition to the requirements of subsection (3) of this section, the transplant hospital must:

(a) Satisfy the annual volume and survival rates criteria for the particular transplant procedures performed at the hospital, as specified in WAC ~~((388-550-2200))~~ 182-550-2200(2).

(b) Submit a copy of its approval from the United Network for Organ Sharing (UNOS), or documentation showing that the hospital:

(i) Participates in the national donor procurement program and network; and

(ii) Systematically collects and shares data on its transplant ~~((program(s)))~~ programs with the network.

(5) The ~~((department))~~ agency applies the following specific requirements to a PSC transplant hospital:

(a) A PSC transplant hospital must be ~~((a department))~~ an agency-approved COE to perform any of the following PSC services:

(i) Harvesting, if it has its own apheresis equipment which meets federal or American Association of Blood Banks (AABB) requirements;

(ii) Processing, if it meets AABB quality of care requirements for human tissue/tissue banking; and

(iii) Reinfusion, if it meets the criteria established by the Foundation for the Accreditation of Hematopoietic Cell Therapy.

(b) A ~~((PSC-[PSC]))~~ PSC transplant hospital may purchase PSC processing and harvesting services from other ~~((department))~~ agency-approved processing providers.

(6) The ~~((department))~~ agency does not pay a PSC transplant hospital for AABB inspection and certification fees related to PSC transplant services.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2200 Transplant requirements—COE.** (1) The ~~((department))~~ medicaid agency measures the effectiveness of transplant centers of excellence (COE) using the performance criteria in this section. Unless otherwise waived by the ~~((department))~~ agency, the ~~((department))~~ agency applies these criteria to a hospital during both initial and periodic evaluations for designation as a transplant COE. The COE performance criteria ~~((shall))~~ must include, but not be limited to:

(a) Meeting annual volume requirements for the specific transplant procedures for which approved;

(b) Patient survival rates; and

(c) Relative cost per case.

(2) A transplant COE must meet or exceed annually the following applicable volume criteria for the particular transplant procedures performed at the facility, except for cornea transplants which do not have established minimum volume requirements. Annual volume requirements for transplant centers of excellence include:

(a) Twelve or more heart transplants;

(b) Ten or more lung transplants;

(c) Ten or more heart-lung transplants;

(d) Twelve or more liver transplants;

(e) Twenty-five or more kidney transplants;

(f) Eighteen or more pancreas transplants;

(g) Eighteen or more kidney-pancreas transplants;

(h) Ten or more bone marrow transplants; and

(i) Ten or more peripheral stem cell (PSC) transplants.

Dual-organ procedures may be counted once under each organ and the combined procedure.

(3) A transplant hospital within the state that fails to meet the volume requirements in subsection (1) of this section may submit a written request to the ~~((department))~~ agency for conditional approval as a transplant COE. The ~~((department))~~ agency considers the minimum volume requirement met when the requestor submits an approved certificate of need for transplant services from the department of health (DOH).

(4) An in-state hospital granted conditional approval by the ~~((department))~~ agency as a transplant COE must meet the ~~((department's))~~ agency's criteria, as established in this chapter, within one year of the conditional approval. The ~~((department))~~ agency must automatically revoke such conditional approval for any hospital ~~((which))~~ that fails to meet the ~~((department's))~~ agency's published criteria within the allotted one year period, unless:

(a) The hospital submits a written request for extension of the conditional approval thirty calendar days ~~((prior to))~~ before the expiration date; and

(b) ~~((Such))~~ The request is granted by the ~~((department))~~ agency.

(5) A transplant center of excellence must meet medicare's survival rate requirements for the transplant procedure~~((s))~~ performed at the hospital.

(6) A transplant COE must submit to the ~~((department))~~ agency annually, at the same time the hospital submits a copy of its medicare cost report (Form 2552-96) documentation showing:

(a) The numbers of transplants performed at the hospital during its preceding fiscal year, by type of procedure; and

(b) Survival rates data for procedures performed over the preceding three years as reported on the United Network of Organ Sharing report form.

(7) Transplant hospitals must:

(a) Submit to the ~~((department))~~ agency, within sixty days of the date of the hospital's approval as a COE, a complete set of the comprehensive patient selection criteria and treatment protocols used by the hospital for each transplant procedure it has been approved to perform.

(b) Submit to the ~~((department))~~ agency annual updates to the documents listed in ~~((subsection))~~ (a) of this ~~((section))~~ subsection, or ~~((whenever))~~ when the hospital makes a change to the criteria ~~((and/))~~ or protocols.

(c) Notify the ~~((department))~~ agency if no changes occurred during a reporting period.

(8) The ~~((department))~~ agency evaluates compliance with the provisions of WAC ~~((388-550-2100 (2)(d) and (e)))~~ 182-550-2100(3) based on the protocols and criteria submitted to the ~~((department))~~ agency by a transplant COE ~~((in accordance with))~~ under subsection (7) of this section. The ~~((department))~~ agency terminates a hospital's designation as a transplant COE if a review or audit finds that hospital in non-compliance with:

(a) Its protocols and criteria in evaluating and selecting candidates for transplantation; and

(b) Distributing donated organs in a fair and equitable manner that promotes an optimal or successful patient outcome.

(9) The ~~((department))~~ agency:

(a) Provides notification to a transplant COE it finds in noncompliance with subsection (8) of this section, and may allow from the date of notification sixty days within which such centers may submit a plan to correct a breach of compliance;

(b) Does not allow the sixty-day option as stated in (a) of this subsection for a breach that constitutes a danger to the health and safety of clients as stated in WAC ~~((388-502-0030))~~ 182-502-0030;

(c) Requires, within six months of submitting a plan to correct a breach of compliance, a center to report that:

(i) The breach of compliance has been corrected; or

(ii) Measurable and significant improvement toward correcting ~~((such))~~ the breach of compliance exists.

(10) The ~~((department))~~ agency periodically reviews the list of approved transplant COEs. The ~~((department))~~ agency may limit the number of hospitals it designates as a transplant COE or contracts with to provide services to ~~((medical assistance))~~ Washington apple health clients if, in the ~~((department's))~~ agency's opinion, doing so would promote better client outcomes and cost efficiencies.

(11) The ~~((department))~~ agency pays ~~((a department))~~ an agency-approved COE for covered transplant procedures using methods identified in chapter ~~((388-550))~~ 182-550 WAC.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2301 Hospital and medical criteria requirements for bariatric surgery.** (1) The ~~((department))~~ medicaid agency pays a hospital for bariatric surgery and bariatric surgery-related services only when the surgery is provided in an inpatient hospital setting and only when:

(a) The client qualifies for bariatric surgery by successfully completing all requirements under WAC ~~((388-531-1600))~~ 182-531-1600;

(b) The client continues to meet the criteria to qualify for bariatric surgery under WAC ~~((388-531-1600))~~ 182-531-1600 up to the actual surgery date;

(c) The hospital providing the bariatric surgery and bariatric surgery-related services meets the requirements in this section and other applicable WAC; and

(d) The hospital receives prior authorization from the ~~((department prior to))~~ agency before performing a bariatric surgery for a ~~((medical assistance))~~ Washington apple health client.

(2) A hospital must meet the following requirements ~~((in order))~~ to be paid for bariatric surgery and bariatric surgery-related services provided to an eligible ~~((medical assistance))~~ Washington apple health client. The hospital must:

(a) Be approved by the ~~((department))~~ agency to provide bariatric surgery and bariatric surgery-related services and~~((;))~~;

(i) For dates of admission ~~((on or))~~ after ~~((July 1))~~ June 30, 2007, be located in Washington state or approved bordering cities (see WAC ~~((388-501-0175))~~ 182-501-0175).

(ii) For dates of admission ~~((on or))~~ after ~~((July 1))~~ June 30, 2007, be located in Washington state, or be ~~((a department))~~ an agency-designated critical border hospital.

(b) Have an established bariatric surgery program in operation under which at least one hundred bariatric surgery procedures have been performed. The program must have been in operation for at least five years and be under the direction of an experienced board-certified surgeon. In addition, ~~((department))~~ the agency requires the bariatric surgery program to:

(i) Have a mortality rate of two percent or less;

(ii) Have a morbidity rate of fifteen percent or less;

(iii) Document patient follow-up for at least five years postsurgery;

(iv) Have an average loss of at least fifty percent of excess body weight achieved by patients at five years postsurgery; and

(v) Have a reoperation or revision rate of five percent or less.

(c) Submit documents to the ~~((department's))~~ agency's division of health care services that verify the performance requirements listed in this section.

(3) The ~~((department))~~ agency waives the program requirements listed in subsection (2)(b) of this section if the hospital participates in a statewide bariatric surgery quality assurance program such as the surgical Clinical Outcomes Assessment Program (COAP).

(4) See WAC ~~((388-531-1600))~~ 182-531-1600(13) for requirements for surgeons who perform bariatric surgery.

(5) Authorization does not guarantee payment. Authorization for bariatric surgery and bariatric surgery-related services is valid only if:

(a) The client is eligible on the date of admission and date of service; and

(b) The hospital and professional providers meet~~((s))~~ the criteria in this section and other applicable WAC to perform bariatric surgery ~~((and/))~~ or to provide bariatric surgery-related services.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2400 Inpatient chronic pain management services.** (1) The ~~((department))~~ medicaid agency pays a hospital that is specifically approved by the ~~((department))~~ agency to provide inpatient chronic pain management services, an all-inclusive per diem facility fee. The ~~((department))~~ agency pays professional fees for chronic pain management services to performing providers ~~((in accordance with the department's))~~ under the agency's fee schedule.

(2) A client qualifies for inpatient chronic pain management services when all ~~((of))~~ the following apply:

(a) The client has had pain for at least three months and has not improved with conservative treatment, including tests and therapies;

(b) At least six months have passed since a previous surgical procedure was done ~~((in relation to))~~ concerning the pain problem; and

(c) A client with active substance abuse must have completed a detoxification program, if appropriate, and must be free from drugs and/or alcohol for at least six months.

(3) The ~~((department))~~ agency:

(a) Covers inpatient chronic pain management training to assist eligible clients to manage chronic pain.

(b) Pays for only one inpatient hospital stay, up to a maximum of twenty-one consecutive days, for chronic pain management training per a client's lifetime.

(c) Does not require prior authorization for chronic pain management services.

(d) Does not pay for services unrelated to the chronic pain management services that are provided during the client's inpatient stay, unless the hospital requests and receives prior authorization from the ~~((department))~~ agency.

(4) All applicable claim payment adjustments for client responsibility, third party liability, medicare crossover, etc., apply to the ~~((department))~~ agency.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2431 Hospice services—Inpatient payments.** See chapter ~~((388-551))~~ 182-551 WAC~~((;))~~ Alternatives to hospital services, subchapter I—Hospice services.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2500 Inpatient hospice services.** (1) The ~~((department))~~ medicaid agency pays hospice agencies participating in the ~~((medical assistance))~~ Washington apple

health program for general inpatient and inpatient respite services provided to clients in hospice care, when:

(a) The hospice agency coordinates the provision of ~~((such))~~ the inpatient services; and

(b) ~~((Such))~~ The services are related to the medical condition for which the client sought hospice care.

(2) Hospice agencies must bill the ~~((department))~~ agency for their services using revenue codes. The ~~((department))~~ agency pays hospice providers a set per diem fee according to the type of care provided to the client on a daily basis.

(3) The ~~((department))~~ agency pays hospital providers directly ~~((pursuant))~~ according to this chapter for inpatient care provided to clients in the hospice program for medical conditions not related to their terminal illness.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2501 Acute physical medicine and rehabilitation (acute PM&R) program—General.** Acute physical medicine and rehabilitation (acute PM&R) is a twenty-four-hour inpatient comprehensive program of integrated medical and rehabilitative services provided during the acute phase of a client's rehabilitation. The ~~((department))~~ medicaid agency requires prior authorization for acute PM&R services. (See WAC ~~((388-550-2561))~~ 182-550-2561 for prior authorization requirements.)

(1) An interdisciplinary team coordinates individualized acute PM&R services at ~~((a department))~~ an agency-approved rehabilitation hospital to achieve the following for a client:

(a) Improved health and welfare; and

(b) Maximum physical, social, psychological, and educational or vocational potential.

(2) The ~~((department))~~ agency determines and authorizes a length of stay based on:

(a) The client's acute PM&R needs; and

(b) Community standards of care for acute PM&R services.

(3) When the ~~((department's))~~ agency's authorized acute period of rehabilitation ends, the hospital provider discharges the client to the client's residence, or to an appropriate level of care. Therapies may continue to help the client achieve maximum potential through other ~~((department))~~ agency programs such as:

(a) Home health services;

(b) Nursing facilities;

(c) Outpatient physical, occupational, and speech therapies; or

(d) Neurodevelopmental centers.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2531 Requirements for becoming an acute PM&R provider.** (1) Before August 1, 2007, only an in-state or bordering city hospital may apply to become a ~~((department))~~ medicaid agency-approved acute PM&R hospital. ~~((On and after August 1))~~ After July 31, 2007 an in-state, bordering city(;) or critical border hospital may apply to become ~~((a department))~~ an agency-approved acute PM&R

hospital. To apply, the ~~((department))~~ agency requires the hospital provider to submit a letter of request to:

Acute PM&R Program Manager  
Division of Health Care Services  
Health and Recovery Services Administration  
P.O. Box 45506  
Olympia, WA 98504-5506

(2) A hospital that applies to become ~~((a department))~~ an agency-approved acute PM&R facility must provide the ~~((department))~~ agency with documentation that confirms the facility is all ~~((of))~~ the following:

(a) A medicare-certified hospital;

(b) Accredited by the joint commission on accreditation of health care organizations (JCAHO);

(c) Licensed by the department of health (DOH) as an acute care hospital as defined under WAC 246-310-010;

(d) Commission on accreditation of rehabilitation facilities (CARF) accredited as a comprehensive integrated inpatient rehabilitation program or as a pediatric family centered rehabilitation program, unless subsection (3) of this section applies;

(e) For dates of admission before July 1, 2007, contracted under the ~~((department's))~~ agency's selective contracting program, if in a selective contracting area, unless exempted from the requirements by the ~~((department))~~ agency; and

(f) Operating per the standards set by DOH (excluding the certified rehabilitation registered nurse (CRRN) requirement) in either:

(i) WAC ~~((246-976-830,))~~ 246-976-800 Level I trauma rehabilitation designation; or

(ii) WAC ~~((246-976-840,))~~ 246-976-800 Level II trauma rehabilitation designation.

(3) A hospital not yet accredited by CARF:

(a) May apply for or be awarded a twelve-month conditional written approval by the ~~((department))~~ agency if the facility:

(i) Provides the ~~((department))~~ agency with documentation that it has started the process of obtaining full CARF accreditation; and

(ii) Is actively operating under CARF standards.

(b) ~~((Is required to))~~ Must obtain full CARF accreditation within twelve months of the ~~((department's))~~ agency's conditional approval date. If this requirement is not met, the ~~((department))~~ agency sends a letter of notification to revoke the conditional approval.

(4) A hospital qualifies as ~~((a department))~~ an agency-approved acute PM&R hospital when:

(a) The hospital meets all the applicable requirements in this section;

(b) The ~~((department's))~~ agency's clinical staff has conducted a facility site visit; and

(c) The ~~((department))~~ agency provides written notification that the hospital qualifies to be paid for providing acute PM&R services to eligible ~~((medical assistance))~~ Washington apple health clients.

(5) The ~~((department))~~ agency-approved acute PM&R hospitals must meet the general requirements in chapter

~~(388-502)~~ 182-502 WAC(~~(;)~~) Administration of medical programs—Providers.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2541 Quality of care—(~~Department~~) Agency-approved acute PM&R hospital.** (1) To ensure quality of care, the (~~department~~) medicaid agency may conduct reviews (e.g., post-pay, on-site) of any (~~department~~) agency-approved acute PM&R hospital.

(2) A provider of acute PM&R services must act on any report of substandard care or violation of the hospital's medical staff bylaws and CARF standards. The provider must have and follow written procedures that:

(a) Provide a resolution to either a complaint or grievance or both; and

(b) Comply with applicable CARF standards for adults or pediatrics as appropriate.

(3) A complaint or grievance regarding substandard conditions or care may be investigated by any one or more of the following:

(a) The department of health (DOH);

(b) The joint commission on accreditation of health care organizations (JCAHO);

(c) CARF;

(d) The (~~department~~) agency; or

(e) Other agencies with review authority for the (~~department's~~) medicaid agency's programs.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2561 The (~~department's~~) agency's prior authorization requirements for acute PM&R services.** (1) The (~~department~~) medicaid agency requires prior authorization for acute PM&R services. The acute PM&R provider of services must obtain prior authorization:

(a) Before admitting a client to the rehabilitation unit; and

(b) For an extension of stay before the client's current authorized period of stay expires.

(2) For an initial admit:

(a) A client must:

(i) Be eligible under one of the programs listed in WAC (~~(388-550-2524)~~) 182-550-2521, subject to the restrictions and limitations listed in that section;

(ii) Require acute PM&R services as determined in WAC (~~(388-550-2554)~~) 182-550-2551;

(iii) Be medically stable and show evidence of physical and cognitive readiness to participate in the rehabilitation program; and

(iv) Be willing and capable to participate at least three hours per day, seven days per week, in acute PM&R activities.

(b) The acute PM&R provider of services must:

(i) Submit a request for prior authorization to the (~~department's~~) agency's clinical consultation team by fax, electronic mail, or telephone as published in the (~~department's~~) agency's acute PM&R billing instructions; and

(ii) Include sufficient medical information to justify that:

(A) Acute PM&R treatment would effectively enable the client to obtain a greater degree of self-care (~~and~~) or independence;

(B) The client's medical condition requires that intensive twenty-four-hour inpatient comprehensive acute PM&R services be provided in (~~a department~~) an agency-approved acute PM&R facility; and

(C) The client suffers from severe disabilities including, but not limited to, neurological (~~and~~) or cognitive deficits.

(3) For an extension of stay:

(a) A client must meet the conditions listed in subsection (2)(a) of this section and have observable and significant improvement; and

(b) The acute PM&R provider of services must:

(i) Submit a request for the extension of stay to the (~~department~~) agency clinical consultation team by fax, electronic mail, or telephone as published in the (~~department's~~) agency's acute PM&R billing instructions; and

(ii) Include sufficient medical information to justify the extension and include documentation that the client's condition has observably and significantly improved.

(4) If the (~~department~~) agency denies the request for an extension of stay, the client must be transferred to an appropriate lower level of care as described in WAC (~~(388-550-2504)~~) 182-550-2501(3).

(5) The (~~department's~~) agency's clinical consultation team approves or denies authorization for acute PM&R services for initial stays or extensions of stay based on individual circumstances and the medical information received. The (~~department~~) agency notifies the client and the acute PM&R provider of a decision.

(a) If the (~~department~~) agency approves the request for authorization, the notification letter includes:

(i) The number of days requested;

(ii) The allowed dates of service;

(iii) (~~A department~~) An agency-assigned authorization number;

(iv) Applicable limitations to the authorized services; and

(v) The (~~department's~~) agency's process to request additional services.

(b) If the (~~department~~) agency denies the request for authorization, the notification letter includes:

(i) The number of days requested;

(ii) The reason for the denial;

(iii) Alternative services available for the client; and

(iv) The client's right to request a fair hearing. (See subsection (7) of this section.)

(6) A hospital or other facility intending to transfer a client to (~~a department~~) an agency-approved acute PM&R hospital (~~; and/or a department~~) or an agency-approved acute PM&R hospital requesting an extension of stay for a client(~~;~~) must:

(a) Discuss the (~~department's~~) agency's authorization decision with the client (~~and~~) or the client's legal representative; and

(b) Document in the client's medical record that the (~~department's~~) agency's decision was discussed with the client (~~and~~) or the client's legal representative.

(7) A client who does not agree with a decision regarding acute PM&R services has a right to a fair hearing under chapter ((388-02)) 182-526 WAC. After receiving a request for a fair hearing, the ((department)) agency may request additional information from the client and the facility, or both. After the ((department)) agency reviews the available information, the result may be:

(a) A reversal of the initial ((department)) agency decision;

(b) Resolution of the client's issue(s); or

(c) A fair hearing conducted per chapter ((388-02)) 182-526 WAC.

(8) The ((department)) agency may authorize administrative ((day(s))) days for a client who:

(a) Does not meet requirements described in subsection (3) of this section; or

(b) Is waiting for a discharge destination or a discharge plan.

(9) The ((department)) agency does not authorize acute PM&R services for a client who:

(a) Is deconditioned by a medical illness or by surgery; or

(b) Has loss of function primarily as a result of a psychiatric condition((+)); or

(c) Has had a recent surgery and has no complicating neurological deficits. Examples of surgeries that do not qualify a client for inpatient acute PM&R services without extenuating circumstances are:

(i) Single amputation;

(ii) Single extremity surgery; and

(iii) Spine surgery.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2565 The long-term acute care (LTAC) program—General.** The long-term acute care (LTAC) program is a twenty-four-hour inpatient comprehensive program of integrated medical and rehabilitative services provided in a ((department)) medicaid agency-approved LTAC hospital during the acute phase of a client's care. The ((department)) agency requires prior authorization for LTAC stays. See WAC ((388-550-2590)) 182-550-2590 for prior authorization requirements.

(1) A facility's multidisciplinary team coordinates individualized LTAC services at ((a department)) an agency-approved LTAC hospital.

(2) The ((department)) agency determines the authorized length of stay for LTAC services based on the client's need as documented in the client's medical records and the criteria described in WAC ((388-550-2590)) 182-550-2590.

(3) When the ((department)) agency-authorized length of stay ends, the provider transfers the client to a more appropriate level of care or, if appropriate, discharges the client to the client's residence.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2575 Client eligibility requirements for LTAC services.** Only a client who is eligible for one of

the following programs may receive LTAC services, subject to the restrictions and limitations in WAC ((388-550-2565; 388-550-2570; 388-550-2580; 388-550-2585; 388-550-2590; 388-550-2595; 388-550-2596)) 182-550-1050, 182-550-2565, 182-550-2580, 182-550-2585, 182-550-2590, 182-550-2595, 182-550-2596, and other rules:

(1) Categorically needy program (CNP);

(2) State children's health insurance program (SCHIP);

(3) Limited casualty program - Medically needy program (LCP-MNP);

(4) Alien emergency medical (AEM)(CNP); or

(5) Alien emergency medical (AEM)(LCP-MNP).

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2580 Requirements for becoming an LTAC hospital.** (1) To apply to become a ((department)) medicaid agency-approved long-term acute care (LTAC) hospital, the ((department)) agency requires a hospital to:

(a) Submit a letter of request to:

LTAC Program Manager

Division of Health Care Services

Health and Recovery Services Administration

P.O. Box 45506

Olympia WA 98504-5506; and

(b) Include in the letter required under (a) of this subsection, documentation that confirms the hospital is:

(i) Medicare-certified for LTAC;

(ii) Accredited by the joint commission on accreditation of health care organizations (JCAHO);

(iii) Licensed as an acute care hospital by the department of health (DOH) under chapter 246-320 WAC (if an in-state hospital), or by the state in which the hospital is located (if an out-of-state hospital); and

(iv) Enrolled with the ((department)) agency as a medicare participating provider.

(2) A hospital qualifies as ((a department)) an agency-approved LTAC hospital when:

(a) The hospital meets all the requirements in this section;

(b) The ((department's)) agency's clinical staff has conducted an on-site visit and recommended approval of the hospital's request for LTAC designation; and

(c) The ((department)) agency provides written notification to the hospital that it qualifies for payment when providing LTAC services to eligible ((medical assistance)) Washington apple health clients.

(3) ((Department)) Agency-approved LTAC hospitals must meet the general requirements in chapter ((388-502)) 182-502 WAC.

(4) The ((department)) agency may, in its sole discretion, approve a hospital located in Idaho or Oregon that is not in a designated bordering city as an LTAC hospital if:

(a) The hospital meets the requirements of this section; and

(b) The hospital provider signs a contract with the ((department)) agency agreeing to the payment rates estab-

lished for LTAC services in accordance with WAC ((388-550-2595)) 182-550-2595.

(5) The ((department)) agency does not have any legal obligation to approve any hospital or other entity as an LTAC hospital.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2585 LTAC hospitals—Quality of care.** (1) To ensure quality of care, the ((department)) medicaid agency may conduct post-pay or on-site reviews of any ((department)) agency-approved LTAC hospital. See chapter 182-502A WAC ((388-502-0240, Audits and the audit appeal process for contractors/providers,)) for additional information on audits conducted by ((department)) agency staff.

(2) A provider of LTAC services must act on any reports of substandard care or violations of the hospital's medical staff bylaws. The provider must have and follow written procedures that provide a resolution to either a complaint or grievance or both.

(3) A complaint or grievance regarding substandard conditions or care may be investigated by any one or more of the following:

- (a) The department of health (DOH);
- (b) The joint commission on accreditation of health care organizations (JCAHO);
- (c) The ((department)) agency; or
- (d) Other agencies with review authority for the ((department's)) agency's programs.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2590 ((Department)) Agency prior authorization requirements for Level 1 and Level 2 LTAC services.** (1) The ((department)) medicaid agency requires prior authorization for Level 1 and Level 2 long term acute care (LTAC) inpatient stays. The prior authorization process includes all ((of)) the following:

- (a) For an initial thirty-day stay:
  - (i) The client must:
    - (A) Be eligible under one of the programs listed in WAC ((388-550-2575)) 182-550-2575; and
    - (B) Require Level 1 or Level 2 LTAC services as defined in WAC ((388-550-2570)) 182-550-1050.
  - (ii) The LTAC provider of services must:
    - (A) Before admitting the client to the LTAC hospital, submit a request for prior authorization to the ((department)) agency by fax, electronic mail, or telephone, as published in the ((department's)) agency's LTAC billing instructions;
    - (B) Include sufficient medical information to justify the requested initial stay;
    - (C) Obtain prior authorization from the ((department's)) agency's medical director or designee, when accepting the client from the transferring hospital; and
    - (D) Meet all the requirements in WAC ((388-550-2580)) 182-550-2580.

(b) For any extension of stay, the criteria in (a) of this subsection must be met, and the LTAC provider of services

must submit a request for the extension of stay to the ((department)) agency with sufficient medical justification.

(2) The ((department)) agency authorizes Level 1 or Level 2 LTAC services for initial stays or extensions of stay based on the client's circumstances and the medical justification received.

(3) A client who does not agree with a decision regarding a length of stay has a right to a fair hearing under chapter ((388-02)) 182-526 WAC. After receiving a request for a fair hearing, the ((department)) agency may request additional information from the client and the facility, or both. After the ((department)) agency reviews the available information, the result may be:

- (a) A reversal of the initial ((department)) agency decision;
- (b) Resolution of the client's issue(s); or
- (c) A fair hearing conducted ((per chapter 388-02)) according to chapter 182-526 WAC.

(4) The ((department)) agency may authorize an administrative day rate payment for a client who meets one or more of the following. The client:

- (a) Does not meet the requirements for Level 1 or Level 2 LTAC services;
- (b) Is waiting for placement in another hospital or other facility; or
- (c) If appropriate, is waiting to be discharged to the client's residence.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2595 Identification of and payment methodology for services and equipment included in the LTAC fixed per diem rate.** (1) In addition to room and board, the LTAC fixed per diem rate includes, but is not limited to, the following (see the ((department's)) medicaid agency's LTAC billing instructions for applicable revenue codes):

- (a) Room and board - Rehabilitation;
- (b) Room and board - Intensive care;
- (c) Pharmacy - Up to and including two hundred dollars per day in total allowed covered charges for any combination of pharmacy services that includes prescription drugs, total parenteral nutrition (TPN) therapy, IV infusion therapy, and((/or)) epogen((/)) or neupogen therapy;
- (d) Medical/surgical supplies and devices;
- (e) Laboratory - General;
- (f) Laboratory - Chemistry;
- (g) Laboratory - Immunology;
- (h) Laboratory - Hematology;
- (i) Laboratory - Bacteriology and microbiology;
- (j) Laboratory - Urology;
- (k) Laboratory - Other laboratory services;
- (l) Respiratory services;
- (m) Physical therapy;
- (n) Occupational therapy; and
- (o) Speech-language therapy.

(2) The ((department)) agency pays the LTAC hospital for services covered by the LTAC fixed per diem rate by the rate in effect at the date of admission, minus the sum of:

(a) Client liability, whether or not collected by the provider; and

(b) Any amount of coverage from third parties, whether or not collected by the provider, including, but not limited to, coverage from:

(i) Insurers and indemnitors;

(ii) Other federal or state health care programs;

(iii) Payments made to the provider on behalf of the client by individuals or organizations not liable for the client's financial obligations; and

(iv) Any other contractual or legal entitlement of the client, including, but not limited to:

(A) Crime victims' compensation;

(B) Workers' compensation;

(C) Individual or group insurance;

(D) Court-ordered dependent support arrangements; and

(E) The tort liability of any third party.

(3) The ~~((department))~~ agency may make annual rate increases to the LTAC fixed per diem rate by using a vendor rate increase. The ~~((department))~~ agency may rebase the LTAC fixed per diem rate periodically.

(4) When the ~~((department))~~ agency establishes a special client service contract to complement the core provider agreement with an out-of-state LTAC hospital for services, the contract terms take precedence over any conflicting payment program policies set in WAC by the ~~((department))~~ agency.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2596 Services and equipment covered by the ~~((department))~~ agency but not included in the LTAC fixed per diem rate.** (1) The ~~((department))~~ medicaid agency uses the ratio of costs-to-charges (RCC) payment method to pay an LTAC hospital for the following that are not included in the LTAC fixed per diem rate:

(a) Pharmacy - After the first two hundred dollars per day in total allowed covered charges for any combination of pharmacy services that includes prescription drugs, total parenteral nutrition (TPN) therapy, IV infusion therapy, and ~~(/~~ ~~œ))~~ epogen ~~(/~~ ~~œ))~~ or neupogen therapy;

(b) Radiology services;

(c) Nuclear medicine services;

(d) Computerized tomographic (CT) scan;

(e) Operating room services;

(f) Anesthesia services;

(g) Blood storage and processing;

(h) Blood administration;

(i) Other imaging services - Ultrasound;

(j) Pulmonary function services;

(k) Cardiology services;

(l) Recovery room services;

(m) EKG/ECG services;

(n) Gastro-intestinal services;

(o) Inpatient hemodialysis; and

(p) Peripheral vascular laboratory services.

(2) The ~~((department))~~ agency uses the appropriate inpatient or outpatient payment method described in other published WAC to pay providers other than LTAC hospitals for

services and equipment that are covered by the ~~((department))~~ agency but not included in the LTAC fixed per diem rate. The provider must bill the ~~((department))~~ agency directly and the ~~((department))~~ agency pays the provider directly.

(3) Transportation services that are related to transporting a client to and from another facility for the provision of outpatient medical services while the client is still an inpatient at the LTAC hospital, or related to transporting a client to another facility after discharge from the LTAC hospital:

(a) Are not covered or reimbursed through the LTAC fixed per diem rate;

(b) Are not payable directly to the LTAC hospital;

(c) Are subject to the provisions in chapter ~~((388-546))~~ 182-546 WAC; and

(d) Must be billed directly to the:

(i) ~~((Department))~~ Agency by the transportation company to be reimbursed if the client required ambulance transportation; or

(ii) ~~((Department's))~~ Agency's contracted transportation broker, subject to the prior authorization requirements and provisions described in chapter ~~((388-546))~~ 182-546 WAC, if the client:

(A) Required nonemergency transportation; or

(B) Did not have a medical condition that required transportation in a prone or supine position.

(4) The ~~((department))~~ agency evaluates requests for covered transportation services that are subject to limitations or other restrictions, and approves ~~((such))~~ the services beyond those limitations or restrictions under ~~((the provisions of WAC 388-501-0165 and 388-501-0169))~~ WAC 182-501-0165 and 182-501-0169.

(5) When the ~~((department))~~ agency established a special client service contract to complement the core provider agreement with an out-of-state LTAC hospital for services, the contract terms take precedence over any conflicting payment program policies set in WAC by the ~~((department))~~ agency.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2598 Critical access hospitals (CAHs).**

(1) The following definitions and abbreviations and those found in ~~((WAC 388-500-0005 and 388-550-1050))~~ chapter 182-500 WAC and WAC 182-182-1050 apply to this section:

(a) "CAH(~~(ç))~~)" see "critical access hospital."

(b) "Cost settlement" means a reconciliation of the fee-for-service interim CAH payments with a CAH's actual costs determined in conjunction with the use of the CAH's final settled medicare cost report (Form 2552-96) after the end of the CAH's HFY.

(c) "Critical access hospital (CAH)" means a hospital that is approved by the department of health (DOH) for inclusion in DOH's critical access hospital program.

(d) ~~((("Departmental weighted costs to charges (DWCC) rate" means a rate the department uses to determine a CAH payment. See subsection (5) of this section for how the department calculates a DWCC rate.~~

~~(e)~~ "DWCC rate" see "~~departmental weighted costs-to-charges (DWCC) rate.~~"

~~(f)~~ "HFY" see "Hospital fiscal year."

~~((g))~~ ~~(e)~~ "Hospital fiscal year" means each individual hospital's medicare cost report fiscal year.

~~((h))~~ ~~(f)~~ "Interim CAH payment" means the actual payment the ~~((department))~~ medicaid agency makes for claims submitted by a CAH for service provided during its current HFY, using the appropriate ~~((DWCC))~~ weighted costs-to-charges (WCC) rate, as determined by the ~~((department))~~ agency.

~~((i))~~ ~~(g)~~ "Revenue codes and procedure codes to cost centers crosswalk" means a document that indicates the revenue codes and procedure codes that are assigned by each hospital to a specific cost center in each hospital's medicare cost report.

~~(h)~~ "Weighted costs-to-charges (WCC) rate" means a rate the agency uses to determine a CAH payment. See subsection (5) of this section for how the agency calculates a WCC rate.

~~(i)~~ "WCC rate" see "weighted costs-to-charges rate."

(2) To be paid as a CAH by the ~~((department))~~ agency, a hospital must be approved by the department of health (DOH) for inclusion in DOH's critical access hospital program. The hospital must provide proof of CAH status to the ~~((department))~~ agency upon request. A CAH paid under the CAH program must meet the general applicable requirements in chapter ~~((388-502))~~ 182-502 WAC. For information on audits and the audit appeal process, see ~~((WAC 388-502-0240))~~ chapter 182-502A WAC.

(3) The ~~((department))~~ agency pays an eligible CAH for inpatient and outpatient hospital services provided to fee-for-service ~~((medical assistance))~~ Washington apple health clients on a cost basis (except when services are provided in a distinct psychiatric unit, a distinct rehabilitation unit, or detoxification unit), using ~~((departmental))~~ weighted costs-to-charges ((DWCC)) WCC rates and a retrospective cost settlement process. The ~~((department))~~ agency pays CAH fee-for-service claims subject to retrospective cost settlement, adjustments such as a third party payment amount, any client responsibility amount, etc.

(4) For inpatient and outpatient hospital services provided to clients enrolled in a managed care organization (MCO) plan, ~~((DWCC))~~ WCC rates for each CAH are incorporated into the calculations for the managed care capitated premiums. The ~~((department))~~ agency considers managed care health options and MHD designee ~~((DWCC))~~ WCC payment rates to be cost. Cost settlements are not performed by the ~~((department))~~ agency for managed care claims.

(5) The ~~((department))~~ agency prospectively calculates fee-for-service and managed care inpatient and outpatient ~~((DWCC))~~ WCC rates separately for each CAH.

(a) ~~((Prior to the department's))~~ Before the agency's calculation of the prospective interim inpatient ~~((DWCC))~~ WCC and outpatient ~~((DWCC))~~ WCC rates for each hospital participating in the CAH program, the CAH must timely submit the following to the ~~((department))~~ agency:

(i) Within twenty working days of receiving the request from the ~~((department))~~ agency, the CAH's estimated aggregate charge master change for its next HFY;

(ii) At the time that the "as filed" version of the medicare cost report the CAH initially submits to the medicare fiscal intermediary for the cost settlement of its most recently completed HFY, a copy of that same medicare cost report;

(iii) At the same time that the "as filed" version of the medicare cost report the CAH has submitted to the medicare fiscal intermediary for cost settlement of its most recently completed HFY, the CAH's corresponding revenue codes and procedure codes to cost centers crosswalk that indicates the revenue codes and procedure codes that are assigned by each hospital to a specific cost center in the hospital's medicare cost report;

(iv) At the same time that the "as filed" version of the medicare cost report the CAH has submitted to the medicare fiscal intermediary for cost settlement of its most recently completed HFY, a document indicating any differences between the CAH's revenue codes and procedure codes to cost centers crosswalk and the standard revenue codes and procedure codes to cost centers crosswalk that the ~~((department))~~ agency provides to the CAH from the ~~((department's))~~ agency's CAH ~~((DWCC))~~ WCC rate calculation model. (For example, a CAH hospital might indicate when it submits its crosswalk to the ~~((department,))~~ agency that a difference exists in the CAH's placement of statistics for the anesthesia revenue code normally identified to the anesthesia cost center in the ~~((department's))~~ agency's CAH ~~((DWCC))~~ WCC rate calculation model, but identified to the surgery cost center in the CAH's submitted medicare cost report.)

(b) The ~~((department))~~ agency:

(i) Determines if differences between the CAH's crosswalk and the crosswalk in the CAH ~~((DWCC))~~ WCC rate calculation model will be allowed when the CAH timely submits the document identified in (a)(iii) and (a)(iv) of this subsection. If the CAH does not timely submit the document, the ~~((department))~~ agency may use the CAH ~~((DWCC))~~ WCC rate calculation model without considering the differences.

(ii) Does not allow unbundling or merging of the standard cost centers identified in the CAH ~~((DWCC))~~ WCC rate calculation model when the ~~((department))~~ agency calculates the ~~((DWCC))~~ WCC rates. This is a standard the ~~((department))~~ agency follows during the rate calculation process even though the CAH hospital may have in contrast to the CAH ~~((DWCC))~~ WCC rate calculation model indicated multiple cost centers, or merged into fewer costs centers, when reporting in the medicare cost report. (For example, a CAH reports to the ~~((department))~~ agency that in the ~~((department's))~~ agency's standard radiology cost center grouping in the CAH ~~((DWCC))~~ WCC rate calculation model, the hospital has established three costs centers in the medicare cost report, which are radioisotopes, radiology therapeutic, and radiology diagnostic. During the rate calculation process, the ~~((department))~~ agency combines these three cost centers under the standard radiology cost center grouping. No unbundling of the standard cost center grouping is allowed.)

(c) The ~~((department))~~ agency:

(i) Obtains from its medicaid management information system (MMIS), the following fee-for-service summary claims data submitted by each CAH for services provided during the same HFY identified in (a)(ii) of this subsection:

(A) (~~(Medical assistance)~~) Washington apple health program codes;

(B) Inpatient and outpatient hospital claim types;

(C) Procedure codes (for outpatient hospital claims only), revenue codes, and diagnosis related group (DRG) codes (for inpatient claims only);

(D) Claim allowed charges, third party liability, client paid amounts, and (~~(department)~~) agency paid amounts; and

(E) Units of service.

(ii) Obtains Level III trauma payment data from the department of health (DOH).

(iii) Obtains the costs-to-charges ration (CCR) of each respective cost center from the "as filed" version of the medicare cost report identified in (a)(ii) of this subsection, supplemented by any crosswalk information as described in (a)(iii) and (a)(iv) of this subsection.

(iv) Obtains from the managed care encounter data the following data submitted by each CAH for services provided during the same HFY identified:

(A) (~~(Medical assistance)~~) Washington apple health program codes;

(B) Inpatient and outpatient hospital claim types;

(C) Procedure codes (for outpatient hospital claims only), revenue codes, and diagnosis related group (DGR) codes (for inpatient claims only); and

(D) Claim allowed charges.

(v) Separates the inpatient claims data and outpatient hospital claims data;

(vi) Obtains the cost center claim allowed charges by classifying inpatient and outpatient hospital claim allowed charges from (c)(i) and (c)(iv) of this subsection billed by a CAH (using any one of, or a combination of, procedure codes, revenue codes, or DRG codes) into the related cost center in the CAH's "as filed" medicare cost report the CAH initially submits to the (~~(department)~~) agency.

(vii) Uses the claims classifications and cost center combinations as defined in the (~~(department's)~~) agency's CAH (~~(DWCC)~~) WCC rate calculation model;

(viii) Assigns a CAH that does not have a cost center ratio that CAH's cost center average;

(ix) Allows changes only if a revenue codes and procedure codes to cost centers crosswalk has been timely submitted (see (a)(iii), (a)(iv), and (b)(i) of this subsection) and a cost center average is being used;

(x) Does not allow an unbundling of cost centers (see (b)(ii) of this subsection);

(xi) Determines the (~~(departmental)~~) agency-weighted costs for each cost center by multiplying the cost center's claim allowed charges from (c)(i) and (c)(iv) of this subsection for the appropriate inpatient or outpatient claim type by the related service costs center ratio;

(xii) Sums all:

(A) Claim allowed charges from (c)(i) and (c)(iv) of this subsection separately for inpatient hospital claims.

(B) Claim allowed charges from (c)(i) and (c)(iv) of this subsection separately for outpatient hospital claims.

(xiii) Sums all:

(A) (~~(Departmental)~~) Agency-weighted costs from (c)(xi) of this subsection separately for inpatient hospital claims.

(B) (~~(Departmental)~~) Agency-weighted costs from (c)(xi) of this subsection separately for outpatient hospital claims.

(xiv) Multiplies each hospital's total (~~(departmental)~~) agency-weighted costs from (c)(xiii) of this subsection by the centers for medicare and medicaid services (CMS) medicare market basket inflation rate to update costs from the HFY to the rate setting period. The medicare market basket inflation rate is published and updated by CMS periodically;

(xv) Multiplies each hospital's total claim allowed charges from (c)(xii) of this subsection by the CAH estimated charge master change from (a)(i) of this subsection. If the charge master change factor is not submitted timely by the hospital (see (a)(i) of this subsection), the (~~(department)~~) agency will apply a reasonable alternative factor; and

(xvi) Determines:

(A) The inpatient (~~(DWCC)~~) WCC rates by dividing the calculation result from (c)(xiv) of this subsection by the calculation result from (c)(xv) of this subsection.

(B) The outpatient (~~(DWCC)~~) WCC rates by dividing the calculation result from (c)(xiv) of this subsection by the calculation result from (c)(xv) of this subsection.

(6) For a currently enrolled hospital provider that is new to the CAH program, the basis for calculating initial prospective (~~(DWCC)~~) WCC rates for inpatient and outpatient hospital claims for:

(a) Fee-for-service clients is:

(i) The hospital's most recent "as filed" medicare cost report; and

(ii) The appropriate MMIS summary claims data for that HFY.

(b) MCO clients is:

(i) The hospital's most recent "as filed" medicare cost report; and

(ii) The appropriate managed care encounter data for that HFY.

(7) For a newly licensed hospital that is also a CAH, the (~~(department)~~) agency uses the current statewide average (~~(DWCC)~~) WCC rates for the initial prospective (~~(DWCC)~~) WCC rates.

(8) For a CAH that comes under new ownership, the (~~(department)~~) agency uses the prior owner's (~~(DWCC)~~) WCC rates until:

(a) The new owner submits its first "as filed" medicare cost report to the medicare fiscal intermediary, and at the same time to the (~~(department)~~) agency, the documents identified in (5)(a)(i) through (a)(iv) of this section; and

(b) The (~~(department)~~) agency has calculated new (~~(DWCC)~~) WCC rates based on the new owner's "as filed" medicare cost report and other timely submitted documents.

(9) In addition to the prospective managed care inpatient and outpatient (~~(DWCC)~~) WCC rates, the (~~(department)~~) agency:

(a) Incorporates the (~~(DWCC)~~) WCC rates into the calculations for the (~~(department's)~~) agency's MCO capitated premium that will be paid to the MCO plan; and

(b) Requires all MCO plans having contract relationships with CAHs to pay inpatient and outpatient (~~(DWCC)~~) WCC rates applicable to managed care claims. For purposes of this section, the (~~(department)~~) agency considers the

((~~DWCC~~)) WCC rates used to pay CAHs for care given to clients enrolled in an MCO plan to be cost. Cost settlements are not performed for claims that are submitted to the MCO plans.

(10) For fee-for-service claims only, the ((~~department~~)) agency uses the same methodology as outlined in subsection (5) of this section to perform an interim retrospective cost settlement for each CAH after the end of the CAH's HFY, using "as filed" medicare cost report data from that HFY that is being cost settled, the other documents identified in subsection (5)(a)(i), (a)(iii) and (a)(iv) of this section, when data from the MMIS related to fee-for-service claims. Specifically, the ((~~department~~)) agency:

(a) Compares actual ((~~department~~)) agency total interim CAH payments to the ((~~departmental~~)) agency-weighted CAH fee-for-service costs for the period being cost settled. (Interim payments are the sum of third party liability/client payments, ((~~department~~)) agency claim payments, and Level III trauma payments); and

(b) Pays the hospital the difference between CAH costs and interim CAH payments if actual CAH costs are determined to exceed the total interim CAH payments for that period. The ((~~department~~)) agency recoups from the hospital the difference between CAH costs and interim CAH payments if actual CAH costs are determined to be less than total interim CAH payments.

(11) The ((~~department~~)) agency performs finalized cost settlements using the same methodology as outlined in subsection (10) of this section, except that the ((~~department~~)) agency uses the hospital's "final settled" medicare cost report instead of the initial "as filed" medicare cost report for the HFY being cost settled. The "final settled" medicare cost report received from the medicare fiscal intermediary must be submitted by the CAH to the ((~~department~~)) agency by the sixtieth day of the hospital's receipt of that medicare cost report.

(12) A CAH must have and follow written procedures that provide a resolution to complaints and grievances.

(13) To ensure quality of care:

(a) A CAH is responsible to investigate any reports of substandard care or violations of the hospital's medical staff bylaws; and

(b) A complaint or grievance regarding substandard conditions or care may be investigated by any one or more of the following:

(i) Department of health (DOH); or

(ii) Other agencies with review authority for ((~~department~~)) agency programs.

(14) The ((~~department~~)) agency pays detoxification units, distinct psychiatric units, and distinct rehabilitation units operated by CAH hospitals using inpatient payment methods other than ((~~DWCC~~)) WCC rates and cost settlement.

(a) For dates of admission before August 1, 2007, the ((~~department~~)) agency uses the RCW payment method to pay for services provided in detoxification units, distinct psychiatric units, and distinct rehabilitation units. The exception is for state-administered programs' psychiatric claims, which are paid using:

(i) The DRG payment method for claims grouped to stable DRG relative weights (unless the claim has an HIV-related diagnosis), and in conjunction with the base community psychiatric hospitalization payment method; or

(ii) The RCW payment method for other psychiatric claims (except for DRGs 469 and 470), in conjunction with the base community psychiatric hospitalization payment method.

(b) For dates of admission ((~~on and after August 1~~)) after July 31, 2007, the ((~~department~~)) agency uses the per diem payment method to pay for services provided in detoxification units, distinct psychiatric units, and distinct rehabilitation units.

(15) The ((~~department~~)) agency may conduct a post pay or on-site review of any CAH.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-2600 Inpatient psychiatric services.**

(1) The ((~~department~~)) medicaid agency, on behalf of the mental health division (MHD), regional support networks (RSNs) and prepaid inpatient health plans (PIHPs), pays for covered inpatient psychiatric services for a voluntary or involuntary inpatient psychiatric admission of an eligible ((~~medical assistance~~)) Washington apple health client, subject to the limitation and restrictions in this section and other published rules.

(2) The following definitions and abbreviations and those found in WAC ((~~388-550-0005 and 388-550-1050~~)) 182-550-1050 apply to this section (where there is any discrepancy, this section prevails):

(a) "Authorization number" refers to a number that is required on a claim in order for a provider to be paid for providing psychiatric inpatient services to a ((~~medical assistance~~)) Washington apple health client. An authorization number:

(i) Is assigned when the certification process and prior authorization process has occurred;

(ii) Identifies a specific request for the provision of psychiatric inpatient services to a ((~~medical assistance~~)) Washington apple health client;

(iii) Verifies when prior or retrospective authorization has occurred;

(iv) Will not be rescinded once assigned; and

(v) Does not guarantee payment.

(b) "Certification" means a clinical determination by an MHD designee that a client's need for a voluntary or involuntary inpatient psychiatric admission, length of stay extension, or transfer has been reviewed and, based on the information provided, meets the requirements for medical necessity for inpatient psychiatric care. The certification process occurs concurrently with the prior authorization process.

(c) "IMD" See "institution for mental diseases."

(d) "Institution for mental diseases (IMD)" means a hospital, nursing facility, or other institution of more than sixteen beds that is primarily engaged in providing diagnosis, treatment, or care of ((~~persons~~)) people with mental diseases, including medical attention, nursing care, and related ser-

vices. The MHD designates whether a facility meets the definition for an IMD.

(e) "Involuntary admission" refer to chapters 71.05 and 71.34 RCW.

(f) "Mental health division (MHD)" is the unit within the department of social and health services (DSHS) authorized to contract for and monitor delivery of mental health programs. MHD is also known as the state mental health authority.

(g) "Mental health division designee" or "MHD designee" means a professional contact person authorized by MHD, who operates under the direction of a regional support network (RSN) or a prepaid inpatient health plan (PIHP).

(h) "PIHP" see "prepaid inpatient health plan."

(i) "Prepaid inpatient health plan (PIHP)" see WAC 388-865-0300.

(j) "Prior authorization" means an administrative process by which hospital providers must obtain an MHD designee's for a client's inpatient psychiatric admission, length of stay extension, or transfer. The prior authorization process occurs concurrently with the certification process.

(k) "Regional support network (RSN)" see WAC 388-865-0200.

(l) "Retrospective authorization" means a process by which hospital providers and hospital unit providers must obtain an MHD designee's certification after services have been initiated for a ~~((medical assistance))~~ Washington apple health client. Retrospective authorization can be ~~((prior to))~~ before discharge or after discharge. This process is allowed only when circumstances beyond the control of the hospital or hospital unit provider prevented a prior authorization request, or when the client has been determined to be eligible for ~~((medical assistance))~~ Washington apple health after discharge.

(m) "RSN" see "regional support network."

(n) "Voluntary admission" refer to chapters 71.05 and 71.34 RCW.

(3) The following department of health (DOH)-licensed hospitals and hospital units are eligible to be paid for providing inpatient psychiatric services to eligible ~~((medical assistance))~~ Washington apple health clients, subject to the limitations listed:

(a) Medicare-certified distinct part psychiatric units;

(b) State-designated pediatric psychiatric units;

(c) Hospitals that provide active psychiatric treatment outside of a medicare-certified or state-designated psychiatric unit, under the supervision of a physician according to WAC 246-322-170; and

(d) Free-standing psychiatric hospitals approved as an institution for mental diseases (IMD).

(4) An MHD designee has the authority to approve or deny a request for initial certification for a client's voluntary inpatient psychiatric admission and will respond to the hospital's or hospital unit's request for initial certification within two hours of the request. An MHD designee's certification and authorization, or a denial, will be provided within twelve hours of the request. Authorization must be requested ~~((prior to))~~ before admission. If the hospital chooses to admit the client without prior authorization due to staff shortages, the request for an initial certification must be submitted the same

calendar day (which begins at midnight) as the admission. In this case, the hospital assumes the risk for denial as the MHD designee may or may not authorize the care for that day.

(5) To be paid for a voluntary inpatient psychiatric admission:

(a) The hospital provider or hospital unit provider must meet the applicable general conditions of payment criteria in WAC ~~((388-502-0100))~~ 182-502-0100; and

(b) The voluntary inpatient psychiatric admission must meet the following:

(i) For a client eligible for ~~((medical assistance))~~ Washington apple health, the admission to voluntary inpatient psychiatric care must:

(A) Be medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070;

(B) Be ordered by an agent of the hospital who has the clinical or administrative authority to approve an admission;

(C) Be prior authorized and meet certification and prior authorization requirements as defined in subsection (2) of this section. See subsection (8) of this section for a voluntary inpatient psychiatric admission that was not prior authorized and requires retrospective authorization by the client's MHD designee; and

(D) Be verified by receipt of a certification form dated and signed by an MHD designee (see subsection (2) of this section). The form must document at least the following:

(I) Ambulatory care resources available in the community do not meet the treatment needs of the client;

(II) Proper treatment of the client's psychiatric condition requires services on an inpatient basis under the direction of a physician (according to WAC 246-322-170);

(III) The inpatient services can reasonably be expected to improve the client's level of functioning or prevent further regression of functioning;

(IV) The client has been diagnosed as having an emotional or behavioral disorder, or both, as defined in the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association; and

(V) The client's principle diagnosis must be an MHD covered diagnosis.

(ii) For a client eligible for both medicare and a ~~((medical assistance))~~ Washington apple health program, the ~~((department))~~ agency pays secondary to medicare.

(iii) For a client eligible for both medicare and a ~~((medical assistance))~~ Washington apple health program and who has not exhausted medicare lifetime benefits, the hospital provider or hospital unit provider must notify the MHD designee of the client's admission if the dual eligibility status is known. The admission:

(A) Does not require prior authorization by an MHD designee; and

(B) Must be ~~((in accordance with))~~ under medicare standards.

(iv) For a client eligible for both medicare and a ~~((medical assistance))~~ Washington apple health program who has exhausted medicare lifetime benefits, the admission must have prior authorization by ~~((a))~~ an MHD designee.

(v) When a liable third party is identified (other than medicare) for a client eligible for a ~~((medical assistance))~~ Washington apple health program, the hospital provider or

hospital unit provider must obtain ((a)) an MHD designee's authorization for the admission.

(6) To be paid for an involuntary inpatient psychiatric admission:

(a) The involuntary inpatient psychiatric admission must be ~~((in accordance with))~~ under the admission criteria specified in chapters 71.05 and 71.34 RCW; and

(b) The hospital provider or hospital unit provider:

(i) Must be certified by the MHD ~~((in accordance with))~~ under chapter 388-865 WAC;

(ii) Must meet the applicable general conditions of payment criteria in WAC ~~((388-502-0100))~~ 182-502-0100; and

(iii) When submitting a claim, must include a completed and signed copy of an Initial Certification Authorization form Admission to Inpatient Psychiatric Care form, or an Extension Certification Authorization for Continued Inpatient Psychiatric Care form.

(7) To be paid for providing continued inpatient psychiatric services to a ~~((medical assistance))~~ Washington apple health client who has already been admitted, the hospital provider or hospital unit provider must request from an MHD designee within the time frames specified, certification and authorization as defined in subsection (2) of this section for any of the following circumstances:

(a) If the client converts from involuntary (legal) status to voluntary status, or from voluntary to involuntary (legal) status as described in chapter 71.05 or 71.34 RCW, the hospital provider or hospital unit provider must notify the MHD designee within twenty-four hours of the change. Changes in legal status may result in issuance of a new certification and authorization. Any previously authorized days under the previous legal status that are past the date of the change in legal status are not billable;

(b) If an application is made for determination of a patient's ~~((medical assistance))~~ Washington apple health eligibility, the request for certification and prior authorization must be submitted within twenty-four hours of the application;

(c) If there is a change in the client's principal ICD9-CM diagnosis to an MHD covered diagnosis, the request for certification and prior authorization must be submitted within twenty-four hours of the change;

(d) If there is a request for a length of stay extension for the client, the request for certification and prior authorization must be submitted ~~((prior to))~~ before the end of the initial authorized days of services (see subsections (11) and (12) of this section for payment methodology and payment limitations); and

(e) If the client is to be transferred from one community hospital to another community hospital for continued inpatient psychiatric care, the request for certification and prior authorization must be submitted ~~((prior to))~~ before the transfer.

(f) If a client who has been authorized for inpatient care by the MHD designee has been discharged or left against medical advice prior to the expiration of previously authorized days, a hospital provider or hospital unit provider must notify the MHD designee within twenty-four hours of discharge. Any previously authorized days past the date the client was discharged or left the hospital are not billable.

(8) An MHD designee has the authority to approve or deny a request for retrospective certification for a client's voluntary inpatient psychiatric admission, length of stay extension, or transfer when the hospital provider or hospital unit provider did not notify the MHD designee within the notification time frames stated in this section. For a retrospective certification request ~~((prior to))~~ before discharge, the MHD designee responds to the hospital or hospital unit within two hours of the request, and provides certification and authorization or a denial within twelve hours of the request. For retrospective certification requests after the discharge, the hospital or hospital unit must submit all the required clinical information to the MHD designee within thirty days of discharge. The MHD designee provides a response within thirty days of the receipt of the required clinical documentation. All retrospective certifications must meet the requirements in this section. An authorization or denial is based on the client's condition and the services provided at the time of admission and over the course of the hospital stay, until the date of notification or discharge, as applicable.

(9) To be paid for a psychiatric inpatient admission of an eligible ~~((medical assistance))~~ Washington apple health client, the hospital provider or hospital unit provider must submit on the claim form the authorization (see subsection (2)(a) for definition of prior authorization and retrospective authorization).

(10) The ~~((department))~~ agency uses the payment methods described in WAC ~~((388-550-2650 through 388-550-5600))~~ 182-550-2650 through 182-550-5600, as appropriate, to pay a hospital and hospital unit for providing psychiatric services to ~~((medical assistance))~~ Washington apple health clients, unless otherwise specified in this section.

(11) Covered days for a voluntary psychiatric admission are determined by ((a)) an MHD designee utilizing MHD approved utilization review criteria.

(12) The number of initial days authorized for an involuntary psychiatric admission is limited to twenty days from date of detention. The hospital provider or hospital unit provider must submit the Extension Certification Authorization for Continued Inpatient Psychiatric Care form twenty-four hours ~~((prior to))~~ before the expiration of the previously authorized days. Extension requests may not be denied for a person detained under ITA unless a less restrictive alternative is identified by the MHD designee and approved by the court. Extension requests may not be denied for youths detained under ITA who have been referred to the children's long-term inpatient program unless a less restrictive alternative is identified by the MHD designee and approved by the court.

(13) The ~~((department))~~ agency pays the administrative day rate for any authorized days that meet the administrative day definition in WAC ~~((388-550-1050))~~ 182-550-1050, and when all ~~((of))~~ the following conditions are met:

(a) The client's legal status is voluntary admission;

(b) The client's condition is no longer medically necessary;

(c) The client's condition no longer meets the intensity of service criteria;

(d) Less restrictive alternative treatments are not available, posing barrier to the client's safe discharge; and

(e) The hospital or hospital unit and the MHD designee mutually agree that the administrative day is appropriate.

(14) The hospital provider or hospital unit provider will use the MHD approved due process for conflict resolution regarding medical necessity determinations provided by the MHD designee.

(15) In order for an MHD designee to implement and participate in a ~~((medical assistance))~~ Washington apple health client's plan of care, the hospital provider or hospital unit provider must provide any clinical and cost of care information to the MHD designee upon request. This requirement applies to all ~~((medical assistance))~~ Washington apple health clients admitted for:

- (a) Voluntary inpatient psychiatric services; and
- (b) Involuntary inpatient psychiatric services, regardless of payment source.

(16) If the number of days billed exceeds the number of days authorized by the MHD designee for any claims paid, the ~~((department))~~ agency will recover any unauthorized days paid.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-3470 Payment method—Bariatric surgery—Per case rate.** (1) The ~~((department))~~ medicaid agency:

(a) Pays for bariatric surgery provided in designated ~~((department))~~ agency-approved hospitals when all criteria established in WAC ~~((388-550-2301 and 388-550-3020))~~ 182-550-2301 are met;

(b) Requires qualification and prior authorization of the provider before bariatric surgery related services are provided (see WAC ~~((388-550-2301))~~ 182-550-2301); and

(c) Uses a per case rate to pay for bariatric surgery.

(2) For dates of admission before August 1, 2007, the ~~((department))~~ agency determines the per case rate by using a hospital-specific medicare fee schedule rate the ~~((department))~~ agency used to pay for bariatric surgery.

(3) For dates of admission ~~((on and after August 1))~~ after July 31, 2007, the ~~((department))~~ agency determines the per case rate by using the bariatric per case rate calculation method described in this subsection and established by the ~~((department's))~~ agency's new inpatient payment system implemented on August 1, 2007.

(a) To adjust hospital-specific operating, capital, and direct medical education costs, the ~~((department))~~ agency:

(i) Inflates the hospital-specific operating, capital, and direct medical education routine costs from the hospital's medicare cost report fiscal year to the mid-point of the state fiscal year.

(ii) Divides the labor portion of the hospital-specific operating costs by the hospital-specific medicare wage index in effect for the medicare inpatient prospective payment system federal fiscal year that most closely matches the time period covered by the medicare cost report used for these calculations.

(b) To determine the statewide standardized weighted average cost per case by using the adjusted hospital-specific

operating and capital costs derived in (a) of this subsection, the ~~((department))~~ agency:

(i) Adjusts the hospital-specific operating and capital costs to remove the indirect costs associated with approved medical education programs; then

(ii) Calculates the operating standardized amount by dividing statewide aggregate adjusted operating costs by the statewide aggregate number cases in the base year claims data; then

(iii) Calculates the capital standardized amount by dividing statewide aggregate adjusted capital costs by the statewide aggregate number of cases in the base year claims data.

(c) To make hospital-specific adjustments to the statewide operating and capital standardized amounts, the ~~((department))~~ agency:

(i) Defines the adjusted operating standardized amount for bariatric services as the average of all instate hospitals operating standardized amount after making adjustments for the wage index and the indirect medical education. The ~~((department))~~ agency:

(A) To determine the labor portion, uses the factor established by medicare multiplied by the statewide operating standardized amount, then multiplies the labor portion of the operating standardized amount by (1.0 plus the most currently available hospital-specific medicare wage index); then

(B) Adds the nonlabor portion of the operating standardized amount to the labor portion derived in (c)(i)(A) of this subsection; then

(C) Multiplies the amount derived in (c)(i)(B) of this subsection by 1.0 plus the most currently available hospital-specific medicare operating indirect medical education factor to derive the operating standardized amount for bariatric services; then

(D) Adjusts the hospital-specific operating standardized amount for bariatric services for inflation based on the CMS PPS input price index. The adjustment is to reflect the increases in price index levels between the base year data and the payment system implementation year.

(E) Calculates the statewide bariatric operating payment per case amount by:

(I) Totaling the hospital-specific amounts derived in (c)(i)(D) of this subsection for each hospital approved by the ~~((department))~~ agency to provide bariatric services; and

(II) Dividing the results in (E)(I) of this subsection by the number of instate hospitals approved by the ~~((department))~~ agency to provide bariatric services.

(ii) Defines the adjusted capital standardized amount for bariatric services as the average of all instate hospitals capital standardized amount after adjusting for the indirect medical education. The ~~((department))~~ agency:

(A) Multiplies the amount derived in (b)(iii) of this subsection by (1.0 plus the most currently available hospital-specific medicare capital indirect medical education factor) to derive the adjusted indirect medical education capital standardized amount for bariatric services.

(B) Adjusts the hospital-specific capital standardized amount for bariatric services for inflation based on the CMS PPS input price index. The adjustment is to reflect the increases in price index levels between the base year data and the payment system implementation year.

(C) Calculates the statewide bariatric capital payment per case amount by:

(I) Totaling the hospital-specific amounts derived in (c)(ii)(B) of this subsection for each hospital approved by the ((department)) agency to provide bariatric services; and

(II) Dividing the results derived in (C)(I) of this subsection by the number of in-state hospitals approved by the ((department)) agency to provide bariatric services.

(iii) Defines the direct medical education standardized amount for bariatric services as the in-state hospitals hospital-specific direct medical education weighted cost per case multiplied by the CMS PPS input price index. The adjustment is to reflect the increases in price index levels between the base year data and the payment system implementation year. The ((department)) agency calculates the statewide bariatric direct medical education standardized payment per case by:

(A) Multiplying the hospital-specific direct medical education weighted cost per case for each hospital approved by the ((department)) agency to provide bariatric services by the CMS PPS input price index; then

(B) Totaling the hospital-specific amounts derived in (iii)(A) of this subsection for each hospital approved by the ((department)) agency to provide bariatric services.

(d) To determine hospital-specific bariatric payment per case amount, the ((department)) agency sums for each hospital the in-state statewide bariatric operating payment per case, the in-state statewide bariatric capital payment per case, and the hospital-specific direct medical education payment per case. (For critical border hospitals, the direct medical education payment per case is limited at the highest direct medical education payment per case amount for the in-state hospitals approved by the ((department)) agency to provide bariatric services.)

(e) The ((department)) agency adjusts the hospital-specific bariatric payment per case amount by a factor to achieve budget neutrality for the state's aggregate inpatient payments for all hospital inpatient services.

(f) The ((department)) agency may make other necessary adjustments as directed by the legislature ((~~to~~)) e.g., rate rebasing and other changes as directed by the legislature.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-4200 Change in hospital ownership.**

(1) For purposes of this section, a change in hospital ownership may involve one or more, but is not limited to, the following events:

- (a) A change in the composition of the partnership;
- (b) A sale of an unincorporated sole proprietorship;
- (c) The statutory merger or consolidation of two or more corporations;

(d) The leasing of all or part of a provider's facility if the leasing affects utilization, licensure, or certification of the provider entity;

(e) The transfer of a government-owned institution to a governmental entity or to a governmental corporation;

(f) Donation of all or part of a provider's facility to another entity if the donation affects licensure or certification of the provider entity;

(g) Disposition of all or some portion of a provider's facility or assets through sale, scrapping, involuntary conversion, demolition, or abandonment if the disposition affects licensure or certification of the provider entity; or

(h) A change in the provider's federal identification tax number.

(2) A hospital must notify the ((department)) medicaid agency in writing ninety days ((~~prior to~~)) before the date of an expected change in the hospital's ownership, but in no case later than thirty days after the change in ownership takes place.

(3) When a change in a hospital's ownership occurs, the ((department)) agency sets the new provider's cost-based conversion factor (CBCF), conversion factor, per diem rates, per case rate, at the same level as the prior owner's, except as provided in subsection (4) ((~~below~~)) of this section.

(4) The ((department)) agency sets for a hospital formed as a result of a merger:

(a) A blended CBCF, conversion factor, per diem rate, per case rate, based on the old hospitals' rates, proportionately weighted by admissions for the old hospitals; and

(b) An RCC rate determined by combining the old hospitals' cost reports and following the process described in WAC ((~~388-550-4500~~)) 182-550-4500. Partial year cost reports will not be used for this purpose.

(5) The ((department)) agency recaptures depreciation and acquisition costs as required by section 1861 (V)(1)(0) of the Social Security Act.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-4550 Administrative day rate and swing bed day rate.**

(1) **Administrative day rate.** The ((department)) medicaid agency allows hospitals an all-inclusive administrative day rate for those days of hospital stay in which a client does not meet criteria for acute inpatient level of care, but is not discharged because an appropriate placement outside the hospital is not available.

(a) The ((department)) agency uses the annual statewide weighted average nursing facility medicaid payment rate to update the all-inclusive administrative day rate on November 1 of each year.

(b) The ((department)) agency does not pay for ancillary services provided during administrative days.

(c) The ((department)) agency identifies administrative days during the length of stay review process after the client's discharge from the hospital.

(d) The ((department)) agency pays the hospital the administrative day rate starting with the date of hospital admission if the admission is solely for a stay until an appropriate ((~~sub-acute~~)) subacute placement can be made.

(2) **Swing bed day rate.** The ((department)) agency allows hospitals a swing bed day rate for those days when a client is receiving ((department)) agency-approved nursing service level of care in a swing bed. The ((department's)) agency's aging and disability services administration (ADSA) determines the swing bed day rate.

(a) The ((department)) agency does not pay a hospital the rate applicable to the acute inpatient level of care for those

days of a hospital stay when a client is receiving ~~((department))~~ agency-approved nursing service level of care in a swing bed.

(b) The ~~((department's))~~ agency's allowed amount for those ancillary services not covered under the swing bed day rate is based on the payment methods provided in WAC ~~((388-550-6000 and 388-550-7200))~~ 182-550-6000 and 182-550-7200. These ancillary services may be billed by the hospital on an outpatient hospital claim, except for pharmacy services and pharmaceuticals.

(c) The ~~((department))~~ agency allows pharmacy services and pharmaceuticals not covered under the swing bed day rate, that are provided to a client receiving ~~((department))~~ agency-approved nursing service level of care, to be billed directly by a pharmacy through the point of sale system. The ~~((department))~~ agency does not allow those pharmacy services and pharmaceuticals to be paid to the hospital through submission of a hospital outpatient claim.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-4690 Authorization requirements and utilization review for hospitals eligible for CPE payments.** This section does not apply to psychiatric certified public expenditure (CPE) inpatient hospital admissions. See WAC ~~((388-550-2600))~~ 182-550-2600.

(1) CPE inpatient hospital claims submitted to the ~~((department))~~ medicaid agency must meet all authorization and program requirements in WAC and current ~~((department))~~ agency-published issuances.

(2) The ~~((department))~~ agency performs utilization reviews of inpatient hospital:

(a) Admissions ~~((in accordance with))~~ under the requirements of 42 C.F.R. 456, subparts A through C; and

(b) Claims for compliance with medical necessity, appropriate level of care and the ~~((department's (or a department))~~ agency's (or an agency designee's) established length of stay (LOS) standards.

(3) For CPE inpatient admissions ~~((prior to))~~ before August 1, 2007, the ~~((department))~~ agency performs utilization reviews:

(a) Using the professional activity study (PAS) length of stay (LOS) standard in WAC ~~((388-550-4300))~~ 182-550-4300 on claims that qualified for ratio of costs-to-charges (RCC) payment ~~((prior to))~~ before July 1, 2005.

(b) On seven-day readmissions according to the diagnosis related group (DRG) payment method described in WAC ~~((388-550-3000 (5)(f)))~~ 182-550-3000 for claims that qualified for DRG payment ~~((prior to))~~ before July 1, 2005.

(4) For claims identified in this subsection, the ~~((department))~~ agency may request a copy of the client's hospital medical records and itemized billing statements. The ~~((department))~~ agency sends written notification to the hospital detailing the ~~((department's))~~ agency's findings. Any day of a client's hospital stay that exceeds the LOS standard:

(a) Is paid under a ~~((nonDRG))~~ non-DRG payment method if the ~~((department))~~ agency determines it to be medically necessary for the client at the acute level of care;

(b) Is paid as an administrative day (see WAC ~~((388-550-1050 and 388-550-4500))~~ 182-550-1050 and 182-550-4500(8)) if the ~~((department))~~ agency determines it to be medically necessary for the client at the subacute level of care; and

(c) Is not eligible for payment if the ~~((department))~~ agency determines it was not medically necessary.

(5) For CPE inpatient admissions ~~((on and after August 4))~~ after July 31, 2007, CPE hospital claims are subject to the same utilization review rules as ~~((nonCPE))~~ non-CPE hospital claims.

(a) LOS reviews may be performed under WAC ~~((388-550-4300))~~ 182-550-4300.

(b) All claims are subject to the ~~((department's))~~ agency's medical necessity review under WAC ~~((388-550-1700))~~ 182-550-1700(2).

(c) For inpatient hospital claims that involve a client's seven-day readmission, see WAC ~~((388-550-3000 (5)(f)))~~ 182-550-3000.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-4700 Payment—Non-SCA participating hospitals.** This section applies only for dates of admission before July 1, 2007. The hospital selective contracting program ends on June 30, 2007.

(1) In a selective contracting area (SCA), ~~((MAA))~~ the medicaid agency pays any qualified hospital for inpatient hospital services provided to an eligible medical care client for treatment of an emergency medical condition.

(2) ~~((MAA))~~ The agency pays any qualified hospital for medically necessary but nonemergent inpatient hospital services provided to an eligible medical care client deemed by the ~~((department))~~ agency to reside an excessive travel distance from a contracting hospital.

(a) The client is deemed to have an excessive travel burden if the travel distance from a client's residence to the nearest contracting hospital exceeds the client's county travel distance standard, as follows:

<u>County</u>	<u>Community Travel Distance Standard</u>
Adams	25 miles
Asotin	15 miles
Benton	15 miles
Chelan	15 miles
Clallam	20 miles
Clark	15 miles
Columbia	19 miles
Cowlitz	15 miles
Douglas	20 miles
Ferry	27 miles
Franklin	15 miles
Garfield	30 miles
Grant	24 miles

<u>County</u>	<u>Community Travel Distance Standard</u>
Grays Harbor	23 miles
Island	15 miles
Jefferson	15 miles
King	15 miles
Kitsap	15 miles
Kittitas	18 miles
Klickitat	15 miles
Lewis	15 miles
Lincoln	31 miles
Mason	15 miles
Okanogan	29 miles
Pacific	21 miles
Pend Oreille	25 miles
Pierce	15 miles
San Juan	34 miles
Skagit	15 miles
Skamania	40 miles
Snohomish	15 miles
Spokane	15 miles
Stevens	22 miles
Thurston	15 miles
Wahkiakum	32 miles
Walla Walla	15 miles
Whatcom	15 miles
Whitman	20 miles
Yakima	15 miles

(b) If a client must travel outside his((/)) or her SCA to obtain inpatient services not available within the community, such as treatment from a tertiary hospital, the client may obtain ((such)) the services from a contracting hospital appropriate to the client's condition.

(3) ((MAA)) The agency requires prior authorization for all nonemergent admissions to nonparticipating hospitals in an SCA. See WAC ((388-550-1700(2)(a))) 182-550-1700.

(4) ((MAA)) The agency pays a licensed hospital all applicable medicare deductible and coinsurance amounts for inpatient services provided to medicaid clients who are also beneficiaries of medicare Part A subject to the medicaid maximum allowable as established in WAC ((388-550-1200)) 182-550-1200 (8)(a).

(5) The ((department)) agency pays any licensed hospital DRG-exempt services as listed in WAC ((388-550-4400)) 182-550-4400.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-4925 Eligibility for DSH programs—New hospital providers.** To be eligible for disproportionate

share hospital (DSH) payments, a new hospital provider must have claims data, audited financial statements, and an "as filed" or finalized medicare cost report for the hospital base year used by the ((department)) medicaid agency in calculating DSH payments for the state fiscal year (SFY) for which the hospital provider is applying. See WAC ((388-550-4900)) 182-550-4900(9).

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-4935 DSH eligibility—Change in hospital ownership.** (1) For purposes of eligibility for disproportionate share hospital (DSH) payments, a change in hospital ownership has occurred if any of the criteria in WAC ((388-550-4200)) 182-550-4200(1) is met.

(2) To be considered eligible for DSH, a hospital whose ownership has changed must notify the ((department)) medicaid agency in writing no later than thirty days after the change in ownership becomes final. The notice must include the new entity's fiscal year end.

(3) A hospital that did not offer nonemergency obstetric services to the general public as of December 22, 1987, when section 1923 of the Social Security Act was enacted, and changes ownership after that date is not eligible for DSH unless it continues to be classified as an acute care hospital serving pediatric and/or adult patients. See WAC ((388-550-4900)) 182-550-4900(5) for the obstetric services and utilization rate requirements for DSH eligibility.

(4) If the fiscal year reported on a hospital's medicare cost report does not exactly match the fiscal year reported on the hospital's DSH application to the ((department)) agency, and if therefore the utilization data reported to the ((department)) agency do not agree, the ((department)) agency will use as the data source the document that gives the higher number of total inpatient hospital days for purposes of calculating the hospital's medicaid inpatient utilization rate (MIPUR). See WAC ((388-550-4900)) 182-550-4900 (6)(b).

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-5000 Payment method—Low income disproportionate share hospital (LIDSH).** (1) The ((department)) medicaid agency makes low income disproportionate share hospital (LIDSH) payments to qualifying hospitals through the disproportionate share hospital (DSH) program.

(2) To qualify for an LIDSH payment, a hospital must:

(a) Not be a hospital eligible for public disproportionate share (PHDSH) payments (see WAC ((388-550-5400)) 182-550-5400);

(b) Not be designated as an "institution for mental diseases (IMD)" as defined in WAC ((388-550-2600)) 182-550-2600 (2)(d);

(c) Meet the criteria in WAC ((388-550-4900)) 182-550-4900 (4) and (5);

(d) Be an in-state hospital. A hospital located out-of-state or in a designated bordering city is not eligible to receive LIDSH payments; and

(e) Meet at least one of the following requirements. The hospital must:

(i) Have a medicaid inpatient utilization rate (MIPUR) as defined in WAC (~~(388-550-4900)~~) 182-550-4900 (3)(h) at least one standard deviation above the mean medicaid inpatient utilization rate of in-state hospitals that receive medicaid payments; or

(ii) Have a low income utilization rate (LIUR) as defined in WAC (~~(388-550-4900)~~) 182-550-4900 (3)(g) that exceeds twenty-five percent.

(3) The ~~((department))~~ agency pays hospitals qualifying for LIDSH payments from a legislatively appropriated pool. The maximum amount of LIDSH payments in any state fiscal year (SFY) is the funding set by the state's appropriations act for LIDSH. The amount that the state appropriates for LIDSH may vary from year to year.

(4) The ~~((department))~~ agency determines LIDSH payments to each LIDSH eligible hospital using the following factors from the specific hospital's base year as defined in WAC (~~(388-550-4900)~~) 182-550-4900 (3)(a):

(a) The hospital's medicaid inpatient utilization rate (MIPUR) (see WAC (~~(388-550-4900)~~) 182-550-4900 for how the ~~((department))~~ agency calculates the MIPUR).

(b) The hospital's medicaid case mix index (CMI). The ~~((department))~~ agency calculates the CMI by:

(i) Using the DRG weight for each of the hospital's paid inpatient claims assigned in the year the claim was paid;

(ii) Summing the DRG weights; and

(iii) Dividing this total by the number of claims.

The CMI the ~~((department))~~ agency uses for LIDSH calculations is not the same as the CMI the ~~((department))~~ agency uses in other hospital rate calculations.

(c) The number of the hospital's Title XIX medicaid discharges. The ~~((department))~~ agency includes in this number only the discharges pertaining to Washington state medicaid clients.

(5) The ~~((department))~~ agency calculates the LIDSH payment to an eligible hospital as follows.

(a) The ~~((department))~~ agency:

(i) Divides the hospital's MIPUR by the average MIPUR of all LIDSH-eligible hospitals; then

(ii) Multiplies the result derived in (a) of this section by the CMI (see (4)(b) of this section), and then by the discharges (see (4)(c) of this section); then

(iii) Converts the product to a percentage of the sum of all such products for individual hospitals; and

(iv) Multiplies this percentage by the legislatively appropriated amount for LIDSH.

(b) If a hospital's calculated LIDSH payment is ~~((greater))~~ more than the hospital-specific DSH cap, the payment to the hospital is limited to the hospital-specific DSH cap, and the ~~((department))~~ agency:

(i) Subtracts the LIDSH payment calculated for the hospital to determine the remaining LIDSH appropriation to distribute to the other qualifying hospitals; and

(ii) Proportionately distributes the remaining LIDSH appropriation (~~((in accordance with))~~ under the factors in (a) of this subsection.

(6) A hospital receiving LIDSH payments must comply with ~~((a department))~~ an agency request for uninsured logs (uninsured logs are documentation of payments, charges, and

other information for uninsured patients) to verify its hospital-specific DSH cap.

(7) The ~~((department))~~ agency will not make changes in the LIDSH payment distribution after the applicable SFY has ended. The ~~((department))~~ agency recalculates the LIDSH payment distribution only when the applicable SFY has not yet ended at the time the alleged need for an LIDSH adjustment is identified, and if the ~~((department))~~ agency considers the recalculation necessary and appropriate under its regulations.

(8) Consistent with the provisions of subsection (7) of this section, the ~~((department))~~ agency applies any adjustments to the DSH payment distribution required by legislative, administrative, or other state action, to other DSH programs (~~((in accordance with the provisions of WAC 388-550-4900))~~ under WAC 182-550-4900 (13) through (16).

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-5130 Payment method—Institution for mental diseases disproportionate share hospital (IMDDSH) and institution for mental diseases (IMD) state grants.** (1) A psychiatric hospital owned and operated by the state of Washington is eligible to receive payments under the institution for mental diseases disproportionate share hospital (IMDDSH) program.

(2) For the purposes of the IMDDSH program, the following definitions apply:

(a) "Institution for mental diseases (IMD)" means a hospital, nursing facility, or other institution of more than sixteen beds, that is primarily engaged in providing diagnosis, treatment, or care of ~~((persons))~~ people with mental diseases, including medical attention, nursing care, and related services.

(b) "Psychiatric community hospital" means a psychiatric hospital other than a state-owned and operated hospital.

(c) "Psychiatric hospital" means an institution which is primarily engaged in providing psychiatric services for the diagnosis and treatment of mentally ill ~~((persons))~~ people. The term applies to a medicare-certified distinct psychiatric care unit, a medicare-certified psychiatric hospital, or a state-designated pediatric distinct psychiatric unit in a medicare-certified acute care hospital.

(d) "State-owned and operated psychiatric hospital" means eastern state hospital and western state hospital.

(3) Except as provided in subsection (4) of this section, a psychiatric community hospital, regardless of location, is not eligible to receive:

(a) IMDDSH payments; or

(b) Any other disproportionate share hospital (DSH) payment from the ~~((department))~~ medicaid agency. See WAC (~~(388-550-4800)~~) 182-550-4800 regarding payment for psychiatric claims for clients eligible under the medical care services programs.

(4) A psychiatric community hospital within the state of Washington that is designated by the ~~((department))~~ agency as an IMD is eligible to receive IMDDSH payment if:

(a) IMDDSH funds remain available after the amounts appropriated for state-owned and operated psychiatric hospitals are exhausted; and

(b) The legislature provides funds specifically for this purpose.

(5) A psychiatric community hospital within the state of Washington that is designated by the ~~((department))~~ agency as an IMD is eligible to receive a state grant amount from the ~~((department))~~ agency if the legislature appropriates funds specifically for this purpose.

(6) An institution for mental diseases located out-of-state, including an IMD located in a designated bordering city, is not eligible to receive a Washington state grant amount.

(7) Under federal law, 42 U.S.C. 1396r-4 (h)(2), the state's annual IMDDSH expenditures are capped at thirty-three percent of the state's annual statewide DSH cap. This amount represents the maximum that the state can spend in any given fiscal year on IMDDSH, but the state is under no obligation to actually spend that amount.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-5200 Payment method—Small rural disproportionate share hospital (SRDSH).** (1) The ~~((department))~~ medicaid agency makes small rural disproportionate share hospital (SRDSH) payments to qualifying small rural hospitals through the disproportionate share hospital (DSH) program.

(2) To qualify for an SRDSH payment, a hospital must:

(a) Not be participating in the "full cost" public hospital certified public expenditure (CPE) payment program as described in WAC ~~((388-550-4650))~~ 182-550-4650;

(b) Not be designated as an "institution for mental diseases (IMD)" as defined in WAC ~~((388-550-2600))~~ 182-550-2600 (2)(d);

(c) Meet the criteria in WAC ~~((388-550-4900))~~ 182-550-4900 (4) and (5);

(d) Have fewer than seventy-five acute beds;

(e) Be an in-state hospital. A hospital located out-of-state or in a designated bordering city is not eligible to receive SRDSH payments; and

(f) Be located in a city or town with a nonstudent population of no more than seventeen thousand eight hundred six in calendar year 2008, as determined by population data reported by the Washington state office of financial management population of cities, towns, and counties used for the allocation of state revenues. This nonstudent population is used for state fiscal year (SFY) 2010, which began July 1, 2009. For each subsequent SFY, the nonstudent population is increased by two percent.

(3) The ~~((department))~~ agency pays hospitals qualifying for SRDSH payments from a legislatively appropriated pool. The ~~((department))~~ agency determines each hospital's individual SRDSH payment from the total dollars in the pool using percentages established as follows:

(a) At the time the SRDSH payment is to be made, the ~~((department))~~ agency calculates each hospital's profitability

margin based on the hospital's base year data and audited financial statements.

(b) The ~~((department))~~ agency determines the average profitability margin for the qualifying hospitals.

(c) Any hospital with a profitability margin of less than one hundred ten percent of the average profitability margin for qualifying hospitals receives a profit factor of 1.1. All other hospitals receive a profit factor of 1.0.

(d) The ~~((department))~~ agency:

(i) Identifies the medicaid payment amounts made by the ~~((department))~~ agency to the individual hospital during the SFY two years ~~((prior to))~~ before the current SFY for which DSH application is being made. These medicaid payment amounts are based on historical data considered to be complete; then

(ii) Multiplies the total medicaid payment amount determined in subsection (i) by the individual hospital's assigned profit factor (1.1 or 1.0) to identify a revised medicaid payment amount; and

(iii) Divides the revised medicaid payment amount for the individual hospital by the sum of the revised medicaid payment amounts for all qualifying hospitals during the same period.

(4) The ~~((department's))~~ agency's SRDSH payments to a hospital may not exceed one hundred percent of the projected cost of care for medicaid clients and uninsured patients for that hospital unless an exception is required by federal statute or regulation.

(5) The ~~((department))~~ agency reallocates dollars as defined in the state plan.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-5210 Payment method—Small rural indigent assistance disproportionate share hospital (SRIADSH).** (1) The ~~((department))~~ medicaid agency makes small rural indigent assistance disproportionate share hospital (SRIADSH) program payments to qualifying small rural hospitals through the disproportionate share hospital (DSH) program.

(2) To qualify for an SRIADSH payment, a hospital must:

(a) Not be participating in the "full cost" public hospital certified public expenditure (CPE) payment program as described in WAC ~~((388-550-4650))~~ 182-550-4650;

(b) Not be designated as an "institution for mental diseases (IMD)" as defined in WAC ~~((388-550-2600))~~ 182-550-2600 (2)(d);

(c) Meet the criteria in WAC ~~((388-550-4900))~~ 182-550-4900 (4) and (5);

(d) Have fewer than seventy-five acute beds;

(e) Be an in-state hospital that provided charity services to clients during the base year. A hospital located out-of-state or in a designated bordering city is not eligible to receive SRIADSH payments; and

(f) Be located in a city or town with a nonstudent population of no more than seventeen thousand eight hundred six in calendar year 2008, as determined by the Washington State office of financial management population of cities, towns,

and counties used for the allocation of state revenues. This nonstudent population is used for SFY 2010, which begins July 1, 2009. For each subsequent SFY, the nonstudent population ceiling is increased by two percent.

(3) The ~~((department))~~ agency pays hospitals qualifying for SRIADSH payments from a legislatively appropriated pool. The ~~((department))~~ agency determines each hospital's individual SRIADSH payment from the total dollars in the pool using percentages established through the following prospective payment method:

(a) At the time the SRIADSH payment is to be made, the ~~((department))~~ agency calculates each hospital's profitability margin based on the hospital's base year data and audited financial statements.

(b) The ~~((department))~~ agency determines the average profitability margin for all hospitals qualifying for SRIADSH.

(c) Any qualifying hospital with a profitability margin of less than one hundred ten percent of the average profitability margin for qualifying hospitals receives a profit factor of 1.1. All other qualifying hospitals receive a profit factor of 1.0.

(d) The ~~((department))~~ agency:

(i) Identifies from historical data considered to be complete, each individual qualifying hospital's allowed charity charges; then

(ii) Multiplies the total allowed charity charges by the hospital's ratio of costs-to-charges (RCC), limiting the RCC to a value of 1, to determine the hospital's charity costs; then

(iii) Multiplies the hospital's charity costs by the hospital's profit factor assigned in (c) of this subsection to identify a revised cost amount; then

(iv) Determines the hospital's percentage of revised costs by dividing its revised cost amount by the sum of the revised charity cost amounts for all qualifying hospitals during the same period.

(4) The ~~((department's))~~ agency's SRIADSH payments to a hospital may not exceed one hundred percent of the projected cost of care for medicaid clients and uninsured indigent patients for that hospital unless an exception is required by federal statute or regulation. The ~~((department))~~ agency reallocates dollars as defined in the state plan.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-5220 Payment method—Nonrural indigent assistance disproportionate share hospital (NRIADSH).** (1) The ~~((department))~~ medicaid agency makes nonrural indigent assistance disproportionate share hospital (NRIADSH) payments to qualifying nonrural hospitals through the disproportionate share hospital (DSH) program.

(2) To qualify for an NRIADSH payment, a hospital must:

(a) Not be participating in the "full cost" public hospital certified public expenditure (CPE) payment program as described in WAC ~~((388-550-4650))~~ 182-550-4650;

(b) Not be designated as an "institution of mental diseases (IMD)" as defined in WAC ~~((388-550-2600))~~ 182-550-2600 (2)(d);

(c) Meet the criteria in WAC ~~((388-550-4900))~~ 182-550-4900 (4) and (5);

(d) Be a hospital that does not qualify as a small rural hospital as defined in WAC ~~((388-550-4900))~~ 182-550-4900 (3)(n); and

(e) Be an in-state or designated bordering city hospital that provided charity services to clients during the base year. For DSH purposes, the ~~((department))~~ agency considers any hospital located in a designated bordering city.

(3) The ~~((department))~~ agency pays hospitals qualifying for NRIADSH payments from a legislatively appropriated pool. The ~~((department))~~ agency determines each hospital's individual NRIADSH payment from the total dollars in the pool using percentages established through the following prospective payment method:

(a) At the time the NRIADSH payment is to be made, the ~~((department))~~ agency calculates each hospital's profitability margin based on the hospital's base year data and audited financial statements.

(b) The ~~((department))~~ agency determines the average profitability margin for the qualifying hospitals.

(c) Any hospital with a profitability margin of less than one hundred ten percent of the average profitability margin for qualifying hospitals receives a profit factor of 1.1. All other hospitals receive a profit factor of 1.0.

(d) The ~~((department))~~ agency:

(i) Identifies from historical data considered to be complete, each individual qualifying hospital's allowed charity charges; then

(ii) Multiplies the total allowed charity charges by the hospital's ratio of costs-to-charges (RCC), limiting the RCC to a value of 1, to determine the hospital's charity costs; then

(iii) Multiplies the hospital's charity costs by the hospital's profit factor assigned in (c) of this subsection to identify a revised cost amount; then

(iv) Determines the hospital's percentage of the NRIADSH revised costs by dividing the hospital's revised cost amount by the total revised charity costs for all qualifying hospitals during the same period.

(4) The ~~((department's))~~ agency's NRIADSH payments to a hospital may not exceed one hundred percent of the projected cost of care for medicaid clients and uninsured indigent patients for the hospital unless an exception is required by federal statute or regulation. The ~~((department))~~ agency reallocates dollars as defined in the state plan.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-5410 CPE medicaid cost report and settlements.** (1) For patients discharged ~~((on or after July 1))~~ after June 30, 2005, a certified public expenditure (CPE) hospital must annually submit to the ~~((department))~~ medicaid agency federally required medicaid cost report schedules, using schedules approved by the centers for medicare and medicaid services (CMS), that apportion inpatient and outpatient costs to medicaid clients and uninsured patients for the service year, as follows:

(a) Title XIX fee-for-service claims;

(b) Medicaid managed care organization (MCO) plan claims;

(c) Uninsured patients. The cost report schedules for uninsured patients must not include services that medicaid would not have covered had the patients been medicaid eligible (see WAC ~~((388-550-1400 and 388-550-1500))~~ 182-550-1400 and 182-550-1500); and

(d) State-administered program patients. State-administered program patients are reported separately and are not to be included on the uninsured patient cost report schedule. The ~~((department))~~ agency will provide provider statistics and reimbursements (PS&R) reports for the state-administered program claims.

(2) A CPE hospital must:

(a) Use the information on individualized PS&R reports provided by the ~~((department))~~ agency when completing the medicaid cost report schedules. The ~~((department))~~ agency provides the hospital with the PS&R reports at least thirty calendar days ~~((prior to))~~ before the appropriate deadline.

(i) For state fiscal year (SFY) 2006, the deadline for all CPE hospitals to submit the federally required medicaid cost report schedules is June 30, 2007.

(ii) For hospitals with a December 31 year end, partial year medicaid cost report schedules for the period July 1, 2005 through December 31, 2005 must be submitted to the ~~((department))~~ agency by August 31, 2007.

(iii) For SFY 2007 and thereafter, each CPE hospital ~~((is required to))~~ must submit the medicaid cost report schedules to the ~~((department))~~ agency within thirty calendar days after the medicare cost report is due to its medicare fiscal intermediary or medicare administrative contractor, whichever ~~((is applicable))~~ applies.

(b) Complete the cost report schedules for uninsured patients and medicaid clients enrolled in an MCO plan using the hospital provider's records.

(c) Comply with the ~~((department's))~~ agency's instructions regarding how to complete the required medicaid cost report schedules.

(3) The medicaid cost report schedules must be completed using the medicare cost report for the same reporting year.

(a) The ratios of costs-to-charges and per diem costs from the "as filed" medicare cost report are used to allocate the medicaid and uninsured costs on the "as filed" medicaid cost report schedules, unless expressly allowed for medicaid.

(b) After the medicare cost report is finalized by the medicare fiscal intermediary or medicare administrative contractor (whichever ~~((is applicable))~~ applies), final medicaid cost report schedules must be submitted to the ~~((department))~~ agency incorporating the adjustments to the medicare cost report, unless expressly allowed for medicaid. CPE hospitals must submit finalized medicare cost reports with the notice of amount of program reimbursement (NPR) within thirty calendar days of receipt. The ~~((department))~~ agency will then provide the hospitals with updated PS&R reports for medicaid and state program claims processed by the ~~((department))~~ agency for the medicaid cost report period. The hospitals will update the data for uninsured patients and medicaid clients enrolled in an MCO plan.

(4) The medicaid cost report schedules and supporting documentation are subject to audit by the ~~((department))~~ agency or its designee to verify that claimed costs qualify under federal and state rules governing the CPE payment program. The documentation required includes, but is not limited to:

(a) The revenue codes assigned to specific cost centers on the medicaid cost report schedules.

(b) The inpatient charges by revenue codes for uninsured patients and medicaid clients enrolled in an MCO plan.

(c) The outpatient charges by revenue codes for uninsured patients and medicaid clients enrolled in an MCO plan.

(d) All payments received for the inpatient and outpatient charges in (b) and (c) of this subsection including, but not limited to, payments for third party liability, uninsured patients, and medicaid clients enrolled in an MCO plan.

(5) The ~~((department))~~ agency:

(a) Performs cost settlements for both the "as filed" and "final" medicaid cost report schedules for all CPE hospitals;

(b) Reports to CMS as an adjustment any difference between the payments of federal funds made to the CPE hospitals and the federal share of the certified public expenditures; and

(c) Recoups from the CPE hospitals the federal payments that exceed the hospitals' costs, unless the hold harmless provision in WAC ~~((388-550-4670 is applicable))~~ 182-550-4670 applies.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-5425 Upper payment limit (UPL) payments for inpatient hospital services.** ~~((+))~~ The upper payment limit (UPL) program is terminated effective July 1, 2007. The ~~((department))~~ medicaid agency will not make UPL payments after June 30, 2007.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-5500 Payment—Hospital-based RHCs.** (1) The ~~((department shall))~~ medicaid agency will reimburse hospital-based rural health clinics under the prospective payment methods effective July 1, 1994. Under the prospective payment method, the ~~((department shall))~~ agency will not make reconciliation payments to a hospital-based rural health clinic to cover its costs for a preceding period.

(2) The ~~((department shall))~~ agency will shall pay an amount equal to the hospital-based rural health clinic's charge multiplied by the hospital's specific ratio of costs to charges (RCC), not to exceed one hundred percent of the charges.

(3) The ~~((department shall))~~ agency will shall determine the hospital-based rural health clinic's RCC from the hospital's annual medicare cost report, ~~((pursuant to WAC 388-550-4500))~~ according to WAC 182-550-4500(1).

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-5550 Public notice for changes in medicaid payment rates for hospital services.** (1) The pur-

pose and intent of this section is to describe ~~((the manner in which the department))~~ how the medicaid agency, pertaining to medicaid hospital rates, will comply with section 4711(a) of the federal Balanced Budget Act of 1997, Public Law 105-33, as codified at 42 U.S.C. 1396a (a)(13)(A).

(2) For purposes of this section, the term:

(a) "Stakeholders" means providers, beneficiaries, representatives of beneficiaries, and other concerned state residents.

(b) "Rate" means the medicaid payment amount to a provider for a particular hospital service, except for disproportionate share payments not mandated by federal law.

(c) "Methodology" underlying the establishment of a medicaid hospital rate means (unless otherwise noted) the principles, procedures, limitations, and formulas detailed in WAC ~~((388-550-2800 through 388-550-5500))~~ 182-550-2900 through 182-550-5500.

(d) "Justification" means an explanation of why the ~~((department))~~ agency is proposing or implementing a medicaid rate change based on a change in medicaid rate setting methodology.

(e) "Reasonable opportunity to review and provide written comments" means a period of fourteen calendar days in which stakeholders may provide written comments to the ~~((department))~~ agency.

(f) "Hospital services" means those services that are performed in a hospital facility for an inpatient client and which are payable only to the hospital entity, not to individual performing providers.

(g) "Web site" means the ~~((department's))~~ agency's internet home page on the worldwide web: ~~((http://www.wa.gov/dshs/maa))~~ http://www.hca.wa.gov/ is the internet address.

(3) The ~~((department))~~ agency will notify stakeholders of proposed and final changes in individual medicaid hospital rates for hospital services, as follows:

(a) Publish the proposed medicaid hospital rates, the methodologies underlying the establishment of ~~((such))~~ the rates, and justifications for ~~((such))~~ the rates;

(b) Give stakeholders a reasonable opportunity to review and provide written comments on the proposed medicaid hospital rates, the methodologies underlying the establishment of ~~((such))~~ the rates, and justifications for ~~((such))~~ the rates; and

(c) Publish the final medicaid hospital rates, the methodologies underlying the establishment of such rates, and justifications for such rates.

(4)(a) Except as otherwise provided in this section, the ~~((department))~~ agency will determine the manner of publication of proposed or final medicaid hospital rates.

(b) Publication of proposed medicaid hospital rates will occur as follows:

(i) The ~~((department))~~ agency will mail each provider's proposed rate to the affected provider via first-class mail at least fifteen calendar days before the proposed date for implementing the rates; and

(ii) For other stakeholders, the ~~((department))~~ agency will post proposed rates on the ~~((department's))~~ agency's web site.

(c) Publication of final medicaid hospital rates will occur as follows:

(i) The ~~((department))~~ agency will mail each provider's final rate to the affected provider via first-class mail at least one calendar day before implementing the rate; and

(ii) For other stakeholders, the ~~((department))~~ agency will post final rates on the ~~((department's))~~ agency's web site.

(d) The publications required by subsections (4)(b) and (c) of this section will refer to the appropriate sections of chapter ~~((388-550))~~ 182-550 WAC for information on the methodologies underlying the proposed and final rates.

(5) The ~~((department, whenever))~~ agency, when it proposes amendments to the methodologies underlying the establishment of medicaid hospital rates as described in WAC ~~((388-550-2800 through 388-550-5500))~~ 182-550-2900 through 182-550-5500, will adhere to the notice and comment provisions of the Administrative Procedure Act (chapter 34.05 RCW).

(6) Stakeholders who wish to receive notice of either proposed and final medicaid hospital rates or proposed and final amendments to WAC ~~((388-550-2800 through 388-550-5500))~~ 182-550-2900 through 182-550-5500 must notify the ~~((department))~~ agency in writing. The ~~((department))~~ agency will send notice of all ~~((such))~~ the actions to ~~((such))~~ the stakeholders postage prepaid by regular mail.

(7)(a) The notice and publication provisions of section 4711(a) of the Balanced Budget Act of 1997 do not apply when a rate change is:

(i) Necessary to conform to medicare rules, methods, or levels of reimbursement for clients who are eligible for both medicare and medicaid;

(ii) Required by Congress, the legislature, or court order, and no further rule making is necessary to implement the change; or

(iii) Part of a nonmedicaid program.

(b) Although notice and publication are not required for medicaid rate changes described in subsection (7)(a) of this section, the ~~((department))~~ agency will attempt to timely notify stakeholders of these rate changes.

(8) The following rules apply when the ~~((department))~~ agency and an individual hospital negotiate or contractually agree to medicaid rates for hospital services:

(a) Receipt by the hospital of the contract or contract amendment form for signature constitutes notice to the hospital of proposed medicaid rates.

(b) Receipt by the hospital of the contract or contract amendment form signed by both parties constitutes notice to the hospital of final medicaid rates.

(c) Notwithstanding subsection (4)(c) of this section, final medicaid contract rates are effective on the date contractually agreed to by the ~~((department))~~ agency and the individual hospital.

(d) ~~((Prior to))~~ Before the execution of the contract, the ~~((department))~~ agency will not publish negotiated contract prices that are agreed to between the ~~((department))~~ agency and an individual provider to anyone other than the individual provider. Within fifteen calendar days after the execution of any such contract, the ~~((department))~~ agency will publish the negotiated contract prices on its web site.

(9) The following rules apply when a hospital provider or other stakeholder wishes to challenge the adequacy of the public notification process followed by the ~~((department))~~ agency

agency in proposing or implementing a change to medicaid hospital rates, the methodologies underlying the establishment of ~~((such))~~ the rates, or the justification for ~~((such))~~ the rates:

(a) If any such challenge is limited solely to the adequacy of the public notification process, then the challenge will:

(i) Not be pursued in any administrative appeal or dispute resolution procedure established in rule by the ~~((department))~~ agency; and

(ii) Be pursued only in a court of proper jurisdiction as may be provided by law.

(b) If a hospital provider brings any such challenge in conjunction with an appeal of its medicaid rate, then the hospital provider may pursue the challenge in an administrative appeal or dispute resolution procedure established in rule by the ~~((department))~~ agency under which hospital providers may appeal their medicaid rates.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-5600 Dispute resolution process for hospital rate reimbursement.** The dispute resolution process for hospital rate reimbursement follows the procedures as stated in WAC ~~((388-502-0220))~~ 182-502-0220.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-5700 Hospital reports and audits.** (1) In-state and border area hospitals ~~((shall))~~ will complete and submit a copy of their annual medicare cost reports (HCFA 2552) to the ~~((department))~~ medicaid agency. These hospital providers ~~((shall))~~ will:

(a) Maintain adequate records for audit and review purposes, and assure the accuracy of their cost reports;

(b) Complete their annual medicare HCFA 2552 cost report according to the applicable medicare statutes, regulations, and instructions; and

(c) Submit a copy to the ~~((department))~~ agency:

(i) Within one hundred fifty days from the end of the hospital's fiscal year; or

(ii) If the hospital provider's contract is terminated, within one hundred fifty days of effective termination date; or

(d) Request up to a thirty day extension of the time for submitting the cost report in writing at least ten days ~~((prior to))~~ before the due date of the report. Hospital providers ~~((shall))~~ will include in the extension request the completion date of the report, and the circumstances prohibiting compliance with the report due date;

(2) If a hospital provider improperly completes a cost report or the cost report is received after the due date or approved extension date, the ~~((department))~~ agency may withhold all or part of the payments due the hospital until the ~~((department))~~ agency receives the properly completed or late report.

(3) Hospitals ~~((shall))~~ will submit other financial information required by the ~~((department))~~ agency to establish rates.

(4) The ~~((department shall))~~ agency will periodically audit:

(a) Cost report data used for rate setting;

(b) Hospital billings; and

(c) Other financial and statistical records.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-5800 Outpatient and emergency hospital services.** The ~~((department shall))~~ medicaid agency will cover outpatient services, emergent outpatient surgical care, and other emergency care performed on an outpatient basis in a hospital for categorically needy or limited casualty program-medically needy clients. ~~((The department shall limit clients eligible for the medically indigent program to emergent hospital services, subject to the conditions and limitations of WAC 388-521-2140, 388-529-2950, and this chapter.))~~

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-6000 Outpatient hospital services—Conditions of payment and payment methods.** (1) The ~~((department))~~ medicaid agency pays hospitals for covered outpatient hospital services provided to eligible clients when the services meet the provisions in WAC ~~((388-550-1700))~~ 182-550-1700. All professional medical services must be billed according to chapter ~~((388-534))~~ 182-531 WAC.

(2) To be paid for covered outpatient hospital services, a hospital provider must:

(a) Have a current core provider agreement with the ~~((department))~~ agency;

(b) Bill the ~~((department))~~ agency according to the conditions of payment under WAC ~~((388-502-0100))~~ 182-502-0100;

(c) Bill the ~~((department))~~ agency according to the time limits under WAC ~~((388-502-0150))~~ 182-502-0150; and

(d) Meet program requirements in other applicable WAC and the ~~((department's))~~ agency's published issuances.

(3) The ~~((department))~~ agency does not pay separately for any services:

(a) Included in a hospital's room charges;

(b) Included as covered under the ~~((department's))~~ agency's definition of room and board (e.g., nursing services). See WAC ~~((388-550-1050))~~ 182-550-1050; or

(c) Related to an inpatient hospital admission and provided within one calendar day of a client's inpatient admission.

(4) The ~~((department))~~ agency does not pay:

(a) A hospital for outpatient hospital services when a managed care plan is contracted with the ~~((department))~~ agency to cover these services;

(b) More than the "acquisition cost" ("A.C.") for HCPCS (health care common procedure coding system) codes noted in the outpatient fee schedule; or

(c) For cast room, emergency room, labor room, observation room, treatment room, and other room charges in combination when billing periods for these charges overlap.

(5) The ~~((department))~~ agency uses the outpatient ~~((departmental))~~ weighted costs-to-charges ~~((ODWCC))~~ (OWCC) rate to pay for covered outpatient services provided in a critical access hospital (CAH). See WAC ~~((388-550-2598))~~ 182-550-2598.

(6) The ~~((department))~~ agency uses the maximum allowable fee schedule to pay non-OPPS hospitals and non-CAH hospitals for the following types of covered outpatient hospital services listed in the ~~((department's))~~ agency's current published outpatient hospital fee schedule and billing instructions:

- (a) EKG/ECG/EEG and other diagnostics;
- (b) Imaging services;
- (c) Immunizations;
- (d) Laboratory services;
- (e) Occupational therapy;
- (f) Physical therapy;
- (g) Sleep studies;
- (h) Speech/language therapy;
- (i) Synaxis; and
- (j) Other hospital services identified and published by the ~~((department))~~ agency.

(7) The ~~((department))~~ agency uses the hospital outpatient rate as described in WAC ~~((388-550-4500))~~ 182-550-4500 to pay for covered outpatient hospital services when:

- (a) A hospital provider is a non-OPPS or a non-CAH provider; and
- (b) The services are not included in subsection (6) of this section.

(8) Hospitals must provide documentation as required ~~((and))~~ or requested by the ~~((department))~~ agency.

(9) All hospital providers must present final charges to the ~~((department))~~ agency within three hundred sixty-five days of the "statement covers period from date" shown on the claim. The state of Washington is not liable for payment based on billed charges received beyond three hundred sixty-five days from the "statement covers period from date" shown on the claim.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-6100 Outpatient hospital physical therapy.** (1) The ~~((department))~~ medicaid agency pays for physical therapy provided to eligible clients as an outpatient hospital service according to WAC ~~((388-545-500 and 388-550-6000))~~ 182-545-200 and 182-550-6000.

(2) A hospital must bill outpatient hospital physical therapy services using appropriate billing codes listed in the ~~((department's))~~ agency's current published billing instructions. The ~~((department))~~ agency does not pay outpatient hospitals a facility fee for ~~((such))~~ these services.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-6150 Outpatient hospital occupational therapy.** (1) The ~~((department))~~ medicaid agency pays for occupational therapy provided as an outpatient hospital service to eligible clients according to WAC ~~((388-545-300 and 388-550-6000))~~ 182-545-200 and 182-550-6000.

(2) The hospital must bill outpatient hospital occupational therapy services using appropriate billing codes listed in the ~~((department's))~~ agency's current published billing instructions. The ~~((department))~~ agency does not pay outpatient hospitals a facility fee for ~~((such))~~ these services.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-6200 Outpatient hospital speech therapy services.** (1) The ~~((department))~~ medicaid agency pays for speech therapy services provided to eligible clients as an outpatient hospital service according to this section and WAC ~~((388-545-700 and 388-550-6000))~~ 182-545-200 and 182-550-6000.

(2) The ~~((department))~~ agency requires swallowing (dysphagia) evaluations to be performed by a speech/language pathologist who holds a master's degree in speech pathology and who has received extensive training in the anatomy and physiology of the swallowing mechanism, with additional training in the evaluation and treatment of dysphagia.

(3) The ~~((department))~~ agency requires a swallowing evaluation to include:

- (a) An oral-peripheral exam to evaluate the anatomy and function of the structures used in swallowing;
- (b) Dietary recommendations for oral food and liquid intake therapeutic or management techniques;
- (c) Therapeutic or management techniques; and
- (d) Videofluoroscopy, when necessary, for further evaluation of swallowing status and aspiration risks.

(4) A hospital must bill outpatient hospital speech therapy services using appropriate billing codes listed in the ~~((department's))~~ agency's current published billing instructions. The ~~((department))~~ agency does not pay the outpatient hospital a facility fee for these services.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-6250 Pregnancy—Enhanced outpatient benefits.** The ~~((department shall))~~ medicaid agency will provide outpatient chemical dependency treatment in programs qualified under chapter ~~((440-25))~~ 388-810 WAC and certified under chapter ~~((440-22))~~ 388-805 WAC or its successor.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-6300 Outpatient nutritional counseling.** (1) The ~~((department shall))~~ medicaid agency will cover nutritional counseling services only for eligible medicaid clients age twenty ~~((years of age))~~ and under referred during an early and periodic screening, diagnosis and treatment screening to a certified dietitian.

(2) Except for children under the children's medical program, the ~~((department shall))~~ agency will not cover nutritional counseling for clients under the medically indigent and other state-only funded programs.

(3) The ~~((department shall))~~ agency will pay for nutritional counseling for the following conditions:

(a) Inadequate or excessive growth, such as failure to thrive, undesired weight loss, underweight, major change in weight-to-height percentile, and obesity;

(b) Inadequate dietary intake, such as formula intolerance, food allergy, limited variety of foods, limited food resources, and poor appetite;

(c) Infant feeding problems, such as poor suck/swallow reflex, breast-feeding difficulties, lack of developmental feeding progress, inappropriate kinds or amounts of feeding offered, and limited caregiver knowledge ~~((and/))~~ or skills;

(d) Chronic disease requiring nutritional intervention, such as congenital heart disease, pulmonary disease, renal disease, cystic fibrosis, metabolic disorder, and gastrointestinal disease;

(e) Medical conditions requiring nutritional intervention, such as iron-deficiency anemia, familial hyperlipidemia, and pregnancy;

(f) Developmental disability, such as increasing the risk of altered energy and nutrient needs, oral-motor or behavioral feeding difficulties, medication-nutrient interaction, and tube feedings; or

(g) Psycho-social factors, such as behavior suggesting eating disorders.

(4) The ~~((department shall))~~ agency will pay for maximum of twenty sessions, in any combination, of assessment/evaluation and/or nutritional counseling in a calendar year.

(5) The ~~((department shall))~~ agency will require each assessment/evaluation or nutritional counseling session be for a period of twenty-five to thirty minutes of direct interaction with a client and/or the client's caregiver.

(6) The ~~((department shall))~~ agency will pay the provider for a maximum of two sessions per day per client.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-6400 Outpatient hospital diabetes education.** (1) The ~~((department))~~ medicaid agency pays for outpatient hospital-based diabetes education for an eligible client when:

(a) The facility where the services are provided is approved by the department of health (DOH) as a diabetes education center, and

(b) The client is referred by a licensed health care provider.

(2) The ~~((department))~~ agency requires the diabetes education teaching curriculum to have measurable, behaviorally stated educational objectives. The diabetes education teaching curriculum must include all the following core modules:

(a) An overview of diabetes;

(b) Nutrition, including individualized meal plan instruction that is not part of the women, infants, and children program;

(c) Exercise, including an individualized physical activity plan;

(d) Prevention of acute complications, such as hypoglycemia, hyperglycemia, and sick day management;

(e) Prevention of other chronic complications, such as retinopathy, nephropathy, neuropathy, cardiovascular disease, foot and skin problems;

(f) Monitoring, including immediate and long-term diabetes control through monitoring of glucose, ketones, and glycosylated hemoglobin; and

(g) Medication management, including administration of oral agents and insulin, and insulin startup.

(3) The ~~((department))~~ agency pays for a maximum of six hours of individual core survival skills outpatient diabetes education per calendar year per client.

(4) The ~~((department))~~ agency requires DOH-approved centers to bill the ~~((department))~~ agency for diabetes education services on the UB92 billing form using the specific revenue code~~((s))~~~~((s))~~ designated and published by the ~~((department))~~ agency.

(5) The ~~((department))~~ agency reimburses for outpatient hospital-based diabetes education based on the individual hospital's current specific ratio of costs-to-charges, or the hospital's customary charge for diabetes education, whichever is less.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-6450 Outpatient hospital weight loss program.** The ~~((department))~~ medicaid agency may pay for an outpatient weight loss program only when provided through an outpatient weight loss facility approved by the ~~((medical assistance administration. The department shall))~~ agency. The agency will deny payment for services provided by nonapproved providers.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-6500 Blood and blood components.** (1) The ~~((department))~~ medicaid agency pays a hospital only for:

(a) Blood bank service charges for processing and storage of blood and blood components; and

(b) Blood administration charges.

(2) The ~~((department))~~ agency does not pay for blood and blood components.

(3) The ~~((department))~~ agency does not pay a hospital separately for the services identified in subsection (1) when these services are included and paid using the diagnosis-related group (DRG), per diem, or per case rate payment rates.

(4) The ~~((department))~~ agency pays a hospital no more than the hospital's cost, as determined by the ~~((department))~~ agency, for the services identified in subsection (1) when the hospital is paid using the ratio of costs-to-charges (RCC) or ~~((departmental))~~ weighted costs-to-charges ((DWCC)) WCC payment method.

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-550-6600 Hospital-based physician services.** See chapter ~~((388-534))~~ 182-531 WAC regarding rules for inpatient and outpatient physician services.

**WSR 15-18-077**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed August 28, 2015, 1:57 p.m., effective September 28, 2015]

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

Purpose: Amendments to the state special education regulations are consistent with United State[s] Department of Education, Office of Special Education Programs regulations adopted in 2015 and clarify the eligibility standard for IDEA (Individuals with Disabilities Education Act) funding and standards for maintenance of effort.

Citation of Existing Rules Affected by this Order: Amending WAC 392-172A-06015, 392-172A-06025, and 392-172A-06030.

Statutory Authority for Adoption: RCW 28A.150.290.

Adopted under notice filed as WSR 15-15-106 on July 16, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 3, 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: August 28, 2015.

Randy Dorn  
 State Superintendent  
 of Public Instruction

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

**WAC 392-172A-06015 Maintenance of effort.** (1)(a) Eligibility standard. For purposes of establishing the school district's eligibility for an award for a fiscal year, the OSPI must determine that the school district budgets, for the education of students eligible for special education, at least the same amount, from at least one of the following sources, as the school district spent for that purpose from the same source for the most recent fiscal year for which information is available:

- (i) Local funds only;
- (ii) The combination of state and local funds;
- (iii) Local funds only on a per capita basis; or
- (iv) The combination of state and local funds on a per capita basis.

(b) When determining the amount of funds that the school district must budget to meet the requirement in (a) of this subsection, the school district may take into consider-

ation, to the extent the information is available, the exceptions and adjustment provided in WAC 392-172A-06020 and 392-172A-06025 that the school district:

(i) Took in the intervening year or years between the most recent fiscal year for which information is available and the fiscal year for which the school district is budgeting; and

(ii) Reasonably expects to take in the fiscal year for which the school district is budgeting.

(c) Expenditures made from funds provided by the federal government for which the OSPI is required to account to the federal government or for which the school district is required to account to the federal government directly or through the OSPI may not be considered in determining whether a school district meets the standard in (a) of this subsection.

(2)(a) Compliance standard. Except as provided under WAC 392-172A-06020 and 392-172A-06025, funds provided to school districts or other public agencies under Part B of the IDEA may not be used to reduce the level of expenditures for the education of students eligible for special education made by it from local funds below the level of those expenditures for the preceding fiscal year.

~~((2) Except as provided in subsection (3) of this section, the OSPI determines that a school district complies with this section for purposes of establishing the school district's eligibility for an award for a fiscal year if the district budgets, for the education of special education students, at least the same total or per capita amount from either of the following sources as the district spent for that purpose from the same source for the most recent prior year for which information is available:~~

~~(a)) (b) A school district meets this standard if it does not reduce the level of expenditures made by the school district for the education of students eligible for special education from at least one of the following sources below the level of those expenditures from the same source for the preceding year except as provided under WAC 392-172A-06020 and 392-172A-06025:~~

~~(i) Local funds only.~~

~~((b)) (ii) The combination of state and local funds.~~

~~((3) A district that relies on subsection (2)(a) of this section for any fiscal year must ensure that the amount of local funds it budgets for the education of students eligible for special education in that year is at least the same, either in total or per capita, as the amount it spent for that purpose in the most recent fiscal year for which information is available, if that year is, or is before, the first fiscal year beginning on or after July 1, 1997, or later, if the most recent fiscal year for which information is available and the standard in subsection (2)(a) of this section was used to establish its compliance with this section.~~

~~(4)) (iii) Local funds only on a per capita basis; or~~

~~(iv) The combination of state and local funds on a per capita basis.~~

(c) The OSPI may not consider any expenditures made from funds provided by the federal government for which the OSPI is required to account to the federal government or for which the school district is required to account to the federal government directly or through the OSPI in determining a

school district's compliance with the requirement in subsection (1)(a) and (b) of this section.

(3)(a) Subsequent years. If, in the fiscal year beginning on July 1, 2013, or July 1, 2014, a school district fails to meet the requirements of 34 C.F.R. 300.203 in effect at that time, the level of expenditures required of the school district for the fiscal year subsequent to the year of the failure is the amount that would have been required in the absence of that failure, not the school district's reduced levels of expenditures.

(b) If, in any fiscal year beginning on July 1, 2015, a school district fails to meet the requirement of subsection (1)(a)(i) or (iii) of this section and the school district is relying on local funds only, or local funds only on a per capita basis, to meet the requirements of 34 C.F.R. 203 (a) and (b), the level of expenditures required of the school district for the fiscal year subsequent to the year of the failure is the amount that would have been required under subsection (1)(a)(i) or (iii) of this section in the absence of that failure, not the school district's reduced level of expenditures.

(c) If, in any fiscal year beginning on July 1, 2015, a school district fails to meet the requirement of subsection (1)(a)(ii) or (iv) of this section and the school district is relying on the combination of state and local funds or the combination of state and local funds on a per capita basis, to meet the requirements of 34 C.F.R. 203 (a) and (b), the level of expenditures required of the school district for the fiscal year subsequent to the year of the failure is the amount that would have been required under subsection (1)(a)(ii) or (iv) of this section in the absence of that failure, not the school district's reduced level of expenditures.

(4) If a school district fails to maintain its level of expenditures for the education of student's eligible for special education in accordance with subsection (1) of this section, OSPI is liable in a recovery action under 20 U.S.C. 1234a to return to the United States Department of Education, using nonfederal funds, an amount equal to the amount by which the school district failed to maintain its level of expenditures in accordance with this subsection (1) of this section in that fiscal year, or the amount of the school district's Part B subgrant, in that fiscal year, whichever is lower.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

**WAC 392-172A-06025 Adjustment to local fiscal efforts in certain fiscal years.** (1) Notwithstanding WAC ~~392-172A-06010 and 392-172A-06015 ((1)(a) and (2) and 392-172A-06020(1);)~~ (2) and except as provided in subsection (4) of this section, for any fiscal year for which the allocation received by a school district exceeds the amount the school district received for the previous fiscal year, the school district may reduce the level of expenditures otherwise required by WAC 392-172A-06015(1) by not more than fifty percent of the amount of that excess.

(2) If a school district exercises the authority under subsection (1) of this section, the school district must use an amount of local funds equal to the reduction in expenditures under subsection (1) of this section to carry out activities that could be supported with funds under the ESEA regardless of

whether the school district is using funds under the ESEA for those activities.

(3) Notwithstanding subsection (1) of this section, if OSPI determines that a school district is unable to establish and maintain programs of FAPE that meet the requirements of this chapter and Part B of the act, the OSPI must prohibit the school district from reducing the level of expenditures under subsection (1) of this section for that fiscal year.

(4) The amount of funds expended by a school district for early intervening services under WAC 392-172A-06085 shall count toward the maximum amount of expenditures that the school district may reduce under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 13-20-034, filed 9/24/13, effective 10/25/13)

**WAC 392-172A-06030 School wide programs under Title 1 of the ESEA.** (1) A school district may use funds received under Part B of the act for any fiscal year to carry out a school wide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount used in any school wide program may not exceed:

(a) The amount received by the school district under Part B for that fiscal year; divided by the number of students eligible for special education in the jurisdiction; multiplied by

(b) The number of students eligible for special education participating in the school wide program.

(2) The funds described in subsection (1) of this section may be used without regard to WAC 392-172A-06010 (1)(a).

(3) The funds described in subsection (1) of this section must be considered as federal Part B funds for purposes of ~~((calculating excess cost and supplanting WAC 392-172A-06010 (1)(b) and (e)))~~ the calculations in WAC 392-172A-06015(2).

(4) Except as provided in subsections (2) and (3) of this section, all other requirements of Part B must be met, including ensuring that students eligible for special education in school wide program schools:

(a) Receive services in accordance with a properly developed IEP; and

(b) Are afforded all of the rights and services guaranteed to students eligible for special education under the IDEA.

## WSR 15-18-078

### PERMANENT RULES

### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed August 28, 2015, 2:07 p.m., effective September 28, 2015]

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

Purpose: Amendments and additions to chapters 392-117, 392-121, 392-122, 392-123, 392-129, 392-134, 392-138, and 392-140 WAC to address the following:

- To amend office of superintendent of public instruction's existing apportionment and finance rules to include public charter schools.

- Define charter schools' reporting requirements, how they will receive general and categorical apportionment and special allocations for full- and part-time student enrollment, and their budgeting requirements.
- Define how charter schools will comply with legal requirements pertaining to emergency school closure, and associated student body moneys.

Citation of Existing Rules Affected by this Order: Amending chapters 392-117, 392-121, 392-122, 392-123, 392-129, 392-134, 392-138, and 392-140 WAC.

Statutory Authority for Adoption: RCW 28A.150.290, 28A.710.220.

Adopted under notice filed as WSR 15-14-131 on July 1, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 5, Amended 169, 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: August 28, 2015.

Randy Dorn  
State Superintendent  
of Public Instruction

AMENDATORY SECTION (Amending WSR 91-13-054, filed 6/14/91, effective 7/15/91)

**WAC 392-117-005 Authority.** The authority for this chapter is RCW 28A.150.290 which establishes that the superintendent of public instruction shall have the power and duty to make rules and regulations that are necessary for the proper administration of allocations for basic education and other purposes and RCW 28A.300.040, which states that the powers and duties of the superintendent of public instruction include:

- (1) To have supervision over all matters pertaining to the public schools;
- (2) To report to the governor and the legislature such information and data as may be required for the management and improvement of the schools; and
- (3) To print and distribute forms that are necessary to discharge the duties of officials charged with the administration of the laws relating to the common schools.

This chapter is further authorized under RCW 28A.710.040(5), which provides that public charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

AMENDATORY SECTION (Amending WSR 91-13-054, filed 6/14/91, effective 7/15/91)

**WAC 392-117-030 Failure to submit timely general apportionment data.** In the event any school district, charter school, or educational service district fails to submit data by the due date established or in the form required by the superintendent of public instruction and the data are unavailable for calculations pursuant to this chapter or the biennial Operating Appropriations Act, the superintendent of public instruction shall either:

(1) Perform calculations and make payments as if the school district, charter school, or educational service district reported zero data; or

(2) Delay calculations and payments to the school district, charter school, or educational service district until the next monthly apportionment payment or until after data are submitted in the form required.

If a school district, charter school, or educational service district is unable to report by the due date or in the form required by the superintendent of public instruction due to extenuating circumstances, the district or charter school may request to make a tentative report. If the superintendent of public instruction agrees that extenuating circumstances exist and if the tentative report is received in time for the calculations, the superintendent of public instruction may use such tentative report for calculations and payments until such time as the district or charter school submits the final required data: Provided, That a tentative report shall not be used for more than one monthly apportionment calculation without consent of the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 91-13-054, filed 6/14/91, effective 7/15/91)

**WAC 392-117-035 Failure to submit timely annual financial statements.** A school district's or charter school's apportionment payments shall be delayed by the superintendent of public instruction if a school district or charter school fails to submit its annual financial statements (Report F-196) to the superintendent of public instruction by the established due date. An educational service district's apportionment payments shall be delayed by the superintendent of public instruction if an educational service district fails to submit its annual financial statements (Report F-185) to the superintendent of public instruction by the established due date. The first apportionment payment to be delayed will be for the month in which the annual financial statements are due. The first apportionment payment shall be delayed no less than thirty days. The first apportionment payment and subsequent apportionment payments shall be delayed until the annual financial statements are filed in approvable form.

AMENDATORY SECTION (Amending WSR 00-12-037, filed 5/31/00, effective 7/1/00)

**WAC 392-117-045 Corrections to data reported to the superintendent of public instruction.** School districts, charter school, and educational service districts shall submit corrections to district or charter school enrollment, personnel,

and other data affecting state apportionment as provided in this section.

(1) If at any time prior to the completion of audit of data by the state auditor a school district, charter school, or educational service district discovers that data have been reported to the superintendent of public instruction in error, the district or charter school shall submit revised data. The "completion of audit" means the date of the exit conference held by the state auditor with district or charter school staff as part of the district's regular financial and state compliance audit.

(2) During audit of data, districts or charter schools submitting revised data shall provide a copy of revisions to the state auditor. "During audit" means between the entrance conference and the exit conference held by the state auditor with district or charter school staff as part of the district's or charter school's regular financial and state compliance audit.

(3) After audit of data by the state auditor, the district or charter school shall report revisions only as part of the audit resolution process pursuant to chapter 392-115 WAC. "After audit" means after the exit conference held by the state auditor with district or charter school staff as part of the district's or charter school's regular financial and state compliance audit.

(4) Unless the superintendent of public instruction provides instructions to the contrary, revised data shall be submitted in the same manner as the original report. The revised report shall contain an original signature of the educational service district superintendent ((~~or~~)), the school district superintendent, the charter school's lead administrator, or the authorized official.

AMENDATORY SECTION (Amending WSR 91-13-054, filed 6/14/91, effective 7/15/91)

**WAC 392-117-050 Documentation requirements.** School districts, charter schools, and educational service districts shall provide upon request by the superintendent of public instruction and for audit purposes, documentation to support all data reported to the superintendent of public instruction pursuant to this chapter.

#### NEW SECTION

**WAC 392-117-055 Reporting contracts for charter schools.** Each public charter school in its first year of operation should contract with the charter school's resident education service district school district for the purpose of reporting general apportionment data, educational data, and year end financial report data to the superintendent of public instruction under this chapter.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-121-001 Authority.** The authority for this chapter is RCW 28A.150.290 which authorizes the superintendent of public instruction to adopt rules and regulations as are necessary for the proper administration of chapter 28A.150 RCW. This general authority is supplemented by RCW 28A.150.400 which authorizes the superintendent of public instruction to develop apportionment factors based on

data and statistics derived in an annual period established by the superintendent of public instruction.

This chapter is further authorized under RCW 28A.710.040(5), which provides that public charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

AMENDATORY SECTION (Amending WSR 88-03-013, filed 1/11/88)

**WAC 392-121-003 Purpose.** The purpose of this chapter is to set forth policies and procedures related to the general apportionment of state moneys for the operation of ((~~common~~)) public schools within the state of Washington. This section shall apply for apportionment purposes only and shall not apply to program approval standards for basic education entitlement.

AMENDATORY SECTION (Amending WSR 92-23-044, filed 11/16/92, effective 12/17/92)

**WAC 392-121-011 General provisions.** The following general provisions apply to this chapter:

(1) Calculations made by the superintendent of public instruction shall use the most current school district information for the school year or charter school on file with the superintendent of public instruction at the time of the calculation unless otherwise provided in this chapter or in chapter 392-117 WAC, Timely reporting.

(2) Full-time equivalent staff shall be rounded to the nearest three decimal places.

(3) Full-time equivalent enrollment shall be rounded to the nearest two decimal places.

(4) Ratios of full-time equivalent staff to students shall be expressed as a ratio of staff to one thousand students and shall be rounded to the nearest two decimal places (e.g., 51.21/1000).

(5) Unless otherwise stated, report forms, staff, salary, and enrollment data references in these rules are report forms, staff, salary, or enrollment data for the school year for which calculations pursuant to this chapter are being made.

(6) Employee assignments and account codes for program, duty, and activity shall mean the same as defined in the accounting manual for public school districts in the state of Washington and in instructions for personnel reporting provided by the superintendent of public instruction.

(7) School districts and charter schools shall have available upon request by the superintendent of public instruction and for audit purposes, such documentation as necessary to support all data reported to the superintendent of public instruction pursuant to this chapter.

AMENDATORY SECTION (Amending WSR 92-23-044, filed 11/16/92, effective 12/17/92)

**WAC 392-121-021 Reporting requirements.** The provisions of chapter 392-117 WAC, Timely reporting, apply to allocations made pursuant to this chapter. Failure of a school district or charter school to report in the form or by the deadline required by the superintendent of public instruction may result in the reduction or delay of apportionment payments.

AMENDATORY SECTION (Amending WSR 99-20-021, filed 9/28/99, effective 9/29/99)

**WAC 392-121-031 Definition—School year.** As used in this chapter, "school year" means the annual period commencing on the first day of September of one calendar year and ending the last day of August of the ensuing calendar year: Provided, That for those school districts or charter schools commencing basic education program prior to September 1, the following activities shall be considered to be within the school year that commences September 1.

- (1) School days scheduled prior to September 1; and
- (2) Staff days and activities in preparation for the school year included in employee contracts for the school year, but occurring before September 1.

AMENDATORY SECTION (Amending WSR 88-03-013, filed 1/11/88)

**WAC 392-121-033 Definition—School day.** As used in this chapter, "school day" means a calendar day except school holidays on which students enrolled in the school district or charter school are afforded the opportunity to be engaged in educational activity which is planned, supervised, and conducted by or under the supervision of the school district or charter school certificated staff, and on which day all or any portion of the students enrolled in the program actually participate in such educational activity.

AMENDATORY SECTION (Amending WSR 09-21-019, filed 10/9/09, effective 11/9/09)

**WAC 392-121-106 Definition—Enrolled student.** As used in this chapter, "enrolled student" means a person residing in Washington state who:

- (1) Is eligible to enroll in the school district's education programs because he or she:
  - (a) Resides in the school district with or without an address (RCW 28A.225.010, 28A.225.160 and 28A.225.-215);
  - (b) Resides on a United States reservation, national park, national forest, or Indian reservation contiguous to the school district (RCW 28A.225.170);
  - (c) Resides in a school district not offering the grade for which they are eligible to enroll such as a nonhigh district (RCW 28A.225.210);
  - (d) Has been released from the school district he or she resides in and has been accepted by the school district claiming enrollment (RCW 28A.225.225 and 28A.225.230);
  - (e) Will be attending the school district as part of an interdistrict cooperative program (RCW 28A.225.250); ((~~or~~))
  - (f) Will be attending school in a school district in another state per a reciprocity agreement pursuant to RCW 28A.225.-260; or
  - (g) Will be attending a public charter school, as defined by RCW 28A.710.010, located within Washington state.

(2) After the close of the prior school year has presented himself or herself, or has been presented, to the school district's or charter school's appropriate official to be entered on the school district's or charter school's rolls for the purpose of attending school in grades kindergarten through twelve;

(3) Is under twenty-one years of age at the beginning of the school year;

(4) Actually participated on a school day during the first four school days of the current school term (semester or quarter), or on a school day during the current school year on or prior to the date being counted, in a course of study offered by the school district or charter school as defined in WAC 392-121-107; and

(5) Does not qualify for any of the enrollment exclusions set forth in WAC 392-121-108.

AMENDATORY SECTION (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

**WAC 392-121-107 Definition—Course of study.** As used in this chapter, "course of study" means those activities for which students enrolled pursuant to chapters 180-16, 180-51, 392-169, 392-134, and 392-410 WAC may be counted as enrolled students for the purpose of full-time equivalent student enrollment counts.

(1) Course of study includes:

(a) Instruction - Teaching/learning experiences conducted by school district staff as directed by the administration and the board of directors of the school district, or teaching/learning experiences conducted by charter school staff as directed by the charter school administration and charter school board, inclusive of intermissions for class changes, recess and teacher/parent-guardian conferences that are planned and scheduled by the district or charter school for the purpose of discussing students' educational needs or progress, and exclusive of time for meals.

(b) Alternative learning experience - Alternative learning experience provided by the school district or charter school in conformance with WAC 392-121-182.

(c) Instruction provided by a contractor - Instruction provided by a contractor in conformance with WAC 392-121-188 or 392-121-1885.

(d) National guard - Participation in a national guard high school career training program for which credit is being given toward either required or elective high school credits pursuant to RCW 28A.300.165 and WAC 392-410-320.

(e) Ancillary service - Any cocurricular service or activity, any health care service or activity, and any other services or activities, for or in which enrolled students are served by appropriate school district or charter school staff. The term shall include, but not be limited to, counseling, psychological services, testing, remedial instruction, speech and hearing therapy, health care services, and if such service is provided by the district or charter school, certificated contact time pursuant to RCW 28A.225.010 (4)(a) with students who are in a home-based instruction program. The term shall exclude all extracurricular activities and all other courses of study defined in this section. In conformance with WAC 392-134-025, school districts and charter schools report the actual number of student contact hours of ancillary service for part-time, private school, and home-based students to the superintendent of public instruction.

(f) Work based learning - Training provided pursuant to WAC 392-410-315 and reported as provided in WAC 392-121-124.

(g) Running start - Attendance at an institution of higher education pursuant to RCW 28A.600.300 through 28A.600.400, chapter 392-169 WAC.

(h) Transition school - Participation in the University of Washington's transition school and early entrance program pursuant to RCW 28A.185.040, and chapter 392-120 WAC. Such participation shall be reported by the University of Washington and shall not be reported by a school district or charter school.

(i) Technical college direct funding - Enrollment at a technical college pursuant to RCW 28A.150.275 and WAC 392-121-187. Such participation shall be reported by the technical college and shall not be reported by a school district unless the technical college and the school district agree to have the school district report such enrollment.

(2) Course of study does not include:

(a) Home-based instruction pursuant to RCW 28A.225.-010(4): Education programs provided by a parent which do not meet the requirements of WAC 392-121-182 cannot be claimed for state funding;

(b) Private school instruction pursuant to chapter 28A.195 RCW;

(c) Adult education as defined in RCW 28B.50.030(12);

(d) Instruction provided to students who do not reside in Washington state (RCW 28A.225.260);

(e) Enrollment in state institutions, i.e., state operated group homes, county juvenile detention centers, state institutions for juvenile delinquents, county and city adult jails, and state residential habilitation centers;

(f) Instruction preparing a student for the general education development (GED) test if such instruction generates state or federal moneys for adult education;

(g) Enrollment in education centers except as provided under contract with a school district pursuant to RCW 28A.150.305 and WAC 392-121-188 or 392-121-1885;

(h) Enrollment in the Washington state school for the deaf and the Washington state school for the blind;

(i) Extracurricular activities including but not limited to before and after school activities such as classes, sports and other activities offered outside the regular curriculum or for which credit is not earned; or

(j) Attendance at universities, colleges, community colleges, or technical colleges of students not earning high school credit.

**AMENDATORY SECTION** (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

**WAC 392-121-108 Definition—Enrollment exclusions.** A person who qualifies for any of the exclusions set forth in this section shall not be counted as an enrolled student pursuant to WAC 392-121-106.

(1) Absences - Except as provided in (a) and (b) of this subsection, a student whose consecutive days of absence from school exceed twenty school days, or a part-time student that has not attended school at least once within a time period consisting of twenty consecutive school days, shall not be counted as an enrolled student until attendance is resumed. School days are defined as the regularly scheduled instructional days for the general population of the school or district

the student is enrolled in, regardless of the student's individualized schedule.

(a) If there is a written agreement between the appropriate school official and a student's parent or guardian pursuant to RCW 28A.225.010 that the student's temporary absence is not deemed to cause a serious adverse effect upon the student's educational progress, the absent student may be counted as an enrolled student for up to two monthly enrollment count dates as specified in WAC 392-121-122.

(b) A student receiving home and/or hospital service pursuant to WAC 392-172A-02100 shall be counted as an enrolled student as provided in WAC 392-122-145.

(2) Dropouts - A student for whom the school district or charter school has received notification of dropping out of school by the student or the student's parent or guardian shall not be counted as an enrolled student until attendance is resumed.

(3) Transfers - A student who has transferred to another public or private school and for whom the school district or charter school has received notification of transfer from the school to which the student has transferred, from the student, or from the student's parent or guardian shall not be counted as an enrolled student unless the student reenrolls in the school district or charter school.

(4) Suspensions - A student who has been suspended from school pursuant to WAC 392-400-260 or in accordance with a charter school's student discipline policy, when the conditions of the suspension will cause the student to lose academic grades or credit, shall not be counted as an enrolled student until attendance is resumed.

(5) Expulsions - A student who has been expelled from all school subjects or classes by the school district pursuant to WAC 392-400-275 or 392-400-295 or in accordance with a charter school's student discipline policy shall not be counted as an enrolled student until such time as enrollment in a district program has resumed; a student who has been partially expelled, such as from a single school subject or class, by the school district or charter school pursuant to WAC 392-400-275 or 392-400-295 or in accordance with a charter school's student discipline policy may be considered a part-time enrolled student.

(6) Graduates - A student who has met the high school graduation requirements of chapter 180-51 WAC by the beginning of the school year.

(7) Tuition - A student paying tuition including, but not limited to, students on an F-1 visa or students enrolled in a tuition-based summer school program.

(8) An institution student who is claimed as a 1.0 FTE by any institution as an enrolled student eligible for state institutional education support pursuant to chapter 392-122 WAC where the institution's count date occurs prior to the school district count date for the month. Where the count dates occur on the same date, the institution shall have priority for counting the student.

**AMENDATORY SECTION** (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

**WAC 392-121-119 Definition—Enrollment count dates.** As used in this chapter, "enrollment count dates"

means the fourth school day of September and the first school day of each of the nine subsequent months of the school year for all school districts and charter schools including districts and charter schools which commence basic education programs prior to September 1st. Exceptions are limited to the following:

(1) In school districts where not every school or grade follows the same calendar of school days, the calendar of an individual school or an entire grade level within a school may determine the monthly enrollment count date for that school or grade level within the school.

(2) The nine count dates for running start enrollment shall be the first school day of each month of October through June.

**AMENDATORY SECTION** (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

**WAC 392-121-122 Definition—Full-time equivalent student.** As used in this chapter, "full-time equivalent student" means each enrolled student in the school district or charter school as of one of the enrollment count dates for at least the minimum number of hours set forth in subsection (1) of this section, inclusive of class periods and normal class change passing time, but exclusive of meal intermissions: Provided, That each hour counted shall contain at least 50 minutes of instruction or supervised study provided by appropriate instructional staff. The purpose of recognizing "50 minute hours" is to provide flexibility to school districts and charter schools which utilize block periods of instruction so long as students are ultimately under the jurisdiction of school staff for the equivalent of 60 minute hours: Provided further, That the hours set forth below shall be construed as annual average hours for the purposes of compliance with this chapter.

(1) The minimum hours for each grade are as follows:

(a) Kindergarten: 20 hours each week, or 4 hours (240 minutes) for each scheduled school day;

(b) Primary (grades 1 through 3): 20 hours each week, or 4 hours (240 minutes) each scheduled school day;

(c) Elementary (grades 4 through 6): 25 hours each week, or 5 hours (300 minutes) each scheduled school day;

(d) Secondary (grades 7 through 12): 25 hours each week, or 5 hours (300 minutes) each scheduled school day.

(2) Except as limited by WAC 392-121-136, a student enrolled for less than the minimum hours shown in subsection (1) of this section shall be counted as a partial full-time equivalent student equal to the student's hours of enrollment divided by the minimum hours for the student's grade level set forth in subsection (1) of this section.

(3) The full-time equivalent of a student's running start enrollment pursuant to RCW 28A.600.300 through 28A.600.400 shall be determined pursuant to chapter 392-169 WAC. If a running start student is enrolled both in high school courses provided by the school district or charter school and in running start courses provided by the college, the high school full-time equivalent and the running start full-time equivalent shall be determined separately.

(4) The full-time equivalent of University of Washington transition school students shall be determined pursuant to chapter 392-120 WAC.

(5) The full-time equivalent of a student's alternative learning experience shall be determined pursuant to WAC 392-121-182.

**AMENDATORY SECTION** (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

**WAC 392-121-123 Nonstandard school year programs.** A student participating in a program of education occurring during the nonstandard school year on a tuition-free basis may be claimed for state funding to the extent that the student was not claimed as a 1.0 AAFTE during the regular school year (September through June), subject to the following:

(1) Eligible student FTE in a nonstandard school year program shall be claimed based upon the following:

(a) Enrolled hours based upon the standards in WAC 392-121-122 or 392-121-182.

(b) Credit based for student enrolled in a college program under WAC 392-121-188.

(c) A student enrolled in transition school or a running start program is not eligible for nonstandard school year funding.

(2) A district or charter school shall make month by month evaluation of the student to determine if the following conditions were met during the regular school year:

(a) The student was not home schooled or enrolled in a private school.

(b) The student was not claimed as a 1.0 FTE in a regular or institution education program.

(3) For each month in which the conditions of subsection (2) of this section are met, the district or charter school shall determine the amount of student FTE claimed for the student. To the extent the enrollment claimed is less than 1.0 FTE for each month, the school district or charter school may claim nonstandard school year FTE based upon the student enrollment in the nonstandard school year school program.

**AMENDATORY SECTION** (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

**WAC 392-121-124 Full-time equivalent enrollment for work based learning.** For work based learning provided pursuant to WAC 392-410-315 or by charter schools, a student's full-time equivalent shall be determined as follows:

(1) For cooperative work based learning experience, in accordance with WAC 392-410-315 (1)(g), divide the student's hours of work experience for the month by two hundred; for example: Forty hours of cooperative work experience equals two tenths of a full-time equivalent ( $40 \div 200 = 0.20$ ). For instructional work based learning experience, in accordance with WAC 392-410-315 (1)(f) and 296-125-043(4), divide the student's enrolled hours of work experience for the month by one hundred; for example: Twenty hours of instructional work experience equals two tenths of a full-time equivalent ( $20 \div 100 = 0.20$ ). Enrollment exclusions in WAC 392-121-108 apply to instructional work based learning enrolled hours.

(2) Estimated or scheduled hours of cooperative work based learning experience may be used in determining a student's full-time equivalent on an enrollment count date: Provided, That the combined monthly hours reported for the school year shall not exceed the student's actual hours of cooperative work based learning experience documented on the student's work records and maintained by the school district or charter school for audit purposes.

(3) Work based learning provided as part of a state-approved vocational education program qualifies for enhanced vocational funding and may be included in determining a student's vocational full-time equivalent enrollment.

(4) No more than three hundred sixty hours of cooperative work based learning may be claimed for funding for each credit a student pursues as reported on the student's transcript. No more than one hundred eighty hours of instructional work based learning may be claimed for funding for each credit a student pursues as reported on the student's transcript.

(5) Funding may be claimed only for work based learning hours that occur after the work based learning plan, work based agreement, program orientation and new employee orientation, as defined in WAC 392-410-315, are completed.

**AMENDATORY SECTION** (Amending WSR 13-02-004, filed 12/19/12, effective 1/19/13)

**WAC 392-121-136 Limitation on enrollment counts.** Enrollment counts pursuant to WAC 392-121-106 through 392-121-133 are subject to the following limitations:

(1) Except as provided in (a), (b) and (c) of this subsection, no student, including a student enrolled in more than one school district, shall be counted as more than one full-time equivalent student on any count date or more than one annual average full-time equivalent student in any school year.

(a) School districts or charter schools operating approved vocational skills center programs during the summer vacation months may claim additional full-time equivalent students based upon actual enrollment in such vocational skills centers on the aggregate of enrolled hours based upon the fourth day of each summer session. Each district or charter school operating an approved vocational skills center program shall be entitled to claim one annual average full-time equivalent student for each 900 hours of planned student enrollment for the summer term(s) subject to the limitation in (c) of this subsection.

(b) Enrollment count limitations apply separately to a student's running start, skills center and high school enrollments and is limited to an overall maximum 1.8 FTE.

(c) Subject to (b) of this subsection, a student enrolled in a skill center program during the regular school year may be claimed for up to a combined 1.6 full-time equivalent student. A student enrolled in running start during the regular school year may be claimed for up to a combined 1.2 full-time equivalent student. A student enrolled in high school and skills center for more than 1.0 FTE, can be claimed for a 0.2 running start FTE.

Each student may be claimed for a maximum of a 1.0 full-time equivalent for the skills center enrollment, a maximum of a 1.0 full-time equivalent for running start and a

maximum of a 1.0 full-time equivalent for the student's high school enrollment subject to the overall combined FTE limitation in (b) of this subsection.

(2) Running start enrollment counts are limited as provided in chapter 392-169 WAC and specifically as provided in WAC 392-169-060.

(3) The full-time equivalent reported for a five year old preschool student with a disability is limited as provided in WAC 392-121-137.

(4) No kindergarten student, including a student enrolled in more than one school district, shall be counted as more than one-half of an annual average full-time equivalent student in any school year.

(5) A student reported as part-time on Form SPI E-672 shall not be reported by a school district or charter school for more than part-time basic education funding on that enrollment count date and the total enrollment reported by one or more school districts or charter schools for basic education and on Form SPI E-672 must not exceed one full-time equivalent.

(6) Districts and charter schools providing an approved state-funded full-day kindergarten program as provided in chapter 28A.150 RCW (from E2SSB 5841) may claim up to an additional 0.50 FTE based upon student enrolled hours in excess of the 0.50 FTE provided under subsection (4) of this section.

**AMENDATORY SECTION** (Amending WSR 09-06-038, filed 2/25/09, effective 3/28/09)

**WAC 392-121-137 Full-time equivalent enrollment of students with a disability.** In determining the full-time equivalent enrollment of students reported as students with a disability pursuant to chapter 392-172A WAC, the following rules apply:

(1) If the student is enrolled exclusively in an ungraded special education program, the student's grade level shall be based on the typical grade level of students of the same age (e.g., a student who is six years old at the beginning of the school year shall be counted as a first grader).

(2) If the student is enrolled in a grade level below the typical grade level of students of the same age, the school district or charter school shall have the option of counting the student in the grade enrolled or the typical grade level of students of the same age.

(3) A student with a disability who is five years old at the beginning of the school year may be counted as a kindergarten student only if the student is enrolled full time (twenty hours or more per week), or is enrolled in a kindergarten program and is provided special education services in addition to the kindergarten program.

**AMENDATORY SECTION** (Amending WSR 15-03-056, filed 1/14/15, effective 2/14/15)

**WAC 392-121-182 Alternative learning experience requirements.** (1) **Purposes:** The purposes of this section are the following:

(a) To ensure that students enrolled in an alternative learning experience offered by a school district or public

charter school have available to them educational opportunities designed to meet their individual needs;

(b) To provide general program requirements for alternative learning experiences offered by or through school districts and charter schools;

(c) To provide a method for determining full-time equivalent enrollment and a process school districts and charter schools must use when claiming state funding for alternative learning experiences.

(2) **General requirements:** A school district or charter school must meet the requirements of this section to count an alternative learning experience as a course of study pursuant to WAC 392-121-107. This section applies solely to school districts and charter schools claiming state funding pursuant to WAC 392-121-107 for an alternative learning experience. It is not intended to apply to alternative learning experiences funded exclusively with federal or local resources. This section does not apply to alternative learning experiences offered by charter schools pursuant to charter contract terms governing the operation of alternative learning experience in the school.

(3) **Definitions:** For the purposes of this section the following definitions apply:

(a)(i) "Alternative learning experience" means a course, or for grades kindergarten through eight, grade-level course work, that is a delivery method for the program of basic education and is:

(A) Provided in whole or in part independently from a regular classroom setting or schedule, but may include some components of direct instruction;

(B) Supervised, monitored, assessed, evaluated, and documented by a certificated teacher employed by the school district or charter school, or under contract as permitted by applicable rules; and

(C) Provided in accordance with a written student learning plan that is implemented pursuant to the school district's or charter school's policy and this chapter.

(ii) The categories of alternative learning experience courses are:

(A) "Online course" means an alternative learning experience course that has the same meaning as provided in RCW 28A.250.010.

(B) "Remote course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for less than twenty percent of the total weekly time for the course.

(C) "Site-based course" means an alternative learning experience course or course work that is not an online course where the student has in-person instructional contact time for at least twenty percent of the total weekly time for the course.

(b) "Alternative learning experience program" is a school or a program within a school that offers alternative learning experience courses or course work;

(c) "Certificated teacher" means an employee of a school district ~~((-or-))~~ or charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school contractor pursuant to WAC 392-121-1885, who is assigned and endorsed according to the provisions of chapter 181-82 WAC;

(d) "Direct personal contact" means a one-to-one meeting between a certificated teacher and the student, or, where appropriate, between the certificated teacher, the student, and the student's parent. Direct personal contact can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication. Direct personal contact:

(i) Must be for the purposes of instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan;

(ii) Must be related to an alternative learning experience course or course work identified in the written student learning plan; and

(iii) Must at minimum include a two-way exchange of information between a certificated teacher and the student. All required direct personal contact must be documented.

(e) "In-person instructional contact" means face-to-face contact between a certificated teacher and the student in a classroom environment. In-person instructional contact may be accomplished in a group setting between the teacher and multiple students. The in-person instructional contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course identified in the written student learning plan.

(f) "Intervention plan" means a plan designed to improve the progress of students determined to be not making satisfactory progress. An intervention plan must be developed, documented, and implemented by a certificated teacher in conjunction with the student and, for students in grades K-8, the student's parent(s). For students whose written student learning plan includes only online courses, the intervention plan may be developed by the school-based support staff in conjunction with the student and certificated teacher and must be approved by the student's online certificated teacher. At minimum, the intervention plan must include at least one of the following interventions:

(i) Increasing the frequency or duration of contact with a certificated teacher for the purposes of enhancing the ability of the certificated teacher to improve student learning;

(ii) Modifying the manner in which contact with a certificated teacher is accomplished;

(iii) Modifying the student's learning goals or performance objectives;

(iv) Modifying the number of or scope of courses or the content included in the learning plan.

(g) "Parent" has the same definition as "parent" in WAC 392-172A-01125;

(h) "Satisfactory progress" means a determination made in accordance with subsection (4)(c) that a student's progress toward achieving the specific learning goals and performance objectives specified in the written student learning plan is satisfactory;

(i) "School week" means any seven-day calendar period starting with Sunday and continuing through Saturday that

includes at least three days when a district's schools are in session or when a charter school is in session;

(j) "School-based support staff" means an employee of a school district ~~(or a charter school)~~ or a charter school, of a school district contractor pursuant to WAC 392-121-188, or a charter school contractor pursuant to WAC 392-121-1885, who is supporting a student in an online course. The school-based support staff may or may not hold a teaching certificate;

(k) "Substantially similar experiences and services" means that for each purchased or contracted instructional or cocurricular course, lesson, trip, or other experience, service, or activity identified on an alternative learning experience written student learning plan, there is an identical or similar experience, service, or activity made available to students enrolled in the district's regular instructional program:

(i) At a similar grade level;

(ii) At a similar level of frequency, intensity, and duration including, but not limited to, consideration of individual versus group instruction;

(iii) At a similar level of cost to the student with regard to any related club, group, or association memberships; admission, enrollment, registration, rental or other participation fees; or any other expense associated with the experience or service;

(iv) In accordance with district adopted or charter school adopted content standards or state defined grade level standards; and

(v) That is supervised, monitored, assessed, evaluated, and documented by a certificated teacher.

(l) "Synchronous digital instructional contact" means real-time communication between a certificated teacher and the student using interactive online, voice, or video communication technology. Synchronous digital instructional contact may be accomplished in a group setting between the teacher and multiple students. The synchronous digital contact must be:

(i) For the purposes of actual instruction, review of assignments, testing, evaluation of student progress, or other learning activities or requirements identified in the written student learning plan; and

(ii) Related to an alternative learning experience course or course work identified in the written student learning plan.

(m) "Total weekly time" means the estimated average hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan;

(n) "Written student learning plan" means a written plan for learning that includes at least the following elements:

(i) A beginning and ending date for the student's alternative learning experience courses;

(ii) An estimate by a certificated teacher of the average number of hours per school week the student will engage in learning activities to meet the requirements of the written student learning plan. This estimate must consider only the time the student will engage in learning activities necessary to accomplish the learning goals and performance objectives specified in the written student learning plan;

(iii) For online courses and remote courses, a description of how weekly contact requirements will be fulfilled;

(iv) A description of each alternative learning experience course or course work included as part of the learning plan, including specific learning goals, performance objectives, and learning activities for each course, written in a manner that facilitates monthly evaluation of student progress. This requirement may be met through the use of individual course syllabi or other similarly detailed descriptions of learning requirements. The description must clearly identify the requirements a student must meet to successfully complete the course or course work. Courses or course work must be identified using course names, codes, and designators specified in the most recent *Comprehensive Education Data and Research System* data manual published by the office of superintendent of public instruction;

(v) Identification of the certificated teacher responsible for each course or course work included as part of the plan;

(vi) Identification of all instructional materials that will be used to complete the learning plan; and

(vii) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan;

(viii) Identification of whether each alternative learning experience course or course work meets one or more of the state essential academic learning requirements or grade-level expectations and any other academic goals, objectives, and learning requirements defined by the school district or charter school.

**(4) Alternative learning experience program requirements:**

(a) Each student participating in an alternative learning experience must have a written student learning plan developed and approved by a certificated teacher that is designed to meet the student's individual educational needs. A certificated teacher must have responsibility and accountability for each course specified in the plan, including supervision and monitoring, and evaluation and documentation of the student's progress. The written student learning plan may be developed with assistance from the student, the student's parents, or other interested parties. For students whose written student learning plan includes only online courses, the written student learning plan may be developed and approved by a certificated teacher or a school-based support staff.

(b) Each student enrolled in an alternative learning experience must have one of the following methods of contact with a certificated teacher at least once a school week until the student completes all course objectives or otherwise meets the requirements of the learning plan:

(i) Direct personal contact; or

(ii) In-person instructional contact; or

(iii) Synchronous digital instructional contact.

(c) The educational progress of each student enrolled in an alternative learning experience must be evaluated at least once each calendar month of enrollment by a certificated teacher or, for students whose written student learning plans include only online classes, school-based support staff in accordance with this section. The results of each evaluation must be communicated to the student or, if the student is in grades K-8, both the student and the student's parent. For students whose written student learning plan includes only online courses, a school-based support staff may communi-

cate the progress evaluation to the student. Educational progress must be evaluated according to the following requirements:

(i) Each student's educational progress evaluation must be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The evaluation of satisfactory progress must be conducted in a manner consistent with school district or charter school student evaluation or grading procedures, and be based on the professional judgment of a certificated teacher.

(iii) In the event that the monthly evaluation is not completed within the calendar month being evaluated, the evaluation must be completed within five school days of the end of the month. Districts and charter schools must not claim funding for the subsequent month for a student who was not evaluated within that time frame.

(iv) The progress evaluation conducted by a certificated teacher must include direct personal contact with the student with the following exceptions:

(A) After an initial month of satisfactory progress, in subsequent months where progress continues to be satisfactory the evaluation may be communicated to the student without direct personal contact.

(B) Direct personal contact is not required as a part of the evaluation conducted in the final month of the school year if the evaluation takes the form of the delivery of final grades to the student.

(v) Based on the progress evaluation, a certificated teacher must determine and document whether the student is making satisfactory progress reaching the learning goals and performance objectives defined in the written student learning plan.

(vi) For students whose written student learning plan includes only online courses, school-based support staff, according to school policy and procedures, may use the student's progress grades in the online course or courses to determine whether a student's progress is satisfactory. School-based support staff, following school policy and procedures, may take into account nonacademic factors or local school expectations to finalize the determination of satisfactory progress. The progress grades posted in the learning management system may serve as the documentation of determining satisfactory progress.

(vii) If it is determined that the student failed to make satisfactory progress or that the student failed to follow the written student learning plan, an intervention plan must be developed for the student. An intervention plan is not required if the evaluation is delivered within the last five school days of the school year.

(viii) If after no more than three consecutive calendar months in which it is determined the student is not making satisfactory progress despite documented intervention efforts, a course of study designed to more appropriately meet the student's educational needs must be developed and implemented by a certificated teacher in conjunction with the student and where possible, the student's parent. This may include removal of the student from the alternative learning experience and enrollment of the student in another educational program offered by the school district or charter school.

(5) **Required school district or charter school board policies for alternative learning experiences:** The board of directors of a school district or charter school board claiming state funding for alternative learning experiences must adopt and annually review written policies authorizing such alternative learning experiences, including each alternative learning experience program and program provider. The policy must designate, by title, one or more school district official(s) or charter school official(s) responsible for overseeing the district's or charter school's alternative learning experience courses or programs, including monitoring compliance with this section, and reporting at least annually to the school district board of directors or charter school board on the program. This annual report shall include at least the following:

(a) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(b) Identification of the overall ratio of certificated instructional staff to full-time equivalent students enrolled in each alternative learning experience program;

(c) A description of how the program supports the district's or charter school's overall goals and objectives for student academic achievement; and

(d) Results of any self-evaluations conducted pursuant to subsection (10) of this section.

**(6) Alternative learning experience implementation requirements:**

(a) School districts or charter schools that offer alternative learning experience courses or course work must ensure that they are accessible to all students, including students with disabilities. Alternative learning experience courses or course work for special education students must be provided in accordance with chapter 392-172A WAC.

(b) Contracting for alternative learning experience courses or course work is subject to the provisions of WAC 392-121-188.

(c) It is the responsibility of the school district or school district contractor, or charter school or charter school contractor, to ensure that students have all curricula, course content, instructional materials and learning activities that are identified in the alternative learning experience written student learning plan.

(d) School districts and charter schools must ensure that no student or parent is provided any compensation, reimbursement, gift, reward, or gratuity related to the student's enrollment or participation in, or related to another student's recruitment or enrollment in, an alternative learning experience course or course work unless otherwise required by law. This prohibition includes, but is not limited to, funds provided to parents or students for the purchase of educational materials, supplies, experiences, services, or technological equipment.

(e) School district employees are prohibited from receiving any compensation or payment as an incentive to increase student enrollment of out-of-district students in an alternative learning experience course or course work.

(f) Curricula, course content, instructional materials, learning activities, and other learning resources for alternative learning experience courses or course work must be con-

sistent in quality with those available to the district's or charter school's overall student population.

(g) Instructional materials used in alternative learning experience courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(h) A district or charter school may purchase educational materials, equipment, or other nonconsumable supplies for students' use in alternative learning experience courses or course work if the purchase is consistent with the district's or charter school's approved instructional materials or curriculum, conforms to applicable laws and rules, and is made in the same manner as such purchases are made for students in the district's or charter school's regular instructional program. Items so purchased remain the property of the school district or charter school upon program completion.

(i) School districts and charter schools are prohibited from purchasing or contracting for instructional or cocurricular experiences and services that are included in an alternative learning experience written student learning plan including, but not limited to, lessons, trips, and other activities, unless substantially similar experiences or services are also made available to students enrolled in the district's or charter school's regular instructional program. This prohibition extends to a district's or charter school's contracted providers of alternative learning experience programs, and each district and charter school shall be responsible for monitoring the compliance of its contracted providers. Nothing herein shall:

(i) Prohibit school districts or charter schools from contracting with school district or charter school employees to provide services or experiences to students; or

(ii) Prohibit school districts or charter schools from contracting with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW; or

(iii) Require school districts or charter schools that contract with school district or charter school employees to provide services or experiences to students, or with online providers approved by the office of superintendent of public instruction pursuant to chapter 28A.250 RCW, to provide substantially similar experiences and services under this subsection.

(j)(i) A school district or charter school that provides alternative learning experience courses or course work to a student must provide the parent(s) of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent must sign documentation attesting to his or her understanding of the difference. Such documentation must be retained by the district or charter school and made available for audit.

(ii) In the event a school district or charter school cannot locate a student's parent within three days of a student's request for enrollment in an alternative learning experience, the school district or charter school may enroll the student for a conditional period of no longer than thirty calendar days. The student must be disenrolled from the alternative learning experience if the school district or charter school does not

obtain the documentation required under this subsection before the end of the thirty day conditional enrollment period.

(k) The school district or school district contractor, or charter school or charter school contractor, is prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district or charter school including, but not limited to, digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts and charter schools may respond to requests for information that are initiated by a parent. This prohibition does not apply to general mailings, newsletters, or other general communication distributed by the school district (~~or the~~) school district contractor, charter school, or charter school contractor to all households in the district.

(l) Work-based learning as a component of an alternative learning experience course of study is subject to the provisions of WAC 392-410-315 and 392-121-124.

(m) The school district or charter school must institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district or charter school.

(n) School districts may accept nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC for enrollment in alternative learning experiences.

(o) School districts enrolling a nonresident student must inform the resident school district if the student drops out of the alternative learning experience program or is otherwise no longer enrolled.

(p) The alternative learning experience must satisfy the office of superintendent of public instruction's requirements for courses of study and equivalencies as provided in chapter 392-410 WAC.

(q) High school alternative learning experience courses must be offered for high school credit. Courses offering credit or alternative learning experience programs issuing a high school diploma must satisfy the state board of education's high school credit and graduation requirements as provided in chapter 180-51 WAC.

(r) Beginning in the 2013-14 school year and continuing through the 2016-17 school year, school districts and charter schools offering or contracting to offer alternative learning experience courses must pay costs associated with a biennial measure of student outcomes and financial audit of the district's or charter school's alternative learning experience courses by the office of the state auditor.

(7) **Enrollment reporting procedures:** Effective the 2011-12 school year, the full-time equivalency of students enrolled in an alternative learning experience must be determined as follows:

(a) The school district or charter school must use the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, subject to documented evidence of student participation as required by WAC 392-121-106(4), the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the student's written student learning plan.

(ii) On any subsequent monthly count date, the student's full-time equivalent must be based on the estimated average weekly hours of learning activity described in the written student learning plan if:

(A) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates satisfactory progress; or

(B) The student's progress evaluation conducted in the prior calendar month pursuant to subsection (4)(c) of this section indicates a lack of satisfactory progress, and an intervention plan designed to improve student progress has been developed, documented, and implemented within five school days of the date of the prior month's progress evaluation.

(iii) On any subsequent monthly count date if an intervention plan has not been developed, documented, and implemented within five days of the prior month's progress evaluation, the student's full-time equivalent must not be included by the school district or charter school in the subsequent month's enrollment count.

(iv) Enrollment of part-time students is subject to the provisions of RCW 28A.150.350, and generates a pro rata share of full-time funding.

(b) The enrollment count must exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had contact with a certificated teacher for twenty consecutive school days. Any such student must not be counted as an enrolled student until the student has met with a certificated teacher and resumed participation in their alternative learning experience or is participating in another course of study as defined in WAC 392-121-107;

(c) The enrollment count must exclude students who are not residents of Washington state as defined by WAC 392-137-115;

(d) The enrollment count must exclude students who as of the enrollment count date have completed the requirements of the written student learning plan prior to ending date specified in the plan and who have not had a new written student learning plan established with a new beginning and ending date that encompasses the count date;

(e) For alternative learning experience programs that end prior to June 1st, the June enrollment count date may be the last school day in May and include students whose written student learning plan includes an ending date that is the last school day in May.

(f) Graduating alternative learning experience students whose last school day is in May may be included in the June enrollment count if the following conditions are met:

(i) The alternative learning experience program calendar identifies that the last day of school for the graduating students is in May.

(ii) The students' written student learning plan includes an end date that is the last day of school for graduating students in May.

(g) School districts claiming alternative learning experiences students for funding for nonresident students must document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate including, but not limited to:

(i) When a resident district and one or more nonresident district(s) will each be claiming basic education funding for a student in the same month or months, the districts shall execute a written agreement that at minimum identifies the maximum aggregate basic education funding each district may claim for the duration of the agreement. A nonresident district may not claim funding for a student until after the effective date of the agreement.

(ii) When a district is providing alternative learning experiences to nonresident students under the school choice enrollment provisions of RCW 28A.225.200 through 28A.225.230 and chapter 392-137 WAC the district may not claim funding for the student until after the release date documented by the resident district.

**(8) Assessment requirements:**

(a) All students enrolled in alternative learning experience courses or course work must be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district or charter school. Part-time students must also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.

(b) Any student whose alternative learning experience enrollment is claimed as greater than 0.8 full-time equivalent in any one month through the January count date must be included by the school district or charter school in any required state or federal accountability reporting for that school year, subject to existing state and federal accountability rules and procedures.

(c) Students enrolled in nonresident district alternative learning experience courses or course work who are unable to participate in required annual state assessments at the nonresident district must have the opportunity to participate in such required annual state assessments at the district of physical residence, subject to that district's planned testing schedule. It is the responsibility of the nonresident enrolling district to establish a written agreement with the district of physical residence that facilitates all necessary coordination between the districts and with the student and, where appropriate, the student's parent(s) to fulfill this requirement. Such coordination may include arranging for appropriate assessment materials, notifying the student of assessment administration schedules, arranging for the forwarding of completed assessment materials to the enrolling district for submission for scoring and reporting, arranging for any allowable testing accommodations, and other steps as may be necessary. The agreement may include rates and terms for payment of reasonable fees by the enrolling district to the district of physical residence to cover costs associated with planning for and administering

the assessments to students not enrolled in the district of physical residence. Assessment results for students assessed according to these provisions must be included in the enrolling district's accountability measurements, and not in the district of physical residence's accountability measurements.

**(9) Reporting requirements:**

(a) Each school district or charter school offering alternative learning experience courses or course work must report monthly to the superintendent of public instruction accurate monthly headcount and full-time equivalent enrollment for students enrolled in alternative learning experiences ~~((as well as))~~. Each school district offering alternative learning experience courses or course work must further report monthly to the superintendent information about the resident and serving districts of such students.

(b) Each school district or charter school offering alternative learning experience courses or course work must submit an annual report to the superintendent of public instruction detailing the costs and purposes of any expenditure made pursuant to subsection (6)(i) of this section, along with the substantially similar experiences or services made available to students enrolled in the district's or charter school's regular instructional program.

(c) Each school district or charter school offering alternative learning experience courses or course work must annually report the following to the superintendent of public instruction:

(i) The number of certificated instructional staff full-time equivalent assigned to each alternative learning experience program; and

(ii) Separately identify alternative learning experience enrollment of students where instruction is provided entirely under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

(d) Each school district or charter school offering alternative learning experience courses must report all required information to the office of superintendent of public instruction's *Comprehensive Education Data and Research System* under RCW 28A.300.500. ~~((Beginning with the 2013-14 school year,))~~ School districts and charter schools must designate alternative learning experience courses as such when reporting course information to the *Comprehensive Education Data and Research System*.

**(10) Documentation and record retention requirements:** School districts and charter schools claiming state funding for alternative learning experiences must retain all documentation required in this section in accordance with established records retention schedules and must make such documentation available upon request for purposes of state monitoring and audit. School districts and charter schools must maintain the following written documentation:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors or charter school board as required by subsection (5) of this section;

(c) Monthly and annual reports to the superintendent of public instruction as required by subsection (9) of this section;

(d) The written student learning plans required by subsection (4) of this section;

(e) Evidence of weekly contact required by subsection (4) of this section.

(i) For students participating in regularly scheduled classes, including in-person instructional contact and synchronous digital instructional contact, evidence may include classroom attendance records.

(ii) For students who are not participating in regularly scheduled classes, evidence of contact must include the date of the contact, the method of communication by which the contact was accomplished, and documentation to support the subject of the communication.

(f) Student progress evaluations and intervention plans required by subsection (4) of this section;

(g) The results of any assessments required by subsection (9) of this section;

(h) Student enrollment detail substantiating full-time equivalent enrollment reported to the state; and

(i) Signed parent enrollment disclosure documents required by subsection (6)(j) of this section.

AMENDATORY SECTION (Amending WSR 13-21-024, filed 10/7/13, effective 11/7/13)

**WAC 392-121-188 Instruction provided under contract.** School districts have general authority to contract for the services of individuals to provide instruction, subject to applicable state and federal laws and local collective bargaining agreements. School districts also have authority to enter into interdistrict cooperative agreements for instructional services with other school districts under RCW 28A.225.250. However, when a school district contracts with an entity other than a school district and that entity employs staff to provide basic education instruction claimed by the school district for state basic education funding, the requirements of this section also apply. Instruction provided by such an entity (hereafter called the contractor) may be counted as a course of study and claimed by the school district for state funding if the following requirements are met:

(1) The school district board of directors in accordance with RCW 28A.320.015 adopts a resolution that concludes it is in the best interest of the students to expand the options available by providing an appropriate basic education program pursuant to the contract and sets forth the rationale in support of the conclusion. A board adopted resolution is not required for online courses purchased by the school district from an online provider approved by the superintendent of public instruction under RCW 28A.250.020;

(2) The school district retains full responsibility for compliance with all state and federal laws;

(3) The contractor complies with all relevant state and federal laws that are applicable to the school district;

(4) The contractor provides instruction free of sectarian or religious influence or control;

(5) The contractor charges the student no tuition for enrollment;

(6) Enrollment is voluntary;

(7) No student or person is unlawfully excluded from participation on the grounds of ~~((race, creed, color, national~~

origin, sex, marital status, or presence of any sensory, mental, or physical handicap)) sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, the use of a trained dog guide or service animal, or marital status;

(8) Each student is enrolled in the school district reporting the enrollment and each high school student is working toward course credits which satisfy high school graduation requirements;

(9) If the contractor is a state higher education institution, a state funded education center, or any other state funded entity, the contractor is not claiming enrollment of the student or receiving direct state support for the contracted instruction reported pursuant to this section;

(10) The curriculum is approved by the district. District approval for online course curriculum is not required for online courses offered by an online provider approved by the superintendent of public instruction under RCW 28A.250-.020;

(11) The contractor provides enrollment reports to the school district that comply with this chapter;

(12) The contractor maintains and has available for audit or review by the school district, state, or federal authorities documentation of enrollment, hours of instructional activity participated in by the students, personnel data, and financial data including all revenues and expenditures pertaining to the contract with the school district;

(13) As of October 1st, if a contractor certificated employee employed by a contractor other than an institution of higher education spends more than twenty-five percent of a full-time equivalent time with students for a given school district, the school district must report the individual contractor certificated employee as required by the SPI annual personnel reporting system for calculation of state funding, staff ratios and statistics;

(14) The school district and contractor execute a written contract which is consistent with this section, and which sets forth the duties of the contractor in detail sufficient to hold the contractor accountable to the school district. School districts that purchase online courses through the online course catalog provided by the office of superintendent of public instruction are exempt from this provision;

(15) The school district and contractor establish a process for periodic monitoring by the school district for compliance with this section and other terms of the contract between the school district and contractor. School districts that purchase online courses through the online course catalog provided by the office of superintendent of public instruction are exempt from this provision;

(16) Contracts for services for students with disabilities shall comply with WAC 392-172A-04085 and 392-172A-04090;

(17) Full-time equivalent enrollment reported for students served under a contract with a higher education institution shall be based on the number of hours of instruction meeting the criteria in WAC 392-121-107 (1)(a) provided by staff of the higher education institution under the contract. This section does not apply to running start enrollment,

which is governed by chapter 392-169 WAC or at-risk programs meeting the standards of subsection (18) of this section; and

(18) Full-time equivalent enrollment reported for students served under contract with a community or technical college as defined in RCW 28B.50.030 shall be based on the credits generated by the student consistent with WAC 392-169-025 if the program meets the following standards:

(a) The student is earning credits applicable to a high school diploma.

(b) The program is focused on serving credit deficient students.

(c) The student population served is considered at-risk and meet the following criteria:

(i) The students have already dropped out of high school; or

(ii) The students have not demonstrated success in the traditional high school environment.

(19) The school district requires the contractor to clearly state in all of the contractor's advertising, publicity, or public statements regarding the contracted service that the service is being offered by the school district under contract.

#### NEW SECTION

**WAC 392-121-1885 Instruction provided under contract by charter schools.** Charter schools are authorized to enter into contracts with any school district, educational service district, or other public or private entity for the provision of educational instructional services to the same extent as other noncharter public schools, as long as the charter school board maintains oversight authority over the charter school. When a charter school contracts with an entity other than a school district and that entity employs staff to provide basic education instruction claimed by the charter school for state basic education funding, the requirements of this section also apply. Instruction provided by such an entity (hereafter called the contractor) may be counted as a course of study and claimed by the charter school for state funding if the following requirements are met:

(1) The charter school retains full responsibility for compliance with all state and federal laws;

(2) The charter school complies with all relevant state and federal laws that are applicable to charter schools;

(3) The contractor provides instruction free of sectarian or religious influence or control;

(4) The contractor charges the student no tuition for enrollment;

(5) No student or person is unlawfully excluded from participation on the grounds of sex, race, creed, religion, color, national origin, honorably discharged veteran or military status, sexual orientation, gender expression, gender identity, the presence of any sensory, mental, or physical disability, the use of a trained dog guide or service animal, or marital status;

(6) Each student is enrolled in the charter school reporting the enrollment and each high school student is working toward course credits which satisfy high school graduation requirements;

(7) If the contractor is a state higher education institution, a state funded education center, or any other state funded entity, the contractor is not claiming enrollment of the student or receiving direct state support for the contracted instruction reported pursuant to this section;

(8) The curriculum is approved by the charter school. Approval for online course curriculum is not required for online courses offered by an online provider approved by the superintendent of public instruction under RCW 28A.250.-020;

(9) The contractor provides enrollment reports to the charter school that comply with this chapter;

(10) The contractor maintains and has available for audit or review by the charter school, charter school authorizer, and state or federal authorities documentation of enrollment, hours of instructional activity participated in by the students, personnel data, and financial data including all revenues and expenditures pertaining to the contract with the charter school;

(11) As of October 1st, if a contractor certificated employee employed by a contractor other than an institution of higher education spends more than twenty-five percent of a full-time equivalent time with students for a given charter school, the charter school must report the individual contractor certificated employee as required by the SPI annual personnel reporting system for calculation of state funding, staff ratios and statistics;

(12) The charter school and contractor execute a written contract which is consistent with this section, and which sets forth the duties of the contractor in detail sufficient to hold the contractor accountable to the charter school. Charter schools that purchase online courses through the online course catalog provided by the office of superintendent of public instruction are exempt from this provision;

(13) The charter school and contractor establish a process for periodic monitoring by the charter school and charter school authorizer for compliance with this section and other terms of the contract between the charter school and contractor. Charter schools that purchase online courses through the online course catalog provided by the office of superintendent of public instruction are exempt from this provision;

(14) Contracts for services for students with disabilities shall comply with WAC 392-172A-04085 and 392-172A-04090;

(15) Full-time equivalent enrollment reported for students served under a contract with a higher education institution shall be based on the number of hours of instruction meeting the criteria in WAC 392-121-107 (1)(a) provided by staff of the higher education institution under the contract. This section does not apply to running start enrollment, which is governed by chapter 392-169 WAC; and

(16) The charter school requires the contractor to clearly state in all of the contractor's advertising, publicity, or public statements regarding the contracted service that the service is being offered by the charter school under contract.

AMENDATORY SECTION (Amending WSR 06-19-045, filed 9/15/06, effective 10/16/06)

**WAC 392-121-200 Definition—Certificated employee.** As used in this chapter, "certificated employee" means:

(1) A person who holds a professional education certificate issued by the superintendent of public instruction and who is employed by a school district or charter school in a position for which such certificate is required by statute, rule of the professional educator standards board, or written policy or practice of the employing school district; or

(2) A superintendent or a person hired to fill a position designated as, or which is, in fact, deputy superintendent or assistant superintendent; or

(3) A charter school's lead administrator or a person hired to fill a position as the lead administrator's deputy administrator or assistant administrator.

AMENDATORY SECTION (Amending WSR 99-08-008, filed 3/25/99, effective 4/25/99)

**WAC 392-121-201 Definition—Contractor certificated employee.** As used in this chapter, "contractor certificated employee" means a person who holds a professional education certificate issued by the superintendent of public instruction and who is employed by a contractor as defined in WAC 392-121-188 or 392-121-1885 in a position for which such certificate is required.

AMENDATORY SECTION (Amending WSR 02-22-065, filed 11/1/02, effective 12/2/02)

**WAC 392-121-205 Definition—District certificated instructional employee.** As used in this chapter, "district certificated instructional employee" means any school district or charter school certificated employee who is employed in whole or part as one or more of the following:

(1) An elementary, secondary or other teacher who instructs pupils in classes or courses;

(2) An educational staff associate who assists, evaluates, counsels, or instructs students in a manner consistent with the employee's educational staff associate certificate; or

(3) Other certificated staff assigned to the 300 or 400 series duty codes as defined in the S-275 personnel reporting instructions.

AMENDATORY SECTION (Amending WSR 02-22-065, filed 11/1/02, effective 12/2/02)

**WAC 392-121-206 Definition—Contractor certificated instructional employee.** As used in this chapter, "contractor certificated instructional employee" means a contractor certificated employee who:

(1) Is employed by a contractor, pursuant to WAC 392-121-188 or 392-121-1885, to serve students claimed for basic education funding by a school district or charter school; and

(2) Is employed as one or both of the following:

(a) An elementary, secondary or other teacher who instructs pupils in classes or courses; or

(b) An educational staff associate who assists, evaluates, counsels, or instructs students in a manner consistent with the employee's educational staff associate certificate.

**AMENDATORY SECTION** (Amending WSR 11-21-065, filed 10/17/11, effective 11/17/11)

**WAC 392-121-210 Definition—Basic education certificated instructional employee.** As used in this chapter, "basic education certificated instructional employee" means a district or charter school certificated instructional employee or a contractor certificated instructional employee assigned in whole or in part to the following programs as defined in the accounting manual for public school districts in the state of Washington:

- (1) 01 Basic Education;
- (2) 02 Basic Education-Alternative Learning Experience;
- (3) 31 Vocational, Basic, State;
- (4) 34 Middle School Career and Technical Education-State;
- (5) 45 Skills Center, Basic, State; and
- (6) 97 ((~~Districtwide~~) District-wide) Support.

**AMENDATORY SECTION** (Amending WSR 02-22-065, filed 11/1/02, effective 12/2/02)

**WAC 392-121-212 Definition—Full-time equivalent (FTE) certificated instructional staff.** As used in this chapter, "full-time equivalent (FTE) certificated instructional staff" means the number of staff units determined as follows:

(1) Each employee of the school district or charter school who, as of October 1 of the school year, is contracted to provide services as a certificated instructional employee for not less than 180 full work days shall be counted as one FTE.

(2) Each employee of the school district or charter school who, as of October 1 of the school year, is contracted to provide services for 180 partial days as a certificated instructional employee shall be counted as a partial FTE, such part to be the quotient rounded to three decimal places obtained by dividing that part of the day worked by the full day as determined by the district or charter school.

(3) Each employee of the school district or charter school who, as of October 1 of the school year, is contracted to provide services for less than 180 full work days as a certificated instructional employee shall be counted as a partial FTE, such part to be the quotient rounded to three decimal places obtained by dividing the number of work days contracted for by 180: Provided, That if the normal annual full-time contract for the position exceeds 180 work days, the greater number of work days normally contracted shall be used as the divisor.

(4) Each employee of the school district or charter school who, as of October 1 of the school year, is contracted to provide services for less than 180 partial days as a certificated instructional employee shall be counted as a partial FTE, such part to be the quotient rounded to three decimal places obtained by dividing the part of the day worked by the full day as determined by the district or charter school and then multiplying the result by the ratio of work days contracted for by 180: Provided, That if the normal annual full-time contract for the position exceeds 180 work days, the greater number of

work days normally contracted shall be used in place of 180 in the ratio.

(5) No employee shall be counted as more than one full-time equivalent certificated staff unit.

(6) The length of a full work day as used in this section shall be determined by the district or charter school.

(7) As used in this section, contracts to provide services as a certificated instructional employee shall exclude supplemental contract services as defined under RCW 28A.400.200 (4).

**AMENDATORY SECTION** (Amending WSR 02-22-065, filed 11/1/02, effective 12/2/02)

**WAC 392-121-215 Definition—Full-time equivalent (FTE) basic education certificated instructional staff.** As used in this chapter, "full-time equivalent (FTE) basic education certificated instructional staff" means the number of staff units determined as follows:

(1) Each employee of the school district or charter school who, as of October 1 of the school year, is contracted to provide services as a basic education certificated instructional employee for not less than 180 full work days shall be counted as one FTE.

(2) Each employee of the school district or charter school who, as of October 1 of the school year, is contracted to provide services for 180 partial days as a basic education certificated instructional employee shall be counted as a partial FTE, such part to be the quotient to three decimal places obtained by dividing that part of the day worked by the full day as determined by the district or charter school.

(3) Each employee of the school district or charter school who, as of October 1 of the school year, is contracted to provide services for less than 180 full work days as a basic education certificated instructional employee shall be counted as a partial FTE, such part to be the quotient rounded to three decimal places obtained by dividing the number of work days contracted for by 180: Provided, That if the normal annual full-time contract for the position exceeds 180 work days, the greater number of work days normally contracted shall be used as the divisor.

(4) Each employee of the school district or charter school who, as of October 1 of the school year, is contracted to provide services for less than 180 partial days as a basic education certificated instructional employee shall be counted as a partial FTE, such part to be the quotient rounded to three decimal places obtained by dividing the part of the day worked by the full day as determined by the district or charter school and then multiplying the result by the ratio of work days contracted for to 180: Provided, That if the normal annual full-time contract for the position exceeds 180 work days, the greater number of work days normally contracted shall be used in place of 180 in the ratio.

(5) No employee shall be counted as more than one full-time equivalent basic education certificated staff unit.

(6) The length of a full work day as used in this section shall be determined by the district or charter school.

(7) As used in this section, contracts to provide services as a basic education certificated instructional employee shall

exclude supplemental contract services as defined under RCW 28A.400.200(4).

**AMENDATORY SECTION** (Amending WSR 02-22-065, filed 11/1/02, effective 12/2/02)

**WAC 392-121-220 Definition—S-275 reporting process.** As used in this chapter, "S-275 reporting process" means the electronic personnel reporting process which is defined annually by the superintendent of public instruction.

This reporting process shall include individuals who are known as of October 1 to be:

(1) District or charter school employees with a contract for certificated employment to provide services during the period September 1 through August 31;

(2) Classified employees, employed by the district or charter school to provide services during the period September 1 through August 31; and

(3) Contractor certificated instructional employees, contracted to provide services during the period September 1 through August 31.

**AMENDATORY SECTION** (Amending WSR 95-21-096, filed 10/18/95, effective 11/18/95)

**WAC 392-121-225 Definition—Report S-275.** As used in this chapter, "Report S-275" means the alphabetic listing of certificated personnel employed by a school district or charter school on October 1 as prepared by the superintendent of public instruction from data submitted by the district or charter school through the S-275 reporting process for the school year.

**AMENDATORY SECTION** (Amending WSR 14-20-061, filed 9/25/14, effective 10/26/14)

**WAC 392-121-257 Definition—In-service credits.** As used in this chapter, "in-service credits" means credits determined as follows:

(1) Credits are earned:

(a) After August 31, 1987; and

(b) After the awarding or conferring of the employee's first bachelor's degree.

(2) Credits are earned on or before October 1 of the year for which allocations are being calculated pursuant to this chapter.

(3) Credits are earned in either:

(a) A locally approved in-service training program which means a program approved by a school district board of directors or charter school board, and meeting standards adopted by the professional educator standards board pursuant to the standards in WAC 181-85-200 and the development of which has been participated in by an in-service training task force whose membership is the same as provided under RCW 28A.415.040; or

(b) A state approved continuing education program offered by an education agency approved to provide in-service for the purposes of continuing education as provided for under rules adopted by the professional educator standards board pursuant to chapter 181-85 WAC.

(4) Credits are not earned for the purpose of satisfying the requirements of the employee's next highest degree.

(5) Credits earned after September 1, 1995, must satisfy the additional requirements of WAC 392-121-262.

(6) Credits are not counted as academic credits pursuant to WAC 392-121-255 or nondegree credits pursuant to WAC 392-121-259.

(7) Ten locally approved in-service or state approved continuing education credit hours defined in WAC 181-85-030 equal one in-service credit.

(8) Each forty hours of participation in an approved internship with a business, industry, or government agency pursuant to chapter 181-83 WAC equals one in-service credit.

(a) No more than two in-service credits may be earned as a result of an internship during any calendar-year period.

(b) Each individual is limited to a maximum of fifteen in-service credits earned from internships.

(9) Accumulate credits rounded to one decimal place.

**AMENDATORY SECTION** (Amending WSR 13-05-072, filed 2/19/13, effective 3/22/13)

**WAC 392-121-262 Definition—Additional criteria for all credits.** Credits earned after September 1, 1995, must satisfy the following criteria in addition to those found in WAC 392-121-255, 392-121-257, and 392-121-259:

(1) At the time credits are recognized by the school district or charter school, the content of the course must meet at least one of the following:

(a) It is consistent with a school-based plan for mastery of student learning goals as referenced in RCW 28A.655.110, the annual school performance report, for the school in which the individual is assigned;

(b) It pertains to the individual's current assignment or expected assignment for the following school year;

(c) It is necessary for obtaining endorsement as prescribed by the Washington professional educator standards board;

(d) It is specifically required for obtaining advanced levels of certification;

(e) It is included in a college or university degree program that pertains to the individual's current assignment or potential future assignment as a certificated instructional staff;

(f) It addresses research-based assessment and instructional strategies for students with dyslexia, dysgraphia, and language disabilities when addressing learning goal one under RCW 28A.150.210, as applicable and appropriate for individual certificated instructional staff; or

(g) Beginning in the 2011-12 school year, it pertains to the revised teacher evaluation system under RCW 28A.405.-100, including the professional development training provided in RCW 28A.405.106.

(2) Credits which have been determined to meet one or more of the criteria in subsection (1) of this section shall continue to be recognized in subsequent school years and by subsequent school district and charter school employers; and

(3) Credits not recognized in a school year may be recognized in a subsequent school year if there is a change in the

qualifying criteria such as a change in professional educator standards board rules, a change in the district's or charter school's strategic plan, a change in the school-based plan for the school in which the individual is assigned, a change in the individual's assignment, or a change in the individual's employer.

**AMENDATORY SECTION** (Amending WSR 10-07-141, filed 3/23/10, effective 4/23/10)

**WAC 392-121-264 Definition—Certificated years of experience.** Regardless of the experience factors used by a school district or charter school for the purposes of its salary schedule(s), as used in this chapter, the term "certificated years of experience" means the number of years of accumulated full-time and part-time professional education employment prior to the current reporting school year in the state of Washington, out-of-state, and a foreign country. School districts and charter schools shall report all certificated years of experience including those beyond the experience limit of the school district's or charter school's salary schedule.

(1) Professional education employment shall be limited to the following:

(a) Employment in public or private preschools or elementary and secondary schools in positions which require certification where:

(i) Schools include the Centrum education program, the Pacific Science Center education program, educational centers authorized under chapter 28A.205 RCW, and Seattle Children's Hospital education program;

(ii) Certification means the concurrent public professional education licensing requirements established in the state, province, country, or other governmental unit in which employment occurred and which, for the state of Washington, refers to the certificates authorized by WAC 181-79A-140 and temporary permits authorized by WAC 181-79A-128;

(b) Employment in public or private vocational-technical schools, technical colleges, community/junior colleges, colleges, and universities in positions comparable to those which require certification in Washington school districts;

(c) Employment in a governmental educational agency with regional administrative responsibilities for preschool, elementary, and/or secondary education including but not limited to an educational service district, office of superintendent of public instruction, or United States department of education in any professional position including but not limited to C.P.A., architect, business manager, or physician;

(d) Experience in the following areas:

(i) Military, Peace Corps, or Vista service which interrupted professional education employment included in (a), (b), or (c) of this subsection; and

(ii) Sabbatical leave.

(e) For nondegreed vocational/career and technical education instructors, up to a maximum of six years of management experience as defined in WAC 181-77-003(6) acquired after the instructor meets the minimum vocational/career and technical education certification requirements of three years (six thousand hours) established in WAC 181-77-041 (1)(a) (i), regardless of when the initial certificate is issued and

regardless of type of vocational/career and technical education certificate held. If a degree is obtained while employed in the state of Washington as a nondegreed vocational/career and technical education instructor, the eligible years of management experience pursuant to this subsection reported on Report S-275 prior to the awarding of the degree shall continue to be reported but shall not increase.

(f) Beginning in the 2007-08 school year, for occupational therapists, physical therapists, nurses, speech-language pathologists, audiologists, counselors, psychologists, and social workers regulated under Title 18 RCW, years of experience may include employment as occupational therapists, physical therapists, nurses, speech-language pathologists, audiologists, counselors, psychologists, and social workers, that does not otherwise meet the requirements of (a) through (e) of this subsection, subject to the following conditions and limitations:

(i) Experience included under this subsection shall be limited to a maximum of two years.

(ii) The calculation of years of experience shall be that one year of experience in a school or other nonschool position counts as one year of experience for the purposes of this subsection, per subsection (2)(a) of this section.

(iii) Employment as occupational therapists shall be limited to the following:

(A) In positions requiring licensure as an occupational therapist under Title 18 RCW, or comparable out-of-state employment; and

(B) While holding a valid occupational therapist license, or other comparable occupational therapist credential.

(iv) Employment as physical therapists shall be limited to the following:

(A) In positions requiring licensure as a physical therapist under Title 18 RCW, or comparable out-of-state employment; and

(B) While holding a valid physical therapist license, or other comparable physical therapist credential.

(v) Employment as nurses shall be limited to the following:

(A) In positions requiring licensure as a registered nurse under Title 18 RCW, or comparable out-of-state employment; and

(B) While holding a valid registered nurse license, or other comparable registered nurse credential.

(vi) Employment as speech-language pathologists or audiologists shall be limited to the following:

(A) In positions requiring the same or similar duties and responsibilities as are performed by speech-language pathologists or audiologists regulated under Title 18 RCW; and

(B) After completion of the minimum requirements for conditional certification as a school speech-language pathologist or audiologist established in WAC 181-79A-231 (1)(c) (iv).

(vii) Employment as counselors shall be limited to the following:

(A) In positions requiring the same or similar duties and responsibilities as are performed by counselors regulated under Title 18 RCW; and

(B) After completion of the minimum requirements for emergency certification as a school counselor established in WAC 181-79A-231(3).

(viii) Employment as psychologists shall be limited to the following:

(A) In positions requiring the same or similar duties and responsibilities as are performed by psychologists regulated under Title 18 RCW; and

(B) After completion of the minimum requirements for emergency certification as a school psychologist established in WAC 181-79A-231(3).

(ix) Employment as social workers shall be limited to the following:

(A) In positions requiring the same or similar duties and responsibilities as are performed by social workers regulated under Title 18 RCW; and

(B) After completion of the minimum requirements for emergency certification as a school social worker established in WAC 181-79A-231(3).

(x) Certificated years of experience as occupational therapists, physical therapists, nurses, speech-language pathologists, audiologists, counselors, psychologists, and social workers, determined pursuant to this subsection and reported on Report S-275, by teachers and other certificated staff who are no longer employed as occupational therapists, physical therapists, nurses, speech-language pathologists, audiologists, counselors, psychologists, and social workers, shall continue to be reported but shall not increase.

(2) Years of full-time and part-time professional education employment prior to the current reporting school year are accumulated as follows:

(a) For each professional education employment which is not employment as a casual substitute pursuant to subsection (1)(a) of this section;

(i) Determine the total number of hours, or other unit of measure, per year for an employee working full-time with each employer;

(ii) Determine the number of hours, or other unit of measure, per year with each employer, including paid leave and excluding unpaid leave;

(iii) Calculate the quotient of the hours, or other unit of measure, determined in (a)(ii) of this subsection divided by the hours, or other unit of measure, in (a)(i) of this subsection rounded to two decimal places for each year.

(b) For professional education employment as a casual substitute pursuant to subsection (1)(a) of this section:

(i) Determine the total number of full-time equivalent substitute days per year;

(ii) Calculate the quotient of full-time equivalent days determined in (b)(i) of this subsection divided by 180 rounded to two decimal places for each year.

(c) No more than 1.0 year may be accumulated in any traditional nine-month academic year or any twelve-month period.

(i) Accumulate, for each year, professional education employment calculated in (a)(iii) and (b)(ii) of this subsection.

(ii) Determine the smaller of the result in (c)(i) of this subsection or 1.00 for each year.

(d) Determine certificated years of experience as the accumulation of all years of professional education employment calculated in (c)(ii) of this subsection and report such years rounded to one decimal place.

AMENDATORY SECTION (Amending WSR 92-23-044, filed 11/16/92, effective 12/17/92)

**WAC 392-121-266 Definition—LEAP salary allocation documents.** As used in this chapter, "LEAP salary allocation documents" means the computerized tabulations prepared by the legislative evaluation and accountability program (LEAP) and identified in the state Operating Appropriations Act as part of the formula for determining average salaries for the purpose of allocating state moneys to school districts or charter schools.

AMENDATORY SECTION (Amending WSR 14-07-006, filed 3/6/14, effective 4/6/14)

**WAC 392-121-280 Placement on LEAP salary allocation documents—Documentation required.** School districts and charter schools shall have documentation on file and available for review which substantiates each certificated instructional employee's placement on LEAP salary allocation documents. The minimum requirements are as follows:

(1) Districts and charter schools shall document the date of awarding or conferring of the highest degree including the date upon which the degree was awarded or conferred as recorded on the diploma or transcript from the registrar of the accredited institution of higher education.

(a) If the highest degree is a master's degree, the district or charter school shall also document the date of awarding or conferring of the first bachelor's degree.

(b) If the degree was awarded by an institution which does not confer degrees after each term, and all degree requirements were completed at a time other than the date recorded on the diploma or transcript, a written statement from the registrar of the institution verifying a prior completion date shall be adequate documentation.

(c) If the degree program was completed in a country other than the United States, documentation must include documentation in English of degree equivalency for the appropriate degree as allowed by WAC 181-79A-260: Provided, That documentation of degree equivalency is not required if that institution of higher education is already regionally accredited or accredited by the distance education and training council, pursuant to WAC 181-78A-010(7).

(2) Districts and charter schools shall document academic credits by having on file a transcript from the registrar of the accredited institution of higher education granting the credits. For purposes of this subsection:

(a) An academic credit is deemed "earned" at the end of the term for which it appears on the transcript: Provided, That a written statement from the registrar of the institution verifying a prior earned date may establish the date a credit was earned;

(b) Washington state community college credits numbered one hundred and above are deemed transferable for purposes of WAC 392-121-255(4) subject to the limitations of that same subsection;

(c) Credits are not deemed "earned" at an institution of higher education which transfers-in credits. Such credits must be documented using a transcript from the initial granting institution and are subject to all the limitations of WAC 392-121-255;

(d) If the credits were completed in a country other than the United States, documentation must include a written statement of credit equivalency for the appropriate credits from a foreign credentials' evaluation agency approved by the office of superintendent of public instruction: Provided, That documentation of degree equivalency is not required if that institution of higher education is already regionally accredited or accredited by the distance education and training council, pursuant to WAC 181-78A-010(7); and

(e) For credits earned after September 1, 1995, districts and charter schools shall document that the course content meets one or more of the criteria of WAC 392-121-262(1). At a minimum, such documentation must include a dated signature of the immediate principal, supervisor, or other authorized school district or charter school representative and must be available to the employee's future employers.

(3) Districts and charter schools shall document in-service credits:

(a) By having on file a document meeting standards established in WAC 181-85-107; and

(b) For credits earned after September 1, 1995, districts and charter schools shall document that the course content meets one or more of the criteria of WAC 392-121-262(1). At a minimum, such documentation must include a dated signature of the immediate principal, supervisor, or other authorized school district or charter school representative and must be available to the employee's future employers.

(4) Districts and charter schools shall document nondegree credits.

(a) For vocational/career and technical education educator training credits pursuant to WAC 392-121-259(3) districts and charter schools shall have on file a document meeting standards established in WAC 181-85-107 and evidence that the training was authorized pursuant to WAC 181-77-003 (2), (9), or (12).

(b) For credits calculated from converted occupational experience pursuant to WAC 392-121-259(3) districts and charter schools shall have on file documents which provide:

(i) Evidence that the occupational experience meets the requirements of WAC 181-77-003(7);

(ii) Evidence of the individual's actual number of hours of employment for each year including dates of employment; and

(iii) The district or charter school calculation of converted credits pursuant to WAC 392-121-259(3).

(c) For credits earned after September 1, 1995, districts shall document that the course content meets one or more of the criteria of WAC 392-121-262(1). At a minimum, such documentation must include a dated signature of the immediate principal, supervisor, or other authorized school district representative and must be available to the employee's future employers.

(5) Districts and charter schools shall document certificated years of experience as follows:

(a) For certificated years of experience obtained and reported on Report S-275 prior to the 1994-95 school year districts and charter schools shall have on file documents that provide evidence of employment including dates of employment.

(b) For certificated years of experience reported on Report S-275 for the first time after the 1993-94 school year districts and charter schools shall have on file:

(i) The total number of hours, or other unit of measure, per year for an employee working full-time with each employer;

(ii) The number of hours, or other unit of measure (worked by the employee), per year and dates of employment with each employer, including paid leave and excluding unpaid leave: Provided, That documentation of hours in excess of one full-time certificated year of experience in any twelve-month period is not required;

(iii) The quotient of the hours, or other unit of measure, determined in (b)(ii) of this subsection divided by the hours, or other unit of measure, in (b)(i) of this subsection rounded to two decimal places for each year;

(iv) The name and address of the employer;

(v) For those counting (~~out-of-district~~) experience outside of the school district or charter school pursuant to WAC 392-121-264 (1)(a), evidence whether or not the position required professional education certification pursuant to WAC 392-121-264 (1)(a)(ii);

(vi) For those counting experience pursuant to WAC 392-121-264 (1)(b), a brief description of the previous employment which documents the school district's or charter school's decision that the position was comparable to one requiring certification in the Washington school districts;

(vii) For those counting management experience pursuant to WAC 392-121-264 (1)(e), evidence that the experience meets the requirements of WAC 181-77-003(6);

(viii) For those counting experience (for educational staff associates) pursuant to WAC 392-121-264 (1)(f), evidence that the previous employment meets the requirements in the applicable subsections of WAC 392-121-264 (1)(f).

(6) Any documentation required by this section may be original or copies of the original: Provided, That each copy is subject to school district or charter school acceptance or rejection.

(7) The falsification or deliberate misrepresentation, including omission of a material fact concerning degrees, credits, or experience by an education practitioner as defined in WAC 181-87-035 shall be deemed an act of unprofessional conduct pursuant to WAC 181-87-050. In such an event the provisions of chapters 181-86 and 181-87 WAC shall apply.

AMENDATORY SECTION (Amending WSR 02-22-065, filed 11/1/02, effective 12/2/02)

**WAC 392-121-299 Determination of district average certificated instructional staff salary for the purpose of apportionment.** Each school district's or charter school's average certificated instructional staff salary for the purpose of apportioning state general fund moneys to school districts pursuant to RCW 28A.150.250 and 28A.150.260 shall be

determined by the superintendent of public instruction as provided in the biennial Operating Appropriations Act using definitions and procedures provided in this chapter.

**AMENDATORY SECTION** (Amending WSR 02-22-065, filed 11/1/02, effective 12/2/02)

**WAC 392-121-400 Apportionment of basic education moneys.** From the basic education moneys appropriated to the superintendent of public instruction, the superintendent shall allocate moneys as follows:

(1) Allocations shall be made pursuant to chapter 28A.150 RCW, the state Operating Appropriations Act, and this chapter.

(2) Allocations to school districts shall be made in twelve monthly payments during the school year pursuant to RCW 28A.510.250 to each school district operating a program approved by the state board of education.

(a) Initial monthly payments shall be based on estimates of such data as the superintendent of public instruction deems necessary to commence payment for the school year, such estimates to be submitted by school districts to the educational service districts or superintendent of public instruction on forms provided by the superintendent of public instruction. The latest date on which a school district may make changes in these data shall be the date on which the school district files its budget with the educational service district.

(b) As the school year progresses, monthly payments to school districts shall be adjusted to reflect actual full-time equivalent students enrolled, district average certificated instructional staff salary for purpose of apportionment, other school district characteristics, deductible revenues and such other data as are deemed necessary by the superintendent and reported by school districts and other governmental agencies on forms provided or approved by the superintendent of public instruction.

(3) Allocations to public charter schools shall be made pursuant to RCW 28A.710.220.

**AMENDATORY SECTION** (Amending WSR 09-06-038, filed 2/25/09, effective 3/28/09)

**WAC 392-121-415 Basic education allocation—Deductible revenues.** In addition to those funds appropriated by the legislature for basic education allocation purposes, the following locally available general fund revenues shall be included in the computation of the total annual basic education allocation of each school district or charter school pursuant to RCW 28A.150.250 and 28A.150.260 and shall be deducted from payments made pursuant to WAC 392-121-400:

(1) Proceeds from the sale, rental or lease of stone, minerals, timber, forest products, other crops and matter, and improvements from or on tax title real property managed by a county pursuant to chapter 36.35 RCW;

(2) Proceeds from state forests pursuant to RCW 79.22.040 and 79.22.050;

(3) Federal in lieu of tax payments made pursuant to RCW 84.72.020; and

(4) Proceeds from the sale of lumber, timber, and timber products on military reservations or facilities in accordance with U.S.C. §2665, Title 10, and P.L. 97-99.

(5) Local in lieu of tax payments including but not limited to payments made pursuant to RCW 35.82.210, 35.83.040, and 79.19.110.

Otherwise deductible revenues from any of the foregoing sources received by a school district due solely to the district's levy of a capital projects fund or debt service fund excess tax levy shall constitute nongeneral fund revenues and shall not be deducted in the computation of the district's annual basic education allocation for that school year.

**AMENDATORY SECTION** (Amending WSR 12-03-068, filed 1/12/12, effective 2/12/12)

**WAC 392-121-421 Definition—Resident student—Basic education allocation—Federal forest funds.** As used in RCW 28A.520.020, resident full-time equivalent students means full-time equivalent students as defined in WAC 392-121-122, excluding:

(1) Students enrolled in school district alternative learning experience programs who reside outside the county of the school district boundaries; and

(2) Students enrolled in charter school alternative learning experience programs who do not reside in the county in which the charter school is located.

**AMENDATORY SECTION** (Amending WSR 88-03-013, filed 1/11/88)

**WAC 392-121-425 Basic education allocation during strike.** Unless a school district's or charter school's program is disapproved in accordance with WAC 180-16-162 through 180-16-164, basic education allocations shall continue for the period of a strike.

**AMENDATORY SECTION** (Amending WSR 88-03-013, filed 1/11/88)

**WAC 392-121-430 Kindergarten and grade one through twelve programs considered collectively—Failure to operate an approved program—Denial of apportionment.** For the purpose of this chapter, a school district's or charter school's scheduled kindergarten and grade one through twelve programs shall be considered collectively. The total program of a district or charter school may not be subdivided for the purpose of applying program approval standards. Those school days which are conducted during the period of a strike following transmittal of a notice of disapproval shall be discounted for state basic education entitlement purposes at the rate of one hundred-eightieth of the district's or charter school's basic education entitlement for the school year per school day: Provided, That kindergarten and grade one through twelve programs shall be considered separately for the purpose of computing compliance with minimum school day requirements and any loss of basic education entitlement.

AMENDATORY SECTION (Amending WSR 96-03-001, filed 1/3/96, effective 2/3/96)

**WAC 392-121-435 Transfer of basic education allocation.** The board of directors of a school district or a charter school board may request the superintendent of public instruction to pay a portion of the district's or charter school's basic education allocation to another school district, a charter school, or an educational service district. The request must be submitted on Form 1324 and must state the dollar amount of the transfer. The board can modify the dollar amount of the transfer by submitting another Form 1324 to the superintendent of public instruction. Unless the form requesting a transfer states a timeline for making the transfer, the superintendent of public instruction shall execute the transfer pursuant to the provisions of WAC 392-121-400.

AMENDATORY SECTION (Amending WSR 90-19-040, filed 9/13/90, effective 10/14/90)

**WAC 392-121-436 Emergency advance payments—School district application.** The board of directors of a school district or a charter school board may apply for any emergency advance on the school district's or charter school's basic education allocation. The application shall take the form of a resolution adopted by the board (~~of directors~~) setting forth the following:

- (1) The nature of the unforeseen condition requiring the advance;
- (2) The amount requested to be advanced;
- (3) The net cash and investment balance of the general fund as of the date of the resolution;
- (4) A forecast of the general fund receipts, disbursements, and net cash and investment balance for each month remaining in the fiscal year; and
- (5) A disclosure of any existing or planned general fund revenue anticipation notes.
- (6) A disclosure of any existing or planned general fund loan to or from another fund of the school district or charter school.

AMENDATORY SECTION (Amending WSR 90-19-040, filed 9/13/90, effective 10/14/90)

**WAC 392-121-438 Emergency advance payments—Approval criteria.** The superintendent of public instruction shall approve requests for an emergency advance if the following conditions are met:

- (1) The unforeseen condition causing the need for the emergency advance could not have been anticipated by a reasonably prudent person.
- (2) It is probable that if the emergency advance is not made that the school district or charter school will be on:
  - (a) An interest-bearing, warrant-issuing basis within two months following the receipt of the resolution; and
  - (b) Warrant interest for at least three months from September through June.
- (3) The school district or charter school shall not have:
  - (a) Cash investments of the general fund during the months it estimates that it would pay warrant interest except for the emergency advance; or

(b) Inter-fund loans from the general fund to any other funds during the months it estimates that it would pay warrant interest; or

(c) Any existing or anticipated general fund revenue anticipated notes.

AMENDATORY SECTION (Amending WSR 09-06-038, filed 2/25/09, effective 3/28/09)

**WAC 392-121-440 Emergency advance payments—Determination of amount.** The superintendent of public instruction shall calculate the emergency advance on the school district's or charter school's basic education allocation as the lesser of:

- (1) The amount set forth in the school district's or charter school's resolution;
- (2) An amount not to exceed ten percent of the total amount to become due and apportionable to the district or charter school from September 1 through August 31 of the school year.
- (3) The highest negative monthly cash and investment balance of the general fund between the date of the resolution and May 31st of the school year less any redirection of a school district's or charter school's basic education allocation to the capital projects fund, debt service fund, or both.

AMENDATORY SECTION (Amending WSR 90-19-040, filed 9/13/90, effective 10/14/90)

**WAC 392-121-442 Emergency advance payments—Forfeiture of earnings on emergency advance.** The superintendent of public instruction shall deduct from a school district's or charter school's basic education allocation apportionment entitlement the amount of any earnings by the school district or charter school on the investment of a temporary cash surplus due to a previously obtained emergency advance.

AMENDATORY SECTION (Amending WSR 90-19-040, filed 9/13/90, effective 10/14/90)

**WAC 392-121-443 Emergency advance payments—Repayment of advances.** Repayments of advances will be accomplished by a reduction in the school district's or charter school's apportionment payments on or before June in the current school year.

AMENDATORY SECTION (Amending WSR 88-03-013, filed 1/11/88)

**WAC 392-121-460 Fire district allocation.** In addition to those moneys distributed for basic education purposes, school districts are entitled per RCW 52.30.020 to be reimbursed for moneys expended for the purchase of fire protection services from fire protection districts. Only school district's school plants located in a fire protection district established pursuant to Title 52 RCW shall be eligible for such moneys.

Payment to districts shall be made each July as a part of the monthly apportionment allocation.

The headcount enrollment used to compute each district's reimbursement will be as of October 1 of the school year for which the allocation is being made. The count shall be entered on forms provided to school districts by the superintendent of public instruction.

Any moneys allocated to school districts for the purpose stated in this rule and not used for this purpose shall be recovered by the superintendent of public instruction from a district's monthly apportionment allocation.

AMENDATORY SECTION (Amending WSR 06-17-141, filed 8/22/06, effective 9/22/06)

**WAC 392-121-465 Formula for and distribution of state moneys for the state incentive grants for increased enrollment in vocational skills centers program.** The purpose of this section is to establish policies and procedures for the calculation and distribution of state incentive moneys to school districts and, if appropriate, public charter schools increasing their enrollments in vocational skills centers.

(1) As used in this section, the term "average annual full-time equivalent students" or AAFTE shall be defined as that term is defined in WAC 392-121-133(1).

(2) Enrollment used in this calculation shall be the AAFTE reported in the form and by the deadline required by the superintendent of public instruction.

(3) A district's or, if appropriate, charter school's state incentive grants for increased enrollment in vocational skills centers shall be calculated as follows:

(a) Determine the increase in the vocational skill center AAFTE of the resident district from the base year of 2004-05 to the current year;

(b) Multiply the number of students obtained in (a) of this subsection by the per pupil allocation established and subject to the limitations in the State Operating Appropriations Act in effect at the time the apportionment is due; and

(c) The product is the district's or charter school's annual incentive payment.

(4) As provided in the State Operating Appropriations Act in effect at the time apportionment is due, money appropriated but not spent in subsection (3) of this section shall be distributed to skills centers for increased capacity of summer vocational programs. The allocation methodology shall be based upon the skills center full-time equivalent reported enrollment from the prior October 1.

(5) The superintendent of public instruction shall apportion to districts and, if appropriate, charter schools for the state incentive grants for increased enrollment in vocational skills centers the amount calculated per district or charter school in this section in June of each year commencing June 2006.

AMENDATORY SECTION (Amending WSR 91-14-038, filed 6/26/91, effective 7/27/91)

**WAC 392-121-500 Withholding for repayment of federal moneys—Applicable provisions.** The provisions of WAC 392-121-500 through 392-121-545 apply to the withholding of basic education allocations pursuant to chapter 103, Laws of 1990 to facilitate repayment of school district and charter school expenditures to the federal government

pursuant to WAC 392-115-090 or a federal audit resolution process.

AMENDATORY SECTION (Amending WSR 91-07-006, filed 3/7/91, effective 4/7/91)

**WAC 392-121-520 Withholding for repayment of federal moneys—Definition—Substantial impairment.** As used in WAC 392-121-500 through 392-121-545, "substantial impairment" means that after reducing the school district's or charter school's current school year basic education allocation by the amount of disallowed costs plus accrued interest the school district or charter school is likely to incur a negative unreserved general fund balance as of August 31 of the current school year and is unlikely to be able to balance the school district or charter school general fund budget for the ensuing school year without requesting the superintendent of public instruction for permission to budget receivables pursuant to WAC 392-123-060.

AMENDATORY SECTION (Amending WSR 91-07-006, filed 3/7/91, effective 4/7/91)

**WAC 392-121-525 Withholding for repayment of federal moneys—Determination of substantial impairment.** If any school district or charter school does not repay disallowed costs plus accrued interest or commit to an acceptable repayment plan within thirty calendar days of issuance of the management decision letter, the superintendent of public instruction shall determine if substantial impairment exists.

AMENDATORY SECTION (Amending WSR 91-07-006, filed 3/7/91, effective 4/7/91)

**WAC 392-121-530 Withholding for repayment of federal moneys—Notice of substantial impairment.** If the superintendent of public instruction determines pursuant to WAC 392-121-525 that substantial impairment exists, the superintendent of public instruction shall notify the school district or charter school in writing that:

(1) No withholding shall occur until such time as substantial impairment no longer exists;

(2) Unless the school district or charter school repays disallowed costs plus accrued interest or agrees to an acceptable repayment plan, the superintendent of public instruction, at least once every twelve months, or sooner at the request of the school district or charter school, shall determine if substantial impairment exists pursuant to WAC 391-121-525; and

(3) Interest will continue to accrue until the amount of disallowed costs plus accrued interest are repaid to the federal government.

AMENDATORY SECTION (Amending WSR 91-07-006, filed 3/7/91, effective 4/7/91)

**WAC 392-121-535 Withholding for repayment of federal moneys—Notice of intent to withhold basic education allocations.** If the superintendent of public instruction determines pursuant to WAC 392-121-525 that substantial

impairment does not exist, the superintendent of public instruction shall notify the school district or charter school in writing of intent to withhold basic education allocations.

AMENDATORY SECTION (Amending WSR 91-07-006, filed 3/7/91, effective 4/7/91)

**WAC 392-121-540 Withholding for repayment of federal moneys—Withholding of basic education allocations.** If the school district or charter school does not repay disallowed costs plus accrued interest or commit to an acceptable repayment plan within thirty calendar days of the notice provided pursuant to WAC 392-121-535, the superintendent of public instruction shall withhold from the school district's or charter school's next basic education apportionment payment an amount equal to the disallowed costs plus accrued interest. After the initial withholding the superintendent of public instruction shall withhold amounts for additional interest accruing on disallowed costs.

AMENDATORY SECTION (Amending WSR 91-07-006, filed 3/7/91, effective 4/7/91)

**WAC 392-121-545 Withholding for repayment of federal moneys—Payment of withheld basic education allocations.** Moneys withheld pursuant to WAC 392-121-540 shall be restored to the school district or charter school or paid to the federal government as provided in this section.

(1) If the school district or charter school repays disallowed costs plus accrued interest to the federal government or commits to an acceptable repayment plan before the close of the state biennium in which withholding occurred the superintendent of public instruction shall restore withheld moneys to the school district's or charter school's basic education allocation.

(2) If the school district or charter school does not repay or commit to repay pursuant to subsection (1) of this section, the superintendent of public instruction shall request the legislature for reappropriation of basic education moneys for the purpose of repaying the federal government. The requested reappropriation shall include amounts for interest accruing on disallowed costs up to the anticipated date of repayment to the federal government.

(3) Upon reappropriation of moneys pursuant to subsection (2) of this section, the superintendent of public instruction shall pay an amount equal to the disallowed costs plus accrued interest to the federal government.

AMENDATORY SECTION (Amending WSR 13-05-049, filed 2/13/13, effective 3/16/13)

**WAC 392-121-570 Vocational indirect cost limit—Applicable code provisions—Purpose—Effective date.** (1) WAC 392-121-570 through 392-121-578 define the fifteen percent limit on indirect cost charges to school district state-funded vocational-secondary programs as required by the Biennial Operating Appropriations Act. These rules do not apply to federal vocational funding which is governed by federal policies.

(2) The purpose of these sections is to assure that state allocations for vocational education are expended by school

districts and charter schools to support state vocational programs. The minimum levels defined here are not to be construed as recommended expenditure levels.

(3) These sections are effective for the 2002-03 school year and thereafter.

(4) WAC 392-121-570 through 392-121-578 also apply to program 34, with program 34 substituted wherever program 31 appears. Running start does not apply to program 34.

AMENDATORY SECTION (Amending WSR 04-01-058, filed 12/11/03, effective 1/11/04)

**WAC 392-121-571 Vocational indirect cost limit—Definitions.** As used in WAC 392-121-570 through 392-121-578:

(1) "Program 31" means the vocational-basic-state program as defined in the *Accounting Manual for Public School Districts in the State of Washington*.

(2) "Basic allocation for vocational students" means the amount of money generated by a school district's or charter school's vocational full-time equivalent enrollment in the general apportionment formula using the state funding formula factors including the grade 4-12 staffing ratios without enhancement, and using the district's or charter school's average certificated instructional staff mix factor for program 31 staff from the district's S-275 personnel report.

(3) "Enhancement allocation for vocational students" means the additional money above the basic allocation for vocational students generated by a school district's or charter school's vocational full-time equivalent enrollment as a result of the enhanced state vocational staffing ratio and enhanced nonemployee related cost allocation for vocational students. This enhancement shall be calculated using the district's or charter school's average certificated instructional staff mix factor for program 31.

(4) "Vocational running start allocation" means the amount generated in the general apportionment formula by a school district's or charter school's running start students enrolled in vocational courses in a community or technical college pursuant to chapter 392-169 WAC.

AMENDATORY SECTION (Amending WSR 04-01-058, filed 12/11/03, effective 1/11/04)

**WAC 392-121-573 Vocational indirect cost limit—Calculation of minimum program 31 expenditures.** Each school district's or charter school's minimum program 31 expenditures equal the sum of the following amounts:

(1) Eighty-five percent of the total basic and vocational enhancement allocations for vocational students;

(2) Ninety-three percent of the vocational running start allocation; plus

(3) Any carryover from the prior school year allowed under WAC 392-121-578.

AMENDATORY SECTION (Amending WSR 04-01-058, filed 12/11/03, effective 1/11/04)

**WAC 392-121-574 Vocational indirect cost limit—Preliminary notice to school districts and charter schools below the minimum expenditure level.** (1) After the close

of the school year, and before December 31, the superintendent of public instruction shall compare each school district's and charter school's program 31 expenditures for the school year as reported on the district's Report F-196 annual year end financial statements to the district's or charter school's minimum program 31 expenditures.

(2) If a district's or charter school's program 31 expenditures are less than the minimum, then the superintendent shall notify the district or charter school of the results of the calculation including any potential recovery of state funding.

AMENDATORY SECTION (Amending WSR 04-01-058, filed 12/11/03, effective 1/11/04)

**WAC 392-121-576 Vocational indirect cost limit—School district requests for review and adjustment.** (1) After receiving notice of the preliminary notice pursuant to WAC 392-121-574, and before the ensuing January 15, a school district or charter school may request review and adjustment to the superintendent's calculations. The request shall be in a form prescribed by the superintendent of public instruction and shall be signed by the school district superintendent or the superintendent's designee, or the charter school lead administrator or lead administrator's designee.

(2) Grounds for review and adjustment include:

(a) Errors in the calculation; or  
(b) Inaccurate school district or charter school data used in the calculation.

(3) A district or charter school requesting review and adjustment due to inaccurate school district or charter school data shall submit corrected data pursuant to the superintendent's instructions.

(4) The superintendent of public instruction shall correct any errors in the calculations or revise the school district or charter school data used in the calculations as appropriate.

AMENDATORY SECTION (Amending WSR 13-05-049, filed 2/13/13, effective 3/16/13)

**WAC 392-121-578 Vocational indirect cost limit—Recovery of state allocations.** (1) At the time of the January apportionment calculations after the close of the school year, the superintendent of public instruction shall recalculate each school district's or charter school's minimum direct expenditures.

(2) If the district's or charter school's program 31 expenditures are below the minimum program 31 expenditure amount, the district or charter school shall be allowed to carry over into the ensuing school year an amount equal to up to ten percent of the minimum expenditure amount excluding any carryover from the prior school year. The actual amount carried over to the ensuing year shall be no more than the vocational enhancement less the recovery.

(3) The superintendent of public instruction shall recover from the district's or charter school's general apportionment allocation as a prior year adjustment an amount equal to the lesser of the district's or charter school's enhancement allocation for vocational students or the following amount:

(a) The district's or charter school's minimum program 31 expenditures; minus

(b) The district's or charter school's program 31 expenditures plus any allowable carryover.

(4) Recoveries made pursuant to this section shall be adjusted after the January apportionment calculation if revised enrollment, staff mix, or expenditure data submitted by the district or charter school and accepted by the superintendent of public instruction materially affects the district's or charter school's recovery amount.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-122-005 Authority.** The authority for this chapter is RCW 28A.150.290 which authorizes the superintendent of public instruction to adopt rules and regulations for the implementation of chapter 28A.150 RCW. This chapter is further authorized under RCW 28A.710.040(5), which provides that public charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

AMENDATORY SECTION (Amending WSR 91-03-118, filed 1/23/91, effective 2/23/91)

**WAC 392-122-010 Purpose.** The purpose of this chapter is to establish policies and procedures for the distribution of state moneys to school districts and charter schools for programs authorized by RCW 28A.150.370 other than basic education apportionment, special allocations pursuant to chapter 392-140 WAC, and transportation allocations.

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

**WAC 392-122-106 Definition—Form P-223H.** "Form P-223H" means the report of school district and charter school special education headcount enrollment for eligible special education students as defined in WAC 392-122-135 submitted monthly by the school districts and charter schools to the superintendent of public instruction for the school year for the purpose of calculating the special education program allocations.

(1) The count dates for special education student enrollments shall be the same as specified in WAC 392-121-122.

(2) This report shall indicate the special education enrollment by resident school district and serving school district.

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

**WAC 392-122-107 Definition—Report 1220.** "Report 1220" means the school district's and charter school's special education allocation report calculated and prepared by the superintendent of public instruction using the district's or charter school's eight-month average annual headcount enrollment as submitted on Form P-223H for the school year and for the 1994-95 school year the ratios and percentages established in the LEAP document for state special education program allocation as defined in WAC 392-122-105. For the purpose of special education allocations, the district's or charter school's eight-month average annual headcount enroll-

ment shall be the average of the enrollments for the first school day of the second reporting month and the subsequent seven months.

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

**WAC 392-122-120 State special education program—Determination of district average state special education program certificated instructional staff salary for the purpose of apportionment.** For the 1994-95 school year the determination of district average special education program certificated instructional staff salary used in the special education allocation formula for the purposes of apportionment to schools and charter schools shall be the same as specified in WAC 392-121-299: Provided, That the words "state special education program" shall be substituted for "basic education" throughout that section.

AMENDATORY SECTION (Amending WSR 09-04-082, filed 2/3/09, effective 3/6/09)

**WAC 392-122-140 State special education program—Home and/or hospital care.** State special education program moneys shall be allocated to school districts and charter schools for students eligible under WAC 392-172A-02100 temporarily requiring home and/or hospital care at the maximum rate provided annually by the superintendent of public instruction for the purpose of distributing home and/or hospital care allocations.

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

**WAC 392-122-150 State special education program—Hospital educational program.** State special education program moneys shall be allocated by the superintendent of public instruction to school districts and charter schools operating a hospital educational program for the exclusive purpose of maintaining and operating the hospital educational program. School districts and charter schools shall be allocated funds for hospital educational programs at the maximum rate provided annually by the superintendent of public instruction for the purpose of distributing hospital educational program allocations.

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

**WAC 392-122-155 State special education program—Board and room cost.** State special education program moneys shall be allocated to school districts and charter schools for the cost of approved board and room for eligible handicapped students served and requiring board and room, who are not eligible under programs of the department of social and health services, but deemed in need of the board and room by the superintendent of public instruction. These moneys are in lieu of transportation costs. School districts and charter schools shall be allocated moneys for board and room of eligible special education students at the maximum rate provided annually by the superintendent of public

instruction for the purpose of distributing board and room allocations.

AMENDATORY SECTION (Amending WSR 14-10-009, filed 4/24/14, effective 5/25/14)

**WAC 392-122-160 State special education program—Reporting.** (1) At such times as are designated by the superintendent of public instruction, each school district and charter school shall report the number of eligible special education students receiving special education according to instructions provided by the superintendent of public instruction. The disability condition shall be one of such conditions in WAC 392-122-135. The age for the purpose of determining the special education program allocation calculated in WAC 392-122-105 shall be the age of the student on the monthly enrollment count date as defined by WAC 392-121-119. The age reported by the school district or charter school shall be for apportionment purposes only and not for determination of a child's eligibility for access to a special education program.

(2) Each school district and charter school shall provide, upon request, such additional data as are necessary to enable the superintendent of public instruction to allocate and substantiate the school district's or charter school's allocation of state special education moneys.

AMENDATORY SECTION (Amending WSR 96-03-002, filed 1/3/96, effective 2/3/96)

**WAC 392-122-165 State special education program—Apportionment of state special education program moneys.** From moneys appropriated by the legislature, the superintendent of public instruction shall apportion state special education program moneys to each school district and charter school based on the criteria cited in the State Operating Appropriations Act for the respective school year for state special education program allocation and on the provisions of WAC 392-122-100 through 392-122-166. The superintendent of public instruction shall make payments in the same manner as provided in WAC 392-121-400.

AMENDATORY SECTION (Amending WSR 09-04-082, filed 2/3/09, effective 3/6/09)

**WAC 392-122-166 State special education program allocation.** The board of directors of a school district or charter school may request the superintendent of public instruction to pay a portion of the district's or charter school's special education allocation to another school district, charter school, or an educational service district. The request must be submitted on Form 1295 and must state the dollar amount of the transfer. The board can modify the dollar amount of the transfer by submitting another Form 1295 to the superintendent of public instruction. Unless the form requesting a transfer states a timeline for making the transfer, the superintendent of public instruction shall execute the transfer pursuant to the provisions of WAC 392-121-400.

AMENDATORY SECTION (Amending WSR 98-21-065, filed 10/20/98, effective 11/20/98)

**WAC 392-122-208 Definition—State institutional education program—Other education provider.** "Other education provider" means:

(1) An educational service district, institution of higher education, private contractor (including public charter school) or any combination thereof providing an institutional education program in an adult correctional facility operated by the department of corrections under contract with the superintendent of public instruction and the department of corrections; or

(2) An educational service district providing an institutional education program pursuant to a contract with a school district in a state-operated group home, institution for juvenile delinquents, or residential habilitation center, or county-operated juvenile detention center.

AMENDATORY SECTION (Amending WSR 08-24-029, filed 11/24/08, effective 12/25/08)

**WAC 392-122-221 Definition—State institutional education program—Enrollment exclusions.** The following may not be counted as an enrolled institutional education program student:

(1) A person whose educational activity has terminated.

(2) A person who has transferred to another institution ~~((or))~~ school district, or charter school.

(3) An institution student who:

(a) Has not engaged in educational activity in the past five school days, excluding days of excused absence;

(b) Has not engaged in educational activity in the past ten school days including days of excused absence; or

(c) Is claimed by any school district or charter school as an enrolled student eligible for state basic education support pursuant to chapter 392-121 WAC where the school district's count date occurs prior to the institution's count date for the month.

When the institution's count date and the school district's or charter school's count date are on the same date, institutions shall have priority for counting the student.

AMENDATORY SECTION (Amending WSR 13-12-008, filed 5/23/13, effective 6/23/13)

**WAC 392-122-424 Full-day kindergarten program—Letter of acceptance and approvals.** (1) School districts with eligible schools or charter schools that intend to provide a FDK program shall submit a letter of acceptance to the superintendent of public instruction in accordance with a timeline established by the superintendent of public instruction. This letter of acceptance must include the following:

(a) Assurances that the school shall comply with all program requirements outlined in RCW 28A.150.315(1);

(b) Assurances that the district or charter school can provide the full-day kindergarten program for all children of parents who request it in each eligible school; and

(c) Any other requirements as established by the office of superintendent of public instruction.

(2) The superintendent shall approve the letters of acceptance that have met the requirements in subsection (1) of this section. If, after approving all of the letters of acceptance that were received that met the requirements in subsection (1) of this section, the superintendent determines that additional funding will be available, the superintendent shall notify charter schools and school districts with schools that have the next highest levels of free and reduced price lunch eligibility that they are eligible.

(3) The eligibility for FDK is determined based upon an individual building's student poverty and may not transfer to other buildings or students within ~~((the))~~ a school district.

AMENDATORY SECTION (Amending WSR 09-04-082, filed 2/3/09, effective 3/6/09)

**WAC 392-122-705 Formula for the distribution of state moneys for the state transitional bilingual program.**

(1) As used in this section the term "eligible student" shall mean those students defined under WAC 392-160-005(3) and 392-150-015.

(2) A district's or charter school's entitlement for state moneys for the state transitional bilingual program shall be calculated as follows:

(a) Multiplying the number of eligible students by the per pupil allocation established in the State Appropriation Act for the state transitional bilingual program.

(b) The result of the calculation provided in (a) of this subsection is the district's or charter school's entitlement subject to WAC 392-122-710 and its provision for enrollment adjustment.

AMENDATORY SECTION (Amending WSR 09-04-082, filed 2/3/09, effective 3/6/09)

**WAC 392-122-710 Distribution of state moneys for the transitional bilingual program.** The superintendent of public instruction shall apportion to districts or charter schools for the state transitional bilingual program the amount calculated per district in WAC 392-122-705 according to the apportionment schedule provided in RCW 28A.510.250. Monthly payments to districts and charter schools shall be adjusted during the year to reflect changes in the district's or charter school's reported eligible students as reported on the P223, monthly report of school district enrollment form. For the purpose of transitional bilingual allocations, the district's or charter school's eight-month average annual headcount enrollment of eligible students as defined in WAC 392-160-005(3) and 392-160-015 shall be the average of such enrollment for the first school day of the second reporting month and the subsequent seven months.

AMENDATORY SECTION (Amending WSR 09-04-082, filed 2/3/09, effective 3/6/09)

**WAC 392-122-805 Formula for distribution of state moneys for the state highly capable students education program.** (1) As used in this section, the term "average annual full-time equivalent students" or AAFTE shall be defined as that term defined in WAC 392-121-133.

(2) A district's or charter school's entitlement for state moneys for the state highly capable students education program shall be calculated as follows:

(a) Multiplying the AAFTE of the reporting district or charter school by the per pupil allocation established in the State Operating Appropriations Act in effect at the time the apportionment is due; and

(b) The product is the district's or charter school's entitlement subject to WAC 392-122-810 and its provision for enrollment adjustment.

**AMENDATORY SECTION** (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-122-810 Distribution of state moneys for the state highly capable students education program.** The superintendent of public instruction shall apportion to districts and charter schools for the state highly capable student education program the amount calculated per district or charter school in WAC 392-122-805 according to the apportionment schedule provided in RCW 28A.510.250. The amount apportioned may be adjusted intermittently to reflect changes in the district's or charter school's AAFTE students as reported on the P223, monthly report of school district enrollment form.

**AMENDATORY SECTION** (Amending WSR 09-04-082, filed 2/3/09, effective 3/6/09)

**WAC 392-122-900 General provision—Indirect cost limitations, carryover limitations and recoveries.** Categorical apportionment moneys shall be expended for allowable categorical program costs. Indirect cost charges to categorical programs are limited as provided in this section. Categorical moneys may be carried over from one school district or charter school fiscal year to another only as provided in this section.

(1) The superintendent of public instruction shall recover categorical program allocations made pursuant to this chapter if not expended by the school district or charter school during the school year for allowable program costs.

(2) For the 2000-01 school year and thereafter, "allowable program costs" means direct program expenditures plus allowable indirect program charges.

(a) Direct program expenditures are expenditures directly traceable to the program for the school year reported consistent with the *Accounting Manual for Public School Districts in the State of Washington* and instructions provided by the superintendent of public instruction including the *Administrative Budgeting, and Financial Reporting Handbook*.

(b) For the purposes of this section, special education program expenditures shall be reduced (abated) by revenues to account 7121 special education revenues from other districts or charter schools.

(c) For special education, highly capable, and transitional bilingual, allowable indirect program charges equal direct program expenditures times the percentage calculated from the school district's or charter school's annual financial statements (Report F-196) for two school years prior as follows:

(i) Divide direct expenditures for program 97 districtwide support by;

(ii) Total general fund direct expenditures for all programs minus direct expenditures for program 97 districtwide support; and

(iii) Round to three decimal places.

(d) For the learning assistance program, allowable indirect program charges equal the direct program expenditures times the federal restricted indirect rate calculated by the superintendent of public instruction.

(e) For the institutional education program, allowable indirect program charges equal the state institutional education program allocation times the percentage allocated for indirect costs pursuant to the biennial operating appropriations act and the state funding formula.

(3) Commencing with the 1994-95 school year allocation, a school district or charter school may carry over from one school district fiscal year to the next up to ten percent of the state learning assistance program allocation. Carryover moneys shall be expended solely for allowable learning assistance program costs.

(4) Commencing with the 1997-98 school year allocation, a district or charter school may carry over from one school fiscal year to the next up to ten percent of state special education program allocation. Carryover moneys shall be expended solely for allowable state special education program costs.

(5) Commencing with the 1998-99 school year allocation, a school district may carry over from one school district fiscal year to the next up to ten percent of the state institutional education program allocation. Carryover moneys shall be expended solely for allowable state institutional education program costs.

(6) The amount recovered pursuant to this section for special education, highly capable, bilingual, and learning assistance programs shall be determined as follows:

(a) Sum the state allocation for the categorical program for the school year and any carryover from the prior school year if applicable;

(b) Determine the district's or charter school's allowable program costs for the school year pursuant to this section;

(c) If the result of (a) of this subsection exceeds the result of (b) of this subsection, the difference less any allowable carryover shall be recovered.

(7) The amount recovered pursuant to this section for the institutional education program shall be determined as follows:

(a) Sum the state allocation for the institutional education program for the school year excluding any amount provided for indirect costs, and any carryover from the prior school year if applicable;

(b) Determine the school district's direct expenditures for the institutional education program as reported on Report F-196 or such other document filed pursuant to instructions provided by the superintendent of public instruction;

(c) If the amount of (a) of this subsection exceeds the amount of (b) of this subsection, the difference less any allowable carryover shall be recovered.

(8) This section applies to categorical program allocations to school districts, educational service districts and, in the case of institutional education programs, entities contracting to provide an institutional education program funded under this chapter.

AMENDATORY SECTION (Amending WSR 86-01-021, filed 12/9/85)

**WAC 392-122-905 General provision—Maximum control factor—Proration.** The maximum rate of allocation specified in this chapter shall be allocated by the superintendent of public instruction to school districts and charter schools unless the state appropriations for these programs are insufficient and it is necessary for the superintendent of public instruction to prorate all or a portion of these funds appropriated for allocation to school districts or charter schools for such programs. All such prorations shall be announced to school districts and charter schools through official agency bulletins or reports.

AMENDATORY SECTION (Amending WSR 91-03-118, filed 1/23/91, effective 2/23/91)

**WAC 392-122-910 General provisions—Recovery for failure to meet program requirements.** (1) Categorical apportionment moneys affected by this chapter shall be recovered in the event that a school district or charter school fails to meet one or more conditions that are established in state law, including the state Operating Appropriations Act, or state rules, or regulations.

(2) Such recovery shall occur if:

(a) The school district's or charter school's failure to meet one or more established conditions is documented either on a school district or charter school report that has been submitted to the superintendent of public instruction or by review of the school district's or charter school's program by the superintendent of public instruction; and

(b) The school district or charter school has been given notice by the superintendent of public instruction of such failure at least thirty calendar days prior to the date of recovery.

(3) The amount of such recovery shall be proportional to the degree to which the school district or charter school fails to meet the established condition.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-123-003 Authority.** The authority for this chapter is RCW 28A.505.140 which authorizes the superintendent of public instruction to promulgate rules and regulations regarding budgetary procedures and practices by school districts. This chapter is further authorized under RCW 28A.710.040(5), which provides that public charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-123-005 Purposes.** The purposes of this chapter are to implement chapter 28A.505 RCW and insure proper budgetary procedures and practices on the part of school districts and charter schools.

AMENDATORY SECTION (Amending WSR 81-20-007, filed 9/24/81)

**WAC 392-123-010 The accounting manual.** The superintendent of public instruction and the office of the state auditor shall publish and distribute to each school district and charter school an accounting manual which shall be referred to as *The Accounting Manual for Public School Districts of the State of Washington*. Such accounting manual, as now or hereafter amended, shall govern the accounting procedures of each school district and charter school and is hereby incorporated into this chapter by this reference. Prior to any revision thereof, the superintendent of public instruction shall publish notice of such proposed action and shall hold at least one public hearing.

AMENDATORY SECTION (Amending WSR 80-06-043, filed 5/13/80)

**WAC 392-123-011 School district and charter school fiscal year.** The fiscal year for school districts ~~((fiscal year))~~ and charter schools shall begin on September 1 and end on August 31.

AMENDATORY SECTION (Amending WSR 99-20-021, filed 9/28/99, effective 9/29/99)

**WAC 392-123-047 Definitions—Revenue, accrual basis expenditures, cash basis expenditures, appropriation, and disbursements.** As used in this chapter, the term:

(1) "Revenue" shall mean an addition to assets of a fund of a school district or charter school during a fiscal period that is available to finance the funds' expenditures during the fiscal period. Revenue does not accompany the increase of liabilities or represent refunds of previous disbursements. Revenue may be in the form of cash, or in the form of non-cash assets such as donated commodities. Revenue for accrual basis expenditure funds is limited to amounts received in cash or noncash donations, plus or minus adjustments for revenue accruals.

(2) "Cash basis revenue" shall mean the actual receipt of revenue not adjusted for revenue accruals.

(3) "Revenue accruals" shall mean those revenues which are (a) anticipated to be received in cash after the close of the fiscal period and (b) represent reimbursement for expenditures incurred by the end of the fiscal period. In order for revenue to be included in revenue accruals, it must meet the above tests.

Revenue accruals, if they meet both tests include: Reimbursements on categorical grants for which expenditures have been made but payment has not been received; payments from other school districts that are due, but are not collected by the end of the fiscal period; deferrals of apportion-

ment payments by the state when a deferral occurs because of district request or state mandate, and the revenue is due to the district; and rental or lease payments that are currently due, and there is reasonable assurance of payment.

Revenue that cannot be accrued because it does not meet the above tests includes: Collection of excess levies not expected to be received until after the end of the fiscal period and PL 874 funds that are to be received in cash in the following fiscal period, i.e. the twenty-five percent payment that is received after the end of the fiscal period.

(4) "Expenditures" shall mean the decrease in assets with no corresponding decrease in liabilities, or the increase in liabilities with no corresponding increase in assets. Expenditures for activities prior to September 1, but within the school year as defined in WAC 392-121-031, are considered expenditures of the school year commencing September 1.

(5) "Expenditure refunds" shall mean the increase in assets with a corresponding decrease in expenditures.

(6) "Revenue refunds" shall mean the increase in liabilities with a corresponding decrease in revenues.

(7) "Liabilities" shall mean debt or other legal obligations arising out of transactions in the past which are payable but not necessarily due.

(8) "Accrual basis expenditures" shall mean expenditures incurred during a given fiscal period, whether paid or unpaid.

(9) "Cash basis expenditures" shall mean the disbursement of cash for expenditures during a given fiscal period regardless of when liabilities are incurred, and the disbursement of inventory.

(10) "Appropriation" shall mean the maximum authorization during a given fiscal period to incur expenditures.

(11) "Disbursements" shall mean payments in cash, including the issuance of warrants, and the disbursement of inventory.

AMENDATORY SECTION (Amending WSR 99-20-021, filed 9/28/99, effective 9/29/99)

**WAC 392-123-049 Basis of budgeting and accounting.** All school districts and charter schools must utilize the following methods of revenue and expenditure recognition in budgeting, accounting, and financial reporting:

(1) Recognize revenue as defined in WAC 392-123-047: Provided, That school districts that elect the cash basis of expenditure recognition as defined below shall recognize revenue on the cash basis.

(2) Recognition of expenditures for all funds shall be on the accrual basis: Provided, That school districts with under one thousand full time equivalent students for the preceding fiscal year may make a uniform election for all funds, except debt service funds, to be on the cash basis of expenditure recognition. Notification of such election shall be given to the state superintendent of public instruction in the budget of the school district and shall remain in effect for one full fiscal year: Provided further, That charter schools may not elect to make a uniform election for any funds to be on the cash basis of expenditure recognition.

(3) Expenditures for activities prior to September 1, but within the school year as defined in WAC 392-121-031, are considered expenditures of the school year commencing September 1.

AMENDATORY SECTION (Amending WSR 83-21-027, filed 10/10/83)

**WAC 392-123-053 Budget contents.** Each school district or charter school that anticipates being an operating district or charter school in the common school system of the state during the following fiscal year shall prepare a budget. For districts anticipating consolidation or annexation, separate budgets shall be prepared pending official consolidation or annexation proceedings.

Every school district and charter school budget shall be prepared, submitted and adopted in the format prescribed by the superintendent of public instruction. The budget classifications contained in said format shall be in accordance with the accounting manual for public school districts, published by the superintendent of public instruction and the state auditor. Budgets prepared and adopted in a format other than that prescribed by the superintendent of public instruction shall not be official and will have no legal effect.

All items on the budget form shall be completed correctly in accordance with instructions provided by the superintendent of public instruction before the budget is presented for hearing review and approval. Information pertaining to budget development which is not available at the time of budget preparation shall be estimated using the most current and reliable information available.

The budget shall set forth the estimated revenues for the budgeted fiscal year, the estimated revenues for the fiscal year current at the time of budget preparation, the actual revenues for the last completed fiscal year, and the reserved and unreserved fund balances for each year. The estimated revenues from all sources for the ensuing fiscal year shall not include any revenue not anticipated to be available during that fiscal year: Provided, That school districts and charter schools, pursuant to WAC 392-123-060 can be granted permission by the superintendent of public instruction to include as revenues in their budgets, receivables collectible in future fiscal years.

Any budget or appropriation adopted by the school district board of directors or charter school board that contains estimated expenditures in excess of the total of estimated revenue for the budgeted fiscal year plus estimated fund balance at the beginning of the budgeted fiscal year less ending reserve fund balance for the budgeted year without written permission from the superintendent of public instruction shall be null and void and shall not be considered an appropriation.

The school district or charter school budget shall set forth by detailed items or classes the estimated expenditures for the budgeted fiscal year, the estimated expenditures for the fiscal year current at the time of budget preparation, and the actual expenditures for the last completed fiscal year. Total salary amounts, full-time equivalents and the high, low and average annual salaries shall be displayed by each job classification within each activity within each program. If individual salaries within each position title are not dis-

played, districts shall provide individual salaries together with the position title of the recipient and the total salary amounts budgeted for each program upon request. Salary schedules shall be displayed. In districts or, when applicable, charter schools where negotiations have not been completed,

the district or charter school may budget the salaries at the current year's rate and restrict fund balance for the amount of anticipated increase in salaries, so long as an explanation shall be attached to the budget on such restriction of fund balance.

**AMENDATORY SECTION** (Amending WSR 96-08-058, filed 4/2/96, effective 5/3/96)

**WAC 392-123-054 Time schedule for budget.** The time schedule for preparation, adoption and filing of the annual budget is as follows:

Final Date For Action	First-Class Districts	Second-Class Districts	Public Charter Schools
July 10	Final date for district to prepare annual budget. Upon completion of their budgets, every school district shall publish a notice stating that the district has completed the budget, placed it on file in the school district administration office, that a copy thereof will be furnished to any person who calls upon the district for it, and that the board of directors will meet for the purpose of fixing and adopting the budget of the district for the ensuing fiscal year. Such notice shall designate the date, time, and place of said meeting. The notice shall also state that any person may appear thereat and be heard for or against any part of such budget. Said notice shall be published at least once each week for two consecutive weeks in a newspaper of general circulation in the district, or, if there be none, in a newspaper of general circulation in the county or counties in which such district is a part. The last notice shall be published no later than seven days immediately prior to the hearing.	Same as first-class.	<u>Final date for charter school to prepare its proposed annual budget. Upon completion of their proposed budgets, every charter school shall publish a notice stating that the charter school has completed the budget, placed it on file in the charter school administration office, that a copy thereof will be furnished to any person who calls upon the school for it, and that the school board will meet for the purpose of fixing and adopting the budget of the charter school for the ensuing fiscal year. Such notice shall designate the date, time, and place of said meeting. The notice shall also state that any person may appear thereat and be heard for or against any part of such budget. Said notice shall be published at least once each week for two consecutive weeks in a newspaper of general circulation in the county or counties in which such school is a part. The last notice shall be published no later than seven days immediately prior to the hearing. Every charter school shall submit the proposed budget to the office of superintendent of public instruction and the charter school's authorizer, as defined in RCW 28A.710.010.</u>
	Final date to have sufficient copies of budget to meet reasonable demands of public. Also, final date to submit the budget to the educational service district for review and comment. The July 10 <sup>th</sup> date may be delayed by the	Same as first-class	<u>Final date to have sufficient copies of budget to meet reasonable demands of public. The July 10<sup>th</sup> date may be delayed by the superintendent of public instruction if the state's operating budget is not finally approved by the legislature</u>

Final Date For Action	First-Class Districts	Second-Class Districts	<u>Public Charter Schools</u>
August 1	superintendent of public instruction if the state's operating budget is not finally approved by the legislature until after June 1st.	<p>Final date for board directors to meet in public hearing and fix and adopt said budget.</p> <p>Such hearing may be continued not to exceed a total of two days: Provided, That the budget must be adopted no later than August 1st.</p> <p>Upon conclusion of the hearing the board of directors shall fix and determine the appropriation from each fund contained in the budget separately, and shall by resolution adopt the budget and the appropriations as so finally determined, and enter the same in the official minutes of the board.</p>	<u>until after June 1st.</u>
August 3		Last date to forward the adopted budget to educational service district for review, alteration and approval.	
August 31	Final date for board of directors to meet in public hearing and fix and adopt said budget. Such hearing may be continued not to exceed a total of two days: Provided, That the budget must be adopted no later than August 31st. Upon conclusion of board of directors shall fix and determine the appropriation from each fund contained in the budget separately, and shall by resolution adopt the budget and the appropriations as so finally determined, and enter the same in the official minutes of the board.	Final date for the budget review committee to fix and approve the amount of the appropriation from each fund of the budget. One copy of the approved budget will be retained by the educational service district and one copy will be retained by the superintendent of public instruction. No budget review committee shall knowingly approve any budget or appropriation that is in violation of state law or rules and regulations adopted by the superintendent of public instruction. Members of the budget review committee as referred to in this section shall consist of the educational service district superintendent or a representative thereof, a member of the local board of directors or a representative thereof and a representative of the superintendent of public instruction.	<u>Final date for the charter school board to meet in public hearing and fix and adopt said budget. Such hearing may be continued not to exceed a total of two days: Provided, That the budget must be adopted no later than August 31st. The charter school board shall fix and determine the appropriation from each fund contained in the budget separately, and shall by resolution adopt the budget and the appropriations as so finally determined, and enter the same in the official minutes of the board.</u>

Final Date For Action	First-Class Districts	Second-Class Districts	Public Charter Schools
September 3	Final date for district to file the adopted budget with their educational service district.		<u>Final date for the charter school to submit the adopted annual budget to the office of superintendent of public instruction and the charter school's authorizer, as defined in RCW 28A.710.010.</u>
September 10	Final date for educational service district to file the adopted budgets with the superintendent of public instruction.	Final date for the superintendent of public instruction to return a copy of the approved budget to the local school district.	

AMENDATORY SECTION (Amending WSR 83-21-027, filed 10/10/83)

**WAC 392-123-055 Identification of revenues to be included in the budget.** Only revenues which can be reasonably anticipated to be available, as defined in WAC 392-123-047 in the fiscal period for which the budget is being prepared may be budgeted by a school district or charter school, except under the following condition: Receipt of written permission from the superintendent of public instruction to budget as revenue in a district's budget receivables collectible in future fiscal periods.

All available current information including current instructions contained in bulletins now or hereafter published by the superintendent of public instruction shall be used to determine the amount of budget revenues that can reasonably be expected to be available in the fiscal period. Proposed levies which have not been certified as approved by the voters shall not be included in the budget as adopted for operation of the district or charter school.

For charter schools authorized by a school district board of directors, allocations to a charter school that are included in RCW 84.52.0531 (3)(a) through (c) shall be included in the school district's budget in the same manner as other public schools in the district.

For levies submitted to voters after a charter school's start-up date, the charter school must be included in the school district's budget in the same manner as other public schools in the district.

AMENDATORY SECTION (Amending WSR 83-21-027, filed 10/10/83)

**WAC 392-123-060 Petition to budget receivables collectible in future fiscal periods.** When a school district or charter school is unable to prepare a budget or a budget extension in which the estimated revenues for the budgeted fiscal period plus the estimated fund balance or actual fund balance in case of a budget extension, at the beginning of the budgeted fiscal period less the ending reserved fund balance for the budgeted fiscal year do not at least equal the estimated expenditures for the budgeted fiscal period, the school district board of directors or charter school board may deliver a petition in writing at least twenty days before the budget or budget extension is scheduled for adoption to the superintendent of public instruction requesting permission to include receiv-

ables collectible in future periods beyond the fiscal period being budgeted in order to balance the budget or budget extension for the fiscal period being budgeted. Said petition shall include a resolution of the school board requesting permission to budget receivables collectible in future fiscal periods and other such information as the superintendent of public instruction shall deem as necessary.

If such permission is granted, it shall be in writing, and it shall contain conditions, binding on the district or charter school, designed to improve the district's or charter school's financial condition.

AMENDATORY SECTION (Amending WSR 80-06-043, filed 5/13/80)

**WAC 392-123-065 Noncompliance with binding restrictions.** If a school district fails to comply with any binding restrictions issued by the superintendent of public instruction pursuant to WAC 392-123-060, or if a public charter school's authorizer deems the charter school has failed to comply with the superintendent's binding restrictions, the allocation of state funds for support of the school district or charter school may be withheld, pending an investigation of the reason for such noncompliance by the superintendent of public instruction. Written notice of the intent to withhold state funds, with reasons stated for this action, shall be made to the school district or charter school by the superintendent of public instruction before any portion of the state allocation is withheld.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-123-070 Overexpending and exceeding the budget.** Total budgeted expenditures for each fund as adopted in the budget of a school district or charter school shall constitute the appropriations of the district or charter school for the budgeted fiscal year and the board of directors or charter school board shall be limited in the incurring of expenditures to the amount of each such appropriation. The board of directors shall incur no expenditures for any purpose in excess of the appropriation for each fund: Provided, That no board of directors or charter school board shall be prohibited from incurring expenditures for the payment of regular employees, for the necessary repairs and upkeep of the school

plant, for the purchase of books and supplies, and for their participation in joint purchasing agencies authorized in RCW 28A.320.080 during the interim while the budget is being settled under WAC 392-123-080: Provided further, That transfers between budget classes may be made by the school district's chief administrative officer or finance officer, subject to such restrictions as may be imposed by the school district board of directors.

Directors, officers or employees of school districts who knowingly or negligently violate or participate in a violation of this section by the incurring of expenditures in excess of any appropriation(s) shall be held civilly liable, jointly and severally, for such expenditures in excess of such appropriation(s), including consequential damages following therefrom, for each such violation. If as a result of any civil or criminal action the violation is found to have been done knowingly, such director, officer, or employee who is found to have participated in such breach shall immediately forfeit his office or employment, and the judgment in any such action shall so provide.

Nothing in this section shall be construed to limit the duty of the attorney general to carry out the provisions of RCW 43.09.260, as now or hereafter amended.

**NEW SECTION**

**WAC 392-123-073 Budget extensions—Public charter schools.** If in a public charter school it becomes necessary to increase the amount of the appropriation, the charter school board, before incurring expenditures in excess of expenditures therefor, shall adopt a resolution stating the facts and the estimated amount of appropriation to meet it.

**AMENDATORY SECTION** (Amending WSR 92-03-024, filed 1/7/92, effective 2/7/92)

**WAC 392-123-074 Effective date of appropriation resolutions.** The effective date of appropriation resolutions are as follows:

	First-Class Districts	Second-Class Districts	Public Charter Schools
Resolutions adopted pursuant to WAC 392-123-054.	12:00 a.m. September 1.	12:00 a.m. September 1 or when approved by the budget review committee, whichever is later.	<u>12:00 a.m. September 1.</u>
Resolutions adopted pursuant to WAC 392-123-071 <del>((and))</del> , 392-123-072 <u>and</u> 392-123-073.	When adopted by the school district board of directors.	When approved by the superintendent of public instruction.	<u>When adopted by the charter school board.</u>

**AMENDATORY SECTION** (Amending WSR 85-15-110, filed 7/24/85)

**WAC 392-123-076 Identification of balanced budget.** For each fund contained in the school district or charter school budget the estimated expenditures for the budgeted fiscal period must not be greater than the total of the estimated revenues for the budgeted fiscal period, plus the estimated fund balance at the beginning of the budgeted fiscal period, less the estimated reserved fund balance at the end of the budgeted fiscal period and, where appropriate, the pro-

Such resolution shall be voted on at a public meeting, notice to be given in the manner provided in WAC 392-123-054. Its introduction and passage shall require the vote of a majority of all members of the charter school board.

Any person may appear at the meeting at which the appropriation resolution is to be voted on and be heard for or against the adoption thereof.

One copy of all adopted appropriation resolutions shall be filed with the superintendent of public instruction. Another copy shall be filed with the charter school's authorizer, as defined in RCW 28A.710.010. The final date for adopting appropriation resolutions extending budgets shall be the close of business on August 31st or the last business day prior to August 31st if August 31st occurs on a nonbusiness day. Each copy of all appropriation resolutions filed shall have attached a copy of the charter school's latest budget status report. The revised budget shall be in the format prescribed by the superintendent of public instruction and shall be prepared in accordance with instructions provided by the superintendent of public instruction. Any appropriation resolution adopted after the date specified in this section shall be null and void. Any appropriation resolution adopted after the current appropriation level has been exceeded shall be null and void to the extent that the current appropriation level has been exceeded.

The superintendent of public instruction's review of budget extensions shall consist of data entry and edit, review of revenues and reserved and unreserved fund balances for accuracy, appropriateness of expenditures, and determination of whether or not the budget extension is in compliance with this chapter, state statutory law, and budget instructions issued by the superintendent of public instruction.

jected revenue from receivables collectible in future periods as approved by the superintendent of public instruction for inclusion in the budget.

The proceeds of any loan must not be used to balance the budget of the borrowing fund.

**AMENDATORY SECTION** (Amending WSR 80-06-043, filed 5/13/80)

**WAC 392-123-077 Termination of appropriations.** All appropriations shall lapse at the end of the school district

or charter school fiscal year. At the expiration of said period all appropriations of said period shall become null and void and any claim presented thereafter against any such appropriation for the fiscal period just closed shall be provided for in the appropriations for the ensuing fiscal period.

#### NEW SECTION

**WAC 392-123-0795 Review of public charter school budgets.** The superintendent of public instruction shall review a charter school's adopted annual budget following the charter school board's submission of the budget to the superintendent of public instruction and the charter school's authorizer under WAC 392-123-054. The review shall include, but not be limited to, completion of data entry and edit, review of revenues and unreserved fund balances for accuracy, appropriateness of expenditures, and determination of whether or not the budget is in compliance with this chapter, state statutory law, and budget instructions issued by the superintendent of public instruction.

AMENDATORY SECTION (Amending Order 8-76, filed 7/23/76)

**WAC 392-123-080 Budget determined to be unsound after superintendent's review.** If the superintendent of public instruction determines that the budget of any school district does not comply with this chapter and/or the provisions of state statutory law applicable to school district((s)) budgets, the superintendent shall provide written notice of such determination (~~((shall be provided))~~) to the board of directors of the district.

If the superintendent of public instruction determines that the budget of any charter school does not comply with this chapter and/or the provisions of state statutory law applicable to charter school budgets, the superintendent shall provide written notice of such determination to the charter school board and the charter school's authorizer.

AMENDATORY SECTION (Amending Order 8-76, filed 7/23/76)

**WAC 392-123-100 Revised budget as not submitted or noncompliant.** If a school district fails or refuses to submit a revised budget at the direction of the superintendent of public instruction which complies with state statutory law and this chapter, the matter shall be submitted to the state board of education. Written notification of the superintendent's intention to submit the matter to the state board shall be made to the board of directors and administration of the school district and to the educational service district superintendent.

If a charter school fails or refuses to submit a revised budget at the direction of the superintendent of public instruction which complies with state statutory law and this chapter, the superintendent will provide written notice of the charter school's failure or refusal to the charter school's authorizer.

AMENDATORY SECTION (Amending Order 8-76, filed 7/23/76)

**WAC 392-123-110 Monthly financial statements and reports prepared by school district administration.** Monthly financial statements and reports shall be prepared by the administration of each school district or charter school on a monthly basis as required by this chapter. The reports shall contain the most current information available at the time of preparation. The purpose of these financial reports shall be to provide the board of directors of the district or charter school board with certain financial information necessary for the proper financial management of the district or charter school. All monthly reports shall be made available by the administration of a district or charter school to each member of the board of directors of the district or charter school board and to any person or organization upon request pursuant to the policies of the board of directors. A district or charter school shall provide the superintendent of public instruction with any of the required reports upon request.

AMENDATORY SECTION (Amending WSR 92-03-024, filed 1/7/92, effective 2/7/92)

**WAC 392-123-115 Monthly budget status reports.** A monthly budget status report for each fund shall be prepared by the administration of each school district and charter school; and a copy of the most current budget status reports shall be provided to each member of the board of directors of the district or charter school board at the board's regular monthly meeting. The report shall contain the most current approved budget amounts by summary level accounts and the fund balance at the beginning and end of the period being analyzed. State Form F-198, which is entitled "budget status report," is an example of the type and level of information necessary for this report. Also, as a part of the budget status report, the administration shall provide each member of the board of directors or charter school board with a brief written explanation of any significant deviations in revenue and/or expenditure projections that may affect the financial status of the district or charter school. If deemed necessary by the superintendent of public instruction, and upon written notice to the district or charter school by the superintendent of public instruction, (1) a school district shall file a monthly budget status report for one or more funds along with other financial information shall be filed with either the educational service district superintendent or the superintendent of public instruction or both for the period of time set forth in such notice, or (2) a charter school shall file a monthly budget status report for one or more funds along with other financial information with the superintendent of public instruction for the period of time set forth in such notice.

AMENDATORY SECTION (Amending WSR 92-03-024, filed 1/7/92, effective 2/7/92)

**WAC 392-123-120 Statement of financial condition—Financial position of the school district.** The administration of each school district and charter school shall be required to provide the board of directors of the district or charter school board with a statement of financial condition

monthly. The "statement of revenues, expenditures and changes in fund balance" in state Form F-196, is an example of the type of format and level of information necessary for this report.

AMENDATORY SECTION (Amending WSR 85-15-110, filed 7/24/85)

**WAC 392-123-125 Personnel budget status report.** Each school district and charter school shall maintain the capability to prepare a monthly personnel status report according to the schedule set forth for monthly budget status reports in WAC 392-123-115. This report shall display the combined responsibilities of the district's or charter school's administrative staff for personnel management and budget control and shall indicate the status of expenditures and commitments for salaries and wages. The report shall also indicate the number of certificated and classified positions planned in the budget and the amount of funds budgeted for those positions, summarized by program and/or responsibility area. The number of positions actually filled and the amount of funds actually expended and encumbered in support of these positions shall also be displayed in a manner that can be compared with budget. Any significant variance between budgeted positions and actual should be explained. The personnel budget status report shall be provided to the superintendent of public instruction or the board of directors of the district or charter school board within ten days from the date of such request from either the superintendent or board. A district's board of directors or a charter school board may use the personnel status report in conjunction with a monthly budget status report and the statement of financial condition to manage the financial position of the district.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-123-135 Interfund loans—Definition.** An interfund loan is considered to be a temporary loan of moneys between one school district fund and another. An interfund loan is not considered to be an investment pursuant to the provisions of RCW 28A.320.320.

AMENDATORY SECTION (Amending WSR 83-21-027, filed 10/10/83)

**WAC 392-123-140 Interfund loans allowable.** Loans are allowable to the general fund, the transportation vehicle fund, the capital projects fund and the debt service fund of school districts. Loans are allowable from the general fund and the capital projects fund. Loans shall not be made to the detriment of any function or project for which the fund was established.

AMENDATORY SECTION (Amending WSR 91-23-043, filed 11/14/91, effective 12/15/91)

**WAC 392-123-180 Bond proceeds.** Money derived from the sale of bonds, including interest earnings thereof, shall be deposited in the capital projects fund, the transportation vehicle fund, the general fund, or the debt service fund,

as applicable, and may only be used by school districts for the purposes as enumerated in RCW 28A.530.010.

Accrued interest paid for bonds sold shall be deposited in the debt service fund.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-129-003 Authority.** The authority for this chapter is RCW 28A.150.290(2) which authorizes the superintendent of public instruction to establish the terms and conditions for allowing a school district to receive an allocation of state moneys when the school district is unable, due to an unforeseen emergency, to fulfill the following statutory requirements:

- (1) One hundred eighty days of operation; or
- (2) The total program hour offerings, teacher contact hours, or course mix and percentage requirements imposed by law.

This chapter is further authorized under RCW 28A.710-040(5), which provides that public charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-129-005 Purpose.** This chapter shall govern a school district's or charter school's entitlement to allocations of state moneys pursuant to RCW 28A.150.290(2) for any school year during which it is unable to conduct the kindergarten program, first through twelfth grade program, or both due to one or more unforeseen emergencies such that the following statutory requirements cannot be met:

- (1) The minimum number of school days; and/or
- (2) Program hour offerings, teacher contact hours, and course mix and percentages.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-129-015 Definition—Vacation day.** As used in this chapter, "vacation day" means a day other than:

- (1) A school day;
- (2) A school holiday defined in RCW 28A.150.050;
- (3) Saturday unless actually used for a school day; or
- (4) An inservice day for employees of the school district or charter school that:

- (a) Was scheduled prior to the unforeseen school closure; and
- (b) Was actually used for that purpose.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-050 Definition—Mechanical failure.** As used in this chapter, "mechanical failure" means a discontinuation or disruption of utilities such as heating, lighting, or water beyond the control of a school district board of directors, a charter school board, and ~~((+))~~ their respective employees.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-060 Definition—Action or inaction by one or more persons.** As used in this chapter, "action or inaction by one or more persons" means, but is not limited to, arson, vandalism, riots, insurrections, bomb threats, bombing, or delays in the scheduled completion of construction projects beyond the control of a school district board of directors, a charter school board, and ~~((its))~~ their respective employees. It shall not mean any labor dispute between a school district board of directors or charter school board and any employee.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-080 Definition—Foreseeable school closure days.** As used in this chapter, "foreseeable school closure days" means those days that are foreseeable in order to provide the school district or charter school with the ability to make up lost school days due to foreseeable natural events, mechanical failure, or action or inaction by one or more persons that would lead to all schools being unsafe, unhealthy, inaccessible, or inoperable.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-090 Definition—District-wide emergency closure.** As used in this chapter, "district-wide emergency closure" means that all school buildings in the school district or charter school are unsafe, unhealthy, inaccessible, or inoperable due to one or more unforeseen natural events, mechanical failures, or actions or inactions by one or more persons.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-100 Definition—School emergency closure.** As used in this chapter, "school emergency closure" means a school in the school district, or a charter school, comprised of more than one school that is unsafe, unhealthy, inaccessible, or inoperable due to one or more unforeseen natural events, mechanical failures, or actions or inactions by one or more persons.

AMENDATORY SECTION (Amending WSR 07-13-090, filed 6/19/07, effective 7/20/07)

**WAC 392-129-105 Definition—Reasonable effort.** As used in this chapter, "reasonable effort" means the:

- (1) Extension of the school year to and through June 14th; and
- (2) Use of scheduled vacation days and foreseeable school closure days, to attain the minimum number of school days and district-wide annual average total instruction hour offerings required by law. In no case, except as provided in subsection (3) of this section, shall a school district or charter school be considered to have made a reasonable effort unless

at least three school days, per incident, and district-wide annual average total instruction hour offerings which have been lost have in fact been made up.

(3) Where a school district or charter school resides in a county which was declared a state of emergency proclamation by the governor due to fire, flood, explosion, storm, earthquake, epidemic, or volcanic eruption, and the emergency impacted district-wide facilities or operations, the superintendent may consider school district or charter school applications to have met the "reasonable effort" test by providing at least the district-wide annual average total instruction hour offerings.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-125 District-wide emergency closure—School district application to the superintendent of public instruction.** A school district or charter school applying for continuation of state support during a district-wide emergency closure will submit the following information:

- (1) The name of the school district or charter school;
- (2) The name of the superintendent of the school district or lead administrator of the charter school;
- (3) A statement signed by the superintendent or charter school's lead administrator that:
  - (a) The school district board of directors or charter school board has reviewed the application and supports its submittal; and
  - (b) Any foreseeable school closure days are not included in the request;
  - (4) The unforeseen natural events, mechanical failures, or actions or inactions by one or more persons which caused the district-wide emergency closure;
  - (5) The specific dates of the district-wide emergency closure; and
  - (6) The specific dates that the school district has scheduled to make up the lost days.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-135 District-wide emergency closure—Implementation of superintendent of public instruction's determination of eligibility.** If the superintendent of public instruction determines that the school district has made a reasonable effort to make up all school days and program hour offerings, teacher contact hours, and course mix percentages required by law, the school district or charter school shall receive its full annual allocation of state moneys. If the superintendent of public instruction determines that the school district or charter school has not made a reasonable effort, the school district's or charter school's annual allocation of state moneys shall be reduced by the number of days lost due to the district-wide emergency closure divided by one hundred eighty.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-140 School emergency closure—School district application to the superintendent of public instruction.** A school district or charter school applying for continuation of state support during a school emergency closure will submit the following information:

- (1) The name of the school district or charter school;
- (2) The name of the superintendent of the school district or lead administrator of the charter school;
- (3) A statement signed by the superintendent or charter school's lead administrator that the school district board of directors or the charter school board has reviewed the application and supports its submittal;
- (4) The name(s) of the individual schools which did not operate;
- (5) The unforeseen natural events, mechanical failures, or actions or inactions by one or more persons which caused the school emergency closure;
- (6) The specific dates of the school emergency closure; and
- (7) The specific dates that the school district or charter school has scheduled to make up the lost days.

AMENDATORY SECTION (Amending WSR 90-01-141, filed 12/20/89, effective 1/20/90)

**WAC 392-129-145 School emergency closure—Superintendent of public instruction's determination of eligibility.** The superintendent of public instruction shall review each application submitted for a school closure to determine if the application provides a conclusive demonstration that one or more unforeseen natural events, mechanical failures, or actions or inactions by one or more persons prevented the school district or charter school from operating the school. Whenever a school district or charter school provides a school day, it shall be considered as meeting all hours, as originally scheduled for that day, toward meeting its program hour offerings, teacher contact hours, and course mix percentage requirements.

AMENDATORY SECTION (Amending WSR 08-13-049 [15-12-113], filed 6/12/08 [6/3/15], effective 7/13/08 [7/4/15])

**WAC 392-129-150 School emergency closure—Implementation of superintendent of public instruction's determination of eligibility.** If the superintendent of public instruction determines that the school district or charter school has provided a conclusive demonstration that one or more unforeseen natural events, mechanical failures, or actions or inactions by one or more persons prevented the school district or charter school from operating the school, the school district or charter school shall receive its full annual allocation of state moneys. However, the superintendent of public instruction may only excuse the school district or charter school for up to two scheduled school days per incident and not for more than three scheduled school days per school year. Provided, the superintendent may excuse more than two scheduled school days per incident or three

scheduled school days per year where the school is located in a county which was subject to a state of emergency declaration by the governor due to fire, flood, explosion, storm, earthquake, epidemic, or volcanic eruption, and the event giving rise to the emergency declaration prevented operation of the school.

(1) If the school district did not conclusively demonstrate that it was prevented from operating the school(s), its allocation of state moneys shall be reduced by:

~~((+))~~ (a) Dividing the number of days lost by one hundred eighty;

~~((=))~~ (b) Multiplying the result obtained in subsection (1) of this section by the annual average full-time equivalent enrollment in the school; and

~~((=))~~ (c) Dividing the result obtained in subsection (2) of this section by the annual average full-time equivalent enrollment in the school district.

(2) If the charter school did not conclusively demonstrate that it was prevented from operating the school, its allocation of state moneys shall be reduced by:

(a) Dividing the number of days lost by one hundred eighty; and

(b) Multiplying the result obtained in (a) of this subsection by the annual average full-time equivalent enrollment in the school.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-134-002 Authority.** The authority for this chapter is RCW 28A.150.350 which authorizes the superintendent of public instruction to adopt rules and regulations regarding part-time public school attendance. This chapter is further authorized under RCW 28A.710.040(5), which provides that public charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-134-005 Definitions.** As used in this chapter the term:

(1) "Ancillary service" shall mean any cocurricular service or activity, any health care service or activity, and any other services or activities, except "courses," for or in which preschool through twelfth grade students are enrolled by a public school. The term shall include, but not be limited to, counseling, psychological services, testing, remedial instruction, speech and hearing therapy, health care services, tutorial services such as home or hospital instruction for the physically disabled, and sports activities;

(2) "Course" shall mean any instructional curricular service or activity in which preschool through twelfth grade students are enrolled by a public school;

(3) "Part-time public school student" shall mean a student who is enrolled in a public school for less time than a "full-time equivalent student" as defined in chapter 392-121 WAC, as now or hereafter amended, and shall include:

(a) Private school students to the extent they are also enrolled in a public school as a student thereof for the purpose of taking any course or receiving any ancillary service, or any combination of courses and ancillary services which is not available in the student's private school of attendance;

(b) Any student who is enrolled exclusively in a public school for the purpose of taking courses or receiving ancillary services and/or participating in a work training program approved by the board of directors of the district or charter school board; and

(c) Any student who is participating in home-based instruction to the extent that the student is also enrolled in a public school for the purpose of taking any course or receiving any ancillary service, or any combination of courses and ancillary services.

(4) "Private school" shall mean any nonpublic vocational school and any nonpublic school which provides instruction in any of the grades kindergarten through twelve inclusive of nonpublic sectarian (religious) schools;

(5) "Private school student" shall mean a student who is enrolled in a private school "full time" as defined by the private school of attendance; and

(6) "Home-based instruction" shall mean an instructional program established pursuant to RCW 28A.225.010(4).

AMENDATORY SECTION (Amending WSR 80-05-035, filed 4/15/80)

**WAC 392-134-010 Attendance rights of part-time public school students.** An eligible part-time public school student who qualifies as a resident of a public school district pursuant to the definition of a "resident student" set forth in chapter 392-137 WAC, as now or hereafter amended, shall be entitled to attend the schools of the district within his or her attendance area tuition free on a part-time basis. Eligible part-time public school students who meet the admission policies of a public charter school shall be entitled to attend the school tuition free on a part-time basis.

An eligible part-time public school student shall be entitled to take any course, receive any ancillary service, and take or receive any combination of courses and ancillary services which is made available by a public school to full-time students. Eligible nonresident part-time public school students may be enrolled at the discretion of a public school district pursuant to the terms and procedures established for nonresident student attendance in chapter 392-137 WAC, as now or hereafter amended.

AMENDATORY SECTION (Amending WSR 86-01-020, filed 12/9/85)

**WAC 392-134-020 Provision of educational program to part-time public school students—Reports—Sites.** (1) Courses, ancillary services, and any combination of courses

and ancillary services shall be provided to part-time public school students at the same level and quality as provided by the public school to full-time students;

(2) Courses, ancillary services, and any combination of courses and ancillary services shall be provided to part-time public school students upon public school grounds or on sites which are controlled by a public school district or charter school and at the home or hospital where the student may be confined by reason of a ~~((physician [physical]))~~ disability or sickness. Courses and ancillary services shall not be provided upon or within any private sectarian (religious) school site or facility: Provided, That field trips and special events incident to the public school program which include participation by both full-time and part-time public school students may be conducted by a public school upon or within private sectarian school facilities;

(3) No test result, grade, or other evaluation of a part-time public school student's abilities, needs, and/or performance which is generated by a public school in connection with the student's attendance may be transmitted or communicated by a public school to a private school except upon the written request of a minor student's parent(s) or guardian(s) or upon the written request of the student if the student is eighteen years of age or older; and,

(4) Transportation between a part-time public school student's private school and a public school in which he/she is enrolled may not be provided to the student at the expense of a public school district or charter school in whole or part: Provided, That the following interschool transportation may be provided at the expense of a public school district or charter school:

(a) Transportation which is provided in connection with a part-time student's participation in field trips and special events permitted by subsection (2) of this section; and

(b) The transportation of part-time public school students which:

(i) Is necessary to comply with a condition to the receipt of federal funds; and

(ii) Is paid or reimbursed for with the federal funds to which the condition is attached, not state or local tax funds or revenues.

AMENDATORY SECTION (Amending WSR 80-05-035, filed 4/15/80)

**WAC 392-134-025 State funding procedures.** (1) Public school districts and charter schools shall maintain a record of the number of hours each part-time public school student is enrolled.

(2) Each district and charter school shall report to the superintendent of public instruction as required the number of hours that courses and/or ancillary services, or any combination of courses and ancillary services, are provided to part-time students in the basic enrollment data for state funding purposes.

(3) The information required by subsections (1) and (2) above shall be provided to the superintendent of public instruction on forms provided by and at such times as are designated by the superintendent.

AMENDATORY SECTION (Amending WSR 90-16-002, filed 7/19/90, effective 8/19/90)

**WAC 392-134-030 Compliance with rules as a condition of state funding.** Each public school district and charter school shall certify compliance with this chapter as a condition to the reimbursement of costs pursuant to RCW 28A.150.250, 28A.150.260 and 28A.150.350, as now or hereafter amended. State and federal funds shall be withheld in whole or part or recovered in whole or part through reduction in future entitlements of a district or charter school as necessary to enforce the provisions and intent of this chapter.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-003 Authority.** The authority for this chapter is RCW 28A.325.020 which authorizes the superintendent of public instruction to adopt rules and regulations regarding the administration and control of associated student body moneys. This chapter is further authorized under RCW 28A.710.040(5), which provides that public charter schools are subject to the supervision of the superintendent of public instruction to the same extent as other public schools.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-005 Purposes.** The purposes of this chapter are to:

- (1) Implement RCW 28A.325.020;
- (2) Designate the powers and responsibilities of the board of directors of each school district and charter school board regarding the efficient administration, management, and control of moneys, records, and reports of associated student body funds;
- (3) Encourage the supervised self-government of associated student bodies; and
- (4) Permit fund-raising activities by students in their private capacities for the purpose of generating nonassociated student body private moneys.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-010 Definitions.** (1) "Associated student body organization" means a formal organization of students, including subcomponents or affiliated student groups such as student clubs, which is formed with the approval, and operated subject to the control, of the board of directors of a school district or a charter school board in compliance with this chapter.

(2) "Associated student body program" means any activity which (a) is conducted in whole or part by or in behalf of an associated student body during or outside regular school hours and within or outside school grounds and facilities, and (b) is conducted with the approval, and at the direction or under the supervision, of the school district and charter school.

(3) "Central district office" means the board of directors, the charter school board, and/or their respective official des-

ignee to whom authority has been delegated to act in their behalf.

(4) "Associated student body public moneys" means fees collected from students and nonstudents as a condition to their attendance at any optional noncredit extracurricular event of the school district or charter school which is of a cultural, social, recreational or athletic nature, revenues derived from "associated student body programs" as defined in subsection (2) of this section, and any other moneys received by an associated student body, not specified in subsection (5) of this section and WAC 392-138-100, for the support of an associated student body program.

(5) "Nonassociated student body private moneys" means moneys generated by fund-raising activities or solicitation of donations by student groups in their private capacities for private purposes and/or private gifts and contributions.

(6) "Associated student body governing body" means the student council, student activities board, or other officially recognized group of students appointed or elected to represent the entire associated student body within a school in accordance with procedures established by the board of directors of the school district or a charter school board.

(7) "Trust fund" means a fund used to account for assets held by the district or charter school in a trustee capacity for the specific purpose designated by the fund-raising group and described in the notice provided to donors prior to the fund-raising event. Such moneys must be accounted for separately from associated student body public moneys.

(8) "Held in trust" means held as private moneys either within a separate account within the associated student body fund or in a trust fund to be disbursed exclusively for an intended purpose.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-011 Formation of associated student bodies required.** The formation of an associated student body shall be mandatory and a prerequisite whenever one or more students of a school district or charter school engages in money-raising activities with the approval and at the direction or under the supervision of the district: Provided, (1) that the board of directors of a school district may act, or delegate the authority to an employee(s) of the district to act, as the associated student body governing body for any school facility within the district containing no grade higher than the sixth grade; and (2) that the charter school board may act, or delegate the authority to an employee(s) of the school to act, as the associated student body governing body for any charter school containing no grade higher than the sixth grade.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-013 Powers—Authority and policy of school boards ~~((of directors))~~.** (1) The board of directors of each school district shall:

(a) Retain and exercise the general powers, authority, and duties expressed and implied in law with respect to the administration of a school district and regulation of actions and activities of the associated student bodies of the district

including, but not limited to RCW 28A.320.010 (Corporate powers), RCW 28A.150.070 (General public school system administration), RCW 28A.320.030 (Gifts, conveyances, etc., for scholarship and student aid purposes, receipts and administration), RCW 28A.600.010 (Government of schools, pupils, and employees), RCW 28A.320.040 (Bylaws of board and school government), RCW 28A.400.030 (2) and (3) (Superintendent's duties), RCW 28A.600.040 (Pupils to comply with rules and regulations), RCW 43.09.200 (Local government accounting—Uniform system of accounting), RCW 36.22.090 (Warrants of political subdivisions), and chapter 28A.505 RCW (School district budgets);

(b) Approve the constitution and bylaws of each district associated student body and establish policies and guidelines relative to:

(i) The identification of those activities which shall constitute the associated student body program;

(ii) The establishment of an official governing body representing the associated student body;

(iii) The methods and means by which students shall be permitted to raise and otherwise acquire associated student body moneys; and

(iv) The designation of the primary advisor to each associated student body and the authority of the primary advisor to designate advisors to the various student subgroup organizations affiliated with an associated student body;

(c) Assign accounting functions, or portions thereof, to the school building level to be performed by a designated representative of an associated student body or centralize the accounting functions at the district central administrative office level;

(d) Provide for the participation of the associated student body or bodies of the school district in the determination of the purposes for which associated student body public moneys and nonassociated student body private moneys if held as private moneys within the associated student body fund shall be budgeted and disbursed(~~(=and)~~).

(2) Public charter school boards shall:

(a) Approve the constitution and bylaws of the charter school's associated student body and establish policies and guidelines relative to:

(i) The identification of those activities which shall constitute the associated student body program;

(ii) The establishment of an official governing body representing the associated student body;

(iii) The methods and means by which students shall be permitted to raise and otherwise acquire associated student body moneys; and

(iv) The designation of the primary advisor to each associated student body and the authority of the primary advisor to designate advisors to the various student subgroup organizations affiliated with an associated student body;

(b) Assign accounting functions, or portions thereof, to the school building level to be performed by a designated representative of an associated student body;

(c) Provide for the participation of the associated student body in the determination of the purposes for which associated student body public moneys and nonassociated student body private moneys if held as private moneys within the

associated student body fund shall be budgeted and disbursed.

(3) If the district or charter school permits students to conduct fund-raising activities and solicitation of donations in ~~((their))~~ its private capacities, ~~((they))~~ it shall establish policies to permit such activities and the allowable uses of such moneys. The board policy and/or procedures must include the approval process for such activities as well as provisions to ensure appropriate accountability for these funds, which are required to be held in trust.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-014 Accounting procedures and records.** Associated student body public and nonassociated student body private moneys shall be accounted for as follows:

(1) Accounting methods and procedures shall comply with such rules and regulations and/or guidelines as are developed by the state auditor and the superintendent of public instruction and published in the *Accounting Manual for Public Schools in the State of Washington* and/or other publications;

(2) Whenever two or more associated student bodies exist within a school district or charter school, the accounting records shall be maintained in such a manner as to provide a separate accounting for the transactions of each associated student body in the associated student body program fund;

(3) The fiscal and accounting records of associated student body program moneys shall constitute public records of the school district or charter school, shall be available for examination by the state auditor, and shall be preserved in accordance with statutory provisions governing the retention of public records; and

(4) Nonassociated student body private moneys shall be held in trust by the school within the associated student body fund or within a trust fund and be disbursed exclusively for such purposes as the student group conducting the fund-raising activity shall determine, subject to applicable school board or charter school policies. The district or charter school shall either withhold or otherwise be compensated an amount from such moneys to pay its direct costs in providing the service. Such funds are private moneys, not public moneys under section 7, Article VIII of the state Constitution.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-017 Segregation of public and private moneys.** When a school district or a charter school board has associated student body organizations that receive both public and private moneys as defined in WAC 392-138-010 (4) and (5), two separate sets of accounts shall be maintained. In addition, separate accounting records should be maintained by organization or purpose including clubs, classes, athletic activities, private purpose fund-raising events and general associated student body.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-018 Petty cash funds.** The board of directors of a school district or a charter school board may authorize the establishment and maintenance of associated student body petty cash funds for use in instances when it is impractical to make disbursement by warrant or check, subject to the following conditions:

- (1) A petty cash fund shall be initiated by warrant or check;
- (2) Paid-out receipts shall constitute invoices for the purpose of vouchering; and
- (3) An upper limit of the amount of the petty cash fund shall be established by the board of directors or charter school board.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-019 Compliance with bid law required.** The statutory provisions of RCW 28A.335.190(~~(; the so-called "bid law" governing school district purchasing procedures;)~~) shall govern purchases payable from the associated student body funds.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-021 Title to property—Dissolution of associated student body or affiliated group.** Title to all such property acquired through the expenditure of associated student body public moneys shall be vested in the school district or charter school.

In the event a member organization affiliated with an associated student body elects to disband or ceases to exist for any reason, then:

- (1) The school district, charter school, and parent associated student body shall cease carrying any money or account on behalf of or to the credit of the organization; and
- (2) The records of the organization shall be retained and disposed of in accordance with applicable state law regarding the retention and destruction of public records.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-110 Associated student body public moneys—Associated student body program budget.** (1) Each associated student body of a school district, with the guidance of the primary advisor, and at such time as is designated by the central district office, annually shall prepare and submit a financial plan (budget) for support of the associated student body program to the district superintendent or his/her designee for consolidation into a district associated student body program fund budget and then present such budget to the board of directors of the district for its review, revision, and approval: Provided, That revisions of the budget submitted by an associated student body and revisions of the budget approved by the board of directors shall first be reviewed by the associated student body and, in the case of an approved

budget, shall be subject to the requirements of chapter 28A.505 RCW regarding emergency expenditures or budget extensions. The budget as approved shall constitute an appropriation and authorization for the disbursement of funds for the purposes established in the budget.

(2) Each associated student body of a charter school, with the guidance of the primary advisor, and at such time as is designated by the charter school's lead administrator, annually shall prepare and submit a financial plan (budget) for support of the associated student body program to the lead administrator or his/her designee for consolidation into a charter school associated student body program fund budget and then present such budget to the charter school board for its review, revision, and approval: Provided, That revisions of the budget submitted by an associated student body and revisions of the budget approved by the charter school board shall first be reviewed by the associated student body and, in the case of an approved budget, shall be subject to the requirements of chapter 392-123 WAC regarding emergency expenditures or budget extensions. The budget as approved shall constitute an appropriation and authorization for the disbursement of funds for the purposes established in the budget.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-115 Associated student body public moneys—Deposit and investment.** All associated student body public moneys, upon receipt, shall be transmitted intact to the district or charter school depository bank and then to the county treasurer or directly to the county treasurer for deposit to the credit of the "associated student body program fund" of the school district or charter school and shall be accounted for, expended, and invested subject to the practices and procedures governing other moneys of the district or charter school except as such practices and procedures are modified by or pursuant to this chapter.

AMENDATORY SECTION (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-120 Associated student body public moneys—Imprest bank checking account.** The board of directors of a school district or charter school board may authorize the establishment and maintenance of an associated student body imprest bank checking account for convenience and efficiency in expediting disbursements, subject to the following conditions:

- (1) The maximum amount of such an account shall be no more than is necessary to provide for disbursements at the level of the month of highest estimated demand for disbursements;
- (2) An imprest bank checking account shall be initiated by deposit of, and replenished by, a warrant drawn on the associated student body program fund;
- (3) Disbursements from an imprest bank checking account shall be by check and shall be restricted to payments of invoices bearing evidence of student approval in accordance with associated student body bylaws;

(4) An imprest bank checking account shall be replenished at least once each month by a warrant drawn on the associated student body program fund in payment of an approved voucher in an amount equal to the sum total of the disbursements made by check from the imprest bank checking account during the preceding interval; and

(5) The replenishment voucher shall reflect such information as the central district office shall prescribe relative to identification of invoices, invoice approvals, codification of expenditures, cancelled checks, and other information deemed pertinent.

**AMENDATORY SECTION** (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-125 Associated student body public moneys—Disbursement approval—Total disbursements.** Associated student body public moneys shall be disbursed subject to the following conditions:

(1) No disbursements shall be made except as provided for in the budget approved pursuant to WAC 392-138-040;

(2) Disbursements shall occur only upon presentation of properly prepared vouchers in such format and design as the central district office or charter school lead administrator shall prescribe;

(3) All disbursements from the associated student body program fund or any imprest bank account established thereunder shall have the prior approval of the appropriate governing body representing the associated student body. Supporting documentation of the vouchers shall bear evidence of approval by the associated student body governing body in accordance with associated student body bylaws;

(4) When an account within the fund balance of an associated student body organization does not contain a sufficient balance to meet a proposed disbursement, such disbursement shall be limited to the fund balance: Provided, That a transfer of fund balance between associated student body organizations may be made pursuant to the associated student body bylaws and as approved by the associated student body governing body;

(5) Warrants shall not be issued in excess of the moneys on deposit with the county treasurer in the associated student body program fund; and

(6) All disbursements shall be made by warrant except for disbursements from imprest bank accounts and petty cash funds provided for in this chapter.

**AMENDATORY SECTION** (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-130 Associated student body public moneys—League and other joint activities.** Athletic league and other forms of joint inter and intra school district or charter school associated student body programs are not precluded by this chapter. In the case of such joint programs, a single school district or charter school, or associated student body or a board representing the participating associated student bodies shall manage associated student body moneys made available to it for the support of the joint program and received as a result of the conduct of such program, in compliance with this chapter and a written cooperative agreement

authorized by the board(s) of directors of the district(s) or charter school board(s).

**AMENDATORY SECTION** (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-200 Nonassociated student body private moneys.** The board of directors of a school district or a charter school board may permit student groups to raise moneys through fund-raising or solicitation in their private capacities when the following conditions are met:

(1) Prior to solicitation of such funds, the school board approves policies defining the scope and nature of fund-raising permitted. School board policy includes provisions to ensure appropriate accountability, including prompt deposit, holding the moneys in trust, and disbursement only for the intended purpose of the fund-raiser;

(2) Such funds are used for scholarship, student exchange, and/or charitable purposes. Charitable purposes do not include any activity related to assisting a campaign for election of a person to an office or promotion or opposition to a ballot proposition;

(3) Prior to solicitation of such funds notice is given. Such notice identifies the intended purpose of the fund-raiser, further it states the proceeds are nonassociated student body funds to be held in trust by the school district exclusively for the intended purposes;

(4) The school district or charter school withholds or otherwise is compensated an amount adequate to reimburse the district for its direct costs in handling these private moneys; and

(5) WAC 392-138-205 applies to moneys received, deposited, invested, and accounted for under this section.

Nonassociated student body private moneys shall not be deemed public moneys under section 7, Article VIII of the state Constitution.

WAC 392-138-035 shall apply to moneys received, deposited, invested, expended, and accounted for under this section.

**AMENDATORY SECTION** (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-205 Nonassociated student body private moneys—Deposit and investment.** All nonassociated student body private moneys, upon receipt, shall be transmitted intact to the district or charter school depository bank and then to the county treasurer or directly to the county treasurer for deposit to the credit of the school district's or charter school's trust fund or the associated student body fund, if held in trust within that fund within accounts as defined in WAC 392-138-010 and shall be accounted for, expended, and invested subject to applicable school board policy and/or procedures pursuant to WAC 392-138-200.

**AMENDATORY SECTION** (Amending WSR 01-16-078, filed 7/25/01, effective 8/25/01)

**WAC 392-138-210 Nonassociated student body private moneys—Disbursement approval—Total disburse-**

**ments.** Nonassociated student body private moneys shall be disbursed subject to the following conditions:

(1) If such funds are held in trust within the associated student body fund, they shall be budgeted pursuant to WAC 392-138-013 (1)(d). No disbursements shall be made except as provided for in the budget approved pursuant to WAC 392-138-110. All disbursements shall have the prior written approval of the associated student body or such other authority designated in school district or charter school policy or procedures;

(2) If such funds are held in a trust fund, they are not budgeted. Disbursements shall occur only upon presentation of properly prepared vouchers in such format and design as the central district office shall prescribe, and as provided for in subsection (3) of this section;

(3) Vouchers authorizing disbursements shall be accompanied by written evidence of approval of disbursement by the associated student body or other authority designated in the school district's or charter school's policies and procedures;

(4) Disbursements shall be made only for the intended purposes pursuant to WAC 392-138-200.

AMENDATORY SECTION (Amending WSR 92-03-023, filed 1/7/92, effective 2/7/92)

**WAC 392-140-067 General provisions.** The following general provisions apply to this chapter:

(1) All calculations made by the superintendent of public instruction shall use the most current school district or charter school information for the school year on file with the superintendent of public instruction at the time of the calculation.

(2) Full-time equivalent (FTE) staff shall be rounded to the nearest three decimal places.

(3) FTE enrollment shall be rounded to the nearest two decimal places.

(4) Ratios of FTE staff to students shall be expressed as a ratio of staff to one thousand students and shall be rounded to the nearest two decimal places (e.g., 51.21/1000).

(5) Unless otherwise stated, report forms, staff, salary, and enrollment data referenced in these rules are school district or charter school report forms, staff, salary, or enrollment data for the school year for which calculations pursuant to this chapter are being made.

(6) Employee assignments and account codes for program, duty, and activity shall mean the same as defined in the accounting manual for public school districts in the state of Washington and in instructions for personnel reporting provided by the superintendent of public instruction.

(7) School districts and charter schools shall have available upon request by the superintendent of public instruction and for audit purposes, such documentation as necessary to support all data reported to the superintendent of public instruction pursuant to this chapter.

(8) Full-time equivalent is abbreviated as FTE.

(9) Kindergarten through third grade is abbreviated as K-3.

AMENDATORY SECTION (Amending WSR 92-03-023, filed 1/7/92, effective 2/7/92)

**WAC 392-140-068 Timely reporting.** Provisions of chapter 392-117 WAC, Timely reporting, apply to allocations made pursuant to this chapter. Failure of a school district or charter school to report as required may reduce or delay state apportionment payments.

NEW SECTION

**WAC 392-140-0695 Definition—Charter school.** As used in this chapter, "charter school" means a public school governed by a charter school board and operated according to the terms of a charter contract executed under chapter 28A.710 RCW and includes a new charter school and a conversion charter school.

AMENDATORY SECTION (Amending WSR 08-03-096, filed 1/17/08, effective 2/17/08)

**WAC 392-140-60110 Definition—Community impact.** For the purpose of state special education safety net funding, community impact refers to school district or charter school identified and quantifiable factor(s) beyond the control of the district or charter school which justify disproportional and extraordinary costs associated with the provision of special education services in the district or charter school (i.e., demographic, environmental, sociological, or other facts that can be described and calculated in an application consistent with WAC 392-140-617).

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-602 Special education safety net—Eligible applicants.** (1) An individual school district of the state of Washington is eligible to apply for special education safety net awards on behalf of its resident students. Resident students include those students as defined by state law. Resident students exclude those residing in another district and enrolled as part of an interdistrict cooperative program (RCW 28A.225.250).

(2) An interdistrict cooperative or educational service agency consistent with WAC 392-172A-01055 and 392-172A-01115 of at least fifteen districts in which all excess cost services for special education students of the member districts are provided by the cooperative or educational agency is eligible to apply for special education safety net awards. Member districts shall be treated as a single school district for the purposes of this chapter and are not eligible to apply for safety net awards individually.

(3) The Washington state center for childhood deafness and hearing loss and the Washington state school for the blind are eligible to apply for high need students under WAC 392-140-616.

(4) Individual charter schools are eligible to apply for special education safety net awards.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-605 Special education safety net—Application types, certification, worksheets.** Application for safety net awards shall be made on Form SPI 1381 - Certification published by the office of the superintendent of public instruction. Applications will be considered and awards made according to the schedule published in the annual *Safety Net Bulletin*.

(1) School districts and charter schools may make application for safety net awards in two categories - High need student(s) and/or community impact factors. The applicant for either or both categories of safety net awards shall certify that:

(a) Differences in costs attributable to district or charter school philosophy, service delivery choice, or accounting practice are not a legitimate basis for safety net awards;

(b) The application complies with the respective safety net application standards of WAC 392-140-616 and 392-140-617;

(c) The application provides true, accurate, and complete information;

(d) The applicant acknowledges that safety net funding is not an entitlement, is subject to adjustment and recovery, may not be available in future years, must be expended in program 21 or program 24 as specified in the award letter, and certifies that federal medicaid has been billed for all services to eligible students consistent with RCW 28A.150.392 (1)(e);

(e) The applicant is making reasonable effort to provide appropriate services for students in need of special education using state funding generated by the basic education apportionment and special education funding formulas and federal funding;

(f) The applicant's special education program is operated in a reasonably efficient manner;

(g) Indirect costs included for purposes of determining safety net awards do not exceed the allowable federally restricted indirect rate plus one percent;

(h) Any available state and federal funding is insufficient to address the request for additional funds;

(i) The costs of any supplemental contracts are not included for purposes of determining safety net awards. Supplemental contracts are those contracts made pursuant to RCW 28A.400.200(4) excluding extended school year contracts (ESY) required by an IEP; and

(j) The costs of any summer school instruction are not included for purposes of making safety net determinations excluding extended school year contracts (ESY) required by a properly formulated IEP.

(2) Worksheet A shall be included with the application and must demonstrate the applicant's capacity for safety net awards. Worksheet A is used to determine a maximum amount of safety net award eligibility. Award amounts may be less than the maximum potential amount of safety net award eligibility determined on worksheet A.

(3) All high need student applications shall include worksheets "A" and "C" and Summary of Applications for High Need Individual Students published in the safety net

application, and certification of standards and criteria pursuant to WAC 392-140-616.

(4) All community impact applications shall include worksheet A, the community impact application, all supporting documentation, and certification of standards and criteria pursuant to WAC 392-140-617.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-617 Special education safety net—Standards—Community impact applications.** For applicants requesting state safety net awards to meet the extraordinary costs associated with communities that draw a larger number of families with children in need of special education services, the applicant must meet the standards of WAC 392-140-605 (1)(a) through (j) and convincingly demonstrate that:

(1) Demographic, environmental, sociological or other factor(s) cause the district's or charter school's special education enrollment to be disproportional by category of disability or the overall number of students identified as eligible for special education; and

(2) The unique factor(s) identified by the applicant is not the result of district or charter school philosophy, service delivery choice, or accounting practice; and

(3) The identified factor(s) creates an adverse documentable fiscal impact upon the applicant's special education program; and

(4) The applicant summarizes the steps the applicant has taken or plans to take in response to the factors identified in the application.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-650 Special education safety net—Withdrawal of application.** If at any time an applicant wishes to withdraw an application submitted prior to the committee vote, the superintendent or designee of the applicant district, or lead administrator or designee of the applicant charter school, must submit a letter requesting withdrawal to the state oversight committee manager.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-675 Special education safety net—Adjustments to special education safety net awards.** Final safety net awards shall be adjusted based on:

(1) The percent of potential medicaid eligible students billed. Potential medicaid revenue will be estimated by the office of the superintendent of public instruction based on the applicant's percent of medicaid eligible students billed and the statewide average payment per student as determined in July of the school year for which the applicant is requesting safety net awards. The office of the superintendent of public instruction shall provide Form SPI 1679 for district and charter school reporting of medicaid eligible students and shall update the district's or charter school's special education medicaid eligibility count and finalize the count for the year based

upon the applicant's most recent submission of Form SPI 1679; and

(2) Changes in factors for which additional or revised information becomes available after the awarding of the initial safety net award.

(a) High need awards and/or community impact awards will be reduced or nullified when the applicant's available revenues and legitimate expenditures for the school year differ significantly from the estimates on which the initial safety net award was based.

(b) An applicant's safety net award may be recovered or adjusted based on the results of the review conducted by the state auditor's office pursuant to WAC 392-140-630.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

**WAC 392-140-685 Special education safety net—Recovery of state and/or federal awards.** High need student state and/or federal special education safety net awards and state community impact safety net awards shall be recovered or awards reduced for the following reasons:

(1) The application omits pertinent information and/or contains a falsification or misrepresentation of information in the application.

(2) The award is unexpended for the purpose allocated including but not limited to situations where the student leaves ~~((the))~~ a school district, ceases attending a charter school, or has a change in services. For students who transfer to another Washington public school district or enroll in a charter school located in Washington state, expenditures for specialized equipment purchased with these funds shall not be recovered provided the district or charter school transfers the equipment to the other school district or charter school.

(3) The applicant has carryover of state and/or federal flow-through special education funding from the school year for which the award was made.

(4) The applicant's available revenues are significantly higher than estimated revenues on which the award was based or the applicant's legitimate expenditures are significantly lower than the estimated expenditures on which the award was based.

(5) The state oversight committee finds grounds for adjustment in the special education program audit team's review pursuant to WAC 392-140-630.

AMENDATORY SECTION (Amending WSR 14-06-014, filed 2/20/14, effective 3/23/14)

**WAC 392-140-915 High poverty funding—Process and definition of eligible schools.** For the purposes of this section, an eligible school is ~~((one))~~ a school administered by a public school district board or a public charter school board in which the free and reduced priced lunch percentage for students in grades K-6 exceeds fifty percent within the school building ~~((, and the school is not))~~. Schools administered by school districts that are part of a district that receives any type of K-6 small school funding or the school does not receive remote and necessary funding are not eligible schools under this section. If a school is determined to be eligible, the K-3 full-time equivalent enrollment as reported to the office of

superintendent of public instruction on the P-223 will be used to generate funding at an enhanced class size as determined by the legislature.

CEDARS data as of October of the previous school year will be used to determine school eligibility. A CEDARS extract of October 1st data will be pulled on March 31st to be used as the basis for K-3 high poverty funding eligibility for the subsequent school year. The list of eligible schools will be published by mid April. No changes to CEDARS data made after March 31st will be considered, and appeals will not be allowed.

Funding of K-3 high poverty schools will be based upon budgeted K-3 enrollment in eligible high poverty schools as stated in a district's or charter school's F-203 from September through December. Funding based on average annual full-time equivalent enrollment reported in final approved eligible schools will begin in January and continue through August. Districts and charter schools must meet the legislative compliance requirements of the K-1 high poverty funding in order to retain the full allotment.

AMENDATORY SECTION (Amending WSR 14-12-004, filed 5/21/14, effective 6/21/14)

**WAC 392-140-921 K-1 high poverty class size compliance.** The superintendent of public instruction shall determine which high poverty schools are eligible for enhanced funding for class size reduction per WAC 392-140-915. High poverty class size compliance in schools administered by school districts will be measured at each eligible school independent of other eligible schools within ~~((a))~~ the district. A demonstrated class size will be measured at each eligible school. That demonstrated class size will be converted to a funded class size, and a weighted average funded class size by district or charter school will be calculated and used for funding purposes.

Compliance calculations will be performed in January, March, and June of each school year. The most recent weighted average funded class size will be used for funding purposes. Districts and charter schools will be funded based on their budgeted high poverty class size from September through December. Only districts with at least one high poverty eligible school may budget an enhanced class size.

AMENDATORY SECTION (Amending WSR 14-12-004, filed 5/21/14, effective 6/21/14)

**WAC 392-140-932 K-1 high poverty class size—Teachers.** The superintendent of public instruction shall include in the calculation of high poverty class size compliance those teachers reported on the S-275 at the eligible schools that are coded in programs 01 and 79 to grade group K or 1, and are reported in one of the following duty roots:

- Duty Root 31 - Elementary teacher
- Duty Root 33 - Other teacher
- Duty Root 52 - Substitute teacher
- Duty Root 63 - Contractor teacher

S-275 data as of the published apportionment cutoff dates in January, March, and June will be considered in the calculation.

Program 21 special education teachers coded to grade K or 1 at the eligible schools multiplied by the annual percentage of students in special education instruction used in determination of a district's or charter school's 3121 revenue will be included.

Teachers coded to program 02 alternative learning experience shall be excluded.

**AMENDATORY SECTION** (Amending WSR 14-12-004, filed 5/21/14, effective 6/21/14)

**WAC 392-140-933 K-1 demonstrated class size.**

Demonstrated class size at each school will be calculated by dividing the total teachers for that school as described in WAC 392-140-932 into the calculated total of K-1 student FTE for that school. Funded class size will equal the demonstrated class size to a maximum of 24.1 and a minimum of 20.3 students per teacher.

A weighted average of funded class sizes across all high poverty eligible schools will be calculated by multiplying eligible enrollment as defined in WAC 392-140-923 at each school by the funded class size at each school. For school districts, the results of that calculation for each school will be summed and divided by the total K-1 calculate enrollment at all eligible schools to arrive at a district wide weighted average funded class size. This weighted average funded class size will be used for funding purposes.

**AMENDATORY SECTION** (Amending WSR 02-20-063, filed 9/27/02, effective 10/28/02)

**WAC 392-140-955 Learning improvement days—**

**Definition—Learning improvement day.** As used in this chapter "learning improvement day" means a scheduled work day during the school year for certificated instructional staff funded by the state for the purpose of improving student learning and implementing education reform.

(1) A learning improvement day is a scheduled work day on a district or school calendar.

(2) The length of a learning improvement day shall not be less than the length of a full work day for certificated instructional staff on a school day during the school year: Provided, That two half days may be scheduled in lieu of one full learning improvement day if the combined work hours equal or exceed hours in a full learning improvement day.

(3) No learning improvement day, or half day, shall be scheduled on a school day as defined in WAC 392-121-033.

(4) A school district or charter school may schedule learning improvement days for different school buildings or groups of employees on different calendar days.

(5) Learning improvement days shall be compensated as part of the employee's base contract.

**AMENDATORY SECTION** (Amending WSR 10-19-028, filed 9/9/10, effective 10/10/10)

**WAC 392-140-956 Learning improvement days—**  
**Other definitions.** As used in WAC 392-140-950 through 392-140-967:

(1) "Certificated instructional staff" means district or charter school certificated instructional employees and contractor certificated instructional employees as defined in WAC 392-121-205 and 392-121-206.

(2) "Base contract" means a contract protected by the continuing contract law, RCW 28A.405.300. The base contract does not include hours or compensation provided under a supplemental contract as defined in RCW 28A.400.200.

(3) "Number of days in the base contract" means the number of full work days in the school year for a full-time certificated instructional employee holding the position for the full school year. Days include paid leave. The number of hours in a full work day is determined by each school district and charter school. Days scheduled before September 1 can be counted in the school year if included and compensated in the base contract for the school year beginning September 1.

(4) "Selected state-funded programs" means the following programs as defined in the *Accounting Manual for Public School Districts in the State of Washington*:

- 01 Basic Education
- 02 Basic Education-Alternative Learning Experience
- 21 Special Education-Supplemental-State
- 31 Vocational-Basic-State
- 34 Middle School Career and Technical Education-State
- 45 Skills Center-Basic-State
- 55 Learning Assistance Program-State
- 65 Transitional Bilingual-State
- 74 Highly Capable
- 97 District-wide Support

(5) "State institutional education programs" means the following programs:

- 26 Special Education-Institutions-State
- 56 State Institutions, Centers, and Homes-Delinquent
- 59 Institutions-Juveniles in Adult Jails

**AMENDATORY SECTION** (Amending WSR 10-19-028, filed 9/9/10, effective 10/10/10)

**WAC 392-140-961 Learning improvement days—**  
**Determination of the number of funded learning improvement days.** The superintendent of public instruction shall separately determine for selected state-funded programs and for institutional education programs the number of funded learning improvement days for each school district or charter school for each school year as follows:

(1) In September through December of each school year, the superintendent will use the number of learning improvement days budgeted by the district or charter school and reported on Form F-203.

(2) Monthly, beginning in January of the school year, using current personnel data reported on the S-275 Personnel Report:

(a) Select all certificated instructional staff with assignments in the selected state-funded programs.

(b) For each employee, subtract one hundred eighty days from the number of days reported in the base contract.

(c) For each school year, take the lesser of the number of learning improvement days funded in the state Biennial Operating Appropriations Act or the result of (b) of this subsection, but not less than zero.

(d) Sum the number of days determined for all employees pursuant to (b) and (c) of this subsection.

(e) Divide the result of (d) of this subsection by the number of employees and round to two decimal places.

(f) The result is the number of funded learning improvement days for the district or charter school.

(3) After the close of the school year, the superintendent shall fund the lesser of:

(a) The number of days determined pursuant to subsection (2) of this section; or

(b) The number of days reported by the district or charter school pursuant to WAC 392-140-967.

**AMENDATORY SECTION** (Amending WSR 10-19-028, filed 9/9/10, effective 10/10/10)

**WAC 392-140-962 Learning improvement days—Salary allocations for learning improvement days.** Using the number of learning improvement days determined pursuant to WAC 392-140-961, the superintendent of public instruction shall adjust salary allocations to school districts and charter schools as follows:

(1) For general apportionment, the derived base salary allocation for learning improvement days as shown on LEAP Document 2, or successor salary allocation schedules, shall be reduced pro rata for any district or charter school with less than the number of learning improvement days funded in the state Biennial Operating Appropriations Act as the result of the determination under WAC 392-140-961.

(2) Special education allocations shall be adjusted based on adjustments to the unenhanced basic education allocation per full-time equivalent student.

(3) For transitional bilingual, highly capable, and learning assistance program allocations, the additional state allocation per pupil for learning improvement days shall be reduced pro rata for any district or charter school with less than the number of learning improvement days funded in the state Biennial Operating Appropriations Act as the result of the determination under WAC 392-140-961.

(4) For state institutional education programs the salary allocation for learning improvement days shall be reduced pro rata for any district or charter school with less than the number of learning improvement days funded in the state Biennial Operating Appropriations Act as the result of the determination under WAC 392-140-961. Educational service districts or contractors operating state-funded institutional education programs shall be eligible for learning improvement day funding in the same manner as school districts and charter schools.

(5) Allocations for learning improvement days are subject to adjustment or recovery based on findings of the Washington state auditor and chapters 392-115 and 392-117 WAC.

**AMENDATORY SECTION** (Amending WSR 02-20-063, filed 9/27/02, effective 10/28/02)

**WAC 392-140-965 Learning improvement days—((School district)) Requests for review and adjustment.** A school district or charter school may at any time request that the superintendent of public instruction review and adjust data and calculations used to determine funding for learning improvement days pursuant to this chapter.

Requests for adjustment to the number of learning improvement days provided in the 1999-2000 school year and thereafter shall be considered if the district or charter school shows that the data or calculations are in error, or other bona fide adjustments are necessary.

**AMENDATORY SECTION** (Amending WSR 02-20-063, filed 9/27/02, effective 10/28/02)

**WAC 392-140-967 Learning improvement days—((School district)) Reporting requirements.** After the close of the school year, school districts and charter schools receiving funding for learning improvement days shall report the number of learning improvement days provided by the district or charter school meeting the requirements of WAC 392-140-950 through 392-140-965.

**AMENDATORY SECTION** (Amending WSR 14-04-002, filed 1/22/14, effective 2/22/14)

**WAC 392-140-973 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Eligibility.** Staff that are eligible for the bonus shall be limited to those meeting the following requirements:

(1) Hold current certification by the national board for professional teaching standards during the entire school year, unless otherwise specified in the state Biennial Operating Appropriations Act; and

(2) Who are:

(a) Teachers and other certificated instructional staff employed full time or part time under written contract by Washington public school districts or educational service districts pursuant to RCW 28A.405.210; or

(b) Teachers and other certificated instructional staff employed full time or part time by a contractor pursuant to WAC 392-121-188 and 392-121-206 (2)(a); or

(c) Teachers and other certificated instructional staff employed full time or part time by the Washington school for the deaf or Washington school for the blind; or

(d) Teachers and other certificated instructional staff employed full time or part time by a charter school.

(3) In addition to bonuses provided by subsection (2) of this section, teachers and other certificated instructional staff shall be eligible for additional bonuses if in an instructional assignment in challenging, high poverty schools, subject to the following conditions and limitations:

(a) Challenging, high poverty schools are schools where, for the prior year, the student headcount enrollment eligible for the federal free or reduced price lunch program was at least:

(i) 70 percent for elementary schools;

(ii) 60 percent for middle schools; or

(iii) 50 percent for high schools; as determined by the October 1 count of the comprehensive education data and research system (CEDARS) or successor data collection and reporting systems, of the office of superintendent of public instruction, on May 1st of that prior year.

(b) For purposes of the national board challenging, high poverty schools bonus, a school shall be categorized based upon the highest grade served as follows:

(i) A school whose highest grade served is 6th grade or lower shall be considered an elementary school;

(ii) A school whose highest grade served is either 7th, 8th, or 9th grade shall be considered a middle school;

(iii) A school whose highest grade served is either 10th, 11th, or 12th grade shall be considered a high school.

(c) A school shall be considered only if it serves thirty or more students, or is the largest school in the district serving its designated category.

(d) Schools that provide institutional education programs pursuant to WAC 392-122-205 shall be designated as challenging, high poverty schools with the student headcount enrollment eligible for the federal free or reduced price lunch program at one hundred percent and shall not be subject to the requirement in this subsection of serving thirty or more students.

(e) The student enrollment data used shall include the state-funded students in kindergarten through twelfth grade, plus prekindergarten students in special education.

(f) Teachers and other certificated instructional staff that meet the qualifications for the challenging, high poverty schools bonus under this subsection who are assigned for less than one full school year or less than full time for the school year shall receive the challenging, high poverty schools bonus in a prorated manner, subject to the following conditions and limitations:

(i) The portion of the employee's assignment to challenging, high poverty schools shall be determined as of June 15th of the school year.

(ii) If the employee's assignment to challenging, high poverty schools is less than 1.0 full-time equivalent, the proration shall use the methodology in WAC 392-121-212 and shall be rounded to three decimal places.

**AMENDATORY SECTION** (Amending WSR 14-04-002, filed 1/22/14, effective 2/22/14)

**WAC 392-140-974 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Administrative procedures.** (1) School districts and charter schools that employ teachers and other certificated instructional staff eligible for the salary bonus shall report those employees to the office of superintendent of public instruction by submitting for each employee the required data as determined by the superintendent of public instruction.

(2) Districts and charter schools shall document each employee's eligibility by maintaining on file for audit a copy of the employee's national board certification notice and evidence of employment and duties assigned. For employees eligible for the challenging, high poverty schools bonus pursu-

ant to WAC 392-140-973(3), districts and charter schools shall also document the employee's instructional assignments in challenging, high poverty schools.

(3) All requests must be submitted to the superintendent of public instruction by June 15th of the school year and shall be paid in the July apportionment and displayed on Report 1197, in revenue account 4158. Bonuses shall be reduced by a factor of 40 percent for first year National Board for Professional Teaching Standards (NBPTS) certified teachers, to reflect the portion of the instructional school year they are certified.

(4) For each candidate, the superintendent of public instruction shall send the district or charter school the amount of the salary bonus set in the operating appropriations act plus an amount for the district's or charter school's (employer) portion of mandatory fringe benefits. The amount of the annual bonus in WAC 392-140-973(2) shall be five thousand dollars in the 2007-08 school year. Thereafter, the annual bonus shall increase by inflation. The amount of the challenging, high poverty schools bonus in WAC 392-140-973(3) shall be five thousand dollars in the 2007-08 school year. Thereafter, the challenging, high poverty schools bonus shall not increase by inflation.

(5) The district or charter school shall pay the bonus to the employee in a lump sum amount on a supplemental contract pursuant to RCW 28A.400.200 no later than August 31st of the school year.

(6) The salary bonus is included in the definition of "earnable compensation" under RCW 41.32.010(10).

**AMENDATORY SECTION** (Amending WSR 14-04-002, filed 1/22/14, effective 2/22/14)

**WAC 392-140-975 Salary bonus for teachers and other certificated instructional staff who hold current certification by the national board—Requests for review and adjustment.** A school district or charter school may request that the superintendent of public instruction review and adjust data and calculations used to determine funding for the salary bonus for teachers and other certificated instructional staff who hold current certification by the national board for professional teaching standards pursuant to this chapter and instructions issued by the superintendent of public instruction. Requests to review and adjust data shall be considered only for those districts or charter schools wishing to appeal a school's eligibility designation for the challenging, high poverty schools bonus pursuant to WAC 392-140-973(3).

Requests to review and adjust data shall be considered only if the district shows that the data or calculations are in error, or other bona fide adjustments are necessary.

## WSR 15-18-120

### PERMANENT RULES

### DEPARTMENT OF LICENSING

[Filed September 2, 2015, 11:42 a.m., effective October 3, 2015]

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

Purpose: Amendment to WAC 308-125-180 is needed to ensure the agency is in compliance with Title XI of the federal Financial Institutions, Reform, Recovery and Enforcement Act (FIRREA) as amended by the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act.

Citation of Existing Rules Affected by this Order: Amending WAC 308-125-180.

Statutory Authority for Adoption: RCW 18.140.030 (1) and (15).

Adopted under notice filed as WSR 15-14-103 on June 30, 2015.

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

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

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

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

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

Date Adopted: September 2, 2015.

Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 97-02-004, filed 12/20/96, effective 1/20/97)

**WAC 308-125-180 Reciprocity.** A person licensed or certified as a real estate appraiser under the rules or laws of another state may obtain certification in the state of Washington when the following condition is met:

The state in which the appraiser is licensed or certified has an appraiser licensure or certification program which meets federal guidelines ~~((and the state has a written reciprocal agreement with the state of Washington))~~.

A person seeking licensure or certification under this section ~~((must))~~ may be required to provide a statement from the state in which the person is licensed or certified establishing licensure or certification.