

WSR 08-20-033
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed September 22, 2008, 4:06 p.m., effective October 23, 2008]

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

Purpose: These rules are necessary to amend the procedures for administering the home and community based services waivers. They incorporate changes reflected in the waivers approved by the federal Centers for Medicare and Medicaid Services under Section 1915(c) of the Social Security Act. They also clarify the existing rules. By amending these rules, the department is able to claim additional federal Title XIX funds.

Citation of Existing Rules Affected by this Order:

WAC SUMMARY and SBEIS/CBA WORKSHEET June 2008		
Washington Administrative Code	Effect of Rule	Impact Small Business?
388-845-0001 Definitions - Amended "CAP Waiver" - Removed "Gainful employment" - Added "Integrated settings" - Added "Living wage" - Added	This definition is obsolete. Adds the definition of "gainful employment." Adds the definition of "integrated settings." Adds the definition of "living wage."	No No No No
388-845-0045 - Amended	Clarifies that needs refer to the identified health and welfare needs.	No
388-845-0205 - Amended	Increases the maximum allowable amount for employment/day program services.	No
388-845-0210 - Amended	Increases the maximum allowable amount for employment/day program services and that this amount may be exceeded by exception to rule.	No
388-845-0600 - Amended	Rewords the definition of community access services for clarity.	No
388-845-0605 - Amended	Rewords who can be providers of community access services for clarity.	No
388-845-0610 - Amended	Clarifies that community access is a service.	No
388-845-0750 - Amended	Clarifies that community transition services may be available when moving from an institutional setting or from a provider operated setting to a community setting in which you live in your own home or apartment and are responsible for your living expenses.	No
388-845-0760 - Amended	Clarifies that community transitional services may not be used for rent.	No
388-845-1200 - Amended	Clarifies the definition of person-to-person services.	No
388-845-1205 - Amended	Grammatical change only.	No
388-845-1210 - Amended	Clarifies the limitations of person-to-person services.	No
388-845-1305 - Amended	Clarifies that providers of personal care services must be contracted with ADSA rather than DDD.	No
388-845-1310 - Amended	Clarifies that homecare agencies must be contracted with ADSA rather than DDD and eliminates an erroneous cross-reference.	No
388-845-1400 - Amended	Expands the definition of prevocational services.	No
388-845-1410 - Amended	Expands the limitations of prevocational services to require prior approval, that these services are time-limited and when a review of these services may be required.	No
388-845-1600 - Amended	Clarifies the definition of respite care.	No

Washington Administrative Code	Effect of Rule	Impact Small Business?
388-845-1620 - Amended	Expands the limitations on respite care regarding parent providers.	No
388-845-1650 - Amended	Changes the term deviation to deviancy and expands the definition for clarity.	No
388-845-1655 - Amended	Changes the term deviation to deviancy.	No
388-845-1660 - Amended	Changes the term deviation to deviancy.	No
388-845-2100 - Amended	Revises and expands the definition of supported employment services.	No
388-845-2105 - Amended	Rewords the grammar for clarity.	No
388-845-2110 - Amended	Clarifies the limitations on supported employment services.	No
388-845-2210 - Amended	Adds a limitation of sixty miles per month for transportation services provided by a personal care provider.	Yes

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Other Authority: Title 71A RCW.

Adopted under notice filed as WSR 08-15-008 on July 3, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-845-1310 has been changed to delete the cross reference to chapter 388-71 WAC.

A final cost-benefit analysis is available by contacting Steve Brink, P.O. Box 45310, Olympia, WA 98504-5310, phone (360) 725-3416, fax (360) 407-0955, e-mail brinksc@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 25, 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 25, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 25, Repealed 0.

Date Adopted: September 22, 2008.

Robin Arnold-Williams
Secretary

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

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

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

~~("CAP waiver" means the community alternatives program waiver.)~~

"CARE" means the comprehensive assessment and reporting evaluation.

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

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

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

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

"Family" means relatives who live in the same home with the eligible client. Relatives include spouse, natural, adoptive or step parents; grandparents; brother; sister; step-brother; stepsister; uncle; aunt; first cousin; niece; or nephew.

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

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

"Home" means your present or intended place of residence.

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

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

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

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

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

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

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

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

"Respite assessment" means an algorithm within the DDD assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the Basic, Basic Plus, or Core waiver.

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

"SSP" means state supplementary payment, a benefit administered by the department intended to augment an individual's SSI.

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

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

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

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

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

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

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

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

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

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

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

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

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

WAC 388-845-0205 Basic waiver services.

BASIC WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$1454 per year on any combination of these services
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed \$(6634)) 6804 per year
	Sexual deviancy evaluation	Limits are determined by DDD
	Respite care	Limits are determined by the DDD assessment
	Personal care	Limits are determined by the CARE tool used as part of the DDD assessment
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing	Limits are determined by a mental health professional or DDD

BASIC WAIVER	SERVICES	YEARLY LIMIT
	Specialized psychiatric services	
	Emergency assistance is only for aggregate services and/or employment/day program services contained in the Basic waiver	\$6000 per year; Preauthorization required

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

WAC 388-845-0210 Basic Plus waiver services.

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	<p>AGGREGATE SERVICES:</p> <p>Behavior management and consultation</p> <p>Community guide</p> <p>Environmental accessibility adaptations</p> <p>Occupational therapy</p> <p>Physical therapy</p> <p>Skilled nursing</p> <p>Specialized medical equipment/supplies</p> <p>Specialized psychiatric services</p> <p>Speech, hearing and language services</p> <p>Staff/family consultation and training</p> <p>Transportation</p>	<p>May not exceed \$6192 per year on any combination of these services</p>
	<p>EMPLOYMENT/DAY PROGRAM SERVICES:</p> <p>Community access</p> <p>Person-to-person</p> <p>Prevocational services</p> <p>Supported employment</p> <p>Adult foster care (adult family home)</p> <p>Adult residential care (boarding home)</p>	<p>May not exceed \$(9694)) <u>9944</u> per year</p> <p><u>This amount may be increased to a maximum of \$19,888 per year by exception to rule based on client need</u></p> <p>Determined per department rate structure</p>
	<p>MENTAL HEALTH STABILIZATION SERVICES:</p> <p>Behavior management and consultation</p>	<p>Limits determined by a mental health professional or DDD</p>

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	<p>Mental health crisis diversion bed services</p> <p>Skilled nursing</p> <p>Specialized psychiatric services</p>	
	Personal care	Limits determined by the CARE tool used as part of the DDD assessment
	Respite care	Limits are determined by the DDD assessment
	Sexual deviancy evaluation	Limits are determined by DDD
	Emergency assistance is only for aggregate services and/or employment/day program services contained in the Basic Plus waiver	\$6000 per year; Preauthorization required

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

WAC 388-845-0600 What ~~((is))~~ are community access services? Community access ~~((is a))~~ services are provided in the community to enhance or maintain ~~((the person's competence,))~~ your community integration, physical or mental skills.

(1) If you are age sixty-two or older, ~~((this service is))~~ these services are available to assist you to participate in activities, events and organizations in the community in ways similar to others of retirement age.

(2) ~~((This service is))~~ These services are available ~~((to adults))~~ in the Basic, Basic Plus, and CORE waivers.

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

WAC 388-845-0605 Who ~~((is a))~~ are qualified providers of community access services? ~~((The))~~ Providers of community access services must be a county or an individual or agency contracted with a county or DDD.

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

WAC 388-845-0610 Are there limits to community access services I can receive? The following limits apply to your receipt of community access services:

- (1) You must be age sixty-two or older.
- (2) You cannot be authorized to receive community access services if you receive prevocational services or supported employment services.

(3) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

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

WAC 388-845-0750 What are community transition services? (1) Community transition services are reasonable costs (necessary expenses in the judgment of the state for ~~((an individual))~~ you to establish ~~((his or her))~~ your basic living arrangement) associated with moving from:

(a) An institutional setting to a community setting in which you are living in your own home or apartment, responsible for your own living expenses and receiving services from a DDD certified residential habilitation services provider as defined in WAC 388-845-1505 and 388-845-1510; or

(b) A provider operated setting, such as a group home, staffed residential, or companion home in the community to a community setting in which you are living in your own home or apartment, responsible for your own living expenses, and receiving services from a DDD certified residential habilitation services provider as defined in WAC 388-845-1505 and 388-845-1510.

(2) Community transition services include:

(a) Security deposits (not to exceed the equivalent of two month's rent) that are required to obtain a lease on an apartment or home;

(b) Essential furnishings such as a bed, a table, chairs, window blinds, eating utensils and food preparation items;

(c) Moving expenses required to occupy ~~((and use a community domicile))~~ your own home or apartment;

(d) Set-up fees or deposits for utility or service access (e.g., telephone, electricity, heating); and

(e) Health and safety assurances, such as pest eradication, allergen control or one-time cleaning prior to occupancy.

(3) Community transition services are available in the CORE and community protection waivers.

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

WAC 388-845-0760 Are there limitations to community transition services I can receive? (1) Community transition services do not include:

(a) Diversional or recreational items such as televisions, cable TV access, VCRs, MP3, CD or DVD players; and

(b) Computers ~~((whose use is))~~ if primarily ~~((diversional or recreational))~~ used as a diversional or for recreation.

(2) ((Community transition services are available only to individuals that are moving from an institution to a community setting and are enrolled in either the CORE or community protection waiver)) Rent assistance is not available as a community transition service.

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

WAC 388-845-1200 What ~~((is-a))~~ are "person-to-person" services? (1) "Person-to-person" ~~((is-a-day program))~~ services are intended to assist ~~((participants))~~ you to ~~((progress toward))~~ achieve the outcome of gainful employment ~~((goals))~~ in an integrated setting through ~~((individualized planning, skill instruction, information and referral, and one-to-one relationship building))~~ a combination of services, which may include:

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

(b) Development of a person centered employment plan;

(c) Preparation of an individualized budget; and

(d) Support to work and volunteer in the community, and/or access the generic community resources needed to achieve integration and employment.

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

(3) These ~~((This))~~ services ~~((is))~~ are available ~~((to adults))~~ in all four HCBS waivers.

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

WAC 388-845-1205 Who ~~((is-a))~~ are qualified providers of person-to-person services? ~~((The))~~ Providers of "person-to-person" services must be a county or an individual or agency contracted with a county or DDD.

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

WAC 388-845-1210 Are there limits to the person-to-person service I can receive? (1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school or age twenty-two or older to receive person-to-person services.

(2) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

(3) These services will be provided in an integrated environment.

(4) Your service hours are determined by the level of assistance you need to reach your employment outcomes and might not equal the number of hours you spend on the job or in job related activities.

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

WAC 388-845-1305 Who are the qualified providers of personal care services? (1) Qualified providers of personal care services may be individuals or licensed homecare agencies contracted with ~~((DDD))~~ ADSA.

(2) All individual providers and homecare agency providers must meet provider qualifications for in-home caregivers in WAC 388-71-0500 through 388-71-0556.

(3) Providers of personal care services for adults must comply with the training requirements in these rules governing Medicaid personal care providers in WAC 388-71-05670 through 388-71-05799.

(4) Natural, step, or adoptive parents can be the personal care provider of their adult child age eighteen or older.

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

WAC 388-845-1310 Are there limits to the personal care services I can receive? (1) You must meet the programmatic eligibility for Medicaid personal care in chapter 388-106 WAC governing Medicaid personal care (MPC) using the current department approved assessment form: Comprehensive assessment reporting evaluation (CARE).

(2) The maximum hours of personal care you may receive are determined by the CARE tool used as part of the DDD assessment.

(a) Provider rates are limited to the department established hourly rates for in-home Medicaid personal care.

(b) Homecare agencies must be licensed through the department of health and contracted with ~~((DDD))~~ ADSA.

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 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1400 What are prevocational services? (1) Prevocational services occur in a segregated setting and are designed to prepare ~~((an adult))~~ you for ~~((paid or unpaid))~~ gainful employment in an integrated setting through ~~((the teaching of such concepts as compliance, attendance, task completion, problem solving and safety))~~ training and skill development.

(2) Prevocational ~~((These))~~ services are available in all four HCBS waivers.

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

WAC 388-845-1410 Are there limits to the prevocational services I can receive? The following limitations apply to your receipt of prevocational services:

(1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive prevocational services.

(2) ~~((You are not expected to be competitively employed within one year (excluding supported employment programs)))~~ New referrals for prevocational services require prior approval by the DDD regional administrator and county coordinator or their designees.

(3) Prevocational services are a time limited step on the pathway toward individual employment and are dependent on your demonstrating steady progress toward gainful employment over time. Your annual vocational assessment will include exploration of integrated settings within your

next service year. Criteria that would trigger a review of your need for these services include, but are not limited to:

(a) Compensation at more than fifty percent of the prevailing wage;

(b) Significant progress made toward your defined goals;

(c) Your expressed interest in competitive employment;
and/or

(d) Recommendation by your individual support plan team.

~~((3))~~ (4) You ~~((cannot))~~ will not be authorized to receive prevocational services ~~((if you receive))~~ in addition to community access services or supported employment services.

~~((4))~~ (5) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of service you may receive.

(6) Your service hours are determined by the assistance you need to reach your employment outcomes.

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

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

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

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

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

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

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

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

(3) Respite cannot replace:

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

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

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

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

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

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

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

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

~~((6)) (7) DDD cannot pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.~~

~~((7)) (8) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the Basic Plus waiver, skilled nursing services are limited to the dollar limits of your aggregate services per WAC 388-845-0210.~~

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

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

~~(a) Are professional evaluations ((of sexual deviancy to determine the need for psychological, medical or therapeutic services)) that assess the person's needs and the person's level of risk of sexual offending or sexual recidivism;~~

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

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

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

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

WAC 388-845-1655 Who is a qualified provider of sexual ((deviation)) deviancy evaluations? The provider of sexual deviancy evaluations must:

~~(1) Be a certified sexual offender treatment provider (SOTP); and~~

~~(2) Meet the standards contained in WAC 246-930-030 (education required prior to examination) and WAC 246-930-040 (professional experience required prior to examination).~~

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

WAC 388-845-1660 Are there limitations to the sexual ((deviation)) deviancy evaluations I can receive? (1) ~~((The)) Sexual deviancy evaluations must meet the standards contained in WAC 246-930-320.~~

~~(2) Sexual ((deviation)) deviancy evaluations require prior approval by the DDD regional administrator or designee.~~

~~(3) The costs of sexual ((deviation)) deviancy evaluations do not count toward the dollar limits for aggregate services in the Basic or Basic Plus waivers.~~

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

WAC 388-845-2100 What ((is)) are supported employment services? Supported employment services provide ~~((s)) you with~~ intensive ongoing ~~((individual or group)) support ((in a work setting to adults with developmental disabilities)) if you need individualized assistance to gain and/or maintain employment. ~~((This service is))~~ These services are tailored to your individual needs, interests, abilities, and promote your career development. These services are provided in individual or group settings and are available in all four HCBS waivers.~~

(1) Individual supported employment services include ~~((s)) activities~~ needed to sustain ~~((paid work by individuals receiving waiver services, including supervision and training)) minimum wage pay or higher. These services are conducted in integrated business environments and include the following:~~

~~(a) Creation of work opportunities through job development;~~

~~(b) On-the-job training;~~

~~(c) Training for your supervisor and/or peer workers to enable them to serve as natural supports to you on the job;~~

~~(d) Modification of your work site tasks;~~

~~(e) Employment retention and follow along support; and~~

~~(f) Development of career and promotional opportunities.~~

~~(2) ((Supported employment is conducted in a variety of settings; particularly work sites in which persons without disabilities are employed)) Group supported employment services are a step on your pathway toward gainful employment in an integrated setting and include:~~

~~(a) The activities outlined in individual supported employment services;~~

~~(b) Daily supervision by a qualified employment provider; and~~

~~(c) Groupings of no more than eight workers with disabilities.~~

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

WAC 388-845-2105 Who ((is a)) are qualified providers of supported employment services? ~~((A)) Supported employment services providers must be a county, or agencies or individuals contracted with a county or DDD.~~

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

WAC 388-845-2110 Are there limits to the supported employment services I can receive? The following limitations apply to your receipt of supported employment services:

~~(1) You must be age twenty and graduating from high school prior to your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive supported employment services.~~

~~(2) Payment will be made only for the ~~((adaptations, supervision, training, and)) employment support ((with the~~~~

activities of daily living)) you require as a result of your disabilities.

(3) Payment ~~((is excluded for))~~ for individual supported employment excludes the supervisory activities rendered as a normal part of the business setting.

(4) You ~~((cannot))~~ will not be authorized to receive supported employment services ~~((if you receive))~~ in addition to community access ~~((services))~~ or prevocational services.

(5) The dollar limitations for employment/day program services in your Basic or Basic Plus waiver limit the amount of supported employment service you may receive.

(6) Your service hours are determined by the assistance you need to reach your employment outcomes and might not equal the number of hours you spend on the job or in job related activities.

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

WAC 388-845-2210 Are there limitations to the transportation services I can receive? The following limitations apply to transportation services:

(1) Transportation to/from medical or medically related appointments is a Medicaid transportation service and is to be considered and used first.

(2) Transportation is offered in addition to medical transportation but cannot replace Medicaid transportation services.

(3) Transportation is limited to travel to and from a waiver service.

(4) Transportation does not include the purchase of a bus pass.

(5) Reimbursement for provider mileage requires prior approval by DDD and is paid according to contract.

(6) This service does not cover the purchase or lease of vehicles.

(7) Reimbursement for provider travel time is not included in this service.

(8) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(9) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your provider's contract and payment.

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

(11) Transportation services require prior approval by the DDD regional administrator or designee.

(12) If your individual personal care provider uses his/her own vehicle to provide transportation to you for essential shopping and medical appointments as a part of your personal care service, your provider may receive up to sixty miles per month in mileage reimbursement. If you work with more than one individual personal care provider, your limit is still a total of sixty miles per month. This cost is not counted toward the dollar limitation for aggregate services in the Basic or Basic Plus waiver.

WSR 08-20-113

PERMANENT RULES

UTILITIES AND TRANSPORTATION COMMISSION

[Docket UT-073014, General Order R-551—Filed September 30, 2008, 1:12 p.m., effective October 31, 2008]

ORDER CORRECTING TEXT OF WAC 480-120-071 (8)(a) and (b) SUBMITTED FOR ADOPTION

In the matter of amending WAC 480-120-071 and 480-120-103, relating to extension of service and application for service.

1 On September 3, 2008, the Washington utilities and transportation commission (commission) filed with the code reviser an order amending and adopting rules permanently in WAC 480-120-071 and 480-120-103, relating to extension of service and application for service. The order is filed at WSR 08-19-001. The effective date for the adoption of the rules is October 4, 2008.

2 The commission recently learned that an intended addition of the effective date to subsections (8)(a) and (b) of WAC 480-120-071, as published at WSR 08-19-001, was erroneously omitted in the rule submitted for adoption. The effective date that should have been included in subsections (8)(a) and (b) is set out below in italics:

WAC 480-120-071 Extension of service.

(8) Application of rule.

(a) The prior WAC 480-120-071, as it was in effect on June 1, 2008, will continue to apply to applications for extension of service that a company has completed or accepted before *October 4, 2008*.

(b) This section, as amended effective *October 4, 2008*, applies to all other requests for service before and after the effective date.

3 Failure to insert the effective date of October 4, 2008, to subsections (8)(a) and (b) of WAC 480-120-071, submitted to the code reviser with the adoption order constitutes an oversight. Accordingly the commission enters this order to correct the rule by inserting the October 4, 2008, effective date in subsections (8)(a) and (b) of WAC 480-120-071. A copy of the corrected rule is shown below this order as Appendix A.

DATED at Olympia, Washington, September 29, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION
COMMISSION

Mark H. Sidran, Chairman
Patrick J. Oshie, Commissioner
Philip B. Jones, Commissioner

APPENDIX A

AMENDATORY SECTION (Amending Order R-474, Docket No. UT-991737, filed 12/5/00, effective 1/15/01)

WAC 480-120-071 Extension of service. (1) Definitions. The following definitions apply to this section unless the context clearly indicates otherwise:

~~("Basic monthly service rate" means the rate for non-measured service for the lowest priced class of service ordered by the applicant.~~

"Binding site plan" has the same meaning as "binding site plan" in RCW 58.17.020.

"Constructed" means a residential building that has been approved for occupancy by the appropriate local government agency.

"Cost justification" means such cost and engineering information as the commission may request.

"Cost of service extension" means the direct and indirect costs of the material and labor to plan and construct the facilities including, but not limited to, drop wire, permitting fees, rights of way fees, and payments to subcontractors, and does not include the cost of reinforcement, network upgrade, or similar costs.

"Development" has the same meaning as "development" and "developed lands" in RCW 58.19.020.

"Distribution plant" means telephone equipment and facilities necessary to provide service to a premises, but does not include drop wire.

"Drop wire" means company-supplied wire and pedestals to be placed between a premise and the company distribution plant at the applicant's property line. For drop wire installed after the effective date of this section, a drop wire must be sufficient in capacity to allow the provisioning of three individual basic exchange voice grade access lines.

"Extension of service" means an extension of company distribution plant to a location that is outside any municipal boundary and where no distribution plant of the extending company exists at the time an extension is requested, that is constructed at the request of one or more applicants for service who pay a charge under this section, and that extends more than 1/10 mile. Extensions of service do not include customer trenches, conduits or other support structure for placement of company provided facilities from the customer property line to the premises to be served.

"Filed" means the approved plat, short plat, binding site plan or other similar approved instrument filed for record with a county auditor and authorizing development activity.

"Lot" has the same meaning as "lot" in RCW 58.17.020.

"Marina" has the same meaning as "marina" in RCW 88.12.010.

"Mobile home lot," "mobile home park," "mobile home park cooperative," and "mobile home park subdivision" have the same meanings as "mobile home lot," "mobile home park," "mobile home park cooperative," and "mobile home park subdivision" have in RCW 59.20.030.

"Neighboring exchange" means an exchange bordering on any other exchange.

"Premises" means any structure that is used as a residence, including farm houses, but does not include predominantly commercial or industrial structures.

"Radio communications service company" has the meaning contained in RCW 80.04.010.

"Residential buildings" has the same meaning as "residential buildings" in RCW 58.19.020.

"Short subdivision" has the same meaning as "short subdivision" in RCW 58.17.020.

"Subdivision" has the same meaning as "subdivision" in RCW 58.17.020.

"Temporary occupancy" means occupancy definitely known to be for less than one year but does not include inter-

mittent or seasonal use when such intermittent or seasonal use will occur in more than a one-year period.

"Temporary service" means service definitely known to be for a short period of time, such as service provided for sales campaigns, athletic contests, conventions, fairs, circuses, and similar events.

(2) Extensions of service.

(a) Each company required to file tariffs under RCW 80.36.100 must have on file an extension of service tariff and must extend service consistent with its tariff and this section and provide drop wire for customer use. Service extensions must be completed within eighteen months after a request is made and the customer makes the initial payment, unless the commission extends the time on a showing of good cause.

(b) Extension of service is required to occupied premises unless the company demonstrates occupancy is temporary. In the case of new construction commenced after the effective date of this section, extension of service is required only if the applicant has permission to build from the applicable local government and the need for service is not temporary.

(c) Any company required to extend service under this section may do so by extending distribution plant or by making a service and financial agreement with a radio communications service company or other alternative provider to provide service. The services provided through a radio communications service company or other alternative provider must be reasonably comparable services at reasonably comparable prices compared to services provided through wireline distribution facilities in the area of the exchange where service has been requested. In addition, the services must include all elements of basic service defined in RCW 80.36.600. A company extending service through a service agreement with a radio communications service company or other alternative provider may file a tariff as permitted under subsection (4) of this section to recover the lesser of the actual direct cost to extend the service through the cooperative agreement or the direct cost of extending wireline distribution plant.

(3) Service extension charge to applicants.

(a) For service provided under subsection (2) of this section, companies must submit a tariff that sets the level of an initial fee and per-month fee for any applicant requesting an extension of service. The tariff may also impose such fees upon applicants for new service from a service extension that is less than five years old measured from the date of the initial service provided by the extension. The charge to applicants for service extensions must include an initial payment to process the order. The maximum initial payment to process the order is an amount equal to twenty times the customer's basic monthly service rate exclusive of all fees, taxes or other charges.

A per-month payment beginning with the first monthly bill for service must be charged once the order is complete and service is provided. The maximum allowable per-month payment for a period of twenty months is an amount equal to the customer's basic monthly service rate, exclusive of all fees, taxes or other charges. Customers may pay the entire amount at any time, in lieu of monthly payments, and must pay the entire remaining amount at the time of disconnecting service if the disconnection occurs prior to full payment.

(b) Customers are responsible for providing or paying the cost of trenching, conduit, or other structures required for placement of company-provided drop wire from the customer's property line to the premises.

(4) Cost recovery for extensions of service.

(a) A company with a terminating access tariff under WAC 480-120-540 and a service extension tariff imposing fees or charges under subsection (3) of this section may file tariffs to include a service extension element on terminating access in an amount necessary to recover the cost of an extension of service. The tariff may not recover costs covered by applicant or customer payments for service extensions, federal universal service funds, or any similar funds or grants from other sources. The company must file the tariff to be effective only so long as necessary to recover the costs allowed under this section.

(b) Companies may recover costs by filing a tariff under (b)(i) or (ii) of this subsection. In the case of companies that serve fewer than two percent of the access lines in the state, placement of the tariff on the agenda of a commission open meeting constitutes notice of an opportunity to be heard on the need for any reporting requirements related to a tariff based on estimated costs.

(i) A company may file a proposed tariff to recover fifty percent of the estimated cost of an extension after it obtains all permits necessary for construction related to the extension of service. Extensions of service must be completed within twelve months of the effective date of a tariff that uses estimated costs. The tariff based on estimates is null and void at the end of that twelve-month period if the extension of service is not completed; however, the commission, for good cause shown, may permit the tariff based on estimates to remain in effect after twelve months. If the commission does not permit the tariff based on estimates to continue, the company must within thirty days of the commission's decision or the end of the twelve-month period, whichever is later, file a replacement tariff to offset the amounts collected. After completion of an extension subject to a tariff based on estimated costs, the company may file a tariff to recover the cost of the extension less any amount already recovered or, in the event of an over-collection, must file a tariff to reduce terminating access sufficient to offset the amount over-collected through the initial tariff.

Class A companies that have in effect a service extension tariff based on estimated costs must report quarterly on collections, expenditures, and construction timetables and progress, including a final report after completion of the extension and termination of the tariff. Companies that serve fewer than two percent of the access lines in the state and that have in effect a service extension tariff based on estimated costs must make the same report every six months if ordered by the commission.

(ii) A company may file a tariff to recover the cost of a service extension at any time within two years after completion of an extension and may accumulate the cost of multiple line extensions before filing a tariff.

(c) The commission will review the cost justification for the tariffs and approve the tariffs if they are consistent with this section. The commission will not conduct an earnings

review of the company's operations for the purpose of reviewing the proposed tariffs.

(5) Extension of service to neighboring exchange facilities.

(a) A company that is willing to extend service to a neighboring exchange may recover under subsection (4) of this section the cost of an extension to a neighboring exchange if companies obligated to serve the neighboring exchange agree that the cost of a cross-boundary service extension would be less than the cost of extension within the applicants' exchange and agree to the cross-boundary extension.

(b) In the case of a cross-boundary extension, an applicant will become a customer of the extending company. The customer's rates and local calling capabilities must be the same as other customers served out of the extending company's same central office.

(c) The newly constructed facilities will be the property of the extending company, but the exchange boundary will remain unchanged.

(d) The charge to the customer shall be determined in accordance with subsection (3) of this section.

(6) Extensions to developments. The cost of extensions to developments should be borne by those who gain economic advantage from development and not by ratepayers in general. This policy promotes the economic good of having telephone infrastructure placed at the same time as other infrastructure is constructed as a part of development. Accordingly, local exchange companies may not recover under subsection (4) of this section the costs of extensions to serve the following:

(a) Developments filed after the effective date of this rule for which a public offering statement is required under chapter 58.19 RCW;

(b) Divisions of land filed after the effective date of this rule that use binding site plans under RCW 58.17.035 to create five or more lots or units;

(c) Subdivisions filed after the effective date of this rule;

(d) Short subdivisions with five or more lots filed after the effective date of this rule;

(e) Developments filed prior to the effective date of this rule, in which all lots were under common ownership and control on the effective date of this rule, and in which no residential buildings were constructed after the division of land and prior to the effective date of this rule;

(f) Divisions of land using binding site plans under chapter 58.17 RCW with five or more lots or units filed prior to the effective date of this rule, in which all lots, units or both were under common ownership and control on the effective date of this rule, and in which no residential buildings or commercial or industrial buildings were constructed after the division of land and prior to the effective date of this rule;

(g) Subdivisions filed prior to the effective date of this rule, in which all lots were under common ownership and control on the effective date of this rule, and in which no residential buildings were constructed after the division of land and prior to the effective date of this rule;

(h) Short subdivisions with five or more lots filed prior to the effective date of this rule, in which all lots were under common ownership and control on the effective date of this

rule, and in which no residential buildings were constructed after the division of land and prior to the effective date of this rule;

(i) Mobile home parks, mobile home park cooperatives, and mobile home park subdivisions filed after the effective date of this rule;

(j) Mobile home parks, mobile home park cooperatives, and mobile home park subdivisions filed prior to the effective date of this rule, in which all lots were under common ownership and control on the effective date of this rule, and in which no residential buildings were placed or constructed after the division of land and prior to the effective date of this rule;

(k) Marinas;

(l) Camping resorts regulated under chapter 19.105 RCW;

(m) Condominiums regulated under chapters 64.32 and 64.34 RCW;

(n) Timeshares regulated under chapter 64.36 RCW.

(7) ~~Waiver of obligation under this section.~~

(a) ~~The commission retains the authority under RCW 80.36.090 to determine whether any applicant for service is not reasonably entitled to service and whether the local exchange company is not obligated to provide service to an applicant under subsection (2)(b) of this section. In determining the reasonable entitlement, the commission may consider those factors listed in (b)(ii)(A) through (G) of this subsection and such other information that it may consider necessary to a proper determination.~~

~~(b) Waiver of subsection (3)(a) of this section:~~

~~(i) A company may petition for a waiver of subsection (3)(a) of this section in order to charge an applicant the direct cost to extend service if it is unreasonable for the direct cost of the extension of service to be borne by rates permitted under subsection (4) of this section.~~

~~(ii) In determining whether cost recovery under subsection (4) of this section for an extension is unreasonable and granting a waiver is consistent with public interest, the commission will consider:~~

~~(A) The total direct cost of the extension;~~

~~(B) The number of customers to be served;~~

~~(C) The comparative price and capabilities of radio communication service or other alternatives available to customers;~~

~~(D) Technological difficulties and physical barriers presented by the requested extensions;~~

~~(E) The effect on the individuals and communities involved;~~

~~(F) The effect on the public switched network; and~~

~~(G) The effect on the company-;)~~ **"Applicant" means any person applying to a telecommunications company for new tariffed residential basic local exchange service. Applicant does not include developers requesting service for developments.**

"Cost of service extension" means the direct and indirect costs of the material and labor to plan and construct the facilities including, but not limited to, permitting fees, rights of way fees, and payments to subcontractors, and does not include the cost of reinforcement, network upgrade, or similar costs.

"Developer" means any owner of a development who offers it for disposition, or an agent of such an owner.

"Development" means land which is divided or is proposed to be divided for the purpose of disposition into four or more lots, parcels, or units.

"Distribution plant" means telephone equipment and facilities necessary to provide new tariffed residential basic local exchange service to a premises, but does not include drop wire.

"Drop wire" means company-supplied wire and pedestals to be placed between a premises and the company distribution plant at the applicant's property line. For drop wire installed after January 15, 2001, a drop wire must be sufficient in capacity to allow the provisioning of three individual basic exchange voice-grade access lines.

"Extension of service" means an extension of company distribution plant for new tariffed residential basic local exchange service to a location where no distribution plant of the extending company exists at the time an extension of service is requested. An extension is constructed at the request of one or more applicants for service. Extensions of service do not include trenches, conduits, or other support structure for placement of company-provided facilities from the applicant's property line to the premises to be served. Extension of service, as defined in this rule, does not apply to extensions of service to developments or to extensions of service for temporary occupancy or temporary service.

"Extraordinary cost" means a substantial expense resulting from circumstances or conditions beyond the control of the company that are exceptional and unlikely to occur in the normal course of planning and constructing facilities contemplated by this rule.

"Order date" as defined in WAC 480-120-021 (Definitions) means the date when an applicant requests service unless a company identifies specific actions a customer must first complete in order to be in compliance with tariffs or commission rules. Except as provided in WAC 480-120-061 (Refusing service) and 480-120-104 (Information to consumers), when specific actions are required to be completed by the applicant, the order date becomes the date the company receives the completed application for extension of service.

"Premises" means any structure that is used as a residence, but does not include predominantly commercial or industrial structures.

"Tariffed" means offered under a tariff filed with the commission.

"Temporary occupancy" means occupancy definitely known to be for less than one year but does not include intermittent or seasonal use when the intermittent or seasonal use will occur in more than a one-year period.

"Temporary service" means service definitely known to be for a short period of time, such as service provided for construction huts, sales campaigns, athletic contests, conventions, fairs, circuses, and similar events.

(2) Tariffed residential basic local exchange service.

(a) Each company required to file tariffs under RCW 80.36.100, and each company required to do so under an alternative form of regulation, must have on file with the commission an extension of service tariff for residential basic local exchange service consistent with this rule. Each com-

pany must extend service consistent with its tariff and this section.

(b) Within seven business days of an applicant's initial request, each company to which (a) of this subsection applies must provide the applicant with an application for extension of service. The company must also provide the applicant a brief explanation of the extension of service rules, including the requirement that subsequent applicants must contribute to the cost of a previously built extension that is less than five years old.

(c) The company must process applications that require an extension of service in a timely manner, consistent with the following:

(i) When there will be no charge for an extension of service as a result of the allowances required under subsection (3) of this section, the company must construct the extension and provide new tariffed residential basic local exchange service within thirteen months of the order date unless the commission grants the company's request to charge the applicant for extraordinary extension of service costs.

(ii) For an extension of service that exceeds the allowances provided under subsection (3) of this section, within one hundred twenty days of the order date, the company must provide the applicant a bill for the estimated cost of construction of the extension of service under subsection (4)(a) of this section. The company must include with the bill a notice to the applicant of the right to be reimbursed for a portion of the cost by a subsequent applicant as provided under subsection (5) of this section.

(iii) When the company bills for the estimated construction charges, including extraordinary costs as allowed in this section, it must complete the extension of service and provide new tariffed residential basic local exchange service within twelve months after the applicant meets the payment terms established by the company (e.g., payment in full, partial payment on a schedule). If there are multiple applicants under subsection (4)(b) of this section, then all applicants must meet the payment terms established by the company.

(3) Allowances.

(a) A company's tariff must allow for an extension of service within its service territory up to one thousand feet at no charge to the applicant. The tariff may allow for an extension of service for distances over the allowance at no charge to the applicant.

(b) The applicant is responsible for the cost of that portion of the extension of service, if any, that exceeds the allowance. When the applicant meets the company's payment terms under subsection (2)(c)(iii) of this section, the company must construct the extension of service. The company's tariff must permit multiple applicants to aggregate their allowances when an extension of service to two or more applicants would follow a single construction path.

(c) If the company determines that the first one thousand feet of an extension of service will involve extraordinary costs, the company may petition for permission to charge the applicant(s) for those costs. The petition must be in the form required under WAC 480-07-370 (1)(b)(ii) and the company must file the petition within one hundred twenty days after the order date. The company must provide notice to the applicant of the petition.

(4) Determining costs and billing for extensions of service longer than allowances.

(a) The company must estimate the cost of the service extension that is attributable to distribution plant that must be extended beyond the applicable allowance established under subsection (3)(b) of this section.

(b) When two or more applicants request service and aggregate their allowances, and it is still necessary to construct an extension of service longer than the aggregated incremental allowances, the company must bill each applicant for an equal portion of the allowable charge (e.g., when two applicants aggregate allowances, the charge is divided by two; when five applicants aggregate allowances, the charge is divided by five). Multiple applicants may agree to divide the bill among themselves in amounts different from those billed as long as the billing company receives full payment.

(c) At the completion of the construction of the extension of service, the company must determine the difference between the estimated cost provided under subsection (2)(c)(ii) of this section and the actual cost of construction. The company must provide to the applicant detailed construction costs showing the difference. The company must refund any overpayment and may charge the applicant for reasonable additional costs up to ten percent of the estimate.

(d) The company must retain records pertaining to the construction charges paid for a period of at least six years from payment of the charges by the original applicant(s).

(5) Subsequent applicants to existing extensions of service for which construction charges were paid.

(a) If within five years of the order date for an extension of service a subsequent applicant seeks service from that previous extension of service and the original applicant(s) paid construction charges under subsection (4) of this section, then the company tariff must require the subsequent applicant to pay a proportionate share of the original extension of service charges before extending service. The tariff must provide that the amount paid by subsequent applicants will be refunded proportionately to the original applicant(s) who paid the extension charges.

(b) The company must provide notice to the last known address of the original applicant(s) of the amount of the refund due the applicant(s). Any refund not requested within sixty days of the date notice was sent will be returned to the subsequent applicant.

(6) Requirements for supporting structures and trenches.

(a) A company tariff may condition construction on completion of support structures, trenches, or both on the applicant's property.

(i) Applicants are responsible for installation of all supporting structures required for placement of company-provided drop wire from the applicant's property line to the applicant's premises. The company may offer to construct supporting structures and dig trenches and may charge for those services, but the tariff must not require that applicants use only company services to construct supporting structures and dig trenches. The offer must clearly state that the applicant may choose to employ a different company for construction services.

(ii) The company tariff may require that all supporting structures required for placement of company-provided drop wire from the applicant's property line to the premises are placed in accordance with reasonable company construction specifications. The tariff must require that, once in place and in use, all supporting structures and drop wire will be maintained by the company as long as the company provides service, and any support structure and trenches constructed at company expense are owned by the company.

(b) The tariff must provide that once supporting structures, trenches, or both, have been constructed, the company will provide drop wire to applicants at no charge.

(7) **Temporary service.** Each company required to file tariffs under RCW 80.36.100 (Tariff schedules to be filed and open to public—Exceptions), and each company regulated under an alternative form of regulation, must have on file with the commission an extension of service tariff for temporary service consistent with this rule. Each company must extend service consistent with its tariff and this section. A company tariff for extension of temporary service may not provide allowances (e.g., one thousand feet without charge) or discounts on the cost of construction.

(8) Application of rule.

(a) The prior WAC 480-120-071, as it was in effect on June 1, 2008, will continue to apply to applications for extension of service that a company has completed or accepted before (the effective date of the amended rule) October 4, 2008.

(b) This section, as amended effective (the effective date of the amended rule) October 4, 2008, applies to all other requests for service before and after the effective date.

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

WSR 08-20-118

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 30, 2008, 4:09 p.m., effective October 31, 2008]

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

Purpose: The division of developmental disabilities is creating a new chapter 388-831 WAC, Community protection program, to implement ESSB 6630, Laws of 2006. This chapter codifies the rules relating to the administration of the community protection program as directed by the legislature.

Citation of Existing Rules Affected by this Order:

WAC	Effect of Rule
388-831-0010	Definitions
388-831-0020	Adds definitions used in this chapter.
388-831-0030	Defines the community protection program (CPP).
388-831-0040	Defines individuals with community protection issues.
388-831-0050	Defines who is covered by these rules.
388-831-0060	Defines the steps necessary to receive services.
	Defines what is contained in the assessment.

WAC	Effect of Rule
388-831-0065	Defines what happens for refusal to participate in the assessment.
388-831-0070	Describes what information will be given to individuals considered for placement in the CPP.
388-831-0080	Describes the notification requirement to individuals who are appropriate for placement in the CPP.
388-831-0090	Describes the notification requirement to individuals who cannot be managed successfully in the CPP.
388-831-0100	Explains how to apply for the CPP.
388-831-0110	Describes what information will be shared with others.
388-831-0120	Describes what the services will be.
388-831-0130	Describes the services available in the CPP.
388-831-0150	Defines who can provide therapy.
388-831-0160	Describes the services available for individuals who refuse placement in the CPP.
388-831-0200	Defines how often progress will be reviewed.
388-831-0210	Defines what is included in the review of progress.
388-831-0220	Defines when placement in a less restrictive setting may be considered.
388-831-0230	Describes the process to move to a less restrictive setting.
388-831-0240	Defines when termination from the CPP may occur.
388-831-0250	Describes that participation in the CPP is voluntary but limits the services available if this occurs.
388-831-0260	Defines where the enforcement rules against a provider of residential services and support may be found.
388-831-0300	Defines the appeal rights for individuals receiving services through the CPP waiver.
388-831-0400	Clarifies that nothing in these rules create an entitlement to placement on the CPP waiver.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: ESSB 6630, Laws of 2006.

Adopted under notice filed as WSR 08-16-123 on August 5, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 25, 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 25, Amended 0, Repealed 0.

Date Adopted: September 29, 2008.

Stephanie E. Schiller
Rules Coordinator

Chapter 388-831 WAC

COMMUNITY PROTECTION PROGRAM

NEW SECTION

WAC 388-831-0010 Definitions. The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

"Certified community protection program residential services" means access to twenty-four hour supervision, instruction, and support services as identified in the person's individual support plan.

"Community protection program" See WAC 388-831-0020.

"Constitutes a risk to others" means a determination of a person's risk and/or dangerousness based upon a thorough assessment by a qualified professional. Actuarial risk assessment instruments should be used to supplement clinical judgment whenever appropriate.

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

"Developmental disability" means that condition defined in WAC 388-823-0040 and RCW 71A.10.020(3).

"Disclosure" means providing copies of professional assessments, incident reports, legal documents, and other information pertaining to community protection issues to ensure the provider has all relevant information. Polygraph and plethysmograph reports are excluded from disclosure.

"Division" means the division of developmental disabilities (DDD).

"Managed successfully" means that a person supported by a community protection program does not engage in the behavior identified in WAC 388-831-0030 and RCW 71A.12.210.

"Opportunistic behavior" means an act committed on impulse, which is not premeditated. In determining whether an act is opportunistic, the original motive or intent of the offense or crime will be considered.

"Predatory" means acts directed toward strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or casual acquaintances with whom no substantial personal relationship exists. Predatory behavior may be characterized by planning and/or rehearsing the act, stalking, and/or grooming the victim.

"Program participant" means a person who has agreed to and is receiving services and supports in the community protection program.

"Qualified professional" means a licensed psychologist, psychiatrist, or a certified or affiliate sex offender treatment provider with at least three years prior experience working with individuals with developmental disabilities, and:

- If the person being assessed has demonstrated sexually aggressive or sexually violent behavior, that person must be assessed by a certified sex offender treatment provider, or affiliate sex offender treatment provider working under the supervision of a certified sex offender treatment provider; or
- If the person being assessed has demonstrated violent, dangerous, or aggressive behavior, that person must be

assessed by a licensed psychologist or psychiatrist who has received specialized training in the treatment of or has at least three years prior experience treating violent or aggressive behavior.

"Restrictive procedures" or "Restrictions" means procedures that restrict a client's freedom of movement, restrict access to client property, prevent a client from doing something the client wants to do, require a client to do something the client does not want to do, or remove something the client owns or has earned.

"Risk assessment" means the written opinion of a qualified professional stating, at a minimum:

- Whether a person meets the criteria in WAC 388-831-0030 and RCW 71A.12.210; and
- What restrictions are necessary to keep people safe.

"Service provider" means a person or agency contracted with the department or a sub-contractor who delivers services and supports to a community protection program participant.

"Specialized environment" means a place where the program participant has agreed to supervision in a safe, structured manner specifying rules, requirements, restrictions, and expectations for personal responsibility in order to maximize community safety.

"Treatment team" means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individual supports and services. This group may include, but is not limited to, the case resource manager, therapist, residential provider, employment/day program provider, and the person's legal representative and/or family, provided the person agrees to the family member's involvement.

"Violent offense" means any felony defined as a violent offense in RCW 9.94A.030.

"Waiver" means the community-based program funded under section 1915(c) of Title XIX of the federal social security act and chapter 388-845 WAC.

NEW SECTION

WAC 388-831-0020 What is the community protection program? (1) The community protection program is an array of services specifically designed to support persons who meet the definition of an "individual with community protection issues", as defined in WAC 388-831-0030.

(2) Community protection services and supports are designed to assist program participants to live safely and successfully in the community while minimizing the risk to public safety.

(3) Participation in the program is voluntary.

NEW SECTION

WAC 388-831-0030 Who are individuals with community protection issues? You are considered an individual with community protection issues if:

(1) You have been determined to have a developmental disability as defined in WAC 388-823-0040 and RCW 71A.10.020(3); and

(2) You have been identified by DDD as a person who meets one or more of the following:

(a) You have been charged with or convicted of a crime of sexual violence as defined in chapter 9A.44 or 71.09 RCW;

(b) You have been charged with or convicted of a crime involving sexual acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been charged with or convicted of one or more violent crimes as defined in RCW 9.94A.030(45);

(d) You have not been charged with or convicted of a crime identified in (2)(a), (b), or (c) above, but you have a history of stalking, sexually violent, predatory and/or opportunistic behavior which demonstrates a likelihood to commit a sexually violent and/or predatory act based on current behaviors that may escalate to violence, as determined by a qualified professional; and

(3) You constitute a current risk to others as determined by a qualified professional.

(4) Charges or crimes that result in acquittal are excluded.

NEW SECTION

WAC 388-831-0040 Who is covered by these rules?

These rules cover persons who are age eighteen or older and meet the criteria defined in WAC 388-831-0030.

NEW SECTION

WAC 388-831-0050 What steps are necessary for me to receive services through the community protection program? In order to receive services through the community protection program, you must:

(1) Receive an assessment of risk and/or dangerousness by a qualified professional, as specified in WAC 388-831-0060;

(a) You and your representative have the right to choose the qualified professional who is contracted with the state;

(b) The division will provide you with a list of these qualified professionals; and

(2) Be informed of the information contained in WAC 388-831-0070.

NEW SECTION

WAC 388-831-0060 What is contained in the risk assessment? (1) The risk assessment must be consistent with the guidelines for risk assessments and psychological or psychosexual evaluations developed by the division.

(2) The risk assessment must contain:

(a) A determination by a qualified professional whether your behaviors can be managed successfully in the community with reasonably available safeguards;

(b) A determination that lesser restrictive residential placement alternatives have been considered and would not be reasonable for your situation;

(c) Recommendations for treatment; and

(d) A list of necessary restrictions and the reason for them.

(3) The division may request an additional evaluation by a qualified professional who is contracted with the state.

NEW SECTION

WAC 388-831-0065 What if I refuse to participate in the risk assessment? (1) If you refuse to participate in the risk assessment, the division cannot determine what your health and safety needs are, or whether you can be supported successfully in the community with reasonable safeguards. You will not be eligible for any division services except for case management and medicaid personal care (if eligible under chapter 388-106 WAC).

(2) Your name will be placed on the specialized client database. This database identifies individuals who may present a danger to their communities.

(3) If DDD determines it can provide only case management and personal care, you and your legal representative will receive a notice of the determination that explains the decision and your right to appeal that decision.

NEW SECTION

WAC 388-831-0070 What type of information will I receive from the division when I am considered for placement in the community protection program? When you are considered for placement in the community protection program, the division will provide you and your legal representative the following information in writing:

(1) Limitations regarding the services that will be available due to your community protection issues;

(2) Disclosure requirements as a condition of receiving services other than case management;

(3) The requirement to engage in therapeutic treatment if it is a condition of receiving certain services;

(4) Anticipated restrictions that may be provided, such as intensive supervision and/or limited access to television viewing, reading material and videos;

(5) The right to decline services;

(6) The anticipated consequences of declining services, such as the loss of existing services and/or removal from waiver services;

(7) The right to an administrative hearing as specified in WAC 388-825-120 through WAC 388-825-165, including an emergency adjudicative proceeding as specified in RCW 34.05.479;

(8) The requirement to sign a preplacement agreement as a condition of receiving community protection program residential services;

(9) The right to retain current services as specified in WAC 388-825-145 or 388-825-150;

(10) The right to refuse to participate in the program; and

(11) Information about how to contact a disability rights organization.

NEW SECTION

WAC 388-831-0080 Will I be notified of the division's determination regarding placement in the community protection program? (1) If the division determines that you are appropriate for placement in the community protec-

tion program, you and your legal representative will receive in writing a determination by the division that you meet the criteria for placement within the community protection program and your right to appeal this decision.

(2) This notification does not guarantee placement within the community protection program.

(3) If the division determines that you are not appropriate for placement in the community protection program, you and your legal representative will receive a notice in writing of the determination by the division that you do not meet the criteria for placement within the community protection program.

NEW SECTION

WAC 388-831-0090 Will I be notified if the division determines that I cannot be managed successfully in the community protection program? If the division determines that your health and safety needs cannot be met and you cannot be managed successfully in the community protection program with reasonably available safeguards, you and your legal representative will receive this determination in writing.

NEW SECTION

WAC 388-831-0100 How do I apply for the community protection program? (1) You may apply for the community protection program by calling the regional DDD office or a local DDD office. The toll free regional numbers are:

Region 1	Spokane	1-800-462-0624
Region 2	Yakima	1-800-822-7840
Region 3	Everett Bellingham Mount Vernon	1-800-788-2053 1-800-239-8285 1-800-491-5266
Region 4	Seattle	1-800-314-3296
Region 5	Tacoma Bremerton	1-800-248-0949 1-800-735-6740
Region 6	Port Angeles Tumwater Vancouver	1-877-601-2760 1-800-339-8227 1-888-877-3490

(2) DDD will make arrangements with you to complete the application for the eligibility determination by mail or over the phone.

NEW SECTION

WAC 388-831-0110 What information about me will be shared with others if I am offered services in the community protection program? (1) If you are offered services in the community protection program, the division will give information about you and your community protection issues to:

- (a) Prospective community protection service providers; and
 - (b) Your current service providers.
- (2) The division will not authorize any services without disclosure of your community protection issues.

NEW SECTION

WAC 388-831-0120 What will my services be like in the community protection program? Your community protection services will be:

- (1) Consistent with your individual support and supervision needs as specified in your individual support plan;
- (2) Consistent with your individual treatment plan, which includes your most recent treatment goals and current restrictions; and
- (3) Provided in the least restrictive manner and environment that minimizes the likelihood of offending behavior.

NEW SECTION

WAC 388-831-0130 What services may I receive in the community protection program? (1) The division will only authorize services to program participants who follow the treatment recommendations made by the qualified professionals who assess and/or provide your treatment and are listed in WAC 388-845-0220.

(2) Your residential services must be provided by a certified community protection intensive supported living services provider. Community protection intensive supported living services provide:

- (a) An opportunity for you to live successfully in the community;
- (b) A specialized environment in which you are supported to make positive choices to reduce the behaviors that require intensive intervention and supervision.

(3) Your employment services as defined in WAC 388-845-1200, 388-845-1400, and 388-845-2100 must be provided by a qualified community protection employment program service provider.

NEW SECTION

WAC 388-831-0150 Who can provide my therapy in the community protection program? You and your representative have the right to choose the qualified professional to provide your therapy, subject to the following conditions:

- (1) Your therapy must be provided by a qualified professional who:
 - (a) Has at least three years experience treating individuals with developmental disabilities and community protection issues;
 - (b) Is in good standing with the department of health, health professions quality assurance division;
 - (c) Is within a reasonable distance of your residence; and
 - (d) Is contracted with the department.

(2) Only a certified sex offender treatment provider (SOTP) or an affiliate sex offender treatment provider working under the supervision of a certified SOTP may provide sexual deviancy treatment.

(3) Any restrictive procedures used during your therapy or as part of your treatment must follow requirements for restrictive procedures developed by the department.

NEW SECTION**WAC 388-831-0160 What services may I receive if I refuse placement in the community protection program?**

If you are offered and refuse community protection program residential services, you may only receive case management services and medicaid personal care (if eligible under chapter 388-106 WAC).

NEW SECTION

WAC 388-831-0200 How often will my progress be reviewed? (1) The treatment team will review your progress at least every ninety days.

(2) If a treatment team member has reason to believe that your circumstances have changed significantly, the team member may request that a risk reassessment be conducted at any time.

NEW SECTION

WAC 388-831-0210 What is included in the review of my progress? (1) The review of your progress will include:

- (a) Evaluating the use of less restrictive measures;
 - (b) Making changes in your program as necessary;
 - (c) Reviewing all restrictions and recommending reductions, if appropriate.
- (2) The therapist must write a report annually evaluating your risk of offense and/or risk of behaviors that are dangerous to you or others.

NEW SECTION

WAC 388-831-0220 When may I be considered for placement in a less restrictive residential setting? (1) If you demonstrate success in complying with reduced restrictions and remain free of any offense that may indicate a relapse for at least twelve months, you may be considered for placement in a less restrictive residential setting.

(2) If you request placement in a less restrictive residential setting and that request is denied, you and your legal representative will receive a notice of the determination by DDD, explaining the reason for the denial and your right to appeal this decision.

NEW SECTION

WAC 388-831-0230 What is the process to move me to a less restrictive residential setting? (1) The process to move you to a less restrictive residential setting will include:

- (a) Written verification of your treatment progress and an assessment of low risk of reoffense and/or dangerousness by your therapist;
- (b) A recommendation by your therapist that you are ready for reductions in supervision and restrictions;
- (c) Development of a gradual phase out plan by the treatment team, projected over a reasonable period of time, which includes specific criteria for evaluating reductions in restrictions, especially supervision;
- (d) Compliance with reduced restrictions;

(e) The absence of any incidents that may indicate relapse for a period of twelve months;

(f) An assessment by a qualified professional consistent with the division guidelines for risk assessment and psychosexual evaluations containing:

- (i) An evaluation of your risk of reoffense and/or dangerousness; and
- (ii) An opinion as to whether or not you can be managed successfully in a less restrictive community residential setting; and
- (g) A recommendation as to suitable placement by the treatment team.

(2) When the treatment team agrees that you are ready to move to a less restrictive community residential placement, you will receive a written plan that details what supports and services, including the level of supervision, you will receive in the less restrictive community residential placement.

(3) If you meet the eligibility requirements described in WAC 388-845-0030, you are eligible for waiver services and will be placed on a waiver that meets your needs.

NEW SECTION

WAC 388-831-0240 Can I be terminated from the community protection program? You may be terminated from the community protection program by the division if:

- (1) You physically assault program participants, staff or others;
- (2) You repeatedly elope from the program or evade supervision;
- (3) You engage in illegal behavior of any kind; or
- (4) You refuse to comply with program and/or treatment guidelines to the extent that your therapist determines you are not amenable to treatment; or
- (5) The division determines that your health and safety needs cannot be met in the program.

NEW SECTION

WAC 388-831-0250 Can I leave the community protection program at any time? Your participation in the community protection program is voluntary. However, if you leave the community protection program and DDD determines that you require the community protection program to meet your health and safety needs and those of the community, you will not be eligible for other DDD residential services or employment/day program services.

NEW SECTION

WAC 388-831-0260 What enforcement actions may the division take against a provider of residential services and support? The rules regarding the enforcement actions that the division may take against a provider of residential services and support may be found in WAC 388-101-4150 through WAC 388-101-4190.

NEW SECTION

WAC 388-831-0300 What appeal rights do I have if I receive services through the division's community protec-

tion waiver? (1) You have the right to appeal decisions made by the division in accordance with WAC 388-825-120 through WAC 388-825-165.

(2) In addition to the right to appeal department actions described in WAC 388-825-120(3), if you receive services through the division's community protection waiver you have the right to appeal the following decisions by the division:

(a) Termination of community protection waiver eligibility;

(b) Your assignment to the community protection waiver; and

(c) Denial of a request for a less restrictive community residential placement.

(3) You may appeal final administrative decisions pursuant to the provisions of RCW 34.05.510 through 34.05.598.

(4) You do not have the right to an administrative hearing on the division's decision denying you placement on the community protection waiver.

NEW SECTION

WAC 388-831-0400 Am I entitled to placement on the community protection waiver? Nothing in these rules creates an entitlement to placement on the community protection waiver.

WSR 08-21-001

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed October 2, 2008, 8:52 a.m., effective November 2, 2008]

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

Purpose: WAC 246-75-010 defines the quantity of marijuana that could reasonably be presumed to be a sixty-day supply allowed under the medical marijuana law (chapter 69.51A RCW) for qualifying patients. The rules clarify the existing law, and will assist patients, designated providers, physicians, law enforcement, and others in understanding what constitutes a sixty-day supply of medical marijuana.

Statutory Authority for Adoption: RCW 69.51A.080 (chapter 371, Laws of 2007).

Adopted under notice filed as WSR 08-14-149 on July 1, 2008.

Changes Other than Editing from Proposed to Adopted Version: The department made changes to the rule to address public comment about the definition of "immature plant" and "mature plant" and the limit of six mature plants as part of the presumptive sixty-day supply. Many comments stated the proposed definition of a sixty-day supply did not include a sufficient number of plants for a sixty-day supply of medical marijuana. The adopted rule allows for a limit of fifteen plants in any stage of growth.

The department also removed from the proposed rule the requirement that a qualifying patient obtain documentation from a physician in order to overcome the presumptive limits. The adopted rule uses the language of the statute.

The department made the following specific changes to provisions of the rule:

WAC 246-75-010 (2)(b) and (c) were amended to remove the definition of "mature plant" and "immature plant." The adopted rule defines a plant as any marijuana plant in any stage of growth.

WAC 246-75-010 (3)(a) was changed to remove the limit of six mature plants and eighteen immature plants. The adopted rule allows a limit of no more than fifteen plants.

WAC 246-75-010 (3)(c) was changed to remove the requirement that a qualifying patient provide documentation from the patient's physician to overcome the rule's presumptive amount of a sixty-day supply. The adopted rule includes the statement from RCW 69.51A.080 that a qualifying patient may overcome the presumptive limit with evidence of necessary medical use.

A final cost-benefit analysis is available by contacting DOH Medical Marijuana, P.O. Box 47850, Olympia, WA, 98504-7850, phone (360) 236-4612, fax (360) 236-4626, e-mail medicalmarijuana@doh.wa.gov.

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

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

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

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

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

Date Adopted: October 1, 2008.

Mary C. Selecky
Secretary

Chapter 246-75 WAC

MEDICAL MARIJUANA

NEW SECTION

WAC 246-75-010 Medical marijuana. (1) Purpose. The purpose of this section is to define the amount of marijuana a qualifying patient could reasonably expect to need over a sixty-day period for their personal medical use. It is intended to:

(a) Allow medical practitioners to exercise their best professional judgment in the delivery of medical treatment;

(b) Allow designated providers to assist patients in the manner provided in chapter 69.51A RCW; and

(c) Provide clarification to patients, law enforcement and others in the use of medical marijuana.

(2) Definitions.

(a) "Designated provider" means a person as defined in RCW 69.51A.010.

(b) "Plant" means any marijuana plant in any stage of growth.

(c) "Qualifying patient" means a person as defined in RCW 69.51A.010.

(d) "Useable marijuana" means the dried leaves and flowers of the *Cannabis* plant family Moraceae. Useable marijuana excludes stems, stalks, seeds and roots.

(3) Presumptive sixty-day supply.

(a) A qualifying patient and a designated provider may possess a total of no more than twenty-four ounces of useable marijuana, and no more than fifteen plants.

(b) Amounts listed in (a) of this subsection are total amounts of marijuana between both a qualifying patient and a designated provider.

(c) The presumption in this section may be overcome with evidence of a qualifying patient's necessary medical use.

WSR 08-21-005

PERMANENT RULES

TRANSPORTATION IMPROVEMENT BOARD

[Filed October 2, 2008, 2:49 p.m., effective November 2, 2008]

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

Purpose: Develop rules to support RCW 47.26.345, which finds that it is in the state's interest to support the economic vitality of all cities and towns, recognizing that those cities and towns with a population of less than 5,000 are unable to fully maintain and preserve their street and sidewalk system.

Statutory Authority for Adoption: Chapter 47.26 RCW.

Adopted under notice filed as WSR 08-15-041 on July 11, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 19, 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 19, Amended 0, Repealed 0.

Date Adopted: September 26, 2008.

Stevan Gorcester
Executive Director

Chapter 479-10 WAC

SMALL CITY PAVEMENT PRESERVATION AND SIDEWALK ACCOUNT

NEW SECTION

WAC 479-10-005 Purpose and authority. The board adopts reasonable rules necessary to administer the small city pavement preservation and sidewalk account pursuant to RCW 47.26.340, 47.26.345 and 47.26.164.

NEW SECTION

WAC 479-10-011 Programs funded from the small city pavement preservation and sidewalk account. The small city pavement preservation and sidewalk account funds both the small city preservation program and the city hard-ship assistance program.

NEW SECTION

WAC 479-10-100 Intent of the small city preservation program. The intent of the small city preservation program is to provide funding for small cities to provide proper pavement management and extend infrastructure longevity.

NEW SECTION

WAC 479-10-110 Who is eligible for small city preservation program funds. Agencies eligible to receive small city pavement program funding are incorporated cities with a population less than five thousand.

NEW SECTION

WAC 479-10-120 Projects that are eligible for small city preservation program funds. Eligible roadway and sidewalk projects are those that maintain, repair, and/or resurface the existing infrastructure that is municipally owned and appropriate under Article II Section 40, 18th Amendment of the Washington state Constitution.

NEW SECTION

WAC 479-10-121 Types of street system treatments allowed under small city preservation program. The type of treatment will be based on the pavement condition rating, treatment types available in the area, and concurrence by the local agency. Treatments may include crack sealing, patching, ditching, chip sealing, overlay, cold in place recycling of roadway, or other treatment as deemed cost effective and/or necessary by TIB staff.

NEW SECTION

WAC 479-10-122 Qualification for the small city preservation program—Pavement condition ratings. To qualify for funding in the current program year, a city's pavement condition rating must be less than four years old on or by the application date.

For the cities' convenience, TIB staff will conduct all pavement condition ratings on a rotational basis every four years. If the city maintains their own pavement condition rating, the methods used for scoring must comply with TIB's methodology. If scores submitted by the city are substantially different than the TIB pavement scores, the difference will be resolved through an on-site review coordinated between TIB and city staff.

NEW SECTION

WAC 479-10-130 Identification of funding requests for the small city preservation program. To be considered for a project under the small city preservation program, an eligible agency may submit a funding application in response to either a standard TIB call for projects or identification and notification by TIB staff based on other opportunities available in the area to decrease material or labor costs associated with project delivery.

NEW SECTION

WAC 479-10-140 Project selection for the small city preservation program. Projects may be selected by the board or the executive director based on need, economy of scale opportunities, and criteria listed in RCW 47.26.345.

NEW SECTION

WAC 479-10-150 Project phases for the small city preservation program. Small city preservation program projects will have three phases. Each phase will require specific documentation as described below and each phase must be approved before the applicant agency is eligible to receive the related funding:

(1) Application phase - The city shall submit an application form as well as documentation showing route and treatment plan.

(2) Design and construction phase - TIB will provide documents for the city to sign and return. The city must submit the following agreements where utilized:

(a) Fuel tax agreement (except if services are provided by WSDOT).

(b) Rights of entry agreement (if applicable).

(c) Consultant agreement (if applicable).

If pavement services will be provided through WSDOT, TIB will maintain the task order agreement and subsequent amendments.

(3) Project closeout phase - All necessary project cost documentation must be received prior to final payment.

NEW SECTION

WAC 479-10-160 City matching funds or services for small city preservation program. The board will consider a city's ability to provide matching funds or in-kind services when allocating funds under this program. Cash or in-kind match may be provided by the local agency in the form of:

(1) Cash match based on ability to contribute:

(a) If the city assessed valuation is greater than five hundred million, a match of ten percent will be contributed.

(b) If the city assessed valuation is from one hundred million to five hundred million, a five percent match will be contributed.

(2) If the city assessed valuation is under one hundred million, no cash match is necessary.

(3) Match is not expected or accepted if the construction services will be provided to the city by WSDOT.

(4) All in-kind contributions must relate directly to the project and are limited to time, material, or real property donated to the agency to fulfill project requirements. In-kind match may include:

(a) Community involvement including volunteer participation.

(b) City force labor, materials, and/or equipment (excluding costs incurred for qualification in WAC 479-10-122 or application for funds).

(c) Other street beautification.

(d) In-kind match must be documented with labor reports, equipment reports, receipts, and/or citizen volunteer time with hourly rate (not to exceed fifteen dollars per hour).

(e) Contributions of overhead, per diem, travel expenses, time spent at advisory groups or meetings, or time from individuals receiving compensation through the grant will not be accepted as in-kind match.

NEW SECTION

WAC 479-10-200 Intent of the city hardship assistance program. The city hardship assistance program provides rehabilitation and maintenance funds for eligible routes pursuant to RCW 47.26.164.

NEW SECTION

WAC 479-10-210 Who is eligible for city hardship assistance program funds. Eligible cities are those with a population of twenty thousand or less with a net gain in cost responsibility due to a road jurisdictional transfer.

NEW SECTION

WAC 479-10-220 What routes are eligible for city hardship assistance program funds. The following routes are eligible to receive city hardship assistance funds for maintenance:

(1) Clarkston, Old SR 128, 0.13 Miles, SR 12 to Poplar Street;

(2) Kelso, Old SR 431, 0.90 Miles, SR 5 to Cowlitz Way; Old I-5, 1.20 Miles, north end of Coweeman River Bridge to 2,480 feet south of Haussler Road and those sections of Kelso Drive, Minor Road, Grade Street and Kelso Avenue referred to in the memorandum of understanding for this turn back, approximately 2.7 miles;

(3) Leavenworth, Old SR 209, 0.11 Miles, SR 2 to 260 feet north of Fir Street;

(4) Milton, Old SR 514, 2.46 Miles, Junction SR 99 to 50 feet west of SR 161;

(5) Napavine, Old SR 603, 0.79 Miles, 810 feet south-west of Lincoln Street to 8th Avenue West;

(6) Pomeroy, Old SR 128, 0.72 Miles, SR 12 to 2,690 feet south of Arlington Avenue;

(7) Sequim, Washington Avenue - Simdars Road to Sunnyside Avenue and 3rd Avenue to 9th Avenue;

(8) Skykomish, Old SR 2 Spur, 0.16 Miles, SR 2 to Railroad Avenue;

(9) Stanwood, Old SR 530, 1.59 Miles, 790 feet north of 86th Drive NW to 740 feet northwest of 72nd Avenue NW;

(10) Toledo, Old SR 505, 0.12 Miles, Fifth Street to 210 feet northwest of Sixth Street;

(11) Toppenish, Old SR 220, 0.27 Miles, Junction SR 22 to 630 feet east of Linden Road;

(12) Vader, Old SR 411, 0.25 Miles, 520 feet south of SR 506 to 1,840 feet south of SR 506;

(13) Washougal, Old SR 140, 0.70 Miles, SR 14 to west end of Washougal River Bridge;

(14) Winlock, Old SR 603, 0.61 Miles, Walnut Street to 160 feet south of Olequa Creek Bridge.

NEW SECTION

WAC 479-10-230 How to request city hardship assistance program funds. To request funding for eligible routes, the city should submit a letter of application including a treatment plan and cost estimate for the project. The request will be due by August 31st of the year prior to treatment, unless otherwise authorized by the executive director.

NEW SECTION

WAC 479-10-240 Phases for city hardship assistance program. City hardship assistance program projects will have the following phases:

(1) Application phase - Letter of application including the treatment plan and cost estimate submitted under WAC 479-10-230.

(2) Design and construction phase - Documents that must be received prior to phase approval:

(a) Fuel tax agreement or WSDOT task order agreement.

(b) Consultant agreement (if applicable).

(3) Project closeout phase - Project cost documentation must be received prior to final payment.

NEW SECTION

WAC 479-10-250 Funding limitations for city hardship assistance program projects. Funding is to be used for maintenance and rehabilitation of existing facilities and not for adding additional capacity or facilities.

NEW SECTION

WAC 479-10-260 No match is required for city hardship assistance program projects. There is no local agency matching funds requirement for city hardship assistance program projects.

NEW SECTION

WAC 479-10-270 Spending any residual amount of city hardship assistance program funds. Any residual funds remaining at the end of the biennium will be spent on small city preservation program projects.

WSR 08-21-015 PERMANENT RULES GROWTH MANAGEMENT HEARINGS BOARDS

[Filed October 3, 2008, 10:40 a.m., effective November 3, 2008]

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

Purpose: The boards have determined that matters may arise which require a joint meeting of the boards in addition to meetings currently addressed in RCW 36.70A.270(9) and WAC 242-02-076 to address special matters. The adoption of a special meetings rule would address the growth management hearings boards need to be able to conduct business, as necessary, by the joint boards at other times in the year beside those times set forth in RCW and WAC.

Citation of Existing Rules Affected by this Order: Amending chapter 242-02 WAC.

Statutory Authority for Adoption: RCW 36.70A.270(7).

Adopted under notice filed as WSR 08-16-089 on August 4, 2008.

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

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

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

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

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

Date Adopted: October 2, 2008.

James J. McNamara, Chair
Rules Committee

NEW SECTION

WAC 242-02-075 Special meeting. (1) A special meeting of the joint boards may be called at the request of any three of the nine board members. To call a special meeting, a written notice of the meeting shall be posted on the boards' web site and personally e-mailed to:

(a) Each member of the boards; and

(b) Each general circulation newspaper, television or radio station which has on file with the boards a written request to be notified of special meetings.

(2) The written notice shall state the date and time of the meeting, and shall specify the business to be transacted by the boards. The boards will not take final action on any matter that is not specified in the written notice.

(3) Notices of special meetings shall be sent by e-mail:

(a) Ten days before the scheduled meeting; except

(b) When a special meeting is called to consider rule changes pursuant to chapter 34.05 RCW, the notice shall be sent at least twenty days prior to the meeting; and except

(c) In the event of an emergency requiring board action, the notice and timing requirements may be waived as provided in RCW 42.30.080.

(4) The special meeting shall be chaired by one of the board members who called the meeting.

(5) A special meeting may be held by telephone conference call.

(6) Two members of each board will constitute a quorum for a special meeting.

(7) Members of the public may attend a special meeting by appearing at any of the three board offices, or the location of the special meeting, at the date and time set for the meeting.

WSR 08-21-019

PERMANENT RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 08-260—Filed October 6, 2008, 1:23 p.m., effective November 6, 2008]

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

Purpose: Of the two sectors that handle commercial fish - wholesale fish dealers/buyers/DRE holders, and secondary receivers - RCW 77.15.568 adequately addresses the record-keeping requirements of the secondary receivers. This proposal for WAC 220-20-019 will provide requirements for the wholesale fish dealers/buyers/DRE holders. It also will allow fish and wildlife officers to have continued access to wholesale dealers'/buyers'/DRE holders' catch-accounting reports.

Citation of Existing Rules Affected by this Order: Amending WAC 220-20-019.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Adopted under notice filed as WSR 08-15-146 on July 22, 2008.

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

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

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

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

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

Date Adopted: October 3, 2008.

Susan Yeager
for Jerry Gutzwiler, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 82-105, filed 8/13/82)

WAC 220-20-019 Requirement to provide sales documents. It is unlawful for any (~~individual, firm, or corporation~~) wholesale fish dealer, fish buyer, or holder of a direct retail endorsement to fail to (~~show on demand to any authorized employee or enforcement officer of the department of fisheries~~) submit for inspection any state of Washington fish receiving tickets or sales documents (pursuant to WAC 220-69-240) upon demand of a fish and wildlife officer. Violation of this section is a gross misdemeanor, punishable under RCW 77.15.640 (1)(d).

WSR 08-21-023

PERMANENT RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 08-261—Filed October 6, 2008, 4:25 p.m., effective November 6, 2008]

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

Purpose: WAC 220-69-26401 Distribution of copies of shellfish receiving ticket, this proposal contains no substantive change to the rule; it is merely housekeeping to correct an error. The Washington department of fish and wildlife requires a definitive time period for shellfish receivers to submit their shellfish receiving tickets. These tickets are used to track catch data for conservation and allocation management purposes. This rule proposal corrects a previous amendment to the rule that inadvertently extended the required reporting period for the geoduck fishery and no others. This change will bring the reporting requirements for geoduck in line with all other receiving-ticket reporting timelines.

WAC 220-69-300 Commercial food fish and shellfish transportation ticket, this proposal contains no substantive change to the rule; it is merely housekeeping. Many commercial vessels are loaded onto trailers after leaving the fishery, with the product still onboard. The department seeks to clarify that in such instances, a transportation ticket is required. The department also expands the transportation ticket requirement to persons beyond commercial fishers, because sometimes transport is done by other than the commercial fishers. The tickets will allow officers to identify harvesters and the legality of harvests.

Citation of Existing Rules Affected by this Order: Amending WAC 220-69-26401 and 220-69-300.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Adopted under notice filed as WSR 08-15-180 on July 23, 2008.

Changes Other than Editing from Proposed to Adopted Version: In WAC 220-69-300 (6)(f), "shellfish" was removed because Oregon does not have a reciprocal agreement with Washington regarding shellfish.

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: October 3, 2008.

Susan Yeager
for Jerry Gutzwiler, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 05-16, filed 2/10/05, effective 3/13/05)

WAC 220-69-26401 Distribution of copies of shellfish receiving ticket. State of Washington shellfish receiving tickets ~~((shall))~~ must be made out in quintuplicate (five copies) at the time of delivery. Upon ~~((completion of the shellfish receiving))~~ completing these tickets, ~~((it is unlawful for))~~ the ~~((person completing the fish receiving ticket to fail to))~~ fish receiver must distribute the copies as follows:

(1) The dealer copies (white and yellow) ~~((shall be retained by))~~ stay with the receiver for ~~((their use))~~ his or her records.

(2)(a) For shellfish other than geoduck clams from department of natural resources geoduck tracts, the state copies (green and pink) ~~((shall))~~ must be mailed to the department of fish and wildlife. ~~((It is required that the state copies be received by))~~ The department must receive these state copies no later than the sixth working day after the day the original receiver completed the ticket ~~((was completed by the original receiver)).~~

(b) For geoduck clams from department of natural resources geoduck tracts, ~~((the green))~~ one state copy ~~((shall))~~ (green) must be mailed to the department of fish and wildlife. The department must receive its copy no later than the sixth working day after the day the original receiver completed the ticket ~~((was completed by the original receiver)).~~ The ~~((pink))~~ other state copy ~~((shall be mailed))~~ (pink) must be given to the department of natural resources ~~((no later than the sixth working day after the ticket was completed by the original receiver, or delivered earlier to the department of natural resources as))~~ at the time of weigh-out, unless otherwise directed by ~~((that))~~ the department of natural resources.

(3) The fisherman's copy (gold) ~~((shall))~~ must be retained by the deliverer for ~~((their))~~ his or her use.

(4) It is unlawful for a fish receiver to fail to distribute fish receiving tickets as directed above. Violation of this section is a gross misdemeanor, punishable under RCW 77.15-640.

AMENDATORY SECTION (Amending Order 04-210, filed 8/17/04, effective 9/17/04)

WAC 220-69-300 Commercial food fish and shellfish transportation ticket. (1) Except as provided in subsection (6) of this section, it is unlawful for commercial fishers or their designees, who are neither wholesale dealers nor holders of a direct retail endorsement ~~((must)),~~ to fail to complete a commercial food fish and shellfish transportation ticket ~~((when))~~ as required by this section. These tickets must be completed prior to transporting ~~((commercial))~~ fish or shellfish ~~((away from the catching vessel or,))~~ harvested for commercial purposes or in commercial quantities. For a fishery that does not require a vessel, ~~((the catch site, and it is unlawful to fail to complete the transportation ticket with all the information in subsection (2) of this section))~~ a transportation ticket must be completed prior to leaving the catch site. The purpose of this rule is to ensure catch accountability when fish or shellfish are transported by the fisherman or his or her designee from the catching vessel to an original receiver. Fish receiving ticket requirements under this chapter are still in effect. A violation of this subsection or subsection (2) of this section is punishable as a gross misdemeanor under RCW 77.15.290.

(2) ~~((The))~~ A transportation ticket ~~((shall))~~ must contain all of the following information and space for that information:

- (a) The name of the fisherman who caught the fish~~((:))~~;
- (b) The fisherman's vessel registration number~~((:))~~;
- (c) The signature of the fisherman or additional operator~~((:))~~;
- (d) The name of the transporter~~((:))~~;
- (e) The signature of the transporter~~((:))~~;
- (f) The catch area where the food fish or shellfish were caught~~((:))~~;
- (g) The species of food fish or shellfish being transported~~((:))~~; and
- (h) The number or approximate pounds of food fish or shellfish being transported.

(3) ~~((The information in subsection (2)(a) through (h) of this section are required entries on all completed transportation tickets.~~

~~((4))~~ It is unlawful for an original receiver or someone acting in the capacity of an original receiver to fail to mail the transportation ticket, together with the state copy of the fish receiving ticket as ~~((provided for))~~ required in WAC 220-69-260, 220-69-264, and 220-69-26401, ~~((#))~~ when the ~~((commercial fisher))~~ person delivering the fish or shellfish does not sign the fish receiving ticket ~~((:))~~ as ~~((provided))~~ required in WAC 220-69-274. If the commercial fisher signs the fish receiving ticket, only the fish receiving ticket must be mailed in, and the transportation ticket is not required to be submitted with ~~((the fish receiving ticket))~~ it. Violation of this section is a gross misdemeanor, punishable under RCW 77.15-640.

~~((5))~~ (4) It is unlawful to fail to keep the transportation ticket ~~((is to remain))~~ with the fish or shellfish until a fish receiving ticket is completed ~~((, and must be presented for inspection by)).~~ Violation of this subsection is a gross misdemeanor under RCW 77.15.290.

(5) ~~It is unlawful for any person((s)) transporting((, hold- ing, or storing)) commercially taken fish or shellfish ((when requested to do so by a fish and wildlife officer, and it is unlawful)) or commercial quantities of fish or shellfish to fail to ((present the)) provide a transportation ticket ((on)) for inspection upon demand by a fish and wildlife officer. Violation of this subsection is a gross misdemeanor ((punishable)) under RCW ((77.15.360)) 77.15.290.~~

(6) The provisions of this section do not apply to:

(a) Food fish and shellfish purchased at retail, provided the purchaser has, in his or her possession, a sales receipt documenting the purchase((-);

(b) Food fish or shellfish for which a fish receiving ticket has been completed((-) and a copy of the fish receiving ticket is in the possession of the person transporting;

(c) Food fish or shellfish being transported by the department((-);

(d) Hatchery carcass sales((-);

(e) Private sector cultured aquatic products in transport((-);

(f) Food fish ((~~or shellfish~~)) being transported on ((~~an~~)) a completed Oregon transportation ticket((-), provided that the fish were caught in the concurrent waters of the Columbia River and were landed on Washington's shore; and

(g) ((~~Food fish~~)) Fish or shellfish being transported in the catching vessel ((prior to delivery)), provided that the vessel is not being transported or towed over land.

WSR 08-21-027

PERMANENT RULES

UTILITIES AND TRANSPORTATION

COMMISSION

[Docket TN-080875, General Order R-52—Filed October 7, 2008, 10:00 a.m., effective November 7, 2008]

In the matter of amending and adopting WAC 480-31-080, relating to fees and annual reports for nonprofit transportation providers.

1 STATUTORY OR OTHER AUTHORITY: The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 08-16-049, filed with the code reviser on July 30, 2008. The commission brings this proceeding pursuant to RCW 80.01.040, 80.04.160, and 81.66.030.

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

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

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

rule changes, and state the commission's responses to the comments reflecting the commission's consideration of them.

5 To avoid unnecessary duplication in the record of this docket, the commission designates the discussion in this order, including appendices, as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-102 proposal and the adoption hearing. Together, these documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

6 REFERENCE TO AFFECTED RULES: This order amends WAC 480-31-080(1) Fees and annual report.

7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER: The commission filed a preproposal statement of inquiry (CR-101) on June 4, 2008, at WSR 08-12-085.

8 The statement advised interested persons that the commission was considering the need to revise WAC 480-31-080, concerning fees and annual reports for nonprofit transportation providers. The commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all registered nonprofit transportation providers. The commission attached draft rule language to this notice and requested comments from interested persons.

9 The commission received no comments concerning the notice of the CR-101 inquiry or the draft rule language.

10 NOTICE OF PROPOSED RULE MAKING: The commission filed a notice of proposed rule making (CR-102) on July 30, 2008, at WSR 08-16-049. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 08-16-049 for October 1, 2008, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission.

11 MEETINGS OR WORKSHOPS: The commission held no meetings or workshops on this matter.

12 WRITTEN COMMENTS: The commission received no written comments.

13 RULE-MAKING HEARING: The commission considered the proposed rule for adoption at a rule-making hearing on October 1, 2008, before Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. No interested person made oral comments.

14 COMMISSION ACTION: After considering all of the information regarding this proposal, the commission finds and concludes that it should amend and adopt the rule as proposed in the CR-102 at WSR 08-16-049.

15 STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE: After reviewing the entire record, the commission determines that WAC 480-31-080(1) should be amended to read as set forth in Appendix A, as a rule of the Washington utilities and transportation commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

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

Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

ORDER

16 THE COMMISSION ORDERS:

17 The commission amends WAC 480-31-080(1) to read as set forth in Appendix A, as a rule of the Washington utilities and transportation commission, to take effect on the thirty-first day after the date of filing with the code reviser pursuant to RCW 34.05.380(2).

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

DATED at Olympia, Washington, October 6, 2008.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

Mark H. Sidran, Chairman
Patrick J. Oshie, Commissioner
Philip B. Jones, Commissioner

AMENDATORY SECTION (Amending Docket No. T-051359, General Order No. R-529, filed 3/15/06, effective 4/15/06)

WAC 480-31-080 Fees and annual report. (1) A private, nonprofit transportation provider must pay to the commission (~~(the sum of ten dollars annually)~~) an annual fee for each vehicle operated. The fee is established by commission order. The provider must pay the annual fee with the filing of the annual report.

(2) At the close of each calendar year, every provider must secure from the commission the proper forms and file with the commission its annual report as soon as possible after the close of the calendar year, but no later than May 1st of the succeeding year.

WSR 08-21-038

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Juvenile Rehabilitation Administration)

[Filed October 8, 2008, 3:02 p.m., effective November 8, 2008]

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

Purpose: The department is amending these rules to implement RCW 13.40.210 (4)(b), effective October 1, 2007,

incorporating statutory language and defining behavior which may be cause for the secretary to modify parole and return a juvenile sex offender to confinement for up to twenty-four weeks.

The department is also incorporating into rule provisions of RCW 13.40.210 (4)(a)(v) and (vi). This law authorizes the secretary to return certain juvenile sex offenders and basic training camp program graduates to confinement for the remainder of his or her sentence. Incorporated into rule also are related guidelines and JRA parole standards.

Additions were made to WAC 388-740-0010 Definitions. WAC 388-740-0040 was amended to reference changes in WAC 388-740-0070 and to include privacy protections. WAC 388-740-0070 Confinement, was reorganized and expanded to include all types of parole revocation authorized in statute, and for ease of reference.

Citation of Existing Rules Affected by this Order: Amending WAC 388-740-0010, 388-740-0040, and 388-740-0070.

Statutory Authority for Adoption: RCW 13.40.210 (4)(b).

Adopted under notice filed as WSR 08-16-099 on August 5, 2008.

Changes Other than Editing from Proposed to Adopted Version: Clarified and simplified definition of confinement.

Corrected subordination of a subsection, otherwise unchanged from current rule.

A final cost-benefit analysis is available by contacting Kecia Rongen, Administrator, 1115 Washington Street, Olympia, WA 98504-5720, phone (360) 902-7952, fax (360) 902-8108, e-mail rongekl@dshs.wa.gov.

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

Date Adopted: October 8, 2008.

Robin Arnold-Williams
Secretary

AMENDATORY SECTION (Amending WSR 00-17-046, filed 8/7/00, effective 8/27/00)

WAC 388-740-0010 Definitions. "Department" means the department of social and health services.

"Active parole" means all time served by a JRA youth under JRA parole supervision except that time during which the offender is:

(1) Under a JRA warrant;

(2) Held in detention within or outside the state of Washington pending a parole revocation hearing, pending charges or pending a civil commitment hearing under chapter 71.09 RCW;

(3) Serving a term of confinement for a parole revocation;

(4) Placed on seventy-two hour hold status pursuant to RCW 13.40.050;

(5) Placed on unauthorized leave status;

(6) Committed involuntarily for mental health or chemical dependency treatment; or

(7) On temporary assignment status to a county juvenile detention center, a county jail, or to a department of corrections facility.

If no other time is concurrently tolled against active parole per (1) through (7) above, one additional day is tolled against active parole when the offender is subject to:

• A parole revocation initiated by the JRA.

• A seventy-two hour hold in a JRA facility pending a parole revocation hearing.

"Confinement" means electronic monitoring of a juvenile or physical custody of a juvenile:

• By the department of social and health services in a facility operated by or pursuant to a contract with the juvenile rehabilitation administration;

• In a county detention facility as defined in RCW 13.40.020 or in a county jail;

• In a facility operated by the department of corrections under provisions of RCW 13.40.280 or 13.40.285; or

• In another state under terms of chapter 13.24 RCW and of the interstate compact to which the state of Washington is a party.

"Detention" means ((physical custody in Washington state by the department of social and health services in a juvenile rehabilitation administration operated or contracted facility or a Washington state detention facility as defined in RCW 13.40.020(9))), for purposes of this rule, temporary confinement of a juvenile pending charges, court disposition or administrative hearing.

"Juvenile parole officer" means a state employee, or person under contract to the state, whose responsibilities include supervising juvenile parolees.

"Juvenile parolee" means a person under age twenty-one released from a juvenile rehabilitation administration residential facility and placed under the supervision of a juvenile parole officer.

"Modification of parole conditions" means a change in the "order of parole conditions" provided by the juvenile parole officer with full knowledge of the change by the juvenile parolee.

"Parole" means a period of supervision following release from a juvenile rehabilitation administration residential facility, during which time certain parole conditions are to be followed.

"Parole conditions" mean interventions or expectations that include, but are not limited to, those listed in RCW 13.40.210, intended to facilitate the juvenile parolee's reintegration into the community and/or to reduce the likelihood of reoffending.

"Secretary" means secretary of the department of social and health services or his/her designee.

"Violation" means behavior by a juvenile parolee contrary to written parole conditions which may result in sanctions that include, but are not limited to, modification of parole conditions and/or confinement.

"Target victim population" means persons who, by age, sex, race, ethnicity, body conformation or coloration or other personal characteristics are consistent with those of a JRA youth's known victim(s).

AMENDATORY SECTION (Amending WSR 00-17-046, filed 8/7/00, effective 8/27/00)

WAC 388-740-0040 Parole revocation petition. (1) The juvenile parole officer:

(a) Must initiate a parole revocation petition if the juvenile parole officer has reason to believe the juvenile parolee possessed a firearm or used a deadly weapon during the parole period; or

(b) May initiate a parole revocation petition if the juvenile parole officer has reason to believe the juvenile parolee has violated a condition of parole, other than possession of a firearm or use of a deadly weapon. Criteria in WAC 388-740-0070 (2), (3), (4) and (5) are assessed by the juvenile parole officer to determine the type of revocation and duration of confinement for which to petition.

(2) The petition, on department forms, must include:

(a) A statement of the nature of the violation and the date it occurred;

(b) The relief requested by the juvenile parole officer as a result of the violation;

(c) Notice of the juvenile parolee's right to be represented by an attorney, either one of his/her own choosing or one appointed at public expense;

(d) A parole revocation hearing waiver agreement;

(e) The dated signature of the regional administrator or designee; and

(f) If the parole revocation hearing is not waived, notice of the time, date, and location of the parole revocation hearing and notice that failure to appear may result in default.

(3) An initial copy of the petition that includes the information described in subsection (2)(a) through (e) must:

(a) Be provided to the juvenile parolee or the juvenile parolee's attorney; and

(b) Be provided to the juvenile parolee's parent/guardian, if reasonably possible, and in accordance with laws and rules governing the release of confidential information. The juvenile parole officer must document the date and time he/she provided the initial copy of the petition to the juvenile parolee or the juvenile parolee's attorney.

(4) A juvenile parolee, only through an attorney, may waive the right to a parole revocation hearing and agree to the parole revocation and agreed upon relief. The decision to waive must be documented with dated signatures on the original petition.

(5) If the juvenile parolee through his/her attorney does not waive the right to a hearing, the parole revocation petition must be filed with the local office of the state office of admin-

istrative hearings within seventy-two hours (excluding Saturdays, Sundays, and holidays) of:

(a) The juvenile parolee being placed in detention for an alleged violation of parole conditions; or

(b) The juvenile parolee or his/her attorney being provided with a copy of the petition under subsection (3) of this section if the juvenile parolee is not detained.

(6) The filed petition must include notice that failure to appear may result in default, and the time, date, and location of the parole revocation hearing, as determined by the state office of administrative hearings. A copy of the filed petition must:

(a) Be served either personally or by certified mail, return receipt requested, on the juvenile parolee or the juvenile parolee's attorney; and

(b) Be provided to the juvenile parolee's parent/guardian, if reasonably possible, and in accordance with laws and rules governing the release of confidential information.

AMENDATORY SECTION (Amending WSR 00-17-046, filed 8/7/00, effective 8/27/00)

WAC 388-740-0070 Confinement. (1) ~~((A juvenile's confinement for violating one or more conditions of parole, as alleged in a parole revocation petition, may not exceed thirty days. Confinement may be continuous, or for a portion of each day, or for certain days each week with the balance of time under supervision. The department must give the juvenile credit against any period of confinement for days served in detention pending a parole revocation hearing. The juvenile must serve his or her confinement in a county detention facility as defined in RCW 13.40.020, a juvenile rehabilitation administration facility, or, if the juvenile parolee is eighteen years old or older, the juvenile may serve his or her confinement in a county jail.~~

~~(2) If a juvenile's parole is revoked two or more times during one parole period, the secretary or designee must approve any period of confinement exceeding a combined total of thirty days.~~

~~(3) Instead of confinement under subsection (1) of this section, the secretary or designee may return the offender to confinement in an institution for the remainder of the sentence range if:~~

~~(a) The offense for which the offender was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined under RCW 9.94A.030; or~~

~~(b) As otherwise authorized in RCW 13.40.210.~~

~~(4)) Mandatory confinement.~~

A JRA youth must be confined for a minimum of thirty days for possession of a firearm or use of a deadly weapon while on parole, per RCW 13.40.210 (4)(c).

(2) Confinement for up to thirty days.

A JRA youth may be confined for a period not to exceed thirty days for violating one or more conditions of parole, per RCW 13.40.210 (4)(a)(i) through (iv).

(3) Confinement for remainder of sentence.

As provided for in RCW 13.40.210 (4)(a)(v) and (vi), certain JRA youth who are placed on parole before completing their maximum sentence may be returned to confinement for the remainder of their sentence if they violate conditions of parole.

(a) Sex Offenders: A JRA youth may be returned to confinement for the remainder of the sentence range if the offense for which the youth was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined under RCW 9.94A.030.

(i) The remainder of sentence is calculated as the maximum aggregated term of qualifying sex offenses, minus the number of days served on the aggregated sentence for the qualifying sex offense or offenses.

(ii) Previous days in confinement for a parole violation are not deducted in this calculation.

(iii) Aggregated terms are served such that any term or terms for qualifying sex offenses are considered the last served.

(b) Graduates of basic training camp: A JRA youth who has successfully completed the juvenile offender basic training camp program under RCW 13.40.320 may be returned to confinement for the remainder of their sentence range.

(i) The remainder of sentence is calculated as the maximum aggregated term or four hundred fifty-five days, whichever is shorter, minus the number of days served on their aggregated sentence and on active parole.

(ii) Previous days in confinement for a parole violation are not deducted in this calculation.

(4) Juvenile sex offender confinement for up to twenty-four weeks.

(a) As provided for in RCW 13.40.210 (4)(b), a JRA youth may be returned to confinement for up to twenty-four weeks if:

(i) The JRA youth was sentenced for a sex offense as defined in RCW 9A.44.130;

(ii) The JRA youth is known to have violated the terms of parole; and

(iii) In the determination of the secretary, other graduated sanctions or interventions have not been effective in controlling the youth's parole violations; or

(iv) The behavior is so egregious it warrants the use of the higher level intervention and the violation:

(A) Is a known pattern of behavior consistent with a previous sex offense that puts the JRA youth at high risk for reoffending sexually;

(B) Consists of sexual behavior that is determined to be predatory as defined in RCW 71.09.020; or

(C) Requires a review under chapter 71.09 RCW, due to a recent overt act.

(b) The total number of days of confinement under subsection (4) shall not exceed the number of days provided by the maximum sentence imposed by the disposition for the underlying sex offense or offenses pursuant to RCW 13.40.0357.

(c) The department shall not aggregate multiple parole violations that occur prior to the parole revocation hearing

and impose consecutive twenty-four week periods of confinement for each parole violation under subsection (4).

(5) Criteria for juvenile sex offender confinement.

A parole revocation petition to confine a juvenile sex offender for the remainder of sentence under subsection (3) or for up to twenty-four weeks under subsection (4) will be based on, but not limited to, the following behavioral and sentence considerations:

(a) Behavioral criteria:

(i) Behavior that appears to constitute a new sex offense or a statement by the JRA youth reporting a new sex offense;

(ii) Statements by the JRA youth that he/she is at imminent risk to re-offend sexually unless confined;

(iii) Accessing, making or possessing child pornography;

(iv) Accessing, making or possessing pornography that depicts excessive physical violence, death or threats of death, torture or infliction of pain, use of a weapon, humiliation or bondage;

(v) Possession of materials which, in total, constitute a "rape kit";

(vi) Unsupervised contact with previous victim(s) or target victim populations, except for approved peer age contact (attending school, etc.);

(vii) Use, possession or providing of drugs and/or alcohol associated with the JRA youth's illegal sexualized behaviors.

(b) Available remainder of sentence range.

If the JRA youth has not served the maximum sentence imposed for the underlying offense or offenses, and confinement under WAC 388-740-0070 (3) or (4) are both available, the petition for relief will take into account whether the remainder of sentence is sufficient to accomplish the purposes of the revocation. If so, the petition will be for confinement for the remainder of the sentence range; if not, the petition will be for up to twenty-four weeks of confinement.

(6) If the JRA youth's parole is revoked, the department must give the youth credit against any period of confinement for days served in detention pending the parole revocation hearing.

(7) Serving confinement.

(a) The JRA youth must serve his or her confinement in a facility or detention facility as described in WAC 388-740-0010.

(b) Confinement may be continuous, or for a portion of each day, or for certain days each week with the balance of time under supervision.

(8) If a juvenile's parole is revoked two or more times during one parole period, the secretary must approve any period of confinement exceeding a combined total of thirty days.

(9) Unless conditions of parole are otherwise amended, the order of parole conditions in effect at the time the parole was revoked shall be deemed reinstated immediately following any period of confinement.

**WSR 08-21-039
PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed October 8, 2008, 3:03 p.m., effective November 8, 2008]

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

Purpose: The department is amending the rule to update and clarify sections in chapter 388-550 WAC, Hospital services, pertaining to the department's long term acute care (LTAC) program definitions, requirements, and processes.

Citation of Existing Rules Affected by this Order: Amending WAC 388-550-2570, 388-550-2580, and 388-550-2590.

Statutory Authority for Adoption: RCW 74.08.090 and 74.09.500.

Adopted under notice filed as WSR 08-17-102 on August 20, 2008.

A final cost-benefit analysis is available by contacting Bev Atteridge, 626 8th Avenue S.E., Olympia, WA 98504-5506, phone (360) 725-1575, fax (360) 586-1471, e-mail atterbj@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 3, Repealed 0.

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

Date Adopted: October 8, 2008.

Robin Arnold-Williams
Secretary

AMENDATORY SECTION (Amending WSR 07-11-129, filed 5/22/07, effective 8/1/07)

WAC 388-550-2570 LTAC program definitions. The following definitions and abbreviations and those found in WAC 388-500-0005 and 388-550-1050 apply to the long term acute care (LTAC) program.

"Level 1 services" means ~~((long-term))~~ long term acute care (LTAC) services provided to a client((s)) who requires ~~((more than))~~ eight or more hours of direct skilled nursing care per day and the client's medical needs cannot be met at a lower level of care due to clinical complexity. Level 1 services include one ~~((or both))~~ of the following:

(1) ~~((Active))~~ Ventilator weaning care ~~((and any specialized therapy services, such as physical, occupational, and speech therapies));~~ or

(2) ~~((Complex medical care that may include: Care for complex draining wounds, care for central lines, multiple~~

~~medications, frequent assessments and close monitoring, third degree burns that may involve grafts and/or frequent transfusions, and specialized therapy services, such as physical, occupational, and speech therapies))~~ Care for a client who has:

(a) Chronic open wounds that require on-site wound care specialty services and daily assessments and/or interventions; and

(b) At least one comorbid condition (such as chronic renal failure requiring hemodialysis).

"Level 2 services" means ~~((long-term))~~ long term acute care (LTAC) services provided to a client((s)) who requires four ~~((to eight))~~ or more hours of direct skilled nursing care per day, and the clients' medical needs cannot be met at a lower level of care due to clinical complexity. Level 2 services include at least ~~((two))~~ one of the following:

(1) Ventilator care for a client((s)) who ~~((are stable, dependent on a))~~ is ventilator-dependent and is not weanable((s)) and ~~((have))~~ has complex medical needs; or

(2) Care for ~~((clients who have tracheostomies, complex airway management and medical needs, and the potential for decannulation; and))~~ a client who:

(a) Has a tracheostomy;

(b) Requires frequent respiratory therapy services for complex airway management and has the potential for decannulation; and

(c) Has at least one comorbid condition (such as quadriplegia).

~~((3) Specialized therapy services, such as physical, occupational, and speech therapies.))~~

~~((Long-term acute care))~~ Long term acute care means inpatient intensive long-term care services provided in department-approved LTAC hospitals to eligible medical assistance clients who require Level 1 or Level 2 services.

"Survey" or "review" means an inspection conducted by a federal, state, or private agency to evaluate and monitor a facility's compliance with LTAC program requirements.

~~(("Transportation company" means either a department-approved transportation broker or a transportation company doing business with the department.))~~

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 07-11-129, filed 5/22/07, effective 8/1/07)

WAC 388-550-2580 Requirements for becoming an LTAC hospital. (1) To apply to become a department-approved long term acute care (LTAC) hospital, the department requires a hospital to:

(a) Submit a letter of request to:

LTAC Program Manager
Division of Healthcare 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 ~~((facility))~~ hospital is:

(i) Medicare-certified for LTAC;

(ii) Accredited by the joint commission on accreditation of healthcare organizations (JCAHO);

(iii) ~~((For an in-state hospital))~~ Licensed as an acute care hospital by the department of health (DOH) under ((WAC 246-310-010)) 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) ~~((For a hospital located out-of-state, licensed as an acute care hospital by that state; and~~

~~((Contracted))~~ Enrolled with the department ((to provide LTAC services if the LTAC hospital is located outside the state of Washington)) as a Medicaid participating provider.

(2) ~~((The))~~ A hospital qualifies as a department-approved LTAC hospital when:

(a) The hospital meets all the requirements in this section;

(b) The department's clinical staff has conducted an on-site visit and recommended approval of the hospital's request for LTAC designation; and

(c) The department provides written notification ~~((that))~~ to the hospital that it qualifies ((to be paid)) for payment when providing LTAC services to eligible medical assistance clients.

(3) Department-approved LTAC hospitals must meet the general requirements in chapter 388-502 WAC.

(4) The department 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 agreeing to the payment rates established for LTAC services in accordance with WAC 388-550-2595.

(5) The department does not have any legal obligation to approve any hospital or other entity as an LTAC hospital.

AMENDATORY SECTION (Amending WSR 07-11-129, filed 5/22/07, effective 8/1/07)

WAC 388-550-2590 Department prior authorization requirements for Level 1 and Level 2 LTAC services. (1) The department 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; and

(B) ~~((Meet the high cost outlier or high outlier status, respectively, at the transferring hospital as described in WAC 388-550-3700. Exception: If the claim is paid under a payment method other than the DRG or per diem payment method, the claim must meet the same outlier threshold described in WAC 388-550-3700.~~

(C)) Require Level 1 or Level 2 LTAC services as defined in WAC 388-550-2570.

(ii) The LTAC provider of services must:

(A) Before admitting the client to the LTAC hospital, submit a request for prior authorization to the ~~((the department's clinical consultation team))~~ department by fax, electronic mail, or telephone, as published in the department's LTAC billing instructions;

(B) Include sufficient medical information to justify the requested initial stay((-);

(C) ~~((Receive))~~ Obtain prior authorization from the department's medical director or designee, ~~((based on clinical quality review by the department's clinical consultation team to determine the client's circumstances and the medical justification for transfer))~~ when accepting the client from the transferring hospital; and

(D) Meet all the requirements in WAC 388-550-2580.

(b) For any extension(s) of stay((-

(i) The client must:

~~(A) Be eligible under one of the programs listed in WAC 388-550-2575; and~~

~~(B) Require Level 1 or Level 2 LTAC services as defined in WAC 388-550-2570.~~

~~((ii)),~~ the criteria in (a) of this subsection must be met, and the LTAC provider of services must((-

~~(A) Before the client's current authorized period of stay expires,))~~ submit a request for the extension of stay to the department ~~((s clinical consultation team by fax, electronic mail, or telephone; and~~

~~(B) Include))~~ with sufficient medical ~~((information to justify the requested extension of stay))~~ justification.

(2) The department ~~((s clinical consultation team))~~ 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 WAC. After receiving a request for a fair hearing, the department may request additional information from the client and the facility, or both. After the department reviews the available information, the result may be:

(a) A reversal of the initial department decision;

(b) Resolution of the client's issue(s); or

(c) A fair hearing conducted per chapter 388-02 WAC.

~~((3))~~ (4) The department 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 ~~((described in this section))~~ 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.

Purpose: Administration of this program has been moved from the higher education coordinating board (HECB) to the state board for community and technical colleges and the WAC moved to chapter 131-49 WAC. Technical changes have been made to update WAC citations, references to the HECB, and references to 1999-2001 contracts.

Citation of Existing Rules Affected by this Order: Amending chapter 131-49 WAC.

Statutory Authority for Adoption: Chapter 28B.04 RCW.

Adopted under notice filed as WSR 08-16-124 on August 5, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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: October 8, 2008.

DelRae Oderman
Executive Assistant
Agency Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-23-089, filed 11/20/07, effective 11/20/07)

WAC 131-49-010 Purpose. The Displaced Homemaker Act, chapter 28B.04 RCW establishes guidelines under which the ~~((higher education coordinating board))~~ state board for community and technical colleges shall contract to establish both multipurpose service centers and programs of service to provide necessary training opportunities, counseling and services for displaced homemakers so that they may enjoy the independence and economic security vital to a productive life. This chapter is promulgated by the board to establish necessary regulations for the operation of the displaced homemaker program.

AMENDATORY SECTION (Amending WSR 07-23-089, filed 11/20/07, effective 11/20/07)

WAC 131-49-040 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Act" means the Displaced Homemaker Act, chapter 28B.04 RCW, as amended.

(2) "Advisory committee" means the advisory committee established pursuant to WAC ~~((250-44-030))~~ 131-49-030.

(3) "Appropriate job opportunities" means opportunities to be gainfully employed, as defined in subsection (9) of this

WSR 08-21-041

PERMANENT RULES

STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

[Filed October 8, 2008, 4:43 p.m., effective November 8, 2008]

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

section, in jobs which build upon all relevant skills and potential skills of the individual displaced homemaker, including opportunities in jobs which in the past may not generally have been considered traditional for women.

(4) "Center" means a multipurpose service center as defined in subsection (10) of this section.

(5) "Board" means the ~~((higher education coordinating board))~~ state board for community and technical colleges.

(6) "Displaced homemaker" means an individual who:

(a) Has worked in the home for ten or more years providing unsalaried household services for family members on a full-time basis; and

(b) Is not gainfully employed;

(c) Needs assistance in securing employment; and

(d) Meets one of the following criteria;

(i) Has been dependent on the income of another family member but is no longer supported by that income; or

(ii) Has been dependent on federal assistance but is no longer eligible for that assistance; or

(iii) Is supported as the parent of minor children by public assistance or spousal support, but whose youngest child is within two years of reaching majority.

(7) "Executive director" means the executive director of the board.

(8) "Executive officer" of the sponsoring organization means the chief executive or senior officer of the organization.

(9) "Gainfully employed" means employed for salary or wages on a continuing basis and earning at least an amount equal to the standard of need established under RCW 74.04.770.

(10) "Multipurpose service center" means a center contracted for under the act, which either provides directly, or provides information about and referral to, each type of program of service as defined in subsection (14) of this section.

(11) "Objective" means a purpose of a program of service which can be quantified and for which objective measurements of performance can be established.

(12) "Displaced homemaker program" means the program of contracts for multipurpose service centers and programs of service for displaced homemakers authorized by the act.

(13) "Program" means a program of service as defined in subsection (14) of this section.

(14) "Program of service" means one of the specific services listed in subdivisions (a) through (g) of this subsection, and meeting the criteria set forth in the subdivision.

(a) Job counseling services, which shall:

(i) Be specifically designed for displaced homemakers;

(ii) Counsel displaced homemakers with respect to appropriate job opportunities (as defined in subsection (3) of this section); and

(iii) Take into account and build upon the skills and experience of a homemaker and emphasize job readiness as well as skill development.

(b) Job training and job placement services, which shall:

(i) Emphasize short-term training programs and programs which expand upon homemaking skills and volunteer experience and which prepare the displaced homemaker to be

gainfully employed as defined in subsection (9) of this section;

(ii) Develop, through cooperation with state and local government agencies and private employers, model training and placement programs for jobs in the public and private sectors;

(iii) Assist displaced homemakers in gaining admission to existing public and private job training programs and opportunities, including vocational education and apprenticeship training programs; and

(iv) Assist in identifying community needs and creating new jobs in the public and private sectors.

(c) Health counseling services, including referral to existing health programs, which shall:

(i) Include general principles of preventative health care;

(ii) Include health care consumer education, particularly in the selection of physicians and health care services, including, but not limited to, health maintenance organizations and health insurance;

(iii) Include family health care and nutrition;

(iv) Include alcohol and drug abuse; and

(v) Include other related health care matters as appropriate.

(d) Financial management services, which shall:

(i) Provide information and assistance with respect to insurance, taxes, estate and probate problems, mortgages, loans and other related financial matters; and

(ii) Include referral, wherever feasible and appropriate, to public legal assistance programs staffed by attorneys.

(e) Educational services, which shall:

(i) Include outreach and information about courses offering credit through secondary or postsecondary education programs, and other reentry programs, including bilingual programming where appropriate; and

(ii) Include information about such other programs determined by the board to be of interest and benefit to displaced homemakers, and for which appropriate informational materials have been provided by the board.

(f) Legal counseling and referral services, which shall:

(i) Be limited to matters directly related to problems of displaced homemakers;

(ii) Be supplemental to financial management services as defined in subdivision (d) of this subsection; and

(iii) Emphasize referral, wherever feasible and appropriate, to public legal assistance programs staffed by attorneys.

(g) General outreach and information services with respect to federal and state employment, education, health, public assistance, and unemployment assistance programs which the board may determine to be of interest and benefit to displaced homemakers, and for which the board distributes appropriate informational materials.

(15) "Reaching majority" means reaching age eighteen.

(16) "Sponsoring organization" means a public institution, agency or governmental entity, or a chartered private nonprofit institution or organization which has legal authority to submit an application, enter into a contract, and provide the programs of service covered by the application, and which agrees to provide supervision and financial management to ensure compliance with the terms and conditions of the contract.

(17) "Training for service providers" means activities which provide training for persons serving the needs of displaced homemakers.

(18) "Statewide outreach and information services" means activities designed to make general outreach and information services for displaced homemakers available throughout Washington including but not limited to areas directly served by multipurpose service centers or other programs of service under the displaced homemaker program.

(19) "Subsistence" means support provided to, or paid to recipients for support services including all living expenses, child care, and transportation.

(20) "Performance indicators" means expected levels of services and outcomes as established by the executive director and made available in the application guidelines.

(21) "Initial contract" means a contract awarded based on a competitive process and the evaluation of an initial application.

(22) "Renewal contract" means a contract awarded to a current sponsoring organization for the ensuing biennium, based on the evaluation of a renewal application.

AMENDATORY SECTION (Amending WSR 07-23-089, filed 11/20/07, effective 11/20/07)

WAC 131-49-060 Eligibility to apply for contracts.

Either an initial or renewal application for a contract to provide either a multipurpose service center or one or more programs of service for displaced homemakers or training for service providers may be submitted by a sponsoring organization, as defined in WAC ((250-44-040)) 131-49-040(16).

(1) The board shall require appropriate documentation of the nonprofit status of an applicant that is nonpublic.

(2) Organizations that apply as a consortium shall submit a single application. The application shall be submitted by the sponsoring organization that will serve as fiscal agent for the consortium.

AMENDATORY SECTION (Amending WSR 07-23-089, filed 11/20/07, effective 11/20/07)

WAC 131-49-070 Calendar and closing dates for applications and awards.

(1) Applications for both initial and renewal contracts to provide services to displaced homemakers shall be submitted by eligible organizations pursuant to WAC ((250-44-040)) 131-49-040(16) by the date specified in the contract application guidelines.

(2) The executive director of the board shall approve awards of contracts, provided qualifying applications were received by the closing dates specified in the application guidelines.

(3) In the event that available funds for contracts under the act are not fully utilized after approval of contracts, the executive director shall either establish a new calendar for further consideration of applications and award of contracts, or award supplemental funds to existing centers and programs by amendment of contracts in effect, or award supplemental funds for targeted displaced homemaker program initiatives.

AMENDATORY SECTION (Amending WSR 07-23-089, filed 11/20/07, effective 11/20/07)

WAC 131-49-100 Required assurances. No contract shall be awarded unless the sponsoring organization includes in its application the following assurances:

(1) No person in this state, on the grounds of sex, age, race, color, religion, national origin, or the presence of any sensory, mental, or physical handicap, shall be excluded from participating in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under the act;

(2) The sponsoring organization shall actively seek to employ for all staff positions supported by funds provided under the act, and for all staff positions supported by matching funds under any contract, including supervisory, technical and administrative positions, persons who qualify as displaced homemakers;

(3) Services provided to displaced homemakers under the contract shall be provided without payment of any fees for the services: Provided, That the executive director may approve exceptions to this requirement upon determining that such exceptions would be in the best interest of displaced homemaker program objectives;

(4) First priority for all services provided under the contract shall be given to persons who qualify in all regards as displaced homemakers. Other persons in need of the services due to similar circumstances may be assisted if provision of such assistance shall not in any way interfere with the provision of services to displaced homemakers as defined in the act. The sponsoring organization shall include in its reports separate and distinct accountability for services to displaced homemakers and to other persons in need of the services;

(5) The sponsoring organization agrees to comply in full with the accounting and reporting requirements set forth in WAC ((250-44-190)) 131-49-190 and such other accounting and reporting requirements as may be established by the executive director.

(6) The sponsoring organization agrees to participate in evaluation procedures, including the use of all specified uniform client classification forms for persons to whom services are provided, and specified uniform evaluation questionnaires;

(7) The sponsoring organization will actively seek to coordinate activities under the contract with related activities and services provided by other organizations;

(8) The sponsoring organization understands and agrees that payments from the board under the contract will be provided monthly or quarterly upon submission and approval of payment requests in a form and containing information specified by the executive director of the board, and that approval of payments shall be conditioned upon the executive director's determination that the sponsoring organization is in compliance with the terms of the contract and this chapter;

(9) The executive officer of the sponsoring organization has reviewed the application, including all assurances contained therein, and is authorized to submit the application and execute a contract in accordance with the application if it is approved by the board; and

(10) The executive director and staff of the board will be provided access to financial and other records pursuant to the contract.

AMENDATORY SECTION (Amending WSR 07-23-089, filed 11/20/07, effective 11/20/07)

WAC 131-49-110 Criteria for selection of contracts to be awarded. (1) Initial contracts. For each closing date established as specified in WAC ((250-44-070)) 131-49-070, applications will be ranked competitively according to their performance with respect to:

- (a) Size of the potential population to be served;
- (b) Demonstrated need for the proposed services;
- (c) Experience and capabilities of the sponsoring organization;
- (d) Provisions for coordination of services with other organizations providing related services in the geographic area.

(2) The executive director shall develop a system for evaluating initial applications with respect to the above-stated criteria, and make available in the application guidelines a description of the system.

(3) Final selection of initial applications to be approved will be based upon both relative ranking on factors listed in subsection (1) of this section and appropriate geographic distribution.

(4) Renewal contracts. The sponsoring organization may be eligible to renew its contract for one ensuing biennium provided the sponsoring organization was in full compliance ((with the 1999-2001 contract. Thereafter, the sponsoring organization may be eligible to renew its contract for one subsequent biennium provided the sponsoring organization was in full compliance)) with the contract and performance indicators established by the executive director.

(5) The executive director shall develop a system for evaluating renewal applications and make available in the application guidelines a description of the system.

AMENDATORY SECTION (Amending WSR 07-23-089, filed 11/20/07, effective 11/20/07)

WAC 131-49-120 Procedure for selection of contracts to be awarded. (1) Initial contracts. The following steps will be employed in screening and selection of applications to be approved for initial contracts:

- (a) Applications will be screened for eligibility and completeness;
- (b) A panel of application readers will be established, to consist of board staff members designated by the executive director, members of the advisory committee who are not members of the legislature or employees of sponsoring organizations, and such other persons as may be deemed appropriate by the executive director;
- (c) Within each category of application as described in WAC ((250-44-110)) 131-49-110(1), the panel of readers will evaluate and rank qualifying applications according to the system published in accordance with WAC ((250-44-110)) 131-49-110(2);

(d) The advisory committee will consider evaluations prepared by the readers, and will develop a list of recommended approved applications to be awarded contracts;

(e) The list of recommended approved applications will be submitted to the executive director of the board for approval. Upon approval the executive director will award the contracts.

(2) Renewal contracts. The following steps will be employed in screening and selection of applications to be approved for renewal contracts:

(a) Applications will be screened for eligibility and completeness;

(b) In cooperation with the advisory committee, or a subset thereof, the board will evaluate qualifying applications in accordance with WAC ((250-44-110)) 131-49-110(4) and develop a list of recommended approved renewal applications according to the system published in WAC ((250-44-110)) 131-49-110(5);

(c) The list of recommended approved renewal applications shall be submitted to the executive director of the board for approval. Upon approval the executive director will award the renewal contracts.

AMENDATORY SECTION (Amending WSR 07-23-089, filed 11/20/07, effective 11/20/07)

WAC 131-49-140 Length of contract periods. (1) Contract periods for each contract awarded under the act shall be in accordance with each application proposal, subject to contract application guidelines issued by the executive director, but shall not begin before the starting date or extend beyond the end date of the upcoming biennium.

(2) An initial contract shall be awarded on a biennial basis.

(3) ((A contract funded for the 1999-2001 biennium may be renewed for the 2001-2003 biennium provided the sponsoring organization was in full compliance with all of the terms of the 1999-2001 contract, as evidenced by the on-site compliance reviews.

(4)) An initial contract ((funded for the 2001-2003 biennium, and any contract funded thereafter)) may be renewed for one ensuing biennium provided the sponsoring organization was in full compliance with the contract and performance indicators established by the executive director.

WSR 08-21-051

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 9, 2008, 10:50 a.m., effective November 9, 2008]

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

Purpose: To repeal the WAC which is no longer needed.

Citation of Existing Rules Affected by this Order:

Repealing chapter 392-163 WAC.

Statutory Authority for Adoption: RCW 28A.165.075.

Adopted under notice filed as WSR 08-17-030 on August 13, 2008.

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

Date Adopted: October 9, 2008.

Dr. Terry Bergeson
Superintendent of
Public Instruction

REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 392-163-700 Authority.
- WAC 392-163-705 Purpose.
- WAC 392-163-710 Adopting the terms and conditions of federal funding by reference.
- WAC 392-163-715 Obtaining copies of federal statutes and rules.

**WSR 08-21-052
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed October 9, 2008, 10:52 a.m., effective November 9, 2008]

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

Purpose: These rules are part of the state funding formula for K-12 education. These rule revisions will update the calculation of the K-12 staff ratio compliance for state funding purposes, for the 2007-08 school year and thereafter. These revisions will provide a more fair and appropriate methodology to calculate the K-12 staff-per-student ratio compliance for school districts that provide students instruction pursuant to a contract with a college or university.

Citation of Existing Rules Affected by this Order: Amending WAC 392-127-015.

Statutory Authority for Adoption: RCW 28A.150.290 (1).

Adopted under notice filed as WSR 08-16-082 on August 1, 2008.

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

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 9, 2008.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 00-02-064, filed 1/3/00, effective 2/3/00)

WAC 392-127-015 FTE enrollment—Definition. As used in this chapter, "full-time equivalent enrollment" means for the period selected by a school district, the total full-time equivalent students reported by a school district pursuant to WAC 392-121-122 excluding:

(1) Running start and University of Washington transition school students reported (~~((pursuant to subsections))~~ under WAC 392-121-122 (3) and (4) (~~((of that section))~~); and

(2) Students that are being served pursuant to a contract under WAC 392-121-188 with a higher education institution when the staff serving the students are not reported on the school district's S-275 report for the time of instruction.

**WSR 08-21-053
PERMANENT RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION**

[Filed October 9, 2008, 10:53 a.m., effective November 9, 2008]

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

Purpose: To amend the WAC for revisions made by the 2007-08 legislative session to authorizing chapter 28A.165 RCW and provide clarifying language.

Citation of Existing Rules Affected by this Order: Amending chapter 392-162 WAC.

Statutory Authority for Adoption: RCW 28A.165.075.

Adopted under notice filed as WSR 08-16-025 on July 28, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 13, Repealed 0.

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

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

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

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

Date Adopted: October 9, 2008.

Dr. Terry Bergeson
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-005 Authority. The authority for this chapter is RCW 28A.165.075 which authorizes the superintendent of public instruction to adopt rules and regulations for the administration of a program designed to provide learning assistance to public school students in grades kindergarten through ~~((eleven (grade)) twelve ((beginning with the 2007-08 school year)))~~ who are deficient in basic skills achievement.

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-010 Purpose. The purpose of this chapter is to set forth policies and procedures for the administration of and to ensure district compliance with state requirements for a program designed to provide extended learning ((assistance)) opportunities to public school students in grades kindergarten through ~~((eleven (grade)) twelve ((beginning with the 2007-08 school year) who are deficient in basic skills achievement))~~ who score below standard for his or her grade level on the statewide assessments and assessments in the basic skills administered by local school districts.

The learning assistance program requirements in this chapter are designed to:

(1) Provide the means by which a school district becomes eligible for learning assistance program funds and the distribution of those funds;

(2) Promote the use of assessment data when developing programs to assist underachieving students; and

(3) Guide school districts in providing ~~((the most effective and efficient practices when implementing programs))~~ extended learning opportunities to assist underachieving students and students in grades eleven and twelve who are at risk of not meeting state and local graduation requirements.

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-020 Definition—Learning assistance program (LAP). As used in this chapter, the term "learning assistance program" means a statewide program designed to enhance educational opportunities for public school students

in grades kindergarten through ~~((eleven (grade)) twelve ((beginning with the 2007-08 school year)))~~ who do not meet state standards.

~~((“Approved program” means a program submitted to and approved by the office of the superintendent of public instruction and conducted pursuant to the plan that addresses the required elements as provided for in this chapter.))~~

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-025 Definition—Statewide assessments. As used in this chapter, the term "statewide assessments" means one or more of the several basic skills assessments administered as part of the state's student assessment system, and assessments in the basic skills areas administered by local school districts.

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-032 Definition—Participating student. As used in this chapter, the term "participating student" means a student in kindergarten through grade ~~((eleven (grade)) twelve ((beginning with the 2007-08 school year)))~~ who scores below standard for his or her grade level on the statewide assessments and who is identified in the approved plan to receive services and students in grades eleven and twelve who are at risk of not meeting state or local graduation requirements.

~~((Beginning with the 2007-08 school year, "participating student" means a student in kindergarten through grade twelve who scores below standard for his or her grade level on the statewide assessments and who is identified in the approved plan to receive services.))~~

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-033 Definition—Underachieving students. As used in this chapter, the term "underachieving students" means students with the greatest academic deficits in basic skills as identified by the statewide assessments and assessments in the basic skills areas administered by the local school district.

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-034 Accelerated learning plans. Accelerated learning plans are to be developed and implemented for participating students. Accelerated learning plans may be developed as part of an existing student achievement plan process such as student plans for achieving state high school graduation standards, individual student academic plans, or the achievement plans for groups of students. Accelerated learning plans shall include:

(1) Achievement goals for students in the content area(s) served;

(2) Roles for the student(s), parents, or guardians and teachers in the plan;

(3) Communication procedures (~~regarding student(s) accomplishment; and~~) used to inform parents or guardians, and teachers of a student's accomplishments and progress toward achieving goals. These may include, but are not limited to:

- (a) When conferences will occur;
- (b) When grade and progress reports will be sent;
- (c) How the parents may be contacted;
- (d) How teachers and administrators may be contacted;
- (e) Access to the web site and its contents;
- (f) How to access grade reports on-line; and
- (g) Other ongoing progress monitoring.

(4) Evidence of the accelerated student learning plan review and adjustment processes.

NEW SECTION

WAC 392-162-036 Definition—Extended learning opportunities. As used in this chapter the term "extended learning opportunities" means a program of learning assistance in addition to the required basic education instruction designed to improve the educational performance of students selected under WAC 392-162-080.

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-054 Definition—District eligibility and distribution of funds. Each school district with an approved program is eligible for state funds provided for the learning assistance program. The funds shall be appropriated for the learning assistance program in accordance with the Biennial Appropriations Act. The distribution formula is for school district allocation purposes only. The distribution formula shall be based on one or more family income factors measuring economic need. ~~((In addition, increases in a school district's allocation above the 2004-05 school year level shall be directed as prescribed by the legislature (to grades nine and ten for the 2006-07 school year):))~~

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-060 District application. Each district that seeks an allocation from the state for a learning assistance program shall submit an ~~((annual))~~ application by July 1st of each year, including the district program plan outlined in WAC 392-162-070, and an annual expenditure plan for approval on electronic forms provided by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-068 Program plan. By July 1st of each year, a participating school district shall submit the district's plan for using learning assistance funds to the office of the superintendent of public instruction for approval. Applications must be approved before funds are expended.

A school district must identify the program activities to be implemented from RCW 28A.165.035 and implement all

of the elements in subsections (1) through (8) of this section. The school district plan shall include the following:

(1) District and school-level data ~~((on))~~ trends in reading, writing, and mathematics achievement as reported pursuant to chapter 28A.655 RCW and relevant federal law;

(2) Processes used for identifying the underachieving students to be served by the program, including the identification of school or program sites providing program activities;

(3) Assurance that accelerated learning plans are developed and implemented for participating students. Accelerated learning plans may be developed as part of an existing student achievement plan process such as student plans for achieving state high school graduation standards, individual student academic plans, or the achievement plans for groups of students;

(4) How state level and classroom assessments are used to inform LAP instruction;

(5) How focused and intentional instructional strategies have been identified and implemented in the LAP program;

(6) How highly qualified instructional staff are developed and supported in the program and in participating schools;

(7) How other federal, state, district, and school resources are coordinated with school improvement plans and the district's strategic plan to support underachieving students; ~~((and))~~

(8) How a program evaluation will be conducted annually to determine direction for the following school year;

(9) A description of the extended learning opportunities for eligible eleventh and twelfth grade students who are at risk of not meeting local or state graduation requirements; and

(10) A description of the extended learning opportunities for eligible eighth grade students who have not met standard on the WASL or need additional assistance to successfully enter high school.

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-072 Program plan—Approved activities. Through the identification of best practices, which maximize the opportunities for student success, services and activities which support the learning assistance program include:

(1) Extended learning time through extended day, week or year activities;

(2) Instructional services to provide extended learning opportunities for eligible eleventh and twelfth grade students who are at risk of not meeting local or state graduation requirements as well as eighth grade students not meeting standard on the Washington assessment of student learning (WASL) or need additional assistance for a successful entry into high school. The instruction services may include, but are not limited to, the following:

(a) Individual or small group instruction;

(b) Instruction in English language arts and/or mathematics that eligible students need to pass all or part of the Washington assessment of student learning;

(c) Inclusion in remediation programs, including summer school;

(d) Language development instruction for English language learners;

(e) On-line curriculum and instructional support, including programs for credit retrieval;

(3) Professional development for certificated and classified staff that focuses on the needs of diverse student populations, specific literacy and mathematics content and instructional strategies, and the use of student work to guide effective instruction;

~~((3))~~ (4) Consultant teacher to assist in implementing effective instructional practices by teachers serving participating students;

~~((4))~~ (5) Tutoring support for participating students; and

~~((5))~~ (6) Outreach activities and support for parents of participating students.

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-080 Program requirement—Selection of students. Students selected to participate in the learning assistance program shall be limited to those who:

(1) Are enrolled in grades kindergarten through ~~((eleven grade))~~ twelve ~~((beginning with the 2007-08 school year))~~;

(2) Are performing below the state standard for his or her grade level;

(3) Have been identified in the approved district plan to receive services; ~~((and))~~

(4) Have been determined to have the greatest risk of not meeting the state's challenging content and performance standards; and

(5) Are in grades eleven or twelve and are at risk of not meeting state or local graduation requirements.

AMENDATORY SECTION (Amending WSR 07-02-015, filed 12/21/06, effective 1/21/07)

WAC 392-162-105 Program requirement—Program evaluation. Evaluation procedures as outlined in WAC 392-162-110 shall be used annually by districts to evaluate the educational achievement of students receiving recommended services in the learning assistance program. Such evaluation for school districts in district improvement, or with one or more schools in school improvement status, shall annually review and evaluate program success in alignment with state and federal program school improvement program requirements.

WSR 08-21-054

PERMANENT RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 9, 2008, 10:54 a.m., effective November 9, 2008]

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

Purpose: To repeal the WAC which is no longer needed.

Citation of Existing Rules Affected by this Order:
Repealing chapter 392-175 WAC.

Statutory Authority for Adoption: RCW 28A.165.075.

Adopted under notice filed as WSR 08-17-031 on August 13, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 5.

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

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

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

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

Date Adopted: October 9, 2008.

Dr. Terry Bergeson
Superintendent of
Public Instruction

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 392-175-001	Authority.
WAC 392-175-005	Purpose.
WAC 392-175-010	Standards for the modification or waiver of the superintendent of public instruction's rules.
WAC 392-175-015	Waiver of state statutes.
WAC 392-175-025	Rules waiver procedures.

WSR 08-21-056

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed October 9, 2008, 1:07 p.m., effective November 9, 2008]

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

Purpose: The rules modify the policies and procedures used by the department in the collection of overpaid unemployment benefits, particularly the circumstances under which a waiver of the overpayment may be granted or an offer in compromise accepted based on principles of equity and good conscience. The rules are intended to comply with the court of appeals decision in the case of *Delagrave v. ESD*, 127 Wn.App. 596.

Citation of Existing Rules Affected by this Order: Amending WAC 192-220-010, 192-220-020, 192-220-030, and 192-230-100.

Statutory Authority for Adoption: RCW 50.12.010, 51.12.040, and 50.20.010.

Adopted under notice filed as WSR 08-15-159 on July 23, 2008.

A final cost-benefit analysis is available by contacting Juanita Myers, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9665, fax (360) 902-9799, e-mail jmyers@esd.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 5, Amended 4, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 5, Amended 4, Repealed 0.

Date Adopted: October 6, 2008.

Karen T. Lee
Commissioner

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-220-010 (~~Overpayments—Notification to individual~~) Will I be notified about a potential overpayment? (1) If a potential overpayment exists, the department will provide you with a ~~(a)~~ written overpayment advice of rights ~~(, in writing,)~~ explaining the following:

- (a) The reasons you may have been overpaid;
- (b) The amount of the possible overpayment as of the date the notice is mailed;
- (c) The fact that the department will collect overpayments as provided in WAC 192-230-100;
- (d) The fact that final overpayments are legally enforceable debts which must be repaid whether or not you are claiming unemployment benefits;
- (e) The fact that these debts can be the basis for warrants which can result in liens, notices to withhold and deliver personal properties, possible sale of real and personal properties, and garnishment of salaries ~~(, and possible sale of real and personal properties);~~;
- (f) An explanation that if you are not at fault, you may request a waiver of the overpayment ~~(, Waiver means the overpayment does not have to be repaid);~~ and
- (g) A statement that you have 10 days to submit information about the possible overpayment and whether you are at fault. ~~(Failure to do so means)~~ If you do not provide the information within 10 days, the department will make a deci-

sion based on available information about the overpayment and your eligibility for waiver.

(2) Any amounts deducted from your benefit payments for federal income taxes or child support are considered paid to you and will be included in the overpayment.

NEW SECTION

WAC 192-220-017 Am I required to repay the overpayment? (1) You must repay the full amount of the overpayment, even if you are not at fault, unless you are granted a waiver. (See also WAC 192-230-110.) A waiver means you do not have to repay the overpayment.

(2) Except as provided in subsection (3), you are potentially eligible for a waiver of an overpayment when it would be against equity and good conscience for the department to require you to repay the full amount.

(3) You are not eligible for a waiver when:

- (a) You are at fault for the overpayment;
- (b) The overpayment is the result of a discharge for misconduct or gross misconduct (see RCW 50.20.066(5));
- (c) The overpayment is the result of a conditional payment of benefits;
- (d) The overpayment decision was issued by a state other than Washington; or
- (e) The overpayment is for disaster unemployment assistance benefits paid under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-220-020 (~~Overpayments—Fault provisions~~) When does the department consider me at fault for an overpayment? (1) ~~(When an overpayment occurs,)~~ The department will ~~(make a finding of)~~ decide if you are at fault ~~(or nonfault)~~ for an overpayment based on information provided by you and your employer and from information contained in the department's records. ~~(After reviewing all such information,)~~ You will be considered ~~(to be)~~ at fault ~~(when the overpayment is):~~

- (a) When the overpayment is ~~(F)~~ the result of fraud, misrepresentation, or willful nondisclosure; or
- (b) ~~(The result of a discharge for a felony or gross misdemeanor under RCW 50.20.065;~~
- (c) ~~The result of a discharge for gross misconduct under RCW 50.04.294; or~~
- (d) ~~(Based on the presence of)~~ When all of the following three elements are present:
 - (i) You were paid benefits in an amount greater than you were entitled to receive and you ~~(accepted and retained)~~ kept those benefits; and
 - (ii) ~~(The payment of these benefits was based on)~~ You provided incorrect information, (or a failure to furnish), did not disclose information which you should have provided, (as outlined in the information for claimants booklet, claimant directives and other reasonable written communications issued by the department;) or ~~(information which)~~ you caused another person to fail to disclose information; and
 - (iii) You had notice that the information should have been reported including, but not limited to, written communi-

cations from the department such as the unemployment claims kit and directives.

(2) You may be considered at fault, even though you provided the department with all relevant information before ~~((the benefit eligibility))~~ a decision was issued, ~~((if the overpayment is the result of payment that))~~ when you should reasonably have known the payment was improper. The following are some, but not all, examples where you should reasonably have known that a payment was improper ~~((and as a result are at fault))~~. These are ~~((intended as))~~ examples only and do not mean that the department would rule in this manner in every such situation.

(a) You correctly reported earnings but the department paid benefits at the full amount or incorrectly deducted the earnings.

(b) You reported that you were unavailable for one or more customary work days, but the department paid at the full amount and the payment was not a conditional payment.

(c) You received a retroactive pension payment that you had applied for and were reasonably sure would be awarded.

(d) You did not inform the department that you were eligible for benefits on an unexpired claim against another state.

(e) A lower level decision was reversed by the office of administrative hearings, the commissioner, or a court because of new information that you did not disclose to the department.

(f) Other circumstances in which the department ~~((fact))~~ finds ~~((ing indicates that))~~ you knew the payment was improper.

(3) In deciding ~~((whether or not))~~ if you are at fault, the department will also consider your education, mental abilities, emotional state, ~~((your))~~ experience with claiming unemployment benefits, and other ~~((elements of your))~~ personal ~~((situation))~~ factors which affect your ~~((knowledge and))~~ ability to ~~((comply with))~~ report ~~((ing))~~ all relevant information to the department. This includes any written information ~~((contained in the information for claimants booklet, claimant directives and other reasonable written communications issued))~~ provided to you by the department.

(4) You ~~((will be considered to be without))~~ are not at fault when you provided the department with all relevant information before ~~((the benefit eligibility))~~ a decision ~~((is))~~ was issued and ~~((the overpayment is the result of payment that))~~ you would not reasonably have known the payment was improper. The following are some, but not all, examples of instances in which you may not reasonably have known that a payment was improper ~~((and as a result are not at fault))~~. These are ~~((intended as))~~ examples only and do not mean that the department would rule in this manner in every such situation.

(a) The department ~~((erroneously))~~ removed a payment stop in error, resulting in improper payment.

(b) You received a retroactive pension which was backdated by the pension source, not at your request.

(c) A combined wage or federal claim was filed against Washington that should have been filed against another state.

(d) Extended benefits were paid by the department when you would have been eligible for a new claim against Washington or another state.

(e) A lower level decision, in which you had provided all information, was reversed by the office of administrative hearings, the commissioner, or a court.

(f) Other circumstances in which the department ~~((fact))~~ finds ~~((ing indicates))~~ you did not know the payment was improper.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-220-030 (~~Overpayments—E~~) What does equity and good conscience mean? (~~provisions~~) (1) ~~((The department will not consider or grant waiver of an overpayment and will not consider or accept an offer in compromise of an overpayment that is:~~

(a) ~~Based on an overpayment decision written by a state other than Washington;~~

(b) ~~The result of a conditional payment as provided in WAC 192-23-900; or~~

(c) ~~For claims with an effective date of January 4, 2004, and later, the result of being discharged for misconduct or gross misconduct as provided in RCW 50.20.066(5);)~~ "Equity and good conscience" means fairness as applied to a given set of circumstances.

(2) ~~((Except as provided in subsection (1), the department will grant waiver of an overpayment when it is found that you were without fault in the overpayment and when it is determined that to require repayment would be against equity and good conscience.))~~ It will be against equity and good conscience to deny waiver when repayment of the overpayment would deprive you of income required ~~((for necessary living expenses))~~ to provide for basic necessities including food, shelter, medicine, utilities, and related expenses. ~~((#))~~ Unless there are unusual circumstances which would argue against waiver(-), the department will presume repayment would leave you unable to provide basic necessities if your total household resources in relation to household size do not exceed seventy percent of the Lower Living Standard Income Level (LLSIL) and circumstances are not expected to change within the next ninety days.

(3) ~~((You will be required to provide financial information to the department to determine if the overpayment will be waived. Your failure to provide such information within 10 days from the request date will result in the department making a decision, based on available information, regarding your eligibility for waiver. The department may verify any financial information you provide. Any amount waived based on information that is later found to be fraudulent or misrepresented will be restored to the overpayment balance.~~

(4) ~~The financial information requested includes:~~

(a) ~~Your income and, to the extent available to you, other financially contributing members of the household for the previous month, the current month and the month following the date the financial information is requested.~~

(b) ~~Your current and readily available liquid assets. Liquid assets may include, but are not limited to, checking and savings account balances, stocks, bonds and cash on hand.~~

(c) ~~Your expenses for the previous month, the current month and the month following the date the financial information is requested.~~

~~(5) If your average monthly expenses equal or exceed your average monthly income and there are no substantial liquid assets available, waiver of the overpayment will be considered. The presence of unusual circumstances may justify waiver on other than a financial basis when not to waive would be unconscionable.~~

~~(6) When you have been denied waiver or waiver was not considered, you may enter into a payment agreement with the department.~~

~~(7) Except as provided in subsection (1), when you have been denied waiver or have been unable to reach a payment agreement with the department you may make an offer in compromise as provided in RCW 50.24.020. The basis for allowing or denying an offer in compromise will be the same criteria used by the department for allowing or denying waiver of an overpayment. Any overpayment amount compromised based on information that is later found to be fraudulent or misrepresented will be restored to the overpayment balance.) The department may also consider, but is not limited to, the following factors in determining whether waiver should be granted for reasons of equity and good conscience:~~

~~(a) Your general health, including disability, competency, and mental or physical impairment;~~

~~(b) Your education level, including literacy;~~

~~(c) Whether you are currently employed and your history of unemployment;~~

~~(d) Your future earnings potential based on your occupation, skills, and the local labor market;~~

~~(e) Your marital status and number of dependents, including whether other household members are employed;~~

~~(f) Whether an error by department staff contributed to the overpayment;~~

~~(g) Whether the employer contributed to the overpayment by providing inaccurate information or failing to respond to the department's request for information within a reasonable period of time;~~

~~(h) Whether you refused or were ineligible for other government benefits because you received unemployment benefits; and~~

~~(i) Other factors indicating that repayment of the full amount would cause you undue economic, physical, or mental hardship.~~

~~(4) The decision to grant or deny waiver will be based on the totality of circumstances rather than the presence of a single factor listed in subsections (2) and (3).~~

NEW SECTION

WAC 192-220-080 How do I obtain a waiver? (1)

When a decision is issued that creates an overpayment, the department will send you an application for waiver if you are potentially eligible.

(2) The waiver application asks for information concerning your financial condition and other circumstances which will help the department determine if the overpayment should be waived.

(3) The financial information requested includes documentation for the previous month, current month, and following month of your:

(a) Income and, to the extent available, the income of other household members who contribute financially to the household;

(b) Expenses; and

(c) Readily available liquid assets including, but not limited to, checking and savings account balances, stocks, bonds, and cash on hand.

(4) The completed application and supporting documents must be returned to the department by the 10 day response deadline indicated in the notice. If you do not provide the information within 10 days, the department will make a decision about your eligibility for waiver based on available information.

(5) A waiver cannot exceed the total amount of benefits available on your claim. The department will not waive the overpayment in such a way as to allow you to receive either a greater weekly benefit amount or a greater total benefit amount than you were originally eligible to receive. Any benefits waived are considered paid to you.

Example: You misplace a benefit check and request a replacement from the department. You subsequently cash both the original check and the replacement. Waiver will not be approved under these circumstances because you have been paid twice for the same week.

(6) If a waiver is approved based on information that is later found to be false or misleading, the amount waived will be restored to your overpayment balance.

AMENDATORY SECTION (Amending WSR 05-01-076, filed 12/9/04, effective 1/9/05)

WAC 192-230-100 (~~Recovery of benefit overpayment—By repayment or offset against past or future benefits~~) What amount will be offset from my benefits to repay the overpayment? (1) If you do not repay an overpayment in full or make the minimum monthly payments provided for in WAC ~~((192-28-130))~~ 192-230-030, the ~~((overpayment))~~ principal amount will be deducted from benefits payable for any week(s) you claim. Interest, penalties, surcharges, and court costs will not be deducted from benefit payments; they must be repaid.

(2) For overpayments assessed under RCW 50.20.010 because you asked to have your unemployment insurance claim cancelled, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. The department will ensure you are informed of the advantages and/or disadvantages of cancelling an existing claim to file a new claim.

(3) If you are currently claiming benefits, the overpayment will not be offset from future weeks payable unless you have missed a portion of two or more payments as provided in WAC ~~((192-28-130))~~ 192-230-030. If you have missed a portion of two or more payments, the overpayment will be offset as described in (a) and (b) below:

(a) If the overpayment was caused by a denial for fraud, misrepresentation, or willful nondisclosure as provided in RCW 50.20.070, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of benefits payable for each week you claim. However, you may request the overpayment be repaid at one hundred percent of benefits payable for each week you claim. The fifty percent deduction is based on your total weekly benefit amount, before deductions for such items as pensions, child support, income taxes.

(4) If the overpayment has been assessed by another state, the amount deducted will be as follows:

(a) For overpayments caused by a denial for fraud, misrepresentation, or willful nondisclosure, the amount deducted will be one hundred percent of benefits payable for each week(s) you claim. These overpayments will be collected first.

(b) For all other overpayments, the amount deducted will be fifty percent of benefits payable for each week you claim. However, you may request the overpayment be repaid at one hundred percent of benefits payable for each week you claim.

~~((5) If you have been denied waiver, or if waiver was not considered, you will be notified in writing of your right to enter into a payment agreement with the department or to make an offer in compromise. An offer in compromise will not be approved if the overpayment was caused by a denial under RCW 50.20.065 or 50.20.070 unless there are unusual circumstances which would justify a compromise. An offer in compromise will not be approved if the overpayment was caused by a denial under RCW 50.20.066.))~~

NEW SECTION

WAC 192-230-110 May I negotiate with the department to repay less than the full amount?—RCW 50.24.020. (1) Yes. State law permits the department to accept an offer in compromise for less than the full amount owed. For purposes of this chapter, an offer in compromise is referred to as a negotiated settlement.

(2) Except as provided in subsection (3), a negotiated settlement of the overpayment for less than the full amount owed will be considered under subsection (2)(a). Settlement offers may also be made by authorized department staff.

(a) The department will consider a settlement offer when it would be against equity and good conscience to require you to repay the full amount. The department may consider, but is not limited to, the following factors in making this decision:

- (i) Your general health, including disability, competency, and mental or physical impairment;
- (ii) Your education level, including literacy;
- (iii) Whether you are currently employed and your history of unemployment;
- (iv) Your future earnings potential based on your occupation, skills, and the local labor market;
- (v) Your marital status and number of dependents, including whether other household members are employed; and
- (vi) Other factors indicating that collection of the full amount would cause you undue economic, physical, or mental hardship and you are unable to provide for basic necessities as described in WAC 192-220-030(2).

(b) In considering settlement offers, the emphasis will be on what is financially advantageous to the department. The department will consider the costs of collection compared to the amount of the overpayment. In doing so, the department may consider such factors as the age and amount of the overpayment, the number of prior contacts with you, whether you previously made good faith efforts to pay the debt, the tools available to enforce collection, and other information relevant to your ability to repay.

(c) If you previously applied for a waiver and were denied and your circumstances have significantly changed, such as catastrophic illness or loss of income, you may ask to negotiate a settlement for less than the full amount of the overpayment.

(3) A negotiated settlement for less than the full amount owed will not be considered when:

- (a) The overpayment is the result of a discharge for misconduct or gross misconduct (see RCW 50.20.066(5));
- (b) The overpayment decision was issued by a state other than Washington; or
- (c) The overpayment is for disaster unemployment assistance benefits paid under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(4) The department's decision to accept or reject a settlement offer is final. However, if the settlement offer is rejected, you are permitted to make another offer at a later date if circumstances change.

NEW SECTION

WAC 192-230-120 Will a settlement offer be accepted if my overpayment is the result of fraud, misrepresentation, or willful nondisclosure? Except in unusual circumstances, a settlement offer will not be accepted when your overpayment is the result of fraud, misrepresentation, or willful nondisclosure. Unusual circumstances that may warrant a negotiated settlement of the overpayment and associated penalties include, but are not limited to, long-term or terminal illness, severe permanent disability, or other circumstances that seriously impair your long-term ability to generate income.

NEW SECTION

WAC 192-230-130 How do I make a settlement offer? You may contact the department's unemployment benefits collection unit in writing or by telephone and make an offer to settle the debt for less than the full amount owing. Specify the amount you are offering to repay and be prepared to provide financial and other information in support of your offer. The department may request a credit report to verify the information you provide. The department will notify you of its decision to accept or decline your offer.

WSR 08-21-068**PERMANENT RULES****DEPARTMENT OF AGRICULTURE**

[Filed October 13, 2008, 8:49 a.m., effective November 13, 2008]

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

Purpose: This rule-making order amends WAC 16-390-230 by removing a sunset provision in the rule establishing the current apple pest certification fee, so that the fee would remain at its current level (\$.015 per hundred weight).

Citation of Existing Rules Affected by this Order: Amending WAC 16-390-230.

Statutory Authority for Adoption: Chapters 15.17, 17.24, and 34.05 RCW.

Adopted under notice filed as WSR 08-19-108 on September 17, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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: October 10, 2008.

John P. Daly
Acting Deputy Director

AMENDATORY SECTION (Amending WSR 06-19-008, filed 9/8/06, effective 10/9/06)

WAC 16-390-230 What is the fee for an apple pest certification? ~~((Through December 31, 2008,))~~ The fee for apple pest certification, using the survey method, on all fresh apples produced in Washington state or marketed under Washington state grades and standards, is \$.015 per cwt. or fraction thereof. ~~((Beginning January 1, 2009, the fee shall be \$.0075 per cwt. or fraction thereof.))~~

WSR 08-21-072**PERMANENT RULES****DEPARTMENT OF AGRICULTURE**

[Filed October 13, 2008, 1:03 p.m., effective November 13, 2008]

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

Purpose: Repeal expiration date of dairy technician license in WAC 16-124-011. This section duplicates RCW 15.36.081 which states in part, "... All dairy technicians' licenses shall expire on December 31 of odd-numbered years."

Citation of Existing Rules Affected by this Order: Repealing WAC 16-124-011.

Statutory Authority for Adoption: Chapter 15.36 RCW.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 08-16-090 on August 4, 2008.

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

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

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

Date Adopted: October 13, 2008.

Robert W. Gore
Acting Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-124-011 Dairy technician license.

WSR 08-21-073**PERMANENT RULES****SECRETARY OF STATE**

[Filed October 13, 2008, 2:28 p.m., effective January 1, 2009]

Effective Date of Rule: WAC 434-662-010 - 434-662-110 to be effective January 1, 2009, and WAC 434-662-140 and 434-662-150 to be effective January 1, 2010.

Purpose: Clarification of electronic public records management requirements. Standards for management of electronic public records. Procedures for transfer of electronic public records to the Washington state digital archives.

Statutory Authority for Adoption: RCW 40.14.020(6).

Other Authority: Chapters 40.14, 42.56, and 43.105 RCW.

Adopted under notice filed as WSR 08-08-060 on March 28, 2008.

Changes Other than Editing from Proposed to Adopted Version: Please contact Megan Moreno to receive a document explaining all changes made at mmoreno@secstate.wa.gov.

A final cost-benefit analysis is available by contacting Jerry Handfield, 1129 Washington Street S.E., Olympia, WA 98504, phone (360) 586-2666, fax (360) 664-8814, e-mail jhandfield@secstate.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 14, Amended 0, Repealed 0.

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

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

Date Adopted: October 13, 2008.

Steve Excell

Assistant Secretary of State

Chapter 434-662 WAC

PRESERVATION OF ELECTRONIC PUBLIC RECORDS

NEW SECTION

WAC 434-662-010 Purpose. Pursuant to the provisions of chapters 40.14 and 42.56 RCW, and RCW 43.105.250, the rules contained in this chapter are intended to ensure that electronic public records are securely preserved for their minimum retention period for present and future access and/or are transferred to the Washington state digital archives for retention so that valuable legal and historical records of the state may be centralized, made more widely available, and permanently preserved.

NEW SECTION

WAC 434-662-020 Definitions applicable to all sections of this chapter. Unless the context indicates otherwise, words used in this chapter shall have the meaning given in this section.

"Agency" means any department, office, commission, board, or division of state government; and any county, city, district, or other political subdivision or municipal corporation or any department, office, commission, court, or board or any other state or local government unit, however designated.

"Archival value" means those public records, as determined by state archivist's appraisal, that are worthy of long-term or permanent preservation by the archives due to their historical, legal, fiscal, evidential, or informational value, or are designated such by statute.

"Authentic" means that a public record is accepted by the state archives as genuine, trustworthy, or original.

"Authentication" means the process of verifying that a public record is acceptable as genuine, trustworthy, original, or authentic.

"Chain of custody" means the documentation of the succession of offices or persons who held public records, in a

manner that could meet the evidentiary standards of a court of law until their proper disposition according to an approved records retention schedule.

"Confidential record" means any public record series, file, record or data base field with restrictions on public access as mandated by federal, state or local laws, or court order.

"Data base management system" means a set of software programs that controls the organization, storage and retrieval of data in a data base, as well as the security and integrity of the data base.

"Digital archives" means the mass storage facility for electronic records located in Cheney, Washington and operated by the Washington state archives. The digital archives is designed to permanently preserve electronic state and local government records with archival value in an environment designed for long-term storage and retrieval.

"Disposition" means the action taken with a record once its required retention period has expired. Disposition actions include but are not limited to transfer to the archives or destruction.

"Elected official" means any person elected at a general or special election to any public office, and any person appointed to fill a vacancy in any such office.

"Electronic record" includes those public records which are stored on machine readable file format.

"Encryption" means the process of rendering plain text unintelligible by converting it to ciphertext so it can be securely transmitted and can only be read by those authorized to decode the plain text from the ciphertext.

"File format" means the type of data file stored on machine readable materials such as hard disks, floppy disks, CD-ROMs, DVDs, flash media cards, USB storage devices, magnetic tape, and any other media designed to store information electronically, as well as the application program necessary to view it.

"Metadata" means data used to describe other data. Metadata describes how, when, and by whom particular content was collected, how the content is formatted, and what the content is. Metadata is designed to provide a high level of categorization to aid in the storage, indexing, and retrieving of electronic records for public use.

"Public record" has the same meaning as in chapters 40.14 and 42.56 RCW.

"Records committees" means the local records committee created in RCW 40.14.070 and the state records committee created in RCW 40.14.050.

"Retention period" means the required minimum amount of time a records series must be retained to meet legal, fiscal, administrative or historical value as listed on an approved records retention schedule or general records retention schedule.

"Records retention schedule" means a legal document approved by the state or local records committee that specifies minimum retention periods for a records series and gives agencies ongoing disposition authority for the records series after the records' approved retention period has been satisfied.

"Spider" means a software program that automatically collects and retrieves on-line web content and all documents

linked to such content. Examples include, but are not limited to: Web spiders, web crawlers, robots, and bots.

NEW SECTION

WAC 434-662-030 Retention scheduling and disposition of electronic public records. Electronic records are bound by the same provisions as paper documents as set forth in chapter 40.14 RCW. Electronic records must be retained pursuant to the retention schedules adopted by the records committees. Destruction of, or changes to the retention period of, any public record, regardless of format, requires legal approval from the state or local records committee pursuant to chapters 40.14 RCW, 434-635 WAC and other applicable state laws. Public records that are designated "archival" by the state archivist must be maintained pursuant to the provisions of this chapter until such time as they are transferred to the state archives.

NEW SECTION

WAC 434-662-040 Agency duties and responsibilities. Electronic records must be retained in electronic format and remain usable, searchable, retrievable and authentic for the length of the designated retention period. Printing and retaining a hard copy is not a substitute for the electronic version unless approved by the applicable records committee.

An agency is responsible for a security backup of active records. A security backup must be compatible with the current system configuration in use by the agency.

NEW SECTION

WAC 434-662-050 Disposition of electronic public records identified by records committees as archival. Electronic records designated as "archival" must be retained in their original format along with the hardware and software required to read the data in that format unless the converted records have been sampled for completeness and accuracy of the migration to a new system and/or file format. Original data, hardware, and software must be maintained until successful migration to a new system has been verified. Agencies have a duty to work with the state archivist to centralize, preserve, and/or transfer archival records to the digital archives. All records transferred to the digital archives will be administered and managed in accordance with all public access and disclosure laws and requirements.

NEW SECTION

WAC 434-662-055 Disposition of electronic public records identified by records committees as nonarchival. Electronic records rendered obsolete through the verified accurate migration to a more current media file format for readability and not designated as "archival" may be considered a secondary copy and disposed of as directed by chapter 40.14 RCW.

NEW SECTION

WAC 434-662-060 Authentication and chain of custody of electronic records. The agency must maintain chain of custody of the record, including employing sufficient security procedures to prevent additions, modifications, or deletion of a record by unauthorized parties. If there is a break in chain of custody, it must be noted in the transmittal to the archives.

NEW SECTION

WAC 434-662-070 Use of encryption on electronic records. If encryption is employed on public records, the agency must maintain the means to decrypt the record for the life of the record as designated by the approved required minimum retention period for that record.

NEW SECTION

WAC 434-662-090 Transmittal agreement for transfer of electronic records. The digital archives must develop a transmittal agreement for the transfer of electronic records from state and local government agencies to the digital archives. At a minimum, a transmittal agreement between the digital archives and a state or local government agency must contain:

- (1) Identification of the record series;
- (2) Disposition authority;
- (3) Number of records to be transferred;
- (4) Method, schedule, and frequency of record transmittal;
- (5) Relevant metadata/indexing fields;
- (6) The decryption means for any record transmitted in an encrypted format;
- (7) Media file format;
- (8) Identification of any access restriction and the statutory authority for such restriction;
- (9) Other technical information, such as backend data base management systems, necessary for ingestion of electronic data into the digital archives repository; and
- (10) Procedures for collecting any fees for public copies as provided by statute or ordinance.

NEW SECTION

WAC 434-662-100 Media format and protocol for transfer. Electronic records will be directly transferred to the digital archives via web services, secure File Transfer Protocol, T-1 line or other direct transmission as outlined in the transmittal agreement. When direct transmission is not practicable, records must be transmitted via portable media formats including, but not limited to tape, compact disc, digital versatile disc, flash media cards, universal serial bus storage devices, external hard drive, or diskette.

NEW SECTION

WAC 434-662-110 Metadata requirements. Electronic records transferred to the digital archives must contain sufficient metadata to categorize, search and retrieve the

records. All transfers of electronic records to the digital archives must identify the name of the originating agency, the date of transfer, the records series, and other appropriate metadata as specified in the transmittal agreement. The digital archives will not accept electronic records that do not contain appropriate metadata as specified in the transmittal agreement.

NEW SECTION

WAC 434-662-140 Web site management. All state and local government agencies must retain all web content in accordance with the approved retention schedules. Pursuant to a transmittal agreement, the digital archives will use a software program commonly known as a spider to copy state and local government web sites that are determined to have archival value either annually or more frequently. All state and local government agencies shall use the following best management practices in the maintenance of their web sites:

- (1) Each page shall contain identifying information as outlined in the transmittal agreement;
- (2) If an agency web site is determined to have archival value and cannot be copied using a spider software program, the agency must copy and preserve all code for the web site.

NEW SECTION

WAC 434-662-150 E-mail management. E-mails created and received by any agency of the state of Washington in the transaction of public business are public records for the purposes of chapter 40.14 RCW and are subject to all of the laws and regulations governing the retention, disclosure, destruction and archiving of public records. The e-mails of all elected government officials and public employees are subject to the records retention periods and disposition promulgated by the records committees, and any and all e-mails with archival value must be retained. Agencies may be relieved of the obligation to permanently retain archival e-mail by transmitting e-mail and all associated metadata to the digital archives pursuant to a transmittal agreement as provided for in WAC 434-662-090. This section does not apply to state legislators or members of the state judiciary.

WSR 08-21-083

PERMANENT RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed October 14, 2008, 2:19 p.m., effective April 1, 2009]

Effective Date of Rule: April 1, 2009.

Purpose: The purpose of this CR-103 is to correct an error in the effective date listed on the CR-103 filed as WSR 08-20-117. The department inadvertently listed the effective date on the CR-103 as November 1, 2009, rather than November 1, 2008, as intended. The department is recommencing the rule-making process to change the rules to have a new effective date and will be filing a preproposal statement of inquiry in October. This CR-103 order changes the

effective date of the rules filed as WSR 08-20-117 to match the estimated effective date of the new rule-making process so that the new rules, when effective, will replace those filed as WSR 08-20-117.

Citation of Existing Rules Affected by this Order: Amending WAC 388-561-0200.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, 74.09.530.

Adopted under notice filed as WSR 08-17-112 on August 20, 2008.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, 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 0, Repealed 0.

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

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

Date Adopted: October 14, 2008.

Stephanie E. Schiller
Rules Coordinator

WSR 08-21-086

PERMANENT RULES GAMBLING COMMISSION

[Order 632—Filed October 14, 2008, 3:22 p.m., effective January 1, 2009]

Effective Date of Rule: January 1, 2009.

Purpose: At the May 2008 commission meeting, the commission filed the recreational gaming association's (RGA) original petition for rule change to allow community cards in card games and nickels/dimes to be used in any card game that charged a commission. Currently, players must have their own hand of cards and nickels/dimes are only allowed in Pai Gow games.

At the July 2008 commission meeting, the RGA submitted an alternative to clarify their intention was to authorize only Mini-Baccarat. This alternative was filed by the commission.

At the August 2008 commission meeting, staff proposed Alternative #2, which was filed [at the] commission meeting. This alternative was in response to questions raised by Chair Bierbaum at the July 2008 commission meeting. Alternative #2 was adopted at the October 10, 2008, meeting.

- Alternative #2 for WAC 230-15-035. This version authorizes Mini-Baccarat to be operated as explained for Baccarat in The New Complete Hoyle, Revised or Hoyle's Encyclopedia of Card Games.

- Switch the order of WAC 230-15-035 and 230-15-040 in the rules manual. The requirement that card game licensees must operate only card games the director or the director's designee has specifically authorized should be listed before what games are authorized.
- Housekeeping changes to WAC 230-15-045.

Citation of Existing Rules Affected by this Order: Amending WAC 230-15-035, 230-15-040, and 230-15-045.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 08-17-083 on August 19, 2008, and published September 3, 2008.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 3, Repealed 0.

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

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

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

Date Adopted: October 13, 2008.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 617, filed 10/22/07, effective 1/1/08)

WAC 230-15-035 ((Requirements for authorized card games.)) Authorizing new games or changing game rules. ((1) In order for a game to be authorized, the game must:

(a) Be played with standard playing cards or with electronic card facsimiles approved by the director or the director's designee; and

(b) Offer no more than three separate games with a single hand of cards. We consider bonus features and progressive jackpots separate games. If a player does not have to place a separate wager to participate, we do not consider it a separate game. An example of this is an "envy" or "share the wealth" pay out when another player achieves a specific hand; and

(c) Not allow side bets between players;

(2) Card game licensees may use more than one deck of cards for a specific game. They also may remove cards to comply with rules of a specific game, such as Pinochle or Spanish 21.

(3) Players must:

(a) Compete against all other players on an equal basis for nonhouse-banked games or against the house for house-banked games. All players must compete solely as a player in the card game; and

(b) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager; and

(c) Not place wagers on any other player's or the house's hand or make side wagers with other players, except for:

(i) An insurance wager placed in the game of Blackjack; or

(ii) An "envy" or "share the wealth" wager which allows a player to receive a prize if another player wins a jackpot or odds-based wager; or

(iii) A tip wager made on behalf of a dealer.

(4) A player's win or loss must be determined during the course of play of a single card game.)) Card game licensees must operate only the card games the director or the director's designee has specifically authorized. The director or the director's designee authorizes each new card game or changes to existing card games on an individual basis. A list of all authorized games and the rules of play are available at all commission offices and on the commission web site.

(1) Card game licensees must submit:

(a) Requests for authorizing new card games in the format we require; and

(b) Changes to an existing card game in writing.

(2) The director or the director's designee will notify the licensee in writing if the request is denied. The notification will include reasons for the denial and provide the licensee all information necessary to file a petition to the commission for rule making.

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

WAC 230-15-040 ((Authorizing new games or changing game rules.)) Requirements for authorized card games. ((Card game licensees must operate only the card games the director or the director's designee has specifically authorized. The director or the director's designee authorizes each new card game or changes to existing card games on an individual basis. A list of all authorized games and the rules of play are available at all commission offices and on the commission web site.

(1) Card game licensees must submit:

(a) Requests for authorizing new card games in the format we require; and

(b) Changes to an existing card game in writing.

(2) The director or the director's designee will notify the licensee in writing if the request is denied. The notification will include reasons for the denial and provide the licensee all information necessary to file a petition to the commission for rule making.)) (1) In order for a game to be authorized, the game must:

(a) Be played with standard playing cards or with electronic card facsimiles approved by the director or the director's designee; and

(b) Offer no more than three separate games with a single hand of cards. We consider bonus features and progressive jackpots separate games. If a player does not have to place a separate wager to participate, we do not consider it a separate game. An example of this is an "envy" or "share the

wealth" pay out when another player achieves a specific hand; and

(c) Not allow side bets between players.

(2) Card game licensees may use more than one deck of cards for a specific game. They also may remove cards to comply with rules of a specific game, such as Pinochle or Spanish 21.

(3) Players must:

(a) Compete against all other players on an equal basis for nonhouse-banked games or against the house for house-banked games. All players must compete solely as a player in the card game; and

(b) Receive their own hand of cards and be responsible for decisions regarding such hand, such as whether to fold, discard, draw additional cards, or raise the wager; and

(c) Not place wagers on any other player's or the house's hand or make side wagers with other players, except for:

(i) An insurance wager placed in the game of Blackjack; or

(ii) An "envy" or "share the wealth" wager which allows a player to receive a prize if another player wins a jackpot or odds-based wager; or

(iii) A tip wager made on behalf of a dealer.

(4) Mini-Baccarat is authorized when operated in the manner explained for Baccarat in the most current version of *The New Complete Hoyle, Revised or Hoyle's Encyclopedia of Card Games*, or similar authoritative book on card games we have approved. However:

(a) Card game licensees may make immaterial modifications to the game; and

(b) Subsection (3) of this section does not apply; and

(c) The number of players is limited under WAC 230-15-055.

(5) A player's win or loss must be determined during the course of play of a single card game.

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

WAC 230-15-045 Withdrawing ((~~approved~~) card game(s)) authorization. If the director or the director's designee withdraws ((~~approval~~) authorization) of a card game:

(1) The director or the director's designee will give licensees written notice and an opportunity to object to the decision. If a licensee files an objection in writing, an administrative law judge will review the decision.

(2) The director or the director's designee will provide written notice to impacted licensees after a final decision is made.

WSR 08-21-087

PERMANENT RULES

GAMBLING COMMISSION

[Order 633—Filed October 14, 2008, 3:27 p.m., effective January 1, 2009]

Effective Date of Rule: January 1, 2009.

Purpose: This new rule requires licensees who offer merchandise prizes to have a sales receipt or invoice from the

seller and to ensure certain information is included on the receipt/invoice.

Repeal WAC 230-06-115, this rule was inadvertently added back to our rules manual. It was repealed in administrative order #459, effective August 2006.

Reporting Changes in Card Room Employees: This change requires card game licensees to notify us when a licensed card room employee (CRE) changes or adds an employer, or is no longer working for them. When this rule was rewritten last year, the requirement was inadvertently switched to the CRE.

Card Tournaments: The word "buy-in" was inadvertently added into this rule and needs to be removed. This will allow Class D licensees to conduct no-fee tournaments without obtaining an additional tournament license.

Fund-raising Events: The commission does not have limits on wagers made with poker tournament chips or scrip. However, fund-raising event licensees may set limits. WAC 230-09-020(2) was rewritten to clarify this requirement. The amendment requires licensees to include game rules and payout restrictions in house rules. Wagering limits were moved from WAC 230-09-020 to a new rule so they are easier to locate.

Citation of Existing Rules Affected by this Order: Repealing WAC 230-06-115, 230-03-290, and 230-15-175; and amending WAC 230-09-020 and 230-15-205.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 08-17-084 on August 19, 2008, and published September 3, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 2, Repealed 3.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 3, Amended 2, Repealed 3.

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 2, Repealed 3.

Date Adopted: October 14, 2008.

Susan Arland
Rules Coordinator

AMENDATORY SECTION (Amending Order 608, filed 4/10/07, effective 1/1/08)

WAC 230-15-205 Card tournament licenses. (1) Class A, B, E, F, or house-banked licensees may conduct a card tournament where a fee or buy-in is charged without getting a card tournament license, but they must only operate those card games approved for their license class.

(2) Class D licensees must obtain a card tournament license to charge a fee ((~~or buy-in~~)) for a card tournament.

AMENDATORY SECTION (Amending Order 604, filed 10/27/06, effective 1/1/08)

WAC 230-09-020 Post house rules. Licensees must develop house rules to govern the scope and manner of all gambling activities they will conduct during the FRE and prominently post these rules in the area where they will conduct the FRE. At a minimum, these rules must((:

~~(1) State that single wagers must not exceed ten dollars. Raffle wagers may exceed ten dollars, but must not exceed the limits set forth in RCW 9.46.0277; and~~

~~(2) State that there are no limits on wagers made with scrip and no limits on the number of poker tournament chips that may be wagered; and~~

~~(3) Prohibit tipping;)) include:~~

(1) Game rules; and

(2) Wager limits; and

(3) Payout restrictions; and

(4) That tipping is prohibited.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-15-175 Reporting card room employees no longer working.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-06-115 Using checks or credit cards to purchase gambling equipment, products, or services.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-03-290 Card room employees working for additional employer or changing employer.

NEW SECTION

WAC 230-09-022 Wagering limits for fund-raising events. (1) Wager limits must not exceed ten dollars. However, raffle wagers must not exceed the limits in RCW 9.46.0277; and

(2) There are no limits on wagers made using scrip or poker tournament chips.

NEW SECTION

WAC 230-06-109 Sales invoices for merchandise prizes. Operators may purchase merchandise prizes from a licensed or unlicensed distributor or business. The sales

invoice or receipt must include at least the following information:

- (1) The date of purchase; and
- (2) The seller's name and complete address; and
- (3) A full description of each item purchased; and
- (4) The quantity of items purchased; and
- (5) The cost per individual items purchased.

NEW SECTION

WAC 230-06-083 Card game licensees reporting changes in licensed employees. Card game licensees, except Class B or Class D must:

(1) Submit an add/transfer application and the required fees before allowing a licensed card room employee to begin working.

(2) Notify us in writing when a licensed card room employee no longer works for them. We must receive the notice at our Lacey office within ten days of the card room employee terminating employment.

**WSR 08-21-091
PERMANENT RULES
OFFICE OF**

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. 2007-11—Filed October 15, 2008, 7:02 a.m., effective February 1, 2009]

Effective Date of Rule: February 1, 2009.

Purpose: These new rules are procedural rules that designate the system for electronic rate and form filing (SERFF), developed by the National Association of Insurance Commissioners (NAIC) as the method by which insurers must file property, casualty, disability, life and annuity products through. As part of this rule making, the insurance commissioner adopts rate and form filing procedures that are compatible with electronic filings. The commissioner has also adopted rules for filing motor vehicle service contracts under RCW 48.110.150.

Citation of Existing Rules Affected by this Order: Repealing WAC 284-58-070 through 284-58-260, 284-20-100 and 284-20-150; and amending WAC 284-24-005, 284-24-060, 284-24-062, 284-24-065, 284-24-070, 284-24-080, 284-24-100, 284-24-110, 284-24-120, 284-58-010, 284-58-020, and 284-58-030.

Statutory Authority for Adoption: RCW 48.02.060, 48.110.150.

Adopted under notice filed as WSR 08-14-055 on June 25, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 284-20B-010, 284-20C-010, and 284-58-010, the office of insurance commissioner (OIC) changed the effective date to February 1, 2009.

WAC 284-20B-030, 284-20C-020, and 284-58-030, editorial changes clarify that new and replacement forms must be filed with the OIC in final form displayed in ten-point type so they are legible for review and storage as a public record.

WAC 284-20B-040, 284-20C-030, and 284-58-037, an editorial change clarifies that if the OIC rejects a filing, the

date filed will be the date the OIC receives and accepts a new filing.

WAC 284-20B-120, 284-20C-060, and 284-58-053, OIC clarified instructions for forms revised due to an OIC objection and forms filed to replace or update an old edition. "Strike through" may be used to show deletions to a form in lieu of brackets.

WAC 284-20B-140, 284-20C-080, and 284-58-061, filers may provide a tracking number for the OIC to locate a previously approved amendatory endorsement in lieu of an actual copy of the form.

WAC 284-20B-150, 284-20C-110, and 284-58-066, OIC edited and corrected rules for insurance policy forms translated from English to another language based on comments from interested parties.

WAC 284-20B-120, the title was amended to be consistent with RCW 48.18.100(1) by referencing "insurance policy forms."

WAC 284-20C-050, subsection (2) of the rule was edited to say it does not apply to affiliates or wholly owned subsidiaries.

WAC 284-58-020 was edited to say that the OIC may withdraw approve [approval] of forms for cause.

WAC 284-58-030 was edited to say that group insurance where different types of insurance are incorporated into a single certificate may be filed together.

WAC 284-58-033 was edited to say that rate filings must be submitted separately but concurrently with forms form [from] filings when new forms are introduced.

WAC 284-58-057 was edited to delete subsection (2).

WAC 284-24-011, the OIC changed the effective date to February 1, 2009.

WAC 284-24-016, an editorial change clarifies that if the OIC rejects a filing, the date filed will be the date the OIC receives and accepts a new filing.

WAC 284-24-080, OIC removed fine arts dealers from the list in inland marine risks that are subject to rate filing requirements.

WAC 284-24-115, the maximum interval for rates to take effect between new and renewal policies is increased to sixty days.

A final cost-benefit analysis is available by contacting Kacy Scott, P.O. Box 40255 [40258], Olympia, WA 98504-0258, phone (360) 725-7041, fax (360) 586-3109, e-mail Kacys@oic.wa.gov.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 50, Amended 12, Repealed 20.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 50, Amended 12, Repealed 20.

Date Adopted: October 15, 2008.

Mike Kreidler
Insurance Commissioner

Chapter 284-20B WAC

RULES FOR FILING PROPERTY AND CASUALTY FORMS

NEW SECTION

WAC 284-20B-005 Definitions that apply to this chapter. The definitions in this section apply throughout this chapter:

(1) "Advisory organization" means an entity not licensed under RCW 48.19.180 that files advisory forms with the commissioner.

(2) "Complete filing" means a package of information containing insurance forms, supporting information, documents and exhibits submitted to the commissioner electronically using the System for Electronic Rate and Form Filing (SERFF).

(3) "Date filed" means the date a complete filing has been received and accepted by the commissioner.

(4) "Filer" means a person, organization or other entity that files insurance forms with the commissioner for an insurer.

(5) "Insurance" means the same as in RCW 48.01.040.

(6) "Insurer" means an insurer defined in RCW 48.01.050 to which the commissioner has issued a certificate of authority under chapter 48.05 RCW.

(7) "Member" or "subscriber" means an insurer that has granted filing authority to a rating organization under RCW 48.19.050, and includes service purchasers.

(8) "NAIC" means the National Association of Insurance Commissioners.

(9) "Objection letter" means correspondence created in SERFF and sent by the commissioner that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves a form under RCW 48.18.110.

(10) "Property and casualty insurance" means all types of:

(a) Property insurance defined in RCW 48.11.040;

(b) Marine and transportation insurance defined in RCW 48.11.050;

(c) Vehicle insurance defined in RCW 48.11.060;

(d) General casualty insurance defined in RCW 48.11.070; and

(e) Title insurance defined in RCW 48.11.100.

(11) "Rating organization" or "bureau" means an entity licensed under RCW 48.19.180 that files forms on behalf of its members, subscribers, and service purchasers.

(12) "SERFF" means the System for Electronic Rate and Form Filing. SERFF is a proprietary NAIC computer-based application that allows filers to create and submit rate, rule and form filings electronically to the commissioner.

(13) "Type of insurance" means a specific type of insurance listed in the *Uniform Property and Casualty Product Coding Matrix* published by the NAIC and available at www.naic.org.

NEW SECTION

WAC 284-20B-010 Purpose and scope of this chapter. (1) The purpose of this chapter is to adopt processes and procedures for insurers and filers to use when they submit property and casualty insurance forms to the commissioner under chapter 48.18 RCW.

(2) This chapter applies to insurers, advisory organizations and rating organizations that file property and casualty insurance forms under RCW 48.18.100 and 48.18.103.

(3) This chapter is effective on February 1, 2009. All form filings received on or after February 1, 2009, must comply with this chapter.

NEW SECTION

WAC 284-20B-020 Filing instructions that are incorporated into this chapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner must incorporate documents posted on the SERFF web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* posted on the SERFF web site (www.serff.com); and

(2) The *Washington State SERFF Property and Casualty Form Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

NEW SECTION

WAC 284-20B-030 General form filings rules. Filers must submit complete filings that comply with the *SERFF Industry Manual* posted on the SERFF web site (www.serff.com) and *Washington State SERFF Property and Casualty Form Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov). All form filings must comply with these rules:

(1) Insurers must file property and casualty insurance forms under RCW 48.18.100(1) or 48.18.103(3). Filers may not use the certification process described in RCW 48.18.100 (2) to file property and casualty insurance forms.

(2) Filers must submit all insurance forms and related documents to the commissioner electronically using SERFF.

(a) Every form filed in SERFF must be attached to the form schedule.

(b) All written correspondence related to a form filing must be sent in SERFF.

(3) All filed forms must be legible for both the commissioner's review and retention as a public record. Filers must submit new and replacement forms to the commissioner for review in final form displayed in ten-point or larger type.

(4) Each form must have a unique identifying number and a way to distinguish it from other editions of the same form.

(5) Filers must not submit combined rate and form filings.

NEW SECTION

WAC 284-20B-040 The commissioner may reject filings. (1) The commissioner may reject and close any filing that does not comply with WAC 284-20B-030. If the commissioner rejects a filing, the insurer has not filed forms with the commissioner.

(2) If the commissioner rejects a filing and the filer resubmits it as a new filing, the date filed will be the date the commissioner receives and accepts the new filing.

NEW SECTION

WAC 284-20B-050 Rules for rejected filings made under RCW 48.18.103. RCW 48.18.103(3) says an insurer must file forms within thirty days after the insurer issues them. If the commissioner rejects a filing under WAC 284-20B-040, the insurer has not filed forms with the commissioner. If the commissioner rejects a filing submitted under RCW 48.18.103, the:

(1) Filer must promptly send a new filing to the commissioner within the original thirty-day use and file period in RCW 48.18.103(3); or

(2) Insurer must stop issuing policies using forms sent with the rejected filing and amend policies using approved forms.

NEW SECTION

WAC 284-20B-060 Filing authorization rules. An insurer may authorize a rating organization or a third-party filer to file forms on its behalf. For the purposes of this section, a "third-party filer" means a person or entity in the business of providing insurance regulatory compliance services.

(1) If an insurer delegates filing authority to a third-party filer, each filing must include a letter as supporting documentation signed by an officer of the insurer authorizing the third-party filer to make filings on behalf of the insurer.

(2) The insurer may not delegate responsibility for the content of a filing to a third-party filer. The commissioner considers errors and omissions made by the third-party filer to be errors and omissions of the insurer.

(3) If third-party filer has a pattern of making filings that do not comply with this chapter, the commissioner may reject a delegation of filing authority from the insurer.

NEW SECTION

WAC 284-20B-070 Rating organization "bureau" rules. Under RCW 48.19.050, an insurer may authorize a bureau to file forms on its behalf. This section applies to members or subscribers that have granted filing authority to a bureau. Bureau members or subscribers must follow instructions provided by the bureau when they implement, delay or nonadopt a bureau form filing that has been approved by the commissioner. The insurer must make a filing with the commissioner if it delays the effective date, nonadopts or changes the bureau filing in any way. The filing must:

- (1) Include a statement of changes proposed by the insurer;
- (2) Provide the filing number used by the bureau when it filed the forms; and
- (3) Be received by the commissioner in a timely manner.
- (4) For purposes of this section, "timely" means:
 - (a) Before the bureau effective date if the filing is made under RCW 48.18.100; or
 - (b) Thirty days after the bureau effective date if the filing is made under RCW 48.18.103.

NEW SECTION

WAC 284-20B-080 Use of rating organization "bureau" forms—No filing authorization. If a member or subscribing insurer has not authorized a bureau to file forms on its behalf, the insurer must make a filing with the commissioner to use bureau forms.

- (1) If the forms are identical to the bureau forms, the filing must include this information:
 - (a) A statement by the insurer of its intent to use the bureau forms; and
 - (b) The filing number used by the bureau when it filed the forms.
- (2) Insurers must independently file any forms that are not identical in content to approved bureau forms.

NEW SECTION

WAC 284-20B-090 Advisory organization rules. (1) Advisory organizations may file insurance forms with the commissioner. The commissioner will review advisory forms using the same standards that apply to insurers and rating organizations. If the forms comply with RCW 48.18.110, the commissioner will approve the forms on an advisory basis.

- (2) If an insurer decides to use approved advisory forms, the insurer must make an independent form filing. The filing must include:
 - (a) A statement by the insurer of its intent to use the advisory forms;
 - (b) The filing number used by the advisory organization when it filed the forms; and
 - (c) Copies of the advisory forms attached to form schedule.

NEW SECTION

WAC 284-20B-100 Rules for responding to an objection letter. An objection letter may ask the filer to revise a noncompliant form or provide clarification or additional information about the form. If a form contains provisions that are contrary to RCW 48.18.110, the objection letter will state the reason(s) for disapproval, including relevant case law, statutes and administrative rules. Filers must:

- (1) Provide a complete response to an objection letter. A complete response includes:
 - (a) A separate response to each objection; and
 - (b) A description of changes proposed to noncompliant forms, and, if applicable, a replacement form or amendatory endorsement attached to the form schedule.

- (2) Respond to the commissioner in a timely manner.

NEW SECTION

WAC 284-20B-110 Applications and policyholder notices. RCW 48.18.190 says each form that conflicts with, modifies, or extends a contract of insurance must be in writing and made a part of the policy. Insurers must file these forms under RCW 48.18.100 or 48.18.103. Insurers must file applications and policyholder notices if the:

- (1) Application will be used under RCW 48.18.080; or
- (2) Policyholder notice amends or modifies policy provisions.

NEW SECTION

WAC 284-20B-120 Rules for revised or replaced insurance policy forms. If an insurer files a revised or replaced form, the filer must provide the supporting documentation described below:

- (1) If a form is revised due to an objection(s) from the commissioner, the filer must provide a detailed explanation of all material changes to the disapproved form.
- (2) If a previously approved form is replaced with a new version, the filer must submit an exhibit that marks and identifies each change or revision to the replaced form using one of these methods:
 - (a) A draft form that strikes through deletions and underlines additions or changes in the form;
 - (b) A draft form that includes comments in the margins explaining the changes in the forms; or
 - (c) A side-by-side comparison of current and proposed policy language.

NEW SECTION

WAC 284-20B-130 Effective date rules. (1) Filers must include a common effective date for all forms submitted in a filing. The insurer may use different effective dates for new and renewal policies if the filing includes this request and the policy includes a liberalization clause or condition.

- (2) The proposed effective date must be a specific date.
 - (a) Vague statements, such as one that says the insurer will implement the filing thirty days after the commissioner's approval is not specific, and does not comply with this rule.
 - (b) If an insurer is filing a new program or optional endorsement, the filer may request an effective date concurrent with the commissioner's approval.
 - (3) The proposed effective date must be consistent with the law. Forms filed under RCW 48.18.103 must propose an effective date no more than thirty days before the date filed.
 - (4) If an insurer revises the effective date, the commissioner must receive this request in SERFF before the original effective date of the filing.

NEW SECTION

WAC 284-20B-140 Reference copies of amendatory endorsements. If an insurer will use a previously approved Washington amendatory endorsement with a new form, the filer must:

(1) Provide a copy of the amendatory endorsement attached as supporting documentation; or

(2) Include the SERFF tracking number under which the endorsement was filed and approved in the filing description; and

(3) Explain how the insurer will use the amendatory endorsement with the new form.

NEW SECTION

WAC 284-20B-150 Rules for insurance policy forms translated from English to another language. Insurers may issue insurance policy forms written in languages other than English.

(1) If an insurer translates an insurance policy form from English to another language, the insurer must:

(a) File the translated version of the form with the commissioner.

(b) Include written disclosure statements on the translated policy form that the insurer is issuing the translated form on an informational basis and the English version is controlling for the purposes of application and interpretation. The disclosure statements must be in English and the language of the translated form and printed in bold face type of at least twelve-point font.

(c) Submit a certification with the filing by an officer employed by the insurer that the insurer will issue the English version of the policy form with the translated policy form.

(2) When filing a translated policy form, the filer must:

(a) Identify the approved English version of the policy form by providing, as applicable, the:

(i) SERFF filing number;

(ii) Form number, edition date or edition identifier; and

(iii) Effective date of the filing.

(b) Submit certification by a professional translator certified by the American Translators Association or a comparable organization that the:

(i) Translator has translated the English version of the form; and

(ii) Translation is accurate.

(3) The commissioner will file but not review or approve translated insurance policy forms.

NEW SECTION

WAC 284-20B-160 Exemption for unauthorized insurers. Chapter 48.15 RCW applies to insurance transactions involving unauthorized surplus line insurers. Under RCW 48.18.100 (1)(e), insurance forms issued by unauthorized surplus line insurers are exempt from filing.

NEW SECTION

WAC 284-20B-170 Exemption for insurance forms issued to large commercial property and casualty accounts. (1) Under RCW 48.18.103 (3)(a), the commissioner exempts forms issued to insure a large commercial property and casualty account from filing requirements under chapter 48.18 RCW.

(2) For purposes of this section, "large commercial property and casualty account" means property and casualty

insurance as defined in WAC 284-24-001(10) that is purchased by a business, not-for-profit organization, or public entity with enough insurance buying experience to negotiate with insurers in a largely unregulated environment and meets any two of the following criteria:

(a) Annual premiums of one hundred thousand dollars or more, excluding workers compensation insurance issued by the department of labor and industries and types of insurance listed in subsection (3) of this section;

(b) Net revenues or sales in excess of one hundred million dollars;

(c) More than two hundred employees;

(d) Net worth over fifty million dollars;

(e) Is a not-for-profit organization or public entity with an annual budget or assets of at least forty-five million dollars;

(f) Is a municipality with a population over fifty thousand.

(3) The exemption provided by this section does not apply to:

(a) Professional liability insurance policies, including all types of malpractice and errors and omissions insurance;

(b) Reimbursement insurance policies that indemnify service contract providers or protection product guarantee providers for contractual obligations assumed under a service contract or protection product guarantee; and

(c) Master policies under which insurers issue certificates of coverage to individual consumers, households, businesses, or other organizations.

(4) Before an insurer issues an insurance policy under this section, the insurer or its insurance producer must send written notice to the insured that says the:

(a) Insurer has not filed the forms with the commissioner; and

(b) Commissioner has not reviewed and approved the forms.

(5) The Washington insurance examining bureau will not audit property forms used to insure large commercial property and casualty accounts under WAC 284-20-006.

(6) If grounds exist under RCW 48.18.110(1), the commissioner may disapprove a form used to insure a large commercial property and casualty account. If the commissioner disapproves a form under RCW 48.18.110(1), the insurer must construe the form under the provisions of RCW 48.18.510.

(7) Each insurer must keep copies of forms used to insure large commercial property and casualty accounts for at least six years after the date the insurer issues a policy under this section. The insurer must make these records available to the commissioner upon request.

Chapter 284-20C WAC

RULES FOR FILING MOTOR VEHICLE SERVICE CONTRACTS

NEW SECTION

WAC 284-20C-005 Definitions that apply to this chapter. The definitions in this section apply throughout this chapter:

(1) "Complete filing" means a package of information containing motor vehicle service contracts, supporting information, documents and exhibits.

(2) "Contract" means a service contract covering motor vehicles, as described in chapter 48.110 RCW. Under this definition:

(a) "Motor vehicle" means the same as in RCW 48.110.020(11), and only includes vehicles that are self-propelled by a motor; and

(b) "Service contract" means the same as in RCW 48.110.020(16).

(3) "Date filed" means the date a complete motor vehicle service contract filing has been received and accepted by the commissioner.

(4) "Filer" means a person, organization or other entity that files motor vehicle service contracts with the commissioner.

(5) "Objection letter" means correspondence sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves a motor vehicle service contract under RCW 48.110.073.

(6) "Service contract provider" or "provider" means the same as in RCW 48.110.020(18).

NEW SECTION

WAC 284-20C-010 Purpose of this chapter. (1) The purpose of this chapter is to adopt processes and procedures for providers and filers to use when they submit motor vehicle service contracts to the commissioner under RCW 48.110.073.

(2) This chapter is effective on February 1, 2009. All motor vehicle service contract filings received on or after February 1, 2009, must comply with this chapter.

NEW SECTION

WAC 284-20C-020 General motor vehicle service contract filing rules. Filers and providers must submit filings that comply with these rules:

(1) Filers must submit complete filings that comply with the filing instructions and procedures in the *Washington State Motor Vehicle Service Contract Filing Instructions* posted on the commissioner's web site (www.insurance.wa.gov), which the commissioner incorporates into this section by reference.

(2) Filers must submit every service contract to the commissioner in paper format with a completed motor vehicle service contract transmittal document.

(3) Filers must not combine "prior approval" and "use and file" contracts in one filing. Filers must file these types of contracts separately:

(a) Contracts filed under RCW 48.110.073(2); or

(b) Contracts filed under RCW 48.110.073(3).

(4) All filed contracts must be legible for both the commissioner's review and retention as a public record. Filers must submit new and replaced contracts to the commissioner for review in final printed form displayed in ten-point or larger type.

(5) Each contract must have a unique identifying number and a way to distinguish it from other editions of the same contract.

(6) Filers must submit a completed compliance checklist with each new motor vehicle service contract. If the filing includes more than one new contract, the filer may:

(a) Complete a separate checklist for each motor vehicle service contract; or

(b) Complete one checklist and submit an explanatory memorandum that lists any material differences between the filed contracts.

NEW SECTION

WAC 284-20C-030 The commissioner may reject motor vehicle service contract filings. (1) The commissioner may reject and close any filing that does not comply with WAC 284-20C-020. If the commissioner rejects a filing, the provider has not filed the service contract(s) with the commissioner.

(2) If the commissioner rejects a filing and the filer resubmits it as a new filing, the date filed will be the date the commissioner receives and accepts the new filing.

NEW SECTION

WAC 284-20C-040 Rules for rejected filings made under RCW 48.110.073(3). (1) RCW 48.110.073(3) says contracts must be filed with the commissioner within sixty days after the provider first issues the contract to a consumer. If the commissioner rejects a filing under WAC 284-20C-030, the provider has not filed contracts with the commissioner.

(2) If the commissioner rejects a filing submitted under RCW 48.110.073(3) the:

(a) Filer must promptly send a new filing to the commissioner within the original sixty-day use and file period in RCW 48.110.073(3); or

(b) Provider must stop issuing motor vehicle service contracts sent with the rejected filing.

NEW SECTION

WAC 284-20C-050 Filing authorization rules. (1) A provider may authorize a third-party filer to file contracts on its behalf. Under this section, a "third-party filer" means:

(a) An administrator as defined in RCW 48.110.020(1);

(b) An insurer; or

(c) A person or entity in the business of providing regulatory compliance services to providers.

(2) If a provider delegates filing authority to a third-party filer, each filing must include a letter signed by an employee of the provider authorizing the third-party filer to make filings on behalf of the provider. This subsection does not apply to a third-party filer that is an affiliate or wholly owned subsidiary of the provider.

(3) The provider may not delegate responsibility for the content of a filing to a third-party filer. The commissioner considers errors and omissions made by the third-party filer to be errors and omissions of the provider.

(4) If a third-party filer has a pattern of making filings that do not comply with this chapter, the commissioner may reject a delegation of filing authority from the provider.

NEW SECTION

WAC 284-20C-060 Rules for revised or replaced motor vehicle service contracts. If a provider files a revised or replaced contract, the filer must provide the supporting documentation described below:

(1) If a contract is revised due to an objection(s) from the commissioner, the filer must provide a detailed explanation of all material changes to the disapproved contract.

(2) If a previously approved contract is replaced with a new version, the filer must submit an exhibit that marks and identifies each change or revision to the replaced contract using one of these methods:

(a) A draft contract that strikes through deletions and underlines additions or changes in the contract;

(b) A draft contract that includes comments in the margins explaining the changes in the contract; or

(c) A side-by-side comparison of current and proposed contract language.

NEW SECTION

WAC 284-20C-070 Effective date rules. (1) Filers must include a common effective date for all contracts submitted in a filing.

(2) The proposed effective date must be a specific date.

(a) Vague statements, such as one that says the provider will implement a filing thirty days after the commissioner's approval is not specific, and does not comply with this rule.

(b) If a provider is filing a new program or optional coverage form, the filer may request an effective date concurrent with the commissioner's approval.

(3) The proposed effective date must be consistent with the law. Contracts filed under RCW 48.110.073(3) must propose an effective date no more than sixty days before the date filed.

(4) If the provider revises the effective date, the commissioner must receive the request before the original effective date of the filing.

NEW SECTION

WAC 284-20C-080 Reference copies of amendatory forms. If a provider will use a previously approved Washington amendatory form with a new contract, the filer must:

(1) Provide a copy of the amendatory form as supporting documentation; or

(2) Provide the company tracking number from the contract filing under which the endorsement was filed and approved; and

(3) Explain how the provider will use the amendatory form with the new contract.

NEW SECTION

WAC 284-20C-090 Rules for responding to an objection letter. An objection letter may ask the filer to revise non-compliant contracts or provide clarification or additional information about the contract. If the commissioner finds that a contract contains provisions that are contrary to RCW 48.110.073, the objection letter will state the reason(s) for disapproval, including relevant case law, statutes and administrative rules. Filers must:

(1) Provide a complete response to an objection letter. A complete response includes:

(a) A separate response to each objection; and

(b) A description of changes proposed to noncompliant contracts, and, if applicable, a replacement contract or amendatory form.

(2) Respond to the commissioner in a timely manner.

NEW SECTION

WAC 284-20C-110 Rules for motor vehicle service contracts translated from English to another language. Providers may issue motor vehicle service contracts written in languages other than English.

(1) If a provider translates a contract from English to another language, the provider must:

(a) File the translated version of the contract with the commissioner.

(b) Include written disclosure statements on the translated contract that the provider is issuing the translated contract on an informational basis and the English version is controlling for the purposes of application and interpretation. The disclosure statements must be in English and the language of the translated contract and printed in bold face type of at least twelve-point font.

(c) Submit written certification by an officer employed by the provider that the provider will issue the English version of the contract with the translated contract.

(2) When filing a translated policy form, the filer must:

(a) Identify the approved English version of the contract by providing, as applicable, the:

(i) Company tracking number under which the contract was filed;

(ii) Contract number, edition date or edition identifier; and

(iii) Effective date of the filing.

(b) Submit written certification by a professional translator certified by the American Translators Association or a comparable organization that the:

(i) Translator has translated the English version of the contract; and

(ii) Translation is accurate.

(3) The commissioner will file but not review or approve translated motor vehicle service contracts.

NEW SECTION

WAC 284-24-001 Definitions that apply to this chapter. Unless otherwise specified in rule, the definitions in this section apply throughout this chapter:

(1) "Advisory organization" means an entity not licensed under RCW 48.19.180 that files advisory rates with the commissioner.

(2) "Complete filing" means a package of information containing rates, supporting information, documents and exhibits submitted to the commissioner electronically using the System for Electronic Rate and Form Filing (SERFF).

(3) "Date filed" means the date a complete filing has been received and accepted by the commissioner.

(4) "Filer" means a person, organization or other entity that files insurance rates with the commissioner for an insurer.

(5) "Insurance" means the same as in RCW 48.01.040.

(6) "Insurer" means an insurer defined in RCW 48.01.-050 to which the commissioner has issued a certificate of authority under chapter 48.05 RCW.

(7) "Member" or "subscriber" means an insurer that has paid a rating organization for services under RCW 48.19.050, and includes service purchasers.

(8) "NAIC" means the National Association of Insurance Commissioners.

(9) "Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves the filing under RCW 48.19.100.

(10) "Property and casualty insurance" means these types of insurance:

(a) Property insurance defined in RCW 48.11.040;

(b) Marine and transportation insurance defined in RCW 48.11.050;

(c) Vehicle insurance defined in RCW 48.11.060;

(d) General casualty insurance defined in RCW 48.11.070; and

(e) Surety insurance defined in RCW 48.11.080.

(11) "Rate" or "rates" means all classification manuals, loss costs, rate or rule manuals, rating plans, rating schedules, minimum rates, class rates, and rating rules that insurers must file under RCW 48.19.040 and 48.19.043.

(12) "Rating organization" or "bureau" means an entity licensed under RCW 48.19.180 that files rates on behalf of its members, subscribers, or service purchasers.

(13) "SERFF" means the System for Electronic Rate and Form Filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule and form filings electronically to the commissioner.

(14) "Type of insurance" means a specific type of insurance listed in the *Uniform Property and Casualty Product Coding Matrix* published by the NAIC and available at www.naic.org.

AMENDATORY SECTION (Amending Matter No. R 98-4, filed 10/7/98, effective 11/7/98)

WAC 284-24-005 (~~Transmittal form required.~~)
Purpose and scope of this chapter. (~~Each rate filing submitted by an insurer shall be submitted with the filing transmittal form prescribed by and available from the commissioner. The insurer shall complete the form in its entirety before it submits the filing.~~) The purpose of this chapter is to adopt processes and procedures for insurers and filers to use when they submit property and casualty insurance rates and rules with the commissioner under chapter 48.19 RCW. This chapter:

(1) Applies to insurers, advisory organizations and rating organizations that file property or casualty insurance rates under RCW 48.19.040 and 48.19.043; and

(2) Does not apply to insurers or insurance scoring model vendors that file insurance scoring models under RCW 48.19.035 and chapter 284-24A WAC.

NEW SECTION

WAC 284-24-007 Filing documents incorporated by reference into this chapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

(1) The *SERFF Industry Manual* posted on the SERFF web site (www.serff.com); and

(2) The *Washington State SERFF Property and Casualty Rate Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

NEW SECTION

WAC 284-24-011 General rate filing rules. Effective February 1, 2009, filers must submit complete rate filings that comply with the *SERFF Industry Manual* posted on the SERFF web site (www.serff.com) and the *Washington State SERFF Property and Casualty Rate Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov). All rate filings must comply with these rules:

(1) Filers must submit all rate filings and related documents to the commissioner electronically using SERFF.

(2) Filers must send all written correspondence related to a rate filing in SERFF.

(3) Each rate filing must be:

(a) Accurate and internally consistent; and

(b) Submitted separately by type of insurance.

(4) Filers must not submit combined rate and form filings.

NEW SECTION

WAC 284-24-016 The commissioner may reject filings. (1) The commissioner may reject and close any filing that does not comply with WAC 284-24-011. If the commis-

sioner rejects a filing, the insurer has not filed rates with the commissioner.

(2) If the commissioner rejects a filing and the filer resubmits it as a new filing, the date filed will be the date the commissioner receives and accepts the new filing.

NEW SECTION

WAC 284-24-021 Rules for rejected rate filings made under RCW 48.19.043. RCW 48.19.043(2) says an insurer must file rates within thirty days after the date the insurer first uses them. If the commissioner rejects a filing under WAC 284-24-016, the insurer has not filed rates with the commissioner. If the commissioner rejects a filing submitted under RCW 48.19.043, the:

(1) Filer must promptly send a new rate filing to the commissioner within the original thirty-day use and file period in RCW 48.19.043(2); or

(2) Insurer must stop using the rates sent with the rejected filing and amend policies using approved rates.

NEW SECTION

WAC 284-24-041 Filing authorization rules. An insurer may authorize a rating organization or third-party filer to file rates on its behalf. For the purposes of this section, a "third-party filer" means a person or entity in the business of providing insurance regulatory compliance services.

(1) If an insurer delegates filing authority to a third-party filer, each filing must include a letter as supporting documentation signed by an officer of the insurer authorizing the third-party filer to make filings on behalf of the insurer.

(2) The insurer may not delegate responsibility for the content of a filing to a third-party filer. The commissioner considers errors and omissions made by the third-party filer to be errors and omissions of the insurer.

(3) If a third-party filer has a pattern of making filings that do not comply with this chapter, the commissioner may reject a delegation of filing authority from the insurer.

NEW SECTION

WAC 284-24-046 Rating organization "bureau" rules. Under RCW 48.19.050, an insurer may authorize a bureau to file rates on its behalf. This section applies to members or subscribers that have granted filing authority to a bureau.

(1) Bureau members or subscribers must follow instructions provided by the bureau when they implement, delay or nonadopt a bureau rate filing that has been approved by the commissioner.

(2) If the insurer has authorized the rating organization to make filings on its behalf, the insurer is not required to file new bureau rates with the commissioner, except as provided under WAC 284-24-062.

(3) The insurer must make a filing with the commissioner if an insurer delays the effective date, nonadopts or changes a filing in any way. The filing must:

(a) Include a statement of the changes proposed by the insurer;

(b) Provide the filing number used by the bureau when it filed rates with the commissioner; and

(c) Be received by the commissioner in a timely manner.

(4) Under this section, "timely" means:

(a) Before the bureau effective date if the filing is made under RCW 48.19.040; or

(b) Thirty days after the bureau effective date if the filing is made under RCW 48.19.043.

NEW SECTION

WAC 284-24-049 Rules that apply to advisory organizations. (1) Advisory organizations may file rates with the commissioner. The commissioner will review the advisory rates using the same standards that apply to insurers and rating organizations. If the rates comply with chapter 48.19 RCW, the commissioner will approve the rates on an advisory basis.

(2) If an insurer wants to use approved advisory rates, the insurer must make a rate filing that includes:

(a) A statement by the insurer of its intent to use the advisory rates;

(b) The filing number used by the advisory organization when it submitted the filing; and

(c) Statistical and actuarial support for each component of the rate filing that is not part of the advisory filing.

NEW SECTION

WAC 284-24-051 Rules for responding to objection letters. If the commissioner disapproves a filing under RCW 48.19.100, the objection letter will state the reason(s) for disapproval, including relevant law and administrative rules. Filers must:

(1) Provide a complete response to an objection letter. A complete response includes:

(a) A separate response to each objection; and

(b) If appropriate, revised exhibits and supporting documentation.

(2) Respond to the commissioner in a timely manner.

AMENDATORY SECTION (Amending Matter No. R 98-4, filed 10/7/98, effective 11/7/98)

WAC 284-24-060 Suspension of filing requirements for surplus lines insurance. Under RCW 48.19.080, the rate filing requirements in chapter 48.19 RCW are suspended ~~((with respect to))~~ for surplus line coverages. Insurers ~~((do not need))~~ are not required to file rates ~~((with respect to))~~ for surplus line ~~((coverages))~~ insurance policies placed in this state under chapter 48.15 RCW.

AMENDATORY SECTION (Amending Matter No. R 98-4, filed 10/7/98, effective 11/7/98)

WAC 284-24-062 ~~((Modification of filing requirements))~~ Loss cost filing((s)) rule. (1) The following definitions apply to this rule:

(a) "Prospective loss cost" means that portion of a rate that:

(i) Provides only for losses and loss adjustment expenses;

(ii) Does not provide for expenses or profit; and

(iii) Is based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

(b) "Loss cost adjustment" means a factor by which prospective loss costs are multiplied to obtain final rates. A loss cost adjustment must take into account:

(i) Operating expenses;

(ii) Underwriting profit (or loss) and contingencies;

(iii) Investment income;

(iv) Dividends, savings, or unabsorbed premium deposits allowed or returned to policyholders, members, or subscribers;

(v) Variations in loss experience unique to the insurer making the filing; and

(vi) Other relevant factors, if any.

(c) "Rate" means the cost of insurance per exposure unit, whether expressed as a single number or separately as prospective loss cost and loss cost adjustment, before application of individual risk variations permitted under WAC 284-24-100. Under this definition, a rate does not include minimum premiums or supplementary rating information.

(d) "Supplementary rating information":

(i) Means any manual or plan of policy writing rules, rating rules, classification system, territory codes and descriptions, rating plans, or any other similar information needed to determine the premium that applies to an insured; and

(ii) Includes factors and relativities, such as increased limits factors, package modification factors, classification relativities, and deductible relativities.

(2) Under RCW 48.19.080, the commissioner may modify the rate filing requirements in chapter 48.19 RCW (as modified as follows:

(a) Rating organizations may)). This rule modifies the rate filing requirements to permit rating and advisory organizations to make reference filings of prospective loss costs.

((The)) (a) Prospective loss costs filings (shall) must contain ((the)) statistical data and supporting information for all calculations and assumptions underlying the prospective loss costs, but do not need to provide the information required by RCW 48.19.040 (2)(b) and (c). ((Filings of)) Prospective loss costs filings must be approved by the commissioner ((prior to)) before use by any insurer as a reference document.

(b) To use rates based on loss costs, a member or ((subscribing insurer of a rating organization)) subscriber must make a loss cost adjustment filing, ((which is subject to)) under the applicable provisions of RCW 48.19.040 ((and/)) or ((RCW)) 48.19.043. The ((filing shall include the following forms, completed in their entirety, prescribed by and available from the commissioner)) filer must attach completed copies of these forms to the supporting documentation tab:

(i) A Washington Reference Filing Adoption Form;

(ii) ((For each loss cost adjustment,)) Δ Washington Summary of Supporting Information Form for each loss cost adjustment factor; and

(ii) For each loss cost adjustment with which an expense constant is used, a Washington Expense Constant Supplement.

(c) A member or ((subscribing insurer of a rating organization)) subscriber may use rates based on the bureau's or advisory organization's prospective loss costs ((filed by the rating organization and approved by the commissioner as a reference document)) without complying with the requirements of RCW 48.19.040 and 48.19.043 if the:

(i) ((The)) Commissioner has approved the loss cost reference document;

(ii) Insurer has an approved loss cost adjustment on file with the commissioner and proposes no changes to it; and

((((ii) The)) (iii) Insurer will begin using the prospective loss costs on the date proposed by the rating organization and approved by the commissioner.

(d) ((Once they have been approved and have)) Δ After the commissioner has approved a loss cost reference document filing for an advisory organization or bureau and the filing has become effective, the ((latest)) new prospective loss costs ((filed by a rating organization are considered to)) supersede all earlier loss cost filings by that ((rating)) organization. Insurers ((are)) must not ((permitted to)) make loss cost adjustment filings using prospective loss costs that have been superseded.

((2) For purposes of this section, the following definitions apply:

(a) "Rating organization" means an organization licensed under RCW 48.19.180.

(b) "Member or subscribing insurer" means an insurer that has granted filing authority to a rating organization under RCW 48.19.050 or has purchased loss cost services from a rating organization.

(c) "Prospective loss cost" means that portion of a rate that provides only for losses and loss adjustment expenses and does not include provisions for expenses (other than loss adjustment expenses) or profit, and is based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

(d) "Loss cost adjustment" means a factor by which prospective loss costs are multiplied to obtain final rates. It takes into account:

(i) Operating expenses;

(ii) Underwriting profit (or loss) and contingencies;

(iii) Investment income;

(iv) Dividends, savings, or unabsorbed premium deposits allowed or returned to policyholders, members, or subscribers;

(v) Variations in loss experience unique to the insurer making the filing; and

(vi) Other relevant factors, if any.

(e) "Rate" means the cost of insurance per exposure unit, whether expressed as a single number or separately as prospective loss cost and loss cost adjustment, prior to any application of individual risk variations as permitted by WAC 284-24-100, and does not include minimum premiums or supplementary rating information.

(f) "Supplementary rating information" means any manual or plan of policy writing rules, rating rules, classification

system, territory codes and descriptions, rating plans, and any other similar information needed to determine the applicable premium for an insured. It includes factors and relativities, such as increased limits factors, package modification factors, classification relativities, and deductible relativities.)

AMENDATORY SECTION (Amending Matter No. R 2003-05, filed 10/31/05, effective 1/1/06)

WAC 284-24-065 Demonstration that rates satisfy the requirements of RCW 48.19.020. (1) When an insurer or rating organization files rates with the commissioner, it must demonstrate that the proposed rates satisfy the requirements of chapter 48.19 RCW. RCW 48.19.020 requires that premium rates for insurance ~~((shall))~~ are not ~~((be))~~ excessive, inadequate, or unfairly discriminatory. A rate is reasonable and not excessive, inadequate, or unfairly discriminatory if it is an actuarially sound estimate of the expected value of all future costs associated with an individual risk transfer. Such costs include claims, claim settlement expenses, operational and administrative expenses, and the cost of capital.

(2) For the purposes of this section, "operating ratio" means the sum of after-tax underwriting profit (or loss) and after-tax investment income on assets corresponding to unearned premium reserves and loss and loss adjustment expense reserves, divided by premium.

(3) For liability insurance, if the increased limits factors include risk loads, the proportion of the expected premium (net of expenses) arising from the risk loads for all policy limits ~~((shall))~~ must be included in the expected underwriting profit or loss.

(4) ~~((Rates are not considered))~~ The commissioner will not consider rates excessive if the expected operating ratio corresponding to the proposed rate level is less than or equal to five percent.

(5) ~~((Rates are not considered))~~ The commissioner will not consider rates inadequate if the expected operating ratio corresponding to the proposed rate level is greater than or equal to zero.

(6) When an insurer, advisory organization, or rating organization files rates for which the expected operating ratio corresponding to the proposed rate level is less than zero or greater than five percent, it must demonstrate that the proposed rates are consistent with the principles stated in subsection (1) of this section. In other words, the insurer or rating organization must show how it has accounted for all expected costs, including claims, claim settlement expenses, operational and administrative expenses, and the cost of capital.

AMENDATORY SECTION (Amending Matter No. R 98-4, filed 10/7/98, effective 11/7/98)

WAC 284-24-070 ~~((Modification of filing requirements—Refer to company rating))~~ Rules for risks if there are no rate manuals. (1) Under RCW 48.19.080, the commissioner may waive insurance rate filing requirements in chapter 48.19 RCW ~~((are modified as to classes of policies))~~. Except as described in subsection (2) of this section, the commissioner will waive rate filing requirements for individual risks or classes of insurance for which the insurer has no classification plan, rate, guide rate, range of rates or rating

rule ~~((except as described in subsection (2) of this section. These classes may include))~~. This section applies to these classes of insurance:

(a) A class in which risks are so different from each other that no rate or range of rates could be representative of all;

(b) A class that does not develop enough loss experience to warrant any credibility for ratemaking purposes; ~~((and))~~ or

(c) Policies involving a new product or coverage for which there is no appropriate analogy to similar exposures for ratemaking purposes.

(2) ~~((Every))~~ A rating rule for ~~((such classes of policies shall))~~ the classes of insurance described in subsection (1) of this section must be ~~((included in an appropriate rate manual and))~~ filed with the commissioner. ~~((Such a))~~ The rating rule ~~((shall consist only of a notation of))~~ must display the symbol "(a)" or include a statement that risks in the class ~~((shall))~~ must be submitted to the insurer for rating.

(3) The insurer's rating of a refer-to-company risk ~~((shall))~~ must be based on a documented underwriting analysis of:

(a) Specific ~~((definable))~~ characteristics related to potential for loss ~~((potential characteristics))~~;

(b) Analogy to similar exposures~~((;))~~;

(c) Available loss frequency and severity data.

(4) Examples of unclassified risks for which "(a)" or refer-to-company rating is appropriate ~~((refer to company))~~ risks include but are not limited to:

(a) Manufacturing and construction risks, such as:

(i) Ammunition manufacturing~~((;))~~;

(ii) Dam construction~~((;))~~;

(iii) Irrigation works operation~~((;))~~; and

(iv) Logging railroad—operation and maintenance.

(b) Owners, landlord and tenants risks, such as:

(i) Amusement devices, designed for small children only, not otherwise classified (NOC)~~((;))~~;

(ii) Christmas tree lots—open air~~((;))~~;

(iii) Bleachers or grandstands~~((;))~~;

(iv) Dude ranches~~((;))~~;

(v) Firing ranges—indoor~~((;))~~;

(vi) Parks or playgrounds~~((;))~~; and

(vii) Zoos.

(c) Product risks, such as:

(i) Aircraft or aircraft parts manufacturing~~((;))~~;

(ii) Ball or roller bearing manufacturing~~((;))~~;

(iii) Chemical manufacturing—household—NOC~~((;))~~;

(iv) Discontinued operations—products~~((;))~~;

(v) Electronic component manufacturing~~((;))~~;

(vi) Firearms manufacturing—over .50 caliber~~((;))~~;

(vii) Instrument manufacturing—NOC~~((;))~~;

(viii) Levee construction~~((;))~~;

(ix) Machinery or machinery parts manufacturing~~((;))~~;

(x) Pharmaceutical or surgical goods manufacturing~~((;))~~;

(xi) Products—NOC~~((;))~~;

(xii) Sign manufacturing—NOC~~((;))~~;

(xiii) Tank manufacturing—metal—not pressurized~~((;))~~;

(xiv) Textile coating or impregnating~~((;))~~;

(xv) Tool manufacturing—hand type—powered~~((;))~~;

(xvi) Valves manufacturing~~((;))~~;

(xvii) Wheels manufacturing~~((;))~~;

(xviii) Wire goods manufacturing—NOC~~((;))~~; and

(xix) Wood products manufacturing—NOC.

(5) Insurers writing risks subject to this ~~((regulation shall maintain))~~ section must keep separate documentation, including loss experience, on each risk written and ~~((shall be prepared to))~~ must provide ~~((such))~~ the documentation to the ~~((insurance))~~ commissioner upon request.

AMENDATORY SECTION (Amending Matter No. R 98-4, filed 10/7/98, effective 11/7/98)

WAC 284-24-080 Rate filings ~~((required for certain))~~ rule for inland marine risks. Under RCW 48.19.030 and 48.19.070 ~~((recognize that))~~, insurers are not required to file rates with the commissioner for certain inland marine risks ~~that~~ are ~~((by general custom of the business))~~ not written according to manual rates or rating plans. The following inland marine classes of risks, ~~which~~ are ~~((, however, by general custom of the business))~~ characterized by large numbers of insureds and homogeneous loss exposure, are written according to manual rates or rating plans ~~((, and, therefore, manual))~~ and must be filed under chapter 48.19 RCW. Manual rates, classification or rating plans ~~((applicable))~~ that apply to the following types of risks ~~((shall))~~ must be filed with the commissioner:

(1) Accounts receivable ~~((and valuable papers and records,))~~ coverage;

(2) Agricultural machinery, farm equipment and livestock ~~((floaters,))~~ coverage;

(3) Bicycle floater~~(-);~~

(4) Boatowners' insurance or coverage for pleasure boats twenty-six feet and under in length;

(5) Camera~~((s,))~~ floater;

~~((5))~~ (6) Camera and musical instrument dealers~~(-);~~

~~((6))~~ (7) Commercial articles coverage (photographic equipment and musical instruments);

(8) Communications equipment, including cell phones, pagers, and portable personal computers;

(9) Equipment dealers~~(-)~~ coverage;

(10) Film coverage form;

(11) Fine arts private collections;

(12) Floor plan merchandise coverage;

(13) Fur dealers;

~~((7))~~ (14) Hardware ~~((and implement dealers floater,))~~ dealers;

~~((8))~~ (15) Implement dealers ~~((stock floater,))~~

~~(9) Fine arts (private collections);~~

~~(10) First class mail;~~

~~(11) Floor plan;~~

~~(12) Furriers' block;~~

~~(13) Furriers' customers,);~~

~~((14))~~ (16) Garment contractors~~(-);~~

~~((15))~~ (17) Golfer's equipment floater~~(-);~~

~~(16) Musical instruments;~~

~~(17) Negative film floater;~~

~~(18) Neon signs,);~~

~~((19))~~ (18) Jewelry dealers;

(19) Mail coverage;

(20) Personal articles floater~~(-);~~

~~((20))~~ (21) Personal effects~~(-)~~ floater;

~~((21))~~ (22) Personal furs or fur floater~~(-);~~

~~((22))~~ (23) Personal jewelry or jewelry floater~~(-);~~

~~((23))~~ (24) Personal property floater~~(-);~~

~~((24))~~ (25) Physicians' and surgeons' equipment ~~((floater,))~~ coverage;

~~((25) Registered mail,))~~ (26) Signs coverage;

~~((26))~~ (27) Silverware floater~~(-);~~

~~((27))~~ (28) Stamp and coin collection floater~~(-);~~

~~(28) Theatrical floater;~~

~~(29) Tourist baggage,);~~

~~((30))~~ (29) Travel ~~((baggage (issued in combination with)) coverage other than accident and sickness ((insurance,))~~);

~~((31) Wedding presents,))~~ (30) Valuable papers and records; and

~~((32) Boatowners' and/or boats twenty-six feet and under in length that are used for pleasure,))~~ (31) Wedding presents.

AMENDATORY SECTION (Amending Matter No. R 98-4, filed 10/7/98, effective 11/7/98)

WAC 284-24-100 ~~((Standards for))~~ Schedule rating plan~~(s)~~ rules. (1) ~~An insurer may file a schedule rating plan ((shall apply only to those classes of insurance (-)) for the following monoline or packaged ((- commonly known as commercial vehicle, commercial general casualty, commercial inland marine, commercial fidelity, surety, commercial crime, and commercial property)) types or subtypes of insurance:~~

(a) Commercial automobile;

(b) Commercial crime;

(c) Commercial fidelity and surety;

(d) Commercial general liability;

(e) Commercial inland marine;

(f) Commercial multiperil; and

(g) Commercial property.

(2) A schedule rating plan ~~((shall))~~ must provide for no more than a twenty-five percent credit (reduction) or debit (charge). A schedule rating plan ~~((shall))~~ must not be combined with other rating plans or rating rules in such a way that the schedule rating affects the premium by more than twenty-five percent.

(3) ~~((Any))~~ If an expense modification rule ~~((which))~~ does not prescribe specific credits or debits for particular situations ~~((is considered to be))~~ the commissioner will consider it similar to schedule rating. In ~~((such a))~~ this case, the combined effect of schedule and expense modifications ~~((shall))~~ must not exceed twenty-five percent.

(4) If an expense modification plan prescribes specific credits for particular situations, ~~((-))~~ such as various premium size ranges or commission levels~~(+)~~, the insurer is not required to include these credits or debits ~~((are not included))~~ in the twenty-five percent schedule rating maximum.

(5) A schedule rating plan must provide for an objective analysis or risk by the insurer ~~((of the risk))~~ and be based on specific ~~((factual))~~ information ~~((supporting))~~ that support the rating decision. ~~((Items such as the following may be considered:))~~ An insurer may consider these types of risk factors:

(a) Management capacity for loss control and risk improvement, including financial and operating performance.

(b) Condition and upkeep of premises and equipment.

(c) Location of risk and suitability of occupancy.

(d) Quality of fire and police protection.

(e) Employee training, selection, supervision, or similar elements.

(f) Type of equipment.

(g) Safety programming.

(h) Construction features and maintenance.

(i) Classification variances, including differences from average hazards.

(6) If a risk is rated below average (debited) under a schedule rating plan, the insurer must advise an insured or applicant, upon timely request, ~~((will be advised by the insurer))~~ of the factors ~~((which resulted in))~~ that led to the adverse rating so that the insured or applicant ~~((will be fairly apprised of any))~~ can take appropriate corrective action ~~((that might be appropriate with respect to the insurance risk))~~.

(7) ~~((A))~~ The insurer must administer each schedule rating plan ~~((shall be administered))~~ equitably and ~~((applied))~~ apply it fairly to every eligible ~~((risk which an insurer elects to insure))~~ applicant or insured.

~~((Records supporting))~~ (8) The insurer must keep documentation that supports the development of individual risk modifications ~~((shall be retained by the insurer))~~ for ~~((a minimum))~~ the later of three years or ~~((until))~~ the ~~((conclusion))~~ end of the next regular examination conducted by ~~((the))~~ its home state insurance ~~((department of its domicile, whichever is later, and made))~~ regulator.

(a) The insurer must make these documents available ~~((at all reasonable times))~~ for ~~((the commissioner's))~~ examination by the commissioner upon request.

(b) The records must include copies of all documentation used in ~~((making each particular determination))~~ the development of each individual risk modification, even ~~((though))~~ if a credit or debit ~~((may))~~ does not result.

AMENDATORY SECTION (Amending Matter No. R 98-4, filed 10/7/98, effective 11/7/98)

WAC 284-24-110 ((Effect of changes to)) An insurer must make a rate filing to change zip code boundaries. (1) An insurer ~~((shall))~~ must not change an insured's rates solely because the insured's zip code has been changed by the United States Postal Service. This section ~~((shall))~~ does not ~~((be construed to))~~ prohibit insurers from using zip codes to define rating territories. ~~((However,))~~

(2) The zip code boundaries ~~((in effect at the time an insurer makes a rate filing defining the territories shall))~~ approved by the commissioner determine the physical boundaries of ~~((these territories))~~ each territory. ~~((These))~~ The insurer must make a new rate filing to change the physical boundaries ~~((can be changed only by the insurer's subsequent rate filings))~~ of a rating territory.

NEW SECTION

WAC 284-24-115 Effective date rules. (1) Filers must include a common effective date for all rates submitted in a

filing. If a filer includes a request in the filing, an insurer may use a different effective date for renewal policies, subject to a maximum interval of sixty days.

(2) The proposed effective date must be a specific date.

(a) Vague statements, such as one that says the insurer will implement a filing thirty days after approval is not specific, and does not comply with this section.

(b) If an insurer is filing a new program or optional coverage, the filer may request an effective date concurrent with the commissioner's approval.

(3) The proposed effective date must be consistent with Washington law. Rates filed under RCW 48.19.043 must propose an effective date no more than thirty days before the date filed.

(4) If an insurer revises the effective date of a filing, the commissioner must receive the request in SERFF before the original effective date of the filing.

AMENDATORY SECTION (Amending Matter No. R 2006-12, filed 4/17/07, effective 5/18/07)

WAC 284-24-120 ((Suspension of)) Rate filing requirements((—)) are suspended for large commercial accounts. (1) Under RCW 48.19.080, the commissioner will suspend the rate filing requirements in chapter 48.19 RCW ~~((are suspended with respect to))~~ for large commercial property and casualty accounts.

(2) For purposes of this section, "large commercial property and casualty account" means property and casualty insurance ~~((coverage))~~ as defined in WAC 284-24-001(10) that~~((:~~

(a) Involves the lines of property and casualty insurance defined in RCW 48.11.040, 48.11.050, 48.11.060, 48.11.070, and/or 48.11.080; and

(b) is purchased by a business, not-for-profit organization, or public entity with enough insurance buying experience to negotiate with insurers in a largely unregulated environment and that meets any two of the following criteria:

((i)) (a) Annual premiums of one hundred thousand dollars or more, excluding workers compensation insurance issued by the department of labor and industries and types of insurance listed in subsection (6) of this section;

((ii)) (b) Net revenues or sales in excess of one hundred million dollars;

((iii)) (c) More than two hundred employees;

((iv)) (d) Net worth over fifty million dollars;

((v)) (e) Is a not-for-profit organization or public entity with an annual budget or assets of at least forty-five million dollars;

((vi)) (f) Is a municipality with a population over fifty thousand.

(3) Before an insurer issues coverage ~~((in reliance on))~~ under this section, the insurer or its ~~((agent shall))~~ insurance producer must notify the insured in writing that the rates have not been and will not be filed ~~((for the commissioner's))~~ with the commissioner for approval.

(4) ~~((Property))~~ The Washington Insurance Examining Bureau will not audit rates used on large commercial property casualty accounts ~~((will not be audited by the Washington Insurance Examining Bureau))~~ under WAC 284-20-006.

(5) The commissioner (~~retains the right and ability to~~) may examine (~~the~~) rates used (~~on~~) for pricing large commercial property and casualty accounts to (~~ascertain whether~~) determine if they meet the requirements of (~~RCW 48.19.020 and other statutes~~) chapter 48.19 RCW and Title 284-24 WAC. (~~The insurer shall maintain records supporting~~) If an insurer relies on this section to issue a policy, the insurer must keep supporting documentation for the (~~rating~~) underlying rates and final premium determination (~~of each policy issued in reliance on this section. These records shall be retained by the insurer~~) for a minimum of three years after the policy is issued and (~~made~~) make it available (~~at all reasonable times for~~) to the commissioner (~~'s examination~~) upon request.

(6) Subsection (1) of this section does not apply to:

(a) Professional liability insurance, including (~~medical malpractice~~) all types of malpractice and errors and omissions insurance;

(b) (~~Directors' and officers' liability insurance purchased by individuals~~);

(~~e~~) Reimbursement insurance policies that (~~reimburse~~) indemnity service contract providers or protection product guarantee providers for contractual obligations assumed under a service contract or protection product guarantee; and

(~~d~~) Master policies under which certificates of coverage are issued to individual consumers, households, businesses, or other organizations.

Chapter 284-58 WAC

~~(REGULATIONS PERTAINING TO)~~ LIFE AND DISABILITY FORM AND RATE FILINGS

NEW SECTION

WAC 284-58-005 Definitions that apply to this chapter. The definitions in this section apply throughout this chapter.

(1) "Complete filing" means a package of information containing insurance forms, supporting information, documents and exhibits submitted to the commissioner electronically using the System for Electronic Rate and Form Filing (SERFF).

(2) "Credit insurance" means the types of insurance defined in RCW 48.34.030 (1) and (2).

(3) "Date filed" means the date a complete filing has been received and accepted by the commissioner.

(4) "Disability insurance" means the same as in RCW 48.11.030.

(5) "Filer" means a person, organization or other entity that files insurance forms or rates with the commissioner for an insurer.

(6) "Insurance" means the same as in RCW 48.01.040.

(7) "Insurer" means an insurer defined in RCW 48.01.-050 that has been issued a certificate of authority by the commissioner under chapter 48.05 RCW.

(8) "Life insurance" means the same as in RCW 48.11.020.

(9) "NAIC" means the National Association of Insurance Commissioners.

(10) "Objection letter" means correspondence created in SERFF and sent by the commissioner to the filer that:

(a) Requests clarification, documentation or other information;

(b) Explains errors or omissions in the filing; or

(c) Disapproves a form under RCW 48.18.110.

(11) "Rate" or "rates" means all classification manuals, rate or rule manuals, rating plans, rating schedules, minimum rates, class rates, and rating rules that insurers must file under RCW 48.19.010(2) and 48.34.100.

(12) "SERFF" means the System for Electronic Rate and Form Filing. SERFF is a proprietary NAIC computer-based application that allows insurers and other entities to create and submit rate, rule and form filings electronically to the commissioner.

(13) "Type of insurance" means a specific type of insurance listed in the *Uniform Life, Accident and Health, Annuity and Credit Coding Matrix* published by the NAIC and available at www.naic.org.

AMENDATORY SECTION (Amending Matter No. R 98-11, filed 6/16/98, effective 7/17/98)

WAC 284-58-010 (~~Title and~~) Purpose of this chapter. (~~(1)~~) This chapter (~~, WAC 284-58-010 through 284-58-260, shall be known and may be cited as~~) contains the Washington state life, disability and credit insurance form and rate filing requirements.

(~~2~~) The purpose of this chapter is to adopt processes and procedures for insurers and filers to use when submitting life, disability and credit insurance products with the commissioner. Rules in this chapter:

(~~a~~) (1) Establish the necessary contents of a form filing (~~, including the documents to be used in connection with a form filing~~);

(b) Designate the types of policy forms which may not be filed by certification under RCW 48.18.100(2); and

(~~e~~) With respect to disability insurance);

(2) Establish the filing requirements (~~with respect to manuals of classification, manual of rules and rates, and modifications thereof~~) for credit and disability insurance classification plan and rate and rule manuals; and

(3) Effective February 1, 2009, designate SERFF as the method by which filers must submit life, credit and disability filings to the commissioner.

AMENDATORY SECTION (Amending Matter No. R 98-11, filed 6/16/98, effective 7/17/98)

WAC 284-58-020 Scope of this chapter. (1) This (~~regulation~~) chapter applies to all life and disability insurers (~~(and to all forms required to be filed with the commissioner)~~) that must file forms and rates under RCW 48.18.100, (~~(and to all manuals of classification, manuals of rules and rates and modifications required to be filed with respect to disability insurance under RCW)~~) 48.19.010(2) and 48.34.-100.

(2) Under RCW 48.18.100 (~~establishes three basic types of form filings. The first type contemplates the approval of~~

the commissioner. The second type contemplates a filing containing a certification, which permits the insurer to use the form without approval, immediately after the filing. The third type, for commercial property casualty forms, permits the insurer to use forms thirty days before filing. The first, or approval, type of filing requires the commissioner to act within thirty (or forty-five days, if extended under RCW 48.18.100(3)), and, if the form has not been either approved or disapproved during such time period, the form is deemed approved and may be used by the insurer. In either case), the commissioner is required to act within thirty days to approve or disapprove a form. The commissioner may extend the review period to forty-five days under RCW 48.18.100(3). If the commissioner does not act within the review period, the form is deemed approved and the insurer may use the form. The commissioner may subsequently withdraw approval (or stop the use) of a form for cause.

NEW SECTION

WAC 284-58-023 Certification process does not apply to life, disability or credit insurance forms. Insurers may not use the certification process described in RCW 48.18.100(2) to file life, disability or credit insurance forms. Insurers must file these forms under RCW 48.18.100(1) or 48.34.100.

NEW SECTION

WAC 284-58-025 Filing instructions that are incorporated into this chapter. SERFF is a dynamic application that the NAIC will revise and enhance over time. To be consistent with NAIC filing standards and provide timely instructions to filers, the commissioner will incorporate documents posted on the SERFF web site into this chapter. By reference, the commissioner incorporates these documents into this chapter:

- (1) The *SERFF Industry Manual* posted on the SERFF web site (www.serff.com); and
- (2) The *Washington State SERFF Life and Disability Rate and Form Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

AMENDATORY SECTION (Amending Matter No. R 96-1, filed 5/2/96, effective 6/2/96)

WAC 284-58-030 General ((contents of all life and disability)) form and ((disability)) rate filing(★) rules. (1) Each credit, life or disability insurance form or rate filing must be submitted to the commissioner((, whether for approval or by certification, shall be submitted with the filing transmittal form prescribed by and available from the commissioner. Use of a standardized transmittal form makes it easier for the commissioner to identify filings, issuers, and other important identifying information; permits more efficient tracking of filings; and makes it less difficult to provide status reports of filings to persons outside the office. The form will include the name of the filing entity, its address, identification number, the type of filing being submitted, the form name or group name and number, and other relevant information. In addition, the filing shall include:

(1) One filing report as required by WAC 284-58-040 and, if applicable, a certification prepared pursuant to WAC 284-58-190 or 284-58-210, as appropriate.

(2) The printed form or forms, completed in John Doe fashion if appropriate.

(3) Rates, manuals of classification, manuals of rules and rates and modifications thereof, if appropriate.

(4) Actuarial memorandum of nonforfeiture values, if appropriate.

(5) Actuarial demonstration of anticipated loss ratio, if appropriate.

(6) Any additional data or information requested by the commissioner) electronically using SERFF.

(a) Every form filed in SERFF must be attached to the form schedule.

(b) Filers must send all written correspondence related to a form or rate filing in SERFF.

(2) All filed forms must be legible for both the commissioner's review and retention as a public record. Filers must submit new or revised forms to the commissioner for review in final form displayed in ten-point or larger type.

(3) Filers must submit complete filings that comply with the *SERFF Industry Manual* posted on the SERFF web site (www.serff.com) and the *Washington State Life and Disability Form Filing General Instructions* posted on the commissioner's web site (www.insurance.wa.gov).

(4) Filers must submit separate filings for each type of insurance. This section does not apply to:

(a) Credit insurance filings made under RCW 48.34.040:

or

(b) Group insurance where different types of insurance are incorporated into a single certificate.

NEW SECTION

WAC 284-58-033 Specific rate filing rules. (1) If a rate filing is required under RCW 48.19.010(2) or 48.34.100, it must be submitted:

- (a) Separate from any corresponding form filing; and
- (b) Concurrently with the corresponding form filing if new forms are being introduced.

(2) Each rate filing must include, if appropriate:

- (a) Rates, manuals of classification, manuals of rules and rates and modifications thereof;
- (b) Actuarial memorandum of nonforfeiture values;
- (c) Actuarial demonstration of anticipated loss ratio; and
- (d) Any additional data or information requested by the commissioner.

NEW SECTION

WAC 284-58-037 The commissioner may reject filings. (1) The commissioner may reject and close any filing that does not comply with WAC 284-58-030 or 284-58-033. If the commissioner rejects a filing, the insurer has not filed forms or rates with the commissioner.

(2) If the commissioner rejects a filing and the filer resubmits it as a new filing, the date filed will be the date the commissioner receives and accepts the new filing.

NEW SECTION

WAC 284-58-043 Filing authorization rules. An insurer may authorize a third-party filer to file forms or rates on its behalf. For the purposes of this section, a "third-party filer" means a person or entity in the business of providing insurance regulatory compliance services.

(1) If an insurer delegates filing authority to a third-party filer, each filing must include a letter as supporting documentation signed by an officer of the insurer authorizing the third-party filer to make filings on behalf of the insurer.

(2) The insurer may not delegate responsibility for the content of a filing to a third-party filer. The commissioner considers errors and omissions made by the third-party filer to be errors and omissions of the insurer.

(3) If a third-party filer has a pattern of making filings that do not comply with this chapter, the commissioner may reject a delegation of filing authority from the insurer.

NEW SECTION

WAC 284-58-047 Rules for responding to an objection letter. An objection letter may ask the filer to revise a noncompliant form or rate filing or provide clarification or additional information. The objection letter will state the reason(s) for disapproval, including relevant case law, statutes and rules. Filers must:

(1) Provide a complete response to an objection letter. A complete response must include:

(a) A separate response to each objection, and if appropriate;

(b) A description of changes proposed to noncompliant forms, and a replacement form attached to the form schedule; or

(c) Revised exhibits and supporting documentation.

(2) Respond to the commissioner in a timely manner.

NEW SECTION

WAC 284-58-053 Rules for revised or replaced insurance policy forms. If an insurer files a revised or replaced form, the filer must provide the supporting documentation described below:

(1) If a form is revised due to an objection(s) from the commissioner, the filer must provide a detailed explanation of all material changes to the disapproved form.

(2) If a previously approved form is replaced with a new version, the filer must submit an exhibit that marks and identifies each change or revision to the replaced form using one of these methods:

(a) A draft form that strikes through deletions and underlines additions or changes in the form;

(b) A draft form that includes comments in the margins explaining the changes in the forms; or

(c) A side-by-side comparison of current and proposed policy language.

NEW SECTION

WAC 284-58-057 Effective date rules. (1) Filers must include a common approval date for all forms or rates submitted in a filing.

(2) Filers may submit a request to change the approval date of a filing as a note to reviewer.

NEW SECTION

WAC 284-58-061 Reference copies of amendatory endorsements. If an insurer will use a previously approved Washington amendatory endorsement with a new form, the filer must:

(1) Provide a copy of the amendatory endorsement attached as supporting documentation; or

(2) Include the SERFF tracking number under which the endorsement was filed and approved in the filing description; and

(3) Explain how the insurer will use the amendatory endorsement with the new form.

NEW SECTION

WAC 284-58-066 Rules that apply to insurance forms translated from English to another language. Insurers may issue insurance policy forms written in languages other than English.

(1) If an insurer translates an insurance policy form from English to another language, the insurer must:

(a) File the translated version of the form.

(b) Include written disclosure statements on the translated policy form that the insurer is issuing the translated form on an informational basis and the English version is controlling for the purposes of application and interpretation. The disclosure statements must be in English and the language of the translated form and printed in bold face type of at least twelve-point font.

(c) Submit a certification with the filing by an officer employed by the insurer that the insurer will issue the English version of the policy form with the translated policy form.

(2) When filing a translated policy form, the filer must:

(a) Identify the approved English version of the policy form by providing, as applicable, the:

(i) SERFF filing number;

(ii) Form number, edition date or edition identifier; and

(iii) Effective date of the filing.

(b) Submit certification by a professional translator certified by the American Translators Association or a comparable organization that the:

(i) Translator has translated the English version of the form; and

(ii) Translation is accurate.

(3) The commissioner will file but not review or approve translated insurance policy forms.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 284-58-070	General designation of life and disability forms which may not be filed by certification.
WAC 284-58-080	Individual disability insurance forms, certification not permitted.
WAC 284-58-090	Group disability insurance forms, certification not permitted.
WAC 284-58-100	Group disability insurance forms which may be filed by certification.
WAC 284-58-110	Blanket disability insurance forms, certification not permitted.
WAC 284-58-120	Blanket disability insurance forms which may be filed by certification.
WAC 284-58-130	Individual life insurance and annuity forms, certification not permitted.
WAC 284-58-140	Individual life insurance and annuity forms which may be filed by certification.
WAC 284-58-150	Group life insurance and annuity contract forms, certification not permitted.
WAC 284-58-160	Group life insurance and annuity forms which may be filed by certification.
WAC 284-58-170	Credit insurance forms, certification not permitted.
WAC 284-58-180	Fraternal benefit society forms.
WAC 284-58-190	Certification form to be used for disability insurance form filings.
WAC 284-58-200	Form to be used for certification of disability insurance form or rate filings.
WAC 284-58-210	Certification form to be used for life insurance and annuity form filings.
WAC 284-58-220	Form to be used for certification of life insurance or annuity form filings.

WAC 284-58-250

General contents of a form filing for property and casualty insurance and kinds of insurance other than life and disability.

WAC 284-58-260

Designation of forms for insurances which may not be filed by certification.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 284-20-100

Modification of form filing requirements.

WAC 284-20-150

Rules that exempt certain commercial property casualty forms from filing requirements.

WSR 08-21-092**PERMANENT RULES****ENERGY FACILITY SITE
EVALUATION COUNCIL**

[Filed October 15, 2008, 11:56 p.m., effective November 15, 2008]

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

Purpose: The purpose of adopting chapter 463-61 WAC is to adopt a mandatory preapplication process required prior to filing an application with the energy facility site evaluation council to site electrical transmission lines that are 115 kilovolts or greater as provided in RCW 80.50.330 as well as identify the requirements for submitting an application for site certification and the costs associated with the preapplication and application process for electrical transmission facilities.

Statutory Authority for Adoption: Chapter 80.50 RCW.

Other Authority: RCW 80.50.040.

Adopted under notice filed as WSR 08-16-093 on August 5, 2008.

Changes Other than Editing from Proposed to Adopted Version: In response to public comments clarifying changes were made to several sections of the proposed rule. There were no substantive changes.

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 11, Amended 0, Repealed 0.

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

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

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

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

Date Adopted: October 15, 2008.

Allen J. Fiksdal
Manager

Chapter 463-61 WAC

ELECTRICAL TRANSMISSION FACILITIES

NEW SECTION

WAC 463-61-010 Purpose. This chapter describes the preapplication process that is mandatory prior to filing an application and the requirements for applications to site electrical transmission facilities.

NEW SECTION

WAC 463-61-020 Definitions. The following definitions apply when these terms are used in the provisions of this chapter:

"EFSEC" means the energy facility site evaluation council and where appropriate the EFSEC staff.

"Facilities" means those energy transmission facilities described in RCW 80.50.060 and WAC 463-61-030.

"Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to chapter 35.63, 35A.06, 36.70, or 36.70A RCW, or as otherwise designated by chapter 325, Laws of 2007.

"Modification" means a significant change to an electrical transmission facility which does not include any of the following:

(a) Minor improvements such as the replacement of existing transmission line facilities or supporting structures with equivalent facilities or structures;

(b) The relocation of existing electrical transmission line facilities within the existing corridor;

(c) The conversion of existing overhead lines to underground; or

(d) The placement of new or additional conductors, supporting structures, insulators, or their accessories on or replacement of supporting structures already built.

"National interest electric transmission corridor" means a transmission corridor identified by the U.S. Department of Energy pursuant to section 1221 of the 2005 Energy Policy Act.

"Preapplicant" means a person considering applying for a site certificate agreement for an electrical transmission facility.

"Preapplication process" means the process which is initiated by written request by a preapplicant to EFSEC, a preapplicant's initial consultation with EFSEC, and the activities conducted under WAC 463-61-050.

"Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapter 35.63, 35A.63, 36.70, or 36.70A RCW, or Article

XI of the state Constitution, or as otherwise designated by chapter 325, Laws of 2007.

NEW SECTION

WAC 463-61-030 Applicability. (1) The provisions of this chapter apply to the construction, reconstruction, or modification of electrical transmission facilities in each of the following circumstances:

(a) The facility is located in a national interest electric transmission corridor as specified in RCW 80.50.045.

(b) The applicant(s) or preapplicant(s) choose to seek certification under RCW 80.50.060 and the facility:

(i) Has a nominal voltage of at least one hundred fifteen thousand volts; and

(ii) Is proposed to be located in a completely new corridor which is located in more than one jurisdiction where at least one such jurisdiction has promulgated land use plans or zoning ordinances. The location of the terminus of the facility or the location of an interconnection between the facility and the existing electrical transmission grid in an existing corridor does not disqualify a facility from consideration under this subsection.

(c) The applicant(s) or preapplicant(s) choose to seek certification under RCW 80.50.060 and the facility:

(i) Has a nominal voltage in excess of one hundred fifteen thousand volts; and

(ii) Is proposed to be located outside an existing or designated electrical transmission corridor identified in (a) or (b) of this subsection.

(2) This section does not apply to normal maintenance and repairs which do not increase the capacity or dimensions beyond those specified in this section.

NEW SECTION

WAC 463-61-040 Initial consultation. Prior to filing a preapplication request under WAC 463-61-050, the preapplicant shall meet and consult with the EFSEC staff concerning the proposed project. Topics for discussion shall include but not be limited to:

(1) The nature of the project, the contents of the preapplication request and the status of the preapplicant's progress toward obtaining information and data regarding the project.

(2) A discussion of whether a third-party contractor is likely to be needed to prepare an environmental documentation for the project.

(3) Development of a preapplication plan to be filed with a preapplication request.

(4) The coordination of the public informational meeting.

NEW SECTION

WAC 463-61-050 Preapplication process. The preapplication request shall be filed with EFSEC at the EFSEC's office and contain the following information:

(1) The name and mailing address of the preapplicant, including a contact name, address, telephone number, and e-mail address of the contact person.

(2) A description of the proposed transmission route and corridor, including location maps and plot plans to scale, showing all major components, including a description of zoning and site availability for any permanent facility, and including whether and to what extent the proposed project is located within a national interest electric transmission corridor.

(3) A description of the proposed right of way width for the transmission line, including the extent a new right of way will be required or an existing right of way will be widened.

(4) A description of the proposed transmission line structures and their dimensions.

(5) A description of the schedule desired for the project, including the expected application filing date, the expected beginning date for construction, and the expected project operational date.

(6) A list of the federal, state, tribal and local government entities, including mailing addresses, contact names, telephone numbers and e-mail addresses that have possible permitting responsibilities for the project (if the project proponents were not to choose the EFSEC review) or ownership of land on which the project will be located. The list shall also identify governmental entities that have requested the preapplicant to notify them of any application or preapplication for site certification.

(7) Information or data that may be available at a later date.

(8) A summary and timeline of any initial consultation to explain the proposal and/or request input from the EFSEC staff, federal, state and local agencies, tribal governments, property owners, and interested persons.

(9) A public participation plan that:

(a) Identifies specific tools and actions to facilitate stakeholder communications and public information, including an up-to-date project web site and a readily accessible, single point of contact within the company;

(b) Lists all central locations in each local government throughout the project area where the preapplicant shall provide copies of all their filings related to the proposed project; and

(c) Includes a description and schedule explaining how the preapplicant intends to respond to requests for information from the public as well as federal, state, local, and tribal agencies or any other legal entities that could have permitting requirements if the project proponents were not to choose the EFSEC review.

(10) A negotiation process acceptable to EFSEC between the preapplicant and the cities, towns, and/or counties through which the proposed transmission line corridor will be located except where the cities, towns, and/or counties have designated transmission corridors through their land use plans or zoning ordinances.

NEW SECTION

WAC 463-61-060 Commencement of preapplication process and public informational meeting. (1) Within three days of filing a preapplication request with EFSEC the preapplicant shall send notice to:

(a) All the towns, cities, and counties in which the proposed electric transmission line route is located;

(b) Persons or governmental agencies owning land that may be acquired for the project or in which an easement may be sought;

(c) Land owners within three hundred feet of the proposed corridor; and

(d) Tribal, federal and state permitting entities if the project proponents were not to choose the EFSEC review.

(2) The notice shall contain a brief summary of the proposed project, the preapplication and application process and tentative schedules, the locations where copies of the notice are located in each town, city and county traversed by the proposed transmission route and the address of a web site containing the proposed project information.

(3) The notice to each affected landowner shall be mailed to the address of record on file with the applicable county auditor and have an explanation of the rights an affected landowner has during an EFSEC application review and under applicable Washington eminent domain laws.

(4) Within sixty days after receipt of the preapplication fee, EFSEC shall conduct at least one public informational meeting. The public informational meeting shall be for the purpose of informing the public and interested entities of relevant information regarding the proposed electrical transmission facility.

(a) The public meeting, at a minimum, shall provide the details of the preapplication request and the preapplication plan including the use of exhibits and hand-outs.

(b) The preapplicant and EFSEC staff shall be available and prepared to answer questions.

(c) The meeting shall be scheduled to maximize the opportunity for attendance by the public and held at a location near the proposed transmission corridor. If the proposed transmission corridor crosses multiple counties EFSEC may hold additional preapplication public meetings along the proposed corridor.

(d) At least two weeks prior to the date of the public meeting, notice of the preapplication public meeting shall be published in newspapers of general circulation for each town, city and/or county where the site is proposed.

NEW SECTION

WAC 463-61-070 Corridors and transmission facilities considerations. (1) EFSEC shall consider and may recommend certification of electrical transmission facilities in corridors designated for this purpose by affected cities, towns, or counties where:

(a) Jurisdictions have identified electrical transmission facility corridors as part of their land use plans and zoning maps based on policies adopted in their plans.

(b) The proposed electrical transmission facility is consistent with any adopted development regulations that govern the siting of electrical transmission facilities in such corridors.

(c) Contiguous jurisdictions and jurisdictions in which related regional electrical transmission facilities are located have either prior to or during the preapplication process

undertaken good faith efforts to coordinate the locations of their corridors consistent with RCW 36.70A.100.

(2) If EFSEC determines that negotiations as required in WAC 463-61-080 have failed, EFSEC shall consider the applicant's proposed corridor and transmission facilities consistent with RCW 80.50.090 and 80.50.100 taking into consideration the positions of the preapplicant and the affected cities, towns or counties.

NEW SECTION

WAC 463-61-080 Negotiations between preapplicants, cities, towns and counties. (1) As required by RCW 80.50.330(2) if no corridor has been designated by a local government the preapplicant and affected cities, towns, and/or counties shall negotiate to designate a corridor for the electrical transmission facility.

(2) If after sixty days of negotiations between the preapplicant and affected cities, towns, and/or counties, no corridor has been agreed upon, the preapplicant together with an affected city, town, or county may request EFSEC extend the time of negotiations by a period of time that the preapplicant and city, town, and/or county have agreed upon. If such a joint request is not made, the negotiations shall be deemed failed.

NEW SECTION

WAC 463-61-090 Preapplication costs. (1) A preapplicant shall deposit with the state treasurer ten thousand dollars to be applied to the cost of the preapplication process as a condition for proceeding by EFSEC.

(2) EFSEC shall manage the preapplication costs using the structure outlined in RCW 80.50.071 as follows:

(a) The preapplicant shall pay all reasonable and necessary costs incurred by EFSEC and its members;

(b) EFSEC shall charge against deposits made by the preapplicant;

(c) EFSEC shall provide the preapplicant with estimates of expected costs;

(d) Any EFSEC costs in excess of the initial ten thousand dollars shall be agreed to by the preapplicant and deposited prior to EFSEC expenditure; and

(e) Any unexpended portions of funds deposited for the preapplication process shall be returned to the preapplicant or, if requested by the preapplicant, applied to the cost of EFSEC's review of an application for site certification.

NEW SECTION

WAC 463-61-100 Applications for site certification. (1) An application for site certification may be submitted when the preapplication process is completed. The preapplication process shall be complete when:

(a) EFSEC has held one or more public meetings under WAC 463-61-060(3); and

(b) Negotiations between affected cities, towns, and/or counties have been conducted and a corridor has been agreed on; or

(c) Negotiations under WAC 463-61-080 have been conducted but the preapplicant, cities, towns, and/or counties

have not agreed on a corridor and EFSEC has determined that negotiations have failed.

(2) Applications for site certification of electrical transmission lines under RCW 80.50.045 and 80.50.060 shall follow the guidelines for applications for site certification found in chapter 463-60 WAC.

NEW SECTION

WAC 463-61-110 EFSEC review. (1) EFSEC shall review the application for site certification of the proposed corridor and electrical transmission facilities consistent with the provisions of chapter 80.50 RCW.

(2) EFSEC shall consider the applicant's application for site certification and proposed corridor and electrical transmission facilities and shall make a recommendation consistent with RCW 80.50.100 and 80.50.110.

WSR 08-21-103

PERMANENT RULES

DEPARTMENT OF REVENUE

[Filed October 16, 2008, 1:12 p.m., effective November 16, 2008]

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

Purpose: WAC 458-20-102 (Rule 102) Resale certificates, has been revised to recognize that the requirement to renew a resale certificate every four years no longer applies. As of July 1, 2008, a resale certificate continues as long as the buyer has a "recurring business relationship" with the seller, which is defined by law as making at least one purchase from the seller within a period of twelve consecutive months.

The sample resale certificate has been eliminated from the rule, and the reader is referred to the department's telephone information center or web site for a certificate.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-102 Resale certificates.

Statutory Authority for Adoption: RCW 82.32.300, 82.32.291, and 82.01.060(2).

Adopted under notice filed as WSR 08-16-040 on July 29, 2008.

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

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

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

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

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

Date Adopted: October 16, 2008.

Janis P. Bianchi
Assistant Director
Interpretations and
Technical Advice Division

AMENDATORY SECTION (Amending WSR 04-17-024, filed 8/9/04, effective 9/9/04)

WAC 458-20-102 Resale certificates. (1) **Introduction.** This ~~((rule))~~ section explains the conditions under which a buyer may furnish a resale certificate to a seller, and explains the information and language required on the resale certificate. This ~~((rule))~~ section also provides tax reporting information to persons who purchase articles or services for dual purposes (i.e., for both resale and consumption).

(a) Legislation passed in 2003. In 2003, the legislature enacted legislation conforming state law to portions of the national Streamlined Sales and Use Tax Agreement (chapter 168, Laws of 2003), which eliminates the good faith requirement when the seller takes from the buyer a resale certificate and also eliminates signature requirements for certificates provided in a format other than paper. These changes apply to resale certificates taken on and after July 1, 2004.

(b) Legislation passed in 2007. Additional Streamlined Sales and Use Tax Agreement legislation was enacted in 2007 (chapter 6, Laws of 2007). It eliminates the provision that resale certificates are only valid for four years from the date they are issued to the seller, as long as there is a recurring business relationship between the buyer and seller. This change is effective on July 1, 2008.

(2) What is a resale certificate? The resale certificate is a document or combination of documents that substantiates the wholesale nature of a sale. The resale certificate cannot be used for purchases that are not purchases at wholesale, or where a more specific certificate, affidavit, or other documentary evidence is required by statute or other section of chapter 458-20 WAC. While the resale certificate may come in different forms, all resale certificates must satisfy the language and information requirements of RCW 82.04.470.

(a) What is the scope of a resale certificate? Depending on the statements made on the resale certificate, the resale certificate may authorize the buyer to purchase at wholesale all products or services being purchased from a particular seller, or may authorize only selected products or services to be purchased at wholesale. The provisions of the resale certificate may be limited to a single sales transaction, or may apply to all sales transactions ~~((for a period not to exceed four years from the effective date))~~ as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. Whatever its form and/or purpose, the resale certificate must be completed in its entirety and signed by a person who is authorized to make such a representation on behalf of the buyer.

(b) Who may issue and sign certificates? The buyer may authorize any person in its employ to issue and sign resale certificates on the buyer's behalf. The buyer is, however, responsible for the information contained on the resale certificate. A resale certificate is not required to be completed

by every person ordering or making the actual purchase of articles or services on behalf of the buyer. For example, a construction company that authorizes only its bookkeeper to issue resale certificates on its behalf may authorize both the bookkeeper and a job foreman to purchase items under the provisions of the resale certificate. The construction company is not required to provide, nor is the seller required to obtain, a resale certificate signed by each person making purchases on behalf of the construction company.

The buyer is responsible for educating all persons authorized to issue and/or use the resale certificate on the proper use of the buyer's resale certificate privileges.

(3) Resale certificate renewal. Prior to July 1, 2008, resale certificates must be renewed at least every four years. ((In addition,)) As of July 1, 2008, the requirement to renew resale certificates at least every four years has been eliminated. The buyer must renew its resale certificate whenever a change in the ownership of the buyer's business requires a new tax registration. (See WAC 458-20-101 Tax registration and tax reporting.) The buyer may not make purchases under the authority of a resale certificate bearing a tax registration number that has been cancelled or revoked by the department of revenue (department).

(4) Sales at wholesale. All sales are treated as retail sales unless the seller takes from the buyer a properly executed resale certificate. Resale certificates may only be used for sales at wholesale and may not be used as proof of entitlement to retail sales tax exemptions otherwise provided by law.

(a) When may a buyer issue a resale certificate? The buyer may issue a resale certificate only when the property or services purchased are:

(i) For resale in the regular course of the buyer's business without intervening use by the buyer;

(ii) To be used as an ingredient or component part of a new article of tangible personal property to be produced for sale;

(iii) A chemical to be used in processing an article to be produced for sale (see WAC 458-20-113 on chemicals used in processing);

(iv) To be used in processing ferrosilicon that is subsequently used in producing magnesium for sale;

(v) Provided to consumers as a part of competitive telephone service, as defined in RCW 82.04.065;

(vi) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use in the federal conservation reserve program or its successor administered by the United States Department of Agriculture; or

(vii) Feed, seed, seedlings, fertilizer, spray materials, or agents for enhanced pollination including insects such as bees for use by a farmer for producing for sale any agricultural product. (See WAC 458-20-210 on sales to and by farmers.)

(b) Required information. All resale certificates, whether paper or nonpaper format, must contain the following information:

(i) The name and address of the buyer;

(ii) The uniform business identifier or tax registration number of the buyer, if the buyer is required to be registered with the department;

(iii) The type of business;

(iv) The categories of items or services to be purchased at wholesale, unless the buyer is in a business classification that may present a blanket resale certificate as provided by the department by rule;

(v) The date on which the certificate was provided;

(vi) A statement that the items or services purchased either are purchased for resale in the regular course of business or are otherwise purchased at wholesale; and

(vii) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale certificate subjects the buyer to a penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law.

(c) **Additional requirements for paper certificates.** In addition to the requirements stated in (b) of this subsection (~~((4)(b) of this rule~~)), paper certificates must contain the following:

(i) The name of the individual authorized to sign the certificate, printed in a legible fashion;

(ii) The signature of the authorized individual; and

(iii) The name of the seller. RCW 82.04.470.

(5) **Seller's responsibilities (~~for acceptance of resale certificates~~).** When a seller receives and accepts from the buyer a resale certificate at the time of the sale, or has a resale certificate on file at the time of the sale, or obtains a resale certificate from the buyer within (~~a reasonable time~~) one hundred twenty days after the sale, the seller is relieved of liability for retail sales tax with respect to the sale covered by the resale certificate. The seller may accept a legible fax, a duplicate copy of an original resale certificate, or a certificate in a format other than paper. (~~The resale certificate will be considered to be obtained within a reasonable time of the sale if it is received within one hundred twenty days of the sale or sales in question.~~)

(a) If the seller has not obtained an appropriate resale certificate or other acceptable documentary evidence (see subsection (8) of this section), the seller is personally liable for the tax due unless it can sustain the burden of proving through facts and circumstances that the property was sold for one of the purposes set forth in subsection (4)(a) of this section. The department will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. It is the seller's responsibility to provide the information necessary to evaluate the facts and circumstances of all sales transactions for which resale certificates are not obtained. Facts and circumstances that should be considered include, but are not necessarily limited to, the following:

(i) The nature of the buyer's business. The items being purchased at wholesale must be consistent with the buyer's business. For example, a buyer having a business name of "Ace Used Cars" would generally not be expected to be in the business of selling furniture;

(ii) The nature of the items sold. The items sold must be of a type that would normally be purchased at wholesale by the buyer; and

(iii) Additional documentation. Other available documents, such as purchase orders and shipping instructions, should be considered in determining whether they support a finding that the sales are sales at wholesale.

(b) If the seller is required to make payment to the department, and later is able to present the department with proper documentation or prove by facts and circumstances that the sales in question are wholesale sales, the seller may in writing request a refund of the taxes paid along with the applicable interest. Both the request and the documentation or proof that the sales in question are wholesale sales must be submitted to the department within the statutory time limitations provided by RCW 82.32.060. (See WAC 458-20-229 Refunds.) However, refer to ((e)) (f) of this subsection in event of an audit situation.

((a)) (c) **Timing requirements for single orders with multiple billings.** If a single order or contract will result in multiple billings to the buyer, and the appropriate resale certificate was not obtained or on file at the time the order was placed or the contract entered, the resale certificate must be received by the seller within one hundred twenty days after the first billing (~~to be considered obtained within a reasonable time of the sale~~). For example, a subcontractor entering into a construction contract for which it has not received a resale certificate must obtain the certificate within one hundred twenty days of the initial construction draw request (~~to consider the resale certificate obtained in a reasonable time after the sale~~), even though the construction project may not be completed at that time and additional draw requests will follow.

((b)) (d) **Requirements for resale certificates obtained after (~~reasonable time has~~) one hundred twenty days have passed.** If the resale certificate is obtained more than one hundred twenty days after the sale or sales in question, the resale certificate must be specific to the sale or sales. The certificate must specifically identify the sales in question on its face, or be accompanied by other documentation signed by the buyer specifically identifying the sales in question and stating that the provisions of the accompanying resale certificate apply. A nonspecific resale certificate that is not obtained within (~~a reasonable period of time~~) one hundred twenty days is generally not, in and of itself, acceptable proof of the wholesale nature of the sales in question. The resale certificate and/or required documentation must be obtained within the statutory time limitations provided by RCW 82.32.050.

((e)) (e) **Examples.** The following examples explain the seller's documentary requirements in typical situations when obtaining a resale certificate more than one hundred twenty days after the sale. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(i) Beginning in January of year 1, MN Company regularly makes sales to ABC Inc. In June of the same year, MN discovers ABC has not provided a resale certificate. MN requests a resale certificate from ABC and, as the resale cer-

tificate will not be received within one hundred twenty days of many of the past sales transactions, requests that the resale certificate specifically identify those past sales subject to the provisions of the certificate. MN receives a legible fax copy of an original resale certificate from ABC on July 1st of that year. Accompanying the resale certificate is a memo providing a list of the invoice numbers for all past sales transactions through May 15th of that year. This memo also states that the provisions of the resale certificate apply to all past and future sales, including those listed. MN Company has satisfied the requirement that it obtain a resale certificate specific to the sales in question. ~~((As the provisions of this resale certificate apply to both past and future sales transactions, the certificate must be renewed no later than December 31st four years from the date the resale certificate became effective.))~~

(ii) XYZ Company makes three sales to MP Inc. in October of year 1 and does not charge retail sales tax. In the review of its resale certificate file in April of the following year, XYZ discovers it has not received a resale certificate from MP Inc. and immediately requests a certificate. As the resale certificate will not be received within one hundred twenty days of the sales in question, XYZ requests that MP provide a resale certificate identifying the sales in question. MP provides XYZ with a resale certificate that does not identify the sales in question, but simply states "applies to all past purchases." XYZ Company has not satisfied its responsibility to obtain an appropriate resale certificate. As XYZ failed to secure a resale certificate within a reasonable period of time, XYZ must obtain a certificate specifically identifying the sales in question or prove through other facts and circumstances that these sales are wholesale sales. (Refer to ~~((d))~~ (a) of this subsection for information on how a seller can prove through other facts and circumstances that a sale is a wholesale sale.) It remains the seller's burden to prove the wholesale nature of the sales made to a buyer if the seller has not obtained a valid resale certificate within one hundred twenty days of the sale.

~~((d) Seller's liability. If the seller has not obtained an appropriate resale certificate or other acceptable documentary evidence (see subsection (8) of this rule), the seller is personally liable for the tax due unless it can sustain the burden of proving through facts and circumstances that the property was sold for one of the purposes set forth in subsection (4)(a) of this rule. The department will consider all evidence presented by the seller, including the circumstances of the sales transaction itself, when determining whether the seller has met its burden of proof. This evidence must be presented within the statutory time limitations provided by RCW 82.32.060. It is the seller's responsibility to provide the information necessary to evaluate the facts and circumstances of all sales transactions for which resale certificates are not obtained. Facts and circumstances that should be considered include, but are not necessarily limited to, the following:~~

~~(i) The nature of the buyer's business. The items being purchased at wholesale must be consistent with the buyer's business. For example, a buyer having a business name of "Ace Used Cars" would generally not be expected to be in the business of selling furniture;~~

~~(ii) The nature of the items sold. The items sold must be of a type that would normally be purchased at wholesale by the buyer;~~

~~(iii) The quantity and frequency of items sold. The number of items sold and the frequency of sales must indicate that the buyer is purchasing such items at wholesale; and~~

~~(iv) Additional documentation. Other available documents, such as purchase orders and shipping instructions, should be considered in determining whether they support a finding that the sales are sales at wholesale.~~

~~(e))~~ (f) Additional time to secure documentation ((after) in audit situation. If in event of an audit the department discovers that the seller has not secured, as described in this subsection (5), the necessary resale certificates and/or documentation, the seller will generally be allowed ~~((thirty))~~ one hundred twenty days in which to obtain and present appropriate resale certificates and/or documentation, or prove by facts and circumstances the sales in question are wholesale sales. The time allotted to the seller shall commence from the date the auditor initially provides the seller with the results of the auditor's wholesale sales review. The processing of the audit report will not be delayed as a result of the seller's failure within the allotted time to secure and present appropriate documentation, or its inability to prove by facts and circumstances that the sales in question were wholesale sales. ~~((The audit report will also not be delayed because the time allotted to the seller expires prior to one hundred twenty days from the date of the sale or sales in question.~~

~~(f) Seller's personal liability. If the seller is unable to provide proper documentation, or unable to prove by facts and circumstances that the sales in question are wholesale sales, the seller becomes personally liable for the taxes in question. If the seller is required to make payment to the department, and later is able to present the department with proper documentation or prove by facts and circumstances that the sales in question are wholesale sales, the seller may in writing request a refund of the taxes paid along with the applicable interest. Both the request and the documentation or proof that the sales in question are wholesale sales must be submitted to the department within the statutory time limitations provided by RCW 82.32.060. (See WAC 458-20-229.))~~

(6) Penalty for improper use. Any buyer who uses a resale certificate to purchase items or services without payment of sales tax and who is not entitled to use the certificate for the purchase will be assessed a penalty of fifty percent of the tax due on the improperly purchased item or service. This penalty is in addition to all other taxes, penalties, and interest due, and can be imposed even if there was no intent to evade the payment of retail sales tax. The penalty will be assessed by the department and applies only to the buyer. However, see subsection (12) of this ~~((rule))~~ section for situations in which the department may waive the penalty.

Persons who purchase articles or services for dual purposes (i.e., some for their own consumption and some for resale) should refer to subsection (11) of this ~~((rule))~~ section to determine whether they may give a resale certificate to the seller.

(7) Resale certificate - suggested form. While there may be different forms of the resale certificate, all resale cer-

tificates must satisfy the language and information requirements provided by RCW 82.04.470. The resale certificate (~~((may be in the suggested form shown below, which))~~) is available on the department's (~~(home page))~~ internet site at <http://dor.wa.gov>, or can be obtained by calling the department's telephone information center at 1-800-647-7706 or by writing:

Taxpayer Services
Department of Revenue
P.O. Box 47478
Olympia, WA 98504-7478

A resale certificate may be in any other form that contains substantially the (~~(following))~~ same information and language, except that certificates provided in a format other than paper are not required to include the printed name of the person authorized to sign the certificate, the signature of the authorized individual, or the name of the seller(~~(=)~~).

~~((The undersigned buyer hereby certifies that the tangible personal property or services specified below will be purchased for: (a) Resale in the regular course of business without intervening use by the buyer, (b) use as an ingredient or component part of a new article of tangible personal property to be produced for sale, (c) use as a chemical to be used in processing a new article of tangible personal property to be produced for sale, or (d) use as feed, seed, fertilizer, or spray materials in its capacity as a farmer as defined in chapter 82.04 RCW. This certificate shall be considered a part of each order that I may give to you on or after the effective date of this certificate, unless otherwise specified, and is valid until revoked by me in writing. This certificate is given with full knowledge that the buyer is solely responsible for purchasing within the categories specified on the certificate, and that misuse of the resale privilege claimed on the certificate is subject to the legally prescribed penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law.~~

Name of Seller..... Effective Date.....
Name of Buyer.....
Address.....
UBI/ Tax Registration #.....
Type of Business.....
Items or item categories purchased at wholesale.....
.....
Authorized agent for buyer (printed).....
Authorized Signature.....
Title.....))

Effective July 1, 2008, buyers also have the option of using a Streamlined Sales and Use Tax Agreement Certificate of Exemption, which has been modified for Washington state laws. It can also be found on the department's internet site at <http://dor.wa.gov>.

(a) **Buyer's responsibility to specify products or services purchased at wholesale.** RCW 82.04.470 requires the buyer making purchases at wholesale to specify the kinds of products or services subject to the provisions of the resale certificate. A buyer who will purchase some of the items at wholesale, and consume and pay tax on some other items being purchased from the same seller, must use terms specific enough to clearly indicate to the seller what kinds of products or services the buyer is authorized to purchase at wholesale.

(i) The buyer may list the particular products or services to be purchased at wholesale, or provide general category descriptions of these products or services. The terms used to describe these categories must be descriptive enough to restrict the application of the resale certificate provisions to those products or services that the buyer is authorized to purchase at wholesale. The following are examples of terms used to describe categories of products purchased at wholesale, and businesses that may be eligible to use such terms on their resale certificates:

(A) "Hardware" for use by a general merchandise or building material supply store, "computer hardware" for use by a computer retailer;

(B) "Paint" or "painting supplies" for use by a general merchandise or paint retailer, "automotive paint" for use by an automotive repair shop; and

(C) "Building materials" or "subcontract work" for use by prime contractors performing residential home construction, "wiring" or "lighting fixtures" for use by an electrical contractor.

(ii) The buyer must remit retail sales tax on any taxable product or service not listed on the resale certificate provided to the seller. If the buyer gave a resale certificate to the seller and later used an item listed on the certificate, or if the seller failed to collect the sales tax on items not listed on the certificate, the buyer must remit the deferred sales or use tax due directly to the department.

(iii) RCW 82.08.050 provides that each seller shall collect from the buyer the full amount of retail sales tax due on each retail sale. If the department finds that the seller has engaged in a consistent pattern of failing to properly charge sales tax on items not purchased at wholesale (i.e., not listed on the resale certificate), it may hold the seller liable for the uncollected sales tax.

(iv) Persons having specific questions regarding the use of terms to describe products or services purchased at wholesale may submit their questions to the department for ruling. The department may be contacted on the internet at <http://dor.wa.gov>/ or by writing:

Taxpayer Services
Department of Revenue
~~((Taxpayer Services))~~
P.O. Box 47478
Olympia, WA 98504-7478

(b) **Blanket resale certificates.** A buyer who will purchase at wholesale all of the products or services being purchased from a particular seller will not be required to specifically describe the items or item categories on the resale certificate. If the certificate form provides for a description of the products or services being purchased at wholesale (~~((as~~

does the suggested form provided in this rule),) the buyer may specify "all products and/or services" (or make a similar designation). A resale certificate completed in this manner is often described as a blanket resale certificate.

(i) The resale certificate used by the buyer must, in all cases, be completed in its entirety. A resale certificate in which the section for the description of the items being purchased at wholesale is left blank by the buyer will not be considered a properly executed resale certificate.

(ii) As of July 1, 2008, renewal or updating of blanket resale certificates is not required as long as the seller has a recurring business relationship with the buyer. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

To effectively administer this provision during an audit, the department will accept a resale certificate as evidence for wholesale sales that occur within four years of the certificate's effective date without evidence of sales transactions being made once every twelve months. For sales transactions made more than four years after the date of the properly completed resale certificate, the seller must substantiate that a recurring business relationship with the buyer has occurred for any sales outside the period of more than four years after the effective date of the resale certificate.

(c) **Resale certificates for single transactions.** If the resale certificate is used for a single transaction, the language and information required of a resale certificate may be written or stamped upon a purchase order or invoice. The language contained in a "single use" resale certificate should be modified to delete any reference to subsequent orders or purchases.

(d) **Examples.** The following examples explain the proper use of types of resale certificates in typical situations. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC is an automobile repair shop purchasing automobile parts for resale and tools for its own use from DE Supply. ABC must provide DE Supply with a resale certificate limiting the certificate's application to automobile part purchases. However, should ABC withdraw parts from inventory to install in its own tow truck, deferred retail sales tax or use tax must be remitted directly to the department. The buyer has the responsibility to report deferred retail sales tax or use tax upon any item put to its own use, including items for which it gave a resale certificate and later used for its own use.

(ii) X Company is a retailer selling lumber, hardware, tools, automotive parts, and household appliances. X Company regularly purchases lumber, hardware, and tools from Z Distributing. While these products are generally purchased for resale, X Company occasionally withdraws some of these products from inventory for its own use. X Company may provide Z Distributing with a resale certificate specifying "all products purchased" are purchased at wholesale. However, whenever X Company removes any product from inventory to put to its own use, deferred retail sales tax or use tax must be remitted to the department.

(iii) TM Company is a manufacturer of electric motors. When making purchases from its suppliers, TM issues a

paper purchase order. This purchase order contains the information required of a resale certificate and a signature of the person ordering the items on behalf of TM. This purchase order includes a box that, if marked, indicates to the supplier that all or certain designated items purchased are being purchased at wholesale.

When the box indicating the purchases are being made at wholesale is marked, the purchase order can be accepted as a resale certificate. As TM Company's purchase orders are being accepted as resale certificates, they must be retained by the seller for at least five years. (See WAC 458-20-254 Recordkeeping.)

(8) **Other documentary evidence.** Other documentary evidence may be used by the seller and buyer in lieu of the resale certificate form described in this ((~~rule~~)) section. However, this documentary evidence must collectively contain the information and language generally required of a resale certificate. The conditions and restrictions applicable to the use of resale certificates apply equally to other documentary evidence used in lieu of the resale certificate form in this ((~~rule~~)) section. The following are examples of documentary evidence that will be accepted to show that sales were at wholesale:

(a) **Combination of documentary evidence.** A combination of documentation kept on file, such as a membership card or application, and a sales invoice or "certificate" taken at the point of sale with the purchases listed, provided:

(i) The documentation kept on file contains all information required on a resale certificate, including, for paper certificates, the names and signatures of all persons authorized to make purchases at wholesale; and

(ii) The sales invoice or "certificate" taken at the point of sale must contain the following:

(A) Language certifying the purchase is made at wholesale, with acknowledgement of the penalties for the misuse of resale certificate privileges, as generally required of a resale certificate; and

(B) The name and registration number of the buyer/business, and, if a paper certificate, an authorized signature.

(b) **Contracts of sale.** A contract of sale that within the body of the contract provides the language and information generally required of a resale certificate. The contract of sale must specify the products or services subject to the resale certificate privileges.

(c) **Other preapproved documentary evidence.** Any other documentary evidence that has been approved in advance and in writing by the department.

(9) **Sales to nonresident buyers.** If the buyer is a nonresident who is not engaged in business in this state, but buys articles here for the purpose of resale in the regular course of business outside this state, the seller must take from the buyer a resale certificate as described in this ((~~rule~~)) section. The seller may accept a resale certificate from an unregistered nonresident buyer with the registration number information omitted, provided the balance of the resale certificate is completed in its entirety. The resale certificate should contain a statement that the items are being purchased for resale outside Washington.

(10) **Sales to farmers.** Farmers selling agricultural products only at wholesale are not required to register with

the department. (See WAC 458-20-101 Tax registration and tax reporting.) When making wholesale sales to farmers (including farmers operating in other states), the seller must take from the farmer a resale certificate as described in this ~~((rule))~~ section. Farmers not required to be registered with the department may provide, and the seller may accept, resale certificates with the registration number information omitted, provided the balance of the certificates are completed in full. Persons making sales to farmers should also refer to WAC 458-20-210 (Sales of tangible personal property for farming—Sales of agricultural products by farmers).

(11) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property, and not able to determine at the time of purchase whether the particular property purchased will be consumed or resold, must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a resale certificate for any part of the purchase. If the buyer principally resells the articles, the buyer may issue a resale certificate for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

(a) **Deferred sales tax liability.** If the buyer gives a resale certificate for all purchases and thereafter consumes some of the articles purchased, the buyer must set up in his or her books of account the value of the article used and remit to the department the applicable deferred sales tax. The deferred sales tax liability should be reported under the use tax classification on the buyer's excise tax return.

(i) Buyers making purchases for dual purposes under the provisions of a resale certificate must remit deferred sales tax on all products or services they consume. If the buyer fails to make a good faith effort to remit this tax liability, the penalty for the misuse of resale certificate privileges may be assessed. This penalty will apply to the unremitted portion of the deferred sales tax liability.

A buyer will generally be considered to be making a good faith effort to report its deferred sales tax liability if the buyer discovers a minimum of eighty percent of the tax liability within one hundred twenty days of purchase, and remits the full amount of the discovered tax liability upon the next excise tax return. However, if the buyer does not satisfy this eighty percent threshold and can show by other facts and circumstances that it made a good faith effort to report the tax liability, the penalty will not be assessed. Likewise, if the department can show by other facts and circumstances that the buyer did not make a good faith effort in remitting its tax liability the penalty will be assessed, even if the eighty percent threshold is satisfied.

(ii) The following example illustrates the use of a resale certificate for dual-use purchases. This example should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances. BC Contracting operates both as a prime contractor and speculative builder of residential homes. BC Contracting purchases building materials from Seller D that are principally incorporated into projects upon which BC acts as a prime contractor. BC provides Seller D with a resale certificate and purchases all building materials at wholesale. BC

must remit deferred sales tax upon all building materials incorporated into the speculative projects to be considered to be properly using its resale certificate privileges. The failure to make a good faith effort to identify and remit this tax liability may result in the assessment of the fifty percent penalty for the misuse of resale certificate privileges.

(b) **Tax paid at source deduction.** If the buyer has not given a resale certificate, but has paid retail sales tax on all articles of tangible personal property and subsequently resells a portion of the articles, the buyer must collect the retail sales tax from its retail customers as provided by law. When reporting these sales on the excise tax return, the buyer may then claim a deduction in the amount the buyer paid for the property resold.

(i) This deduction may be claimed under the retail sales tax classification only. It must be identified as a "taxable amount for tax paid at source" deduction on the deduction detail worksheet, which must be filed with the excise tax return. Failure to properly identify the deduction may result in the disallowance of the deduction. When completing the local sales tax portion of the tax return, the deduction must be computed at the local sales tax rate paid to the seller, and credited to the seller's tax location code.

(ii) The following example illustrates the tax paid at source deduction on or after July 1, 2008. This example should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances. Seller A is located in Spokane, Washington and purchases equipment parts for dual purposes from a supplier located in Seattle, Washington. The supplier ships the parts to Spokane. Seller A does not issue a resale certificate for the purchase, and remits retail sales tax to the supplier at the ~~((Seattle))~~ Spokane tax rate. A portion of these parts are sold and shipped to Customer B in Kennewick, with retail sales tax collected at the ~~((Spokane))~~ Kennewick tax rate. Seller A must report the amount of the sale to Customer B on its excise tax return, compute the local sales tax liability at the ~~((Spokane))~~ Kennewick rate, and code this liability to the location code for ~~((Spokane (3210)))~~ Kennewick (0302). Seller A would claim the tax paid at source deduction for the cost of the parts resold to Customer B, compute the local sales tax credit at the ~~((Seattle))~~ Spokane rate, and code this deduction amount to the location code for ~~((Seattle (1726)))~~ Spokane (3210).

(iii) Claim for deduction will be allowed only if the taxpayer keeps and preserves records in support of the deduction that show the names of the persons from whom such articles were purchased, the date of the purchase, the type of articles, the amount of the purchase and the amount of tax that was paid.

(iv) Should the buyer resell the articles at wholesale, or under other situations where retail sales tax is not to be collected, the claim for the tax paid at source deduction on a particular excise tax return may result in a credit. In such cases, the department will issue a credit notice that may be used against future tax liabilities. However, a taxpayer may request in writing a refund from the department.

(12) **Waiver of penalty for resale certificate misuse.** The department may waive the penalty imposed for resale certificate misuse upon finding that the use of the certificate

to purchase items or services by a person not entitled to use the certificate for that purpose was due to circumstances beyond the control of the buyer. However, the use of a resale certificate to purchase items or services for personal use outside of the business does not qualify for the waiver or cancellation of the penalty. The penalty will not be waived merely because the buyer was not aware of either the proper use of the resale certificate or the penalty. In all cases the burden of proving the facts is upon the buyer.

(a) **Considerations for waiver.** Situations under which a waiver of the penalty will be considered by the department include, but are not necessarily limited to, the following:

(i) The resale certificate was properly used to purchase products or services for dual purposes; or the buyer was eligible to issue the resale certificate; and the buyer made a good faith effort to discover all of its deferred sales tax liability within one hundred twenty days of purchase; and the buyer remitted the discovered tax liability upon the next excise tax return. (Refer to subsection (11)(a)(i) of this ~~(rule)~~ section for an explanation of what constitutes "good faith effort.")

(ii) The certificate was issued and/or purchases were made without the knowledge of the buyer, and had no connection with the buyer's business activities. However, the penalty for the misuse of resale certificate privileges may be applied to the person actually issuing and/or using the resale certificate without knowledge of the buyer.

(b) **One-time waiver of penalty for inadvertent or unintentional resale certificate misuse.** The penalty prescribed for the misuse of the resale certificate may be waived or cancelled on a one time only basis if such misuse was inadvertent or unintentional, and the item was purchased for use within the business. If the department does grant a one time waiver of the penalty, the buyer will be provided written notification at that time.

(c) **Examples.** The following are examples of typical situations where the fifty percent penalty for the misuse of resale privileges will or will not be assessed. These examples should be used only as a general guide. The tax status of other situations must be determined after a review of all of the facts and circumstances.

(i) ABC Manufacturing purchases electrical wiring and tools from X Supply. The electrical wiring is purchased for dual purposes, i.e., for resale and for consumption, with more than fifty percent of the wiring purchases becoming a component of items that ABC manufactures for sale. ABC Manufacturing issues a resale certificate to X Supply specifying "electrical wiring" as the category of items purchased for resale. ABC regularly reviews its purchases and remits deferred sales tax upon the wiring it uses as a consumer.

ABC is subsequently audited by the department and it is discovered that ABC Manufacturing failed to remit deferred sales tax upon three purchases of wiring for consumption. The unreported tax liability attributable to these three purchases is less than five percent of the total deferred sales tax liability for wiring purchases made from X Supply. It is also determined that the failure to remit deferred sales tax upon these purchases was merely an oversight. The fifty percent penalty for the misuse of resale certificate privileges does not apply, even though ABC failed to remit deferred sales tax on these purchases. The resale certificate was properly issued,

and ABC remitted to the department more than eighty percent of the deferred sales tax liability for wiring purchases from X Supply.

(ii) During a routine audit examination of a jewelry store, the department discovers that a dentist has provided a resale certificate for the purchase of a necklace. This resale certificate indicates that in addition to operating a dentistry practice, the dentist also sells jewelry. The resale certificate contains the information required under RCW 82.04.470.

Upon further investigation, the department finds that the dentist is not engaged in selling jewelry. The department will look to the dentist for payment of the applicable retail sales tax. In addition, the dentist will be assessed the fifty percent penalty for the misuse of resale certificate privileges. The penalty will not be waived or cancelled as the dentist misused the resale certificate privileges to purchase a necklace for personal use.

(iii) During a routine audit examination of a computer dealer, it is discovered that a resale certificate was obtained from a bookkeeping service. The resale certificate was completed in its entirety and accepted by the dealer. Upon further investigation it is discovered that the bookkeeping service had no knowledge of the resale certificate, and had made no payment to the computer dealer. The employee who signed the resale certificate had purchased the computer for personal use, and had personally made payment to the computer dealer.

The fifty percent penalty for the misuse of the resale certificate privileges will be waived for the bookkeeping service. The bookkeeping service had no knowledge of the purchase or unauthorized use of the resale certificate. However, the department will look to the employee for payment of the taxes and the fifty percent penalty for the misuse of resale certificate privileges.

(iv) During an audit examination it is discovered that XYZ Corporation, a duplicating company, purchased copying equipment for its own use. XYZ Corporation issued a resale certificate to the seller despite the fact that XYZ does not sell copying equipment. XYZ also failed to remit either the deferred sales or use tax to the department. As a result of a previous investigation by the department, XYZ had been informed in writing that retail sales and/or use tax applied to all such purchases. The fifty percent penalty for the misuse of resale certificate privileges will be assessed. XYZ was not eligible to provide a resale certificate for the purchase of copying equipment, and had previously been so informed. The penalty will apply to the unremitted deferred sales tax liability.

(v) AZ Construction issued a resale certificate to a building material supplier for the purchase of "pins" and "loads." The "pins" are fasteners that become a component part of the finished structure. The "load" is a powder charge that is used to drive the "pin" into the materials being fastened together. AZ Construction is informed during the course of an audit examination that it is considered the consumer of the "loads" and may not issue a resale certificate for its purchase thereof. AZ Construction indicates that it was unaware that a resale certificate could not be issued for the purchase of "loads," and there is no indication that AZ Construction had previously been so informed.

The failure to be aware of the proper use of the resale certificate is not generally grounds for waiving the fifty percent penalty for the misuse of resale certificate privileges. However, AZ Construction does qualify for the "one time only" waiver of the penalty as the misuse of the resale certificate privilege was unintentional and the "loads" were purchased for use within the business.

WSR 08-21-106
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 16, 2008, 1:25 p.m., effective November 16, 2008]

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

Purpose: The department is amending WAC 388-450-0195 Utility allowances for Basic Food programs and 388-492-0070 How are my WASHCAP benefits calculated?

The rules provide standards used to determine monthly benefit levels for the Washington Basic Food program and WASHCAP program. The rules also indicate when a WASHCAP-eligible household may choose to participate in the Basic Food program. The proposed changes update utility standards for Basic Food, the WASHCAP high cost shelter standard, the WASHCAP low cost shelter standard, and the WASHCAP shelter threshold.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0195 and 388-492-0070.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Other Authority: 7 C.F.R. 273.9.

Adopted under notice filed as WSR 08-17-109 on August 20, 2008.

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

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

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

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

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

Date Adopted: October 14, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-22-036, filed 10/30/07, effective 11/30/07)

WAC 388-450-0195 Utility allowances for Basic Food programs. (1) For Basic Food, "utilities" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water or sewer;
- (d) Well or septic tank installation/maintenance;
- (e) Garbage/trash collection; and
- (f) Telephone service.

(2) The department uses the amounts below if you have utility costs separate from your rent or mortgage payment. We add your utility allowance to your rent or mortgage payment to determine your total shelter costs. We use total shelter costs to determine your Basic Food benefits.

(a) If you have heating or cooling costs, you get a standard utility allowance (SUA) that depends on your assistance unit's size.

Assistance Unit (AU) Size	Utility Allowance
1	\$((328)) <u>352</u>
2	\$((338)) <u>362</u>
3	\$((348)) <u>373</u>
4	\$((358)) <u>384</u>
5	\$((368)) <u>394</u>
6 or more	\$((378)) <u>405</u>

(b) If your AU does not qualify for the SUA and you have any two utility costs listed above, you get a limited utility allowance (LUA) of two hundred ((~~fifty-nine~~)) seventy-six dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of forty-two dollars.

AMENDATORY SECTION (Amending WSR 07-22-036, filed 10/30/07, effective 11/30/07)

WAC 388-492-0070 How are my WASHCAP food benefits calculated? We calculate your food benefits as follows:

(1) We begin with your gross income.

(2) We subtract one hundred ((~~thirty-four~~)) forty-four dollars from your gross income to get your countable income.

(3) We figure your shelter cost based on information we receive from Social Security Administration (SSA), unless you report a change as described under WAC 388-492-0080. If you pay:

(a) Two hundred ((~~seventy-five~~)) eighty-four dollars or more a month for shelter, we use three hundred ((~~sixty-six~~)) seventy-nine dollars as your shelter cost; or

(b) Less than two hundred ((~~seventy-five~~)) eighty-four dollars for shelter, we use one hundred ((~~seventy-six~~)) eighty-two dollars as your shelter cost; and

(c) We add the current standard utility allowance under WAC 388-450-0195 to determine your total shelter cost.

(4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.

(5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.

(6) We figure your WASHCAP food benefits (allotment) by:

(a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and

(b) Subtracting the result from the maximum allotment under WAC 388-478-0060.

(c) If you are eligible for WASHCAP, you will get at least ~~((ten dollars in food benefits each month))~~ the minimum monthly benefit for Basic Food under WAC 388-412-0015.

WSR 08-21-107

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed October 16, 2008, 1:39 p.m., effective November 16, 2008]

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

Purpose: The rule improves provider community understanding about outpatient drug coverage and limitations to the expansion of the smoking cessation benefit, and clarifies "over-the-counter" (OTC) coverage due to the questions that the department receives from pharmacy providers.

Citation of Existing Rules Affected by this Order: Amending WAC 388-530-1000, 388-530-1050, 388-530-2000, 388-530-2100, 388-530-3000, 388-530-3200, 388-530-4100, and 388-530-4150.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090.

Other Authority: RCW 74.09.700, chapter 245, Laws of 2008 (SB 6421).

Adopted under notice filed as WSR 08-15-007 on July 3, 2008.

Changes Other than Editing from Proposed to Adopted Version: Note: Text to clarify rules for the OTC coverage was inadvertently omitted under WSR 08-15-007. The department will make those rule amendments under a separate rule proposal.

Amended Section

~~WAC 388-530-1000(3) Coverage determinations are decided by the department:~~

~~(a) According to federal guidelines;~~

~~(b) In consultation with the drug use review (DUR board); or~~

~~(c) As recommended by the department's medical consultants and the department's pharmacists.~~ Coverage determinations for the department are made by the department's pharmacists or medical consultants in accordance with applicable federal law. The department's determination may include consultation with the drug use review (DUR) board.

Amended Section

~~WAC 388-530-2000 (1)(c)(iii) Fluoride ((varnish for children under the early and periodic screening, diagnosis,~~

~~and treatment (EPSDT) program)) prescribed for clients under the age of twenty-one.~~

Amended Section

~~WAC 388-530-2000(2) Coverage determinations for the department are decided by:~~

~~(a) The department in consultation with federal guidelines; or~~

~~(b) The drug use review (DUR) board; and~~

~~(c) The department's medical consultants and the department's pharmacist(s).~~

~~(3) The department does not...~~

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, 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 8, Repealed 0.

Date Adopted: October 14, 2008.

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

WAC 388-530-1000 Outpatient drug program—

General. (1) The purpose of the outpatient drug program is to ~~((pay))~~ reimburse providers for outpatient drugs, vitamins, minerals, devices, and drug-related supplies according to department rules and subject to the limitations and requirements in this chapter.

(2) The department reimburses for outpatient drugs, vitamins, minerals, devices, and pharmaceutical supplies that are:

(a) Covered. Refer to WAC 388-530-2000 for covered drugs, vitamins, minerals, devices, and drug-related supplies and to WAC 388-530-2100 for noncovered drugs and drug-related supplies;

(b) Prescribed by a provider with ~~((prescribing))~~ prescriptive authority (see exceptions for family planning and emergency contraception for ~~((woman [women]))~~ women eighteen years of age and older in WAC 388-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 388-530-2000 (1)(a)(v);

(c) Within the scope of an eligible client's medical assistance program;

(d) Medically necessary as defined in WAC 388-500-0005 and determined according to the process found in WAC 388-501-0165; and

(e) Authorized, as required within this chapter;

(f) Billed according to WAC 388-502-0150 and 388-502-0160; and

(g) Billed according to the requirements of this chapter.

(3) Coverage determinations for the department are made by the department's pharmacists or medical consultants in accordance with applicable federal law. The department's determination may include consultation with the drug use review (DUR) board.

(4) The department may not ~~((pay))~~ reimburse for prescriptions written by healthcare practitioners whose application for a core provider agreement (CPA) has been denied, or whose CPA has been terminated.

~~((4))~~ (5) The department may not ~~((pay))~~ reimburse for prescriptions written by non-CPA healthcare practitioners who do not have a current core provider agreement with the department when the department determines there is a potential danger to the client's health and/or safety.

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

WAC 388-530-1050 Definitions. In addition to the definitions and abbreviations found in WAC 388-500-0005, Medical definitions, the following definitions apply to this chapter.

"Active ingredient" - The chemical component of a drug responsible for a drug's prescribed/intended therapeutic effect. The department limits coverage of active ingredients to those with an eleven-digit national drug code (NDC) and those specifically authorized by the department.

"Actual acquisition cost (AAC)" - The net cost a provider paid for a drug, device, or drug-related supply marketed in the package size purchased. The ~~((ACC))~~ AAC includes discounts, rebates, charge backs and other adjustments to the price of the drug, device or drug-related supply, but excludes dispensing fees.

"Administer" - Includes the direct application of a prescription drug or device by injection, insertion, inhalation, ingestion, or any other means, to the body of a patient by a practitioner, or at the direction of the practitioner.

"Appointing authority" - For the evidence-based prescription drug program of the participating agencies in the state-operated health care programs, the following persons acting jointly: The administrator of the health care authority (HCA), the secretary of the department of social and health services (DSHS), and the director of the department of labor and industries (L&I).

"Automated authorization" - Adjudication of claims using submitted NCPDP data elements or claims history to verify that the department's authorization requirements have been satisfied without the need for the department to request additional clinical information.

"Automated maximum allowable cost (AMAC)" - The rate established by the department for a multiple-source drug that is not on the maximum allowable cost (MAC) list and that is designated by two or more products at least one of which must be under a federal drug rebate contract.

"Average manufacturer price (AMP)" - The average price paid to a manufacturer by wholesalers for drugs distributed to retail pharmacies.

"Average sales price (ASP)" - The weighted average of all nonfederal sales to wholesalers net of charge backs, discounts, rebates, and other benefits tied to the purchase of the drug product, whether it is paid to the wholesaler or the retailer.

"Average wholesale price (AWP)" - The average price of a drug product that is calculated from wholesale list prices nationwide at a point in time and reported to the department by the department's drug file contractor.

"Combination drug" - A commercially available drug including two or more active ingredients.

"Compendia of drug information" includes the following:

(1) The American Hospital Formulary Service Drug Information;

(2) The United States Pharmacopeia Drug Information; and

(3) DRUGDEX Information System.

"Compounding" - The act of combining two or more active ingredients or adjusting therapeutic strengths in the preparation of a prescription.

"Deliver or delivery" - The transfer of a drug or device from one person to another.

"Dispense as written (DAW)" - An instruction to the pharmacist forbidding substitution of a generic drug or a therapeutically equivalent product for the specific drug product prescribed.

"Dispensing fee" - The fee the department sets to pay pharmacy providers for dispensing department-covered prescriptions. The fee is the department's maximum reimbursement for expenses involved in the practice of pharmacy and is in addition to the department's reimbursement for the costs of covered ingredients.

"Drug evaluation matrix" - The criteria-based scoring sheet used to objectively and consistently evaluate the food and drug administration (FDA) approved drugs to determine drug coverage status.

"Drug file" - A list of drug products, pricing and other information provided to the department and maintained by a drug file contractor.

"Drug file contractor" - An entity which has been contracted to provide regularly updated information on drugs, devices, and drug-related supplies at specified intervals, for the purpose of pharmaceutical claim adjudication. Information is provided specific to individual national drug codes, including product pricing.

"Drug rebates" - Reimbursements provided by pharmaceutical manufacturers to state Medicaid programs under the terms of the manufacturers' agreements with the Department of Health and Human Services (DHHS).

"Drug-related supplies" - Nondrug items necessary for the administration, delivery, or monitoring of a drug or drug regimen.

"Drug use review (DUR)" - A review of covered outpatient drug use that assures prescriptions are appropriate, medically necessary, and not likely to result in adverse medical outcomes.

"Effectiveness" - The extent to which a given intervention is likely to produce beneficial results for which it is intended in ordinary circumstances.

"Efficacy" - The extent to which a given intervention is likely to produce beneficial effects in the context of the research study.

"Emergency kit" - A set of limited pharmaceuticals furnished to a nursing facility by the pharmacy that provides prescription dispensing services to that facility. Each kit is specifically set up to meet the emergency needs of each nursing facility's client population and is for use during those hours when pharmacy services are unavailable.

"Endorsing practitioner" - A practitioner who has reviewed the Washington preferred drug list (PDL) and has enrolled with the health care authority (HCA), agreeing to allow therapeutic interchange (substitution) of a preferred drug for any nonpreferred drug in a given therapeutic class on the Washington PDL.

"Estimated acquisition cost (EAC)" - The department's estimate of the price providers generally and currently pay for a drug marketed or sold by a particular manufacturer or labeler.

"Evidence-based" and **"evidenced-based medicine (EBM)"** - The application of a set of principles and a method for the review of well-designed studies and objective clinical data to determine the level of evidence that proves to the greatest extent possible, that a healthcare service is safe, effective and beneficial when making population-based coverage policies or individual medical necessity decisions.

"Evidence-based practice center" - A research organization that has been designated by the Agency for Healthcare Research and Quality (AHRQ) of the U.S. government to conduct systematic reviews of all the evidence to produce evidence tables and technology assessments to guide health care decisions.

"Federal upper limit (FUL)" - The maximum allowable reimbursement set by the Centers for Medicare and Medicaid Services (CMS) for a multiple-source drug.

"Four brand name prescriptions per calendar month limit" - The maximum number of paid prescription claims for brand name drugs that the department allows for each client in a calendar month without a complete review of the client's drug profile.

"Generic drug" - A nonproprietary drug that is required to meet the same bioequivalency tests as the original brand name drug.

"Inactive ingredient" - A drug component that remains chemically unchanged during compounding but serves as the:

- (1) Necessary vehicle for the delivery of the therapeutic effect; or
- (2) Agent for the intended method or rate of absorption for the drug's active therapeutic agent.

"Ingredient cost" - The portion of a prescription's cost attributable to the covered drug ingredients or chemical components.

"Innovator multiple source drug" - As set forth in Section 1927 (k)(7)(A)(ii) of the Social Security Act, includes all covered outpatient drugs approved under a new drug application (NDA), product license approval (PLA), establishment license approval (ELA), or antibiotic drug approval (ADA). A covered outpatient drug marketed by a cross-licensed producer or distributor under the approved

new drug application will be included as an innovator multiple source drug when the drug product meets this definition.

"Less than effective drug" or **"DESI"** - A drug for which:

- (1) Effective approval of the drug application has been withdrawn by the Food and Drug Administration (FDA) for safety or efficacy reasons as a result of the drug efficacy study implementation (DESI) review; or

- (2) The secretary of the Department of Health and Human Services (DHHS) has issued a notice of an opportunity for a hearing under section 505(e) of the federal Food, Drug, and Cosmetic Act on a proposed order of the secretary to withdraw approval of an application for such drug under such section because the secretary has determined the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling.

"Long-term therapy" - A drug regimen a client receives or will receive continuously through and beyond ninety days.

"Maximum allowable cost (MAC)" - The maximum amount that the department reimburses for a drug, device, or drug-related supply.

"Medically accepted indication" - Any use for a covered outpatient drug:

- (1) Which is approved under the federal Food, Drug, and Cosmetic Act; or
- (2) The use of which is supported by one or more citations included or approved for inclusion in any of the compendia of drug information, as defined in this chapter.

"Modified unit dose delivery system" (also known as blister packs or "bingo/punch cards") - A method in which each patient's medication is delivered to a nursing facility:

- (1) In individually sealed, single dose packages or "blisters"; and
- (2) In quantities for one month's supply, unless the prescriber specifies a shorter period of therapy.

"Multiple-source drug" - A drug marketed or sold by:

- (1) Two or more manufacturers or labelers; or
- (2) The same manufacturer or labeler:
 - (a) Under two or more different proprietary names; or
 - (b) Under a proprietary name and a generic name.

"National drug code (NDC)" - The eleven-digit number the FDA and manufacturer or labeler assigns to a pharmaceutical product and attaches to the product container at the time of packaging. The NDC is composed of digits in 5-4-2 groupings. The first five digits comprise the labeler code assigned to the manufacturer by the Food and Drug Administration (FDA). The second grouping of four digits is assigned by the manufacturer to describe the ingredients, dose form, and strength. The last grouping of two digits describes the package size.

"Noncontract drugs" - Are drugs manufactured or distributed by manufacturers/labelers who have not signed a drug rebate agreement with the federal Department of Health and Human Services.

"Nonpreferred drug" - A drug that has not been selected as a preferred drug within the therapeutic class(es) of drugs on the preferred drug list.

"Obsolete NDC" - A national drug code replaced or discontinued by the manufacturer or labeler.

"Over-the-counter (OTC) drugs" - Drugs that do not require a prescription before they can be sold or dispensed.

"Peer reviewed medical literature" - A research study, report, or findings regarding the specific use of a drug that has been submitted to one or more professional journals, reviewed by experts with appropriate credentials, and subsequently published by a reputable professional journal. A clinical drug study used as the basis for the publication must be a double blind, randomized, placebo or active control study.

"Pharmacist" - A person licensed in the practice of pharmacy by the state in which the prescription is filled.

"Pharmacy" - Every location licensed by the state board of pharmacy in the state where the practice of pharmacy is conducted.

"Pharmacy and therapeutic (P&T) committee" - The independent Washington state committee created by RCW 41.05.021 (1)(a)(iii) and 70.14.050. At the election of the department, the committee may serve as the drug use review board provided for in WAC 388-530-4000.

"Point-of-sale (POS)" - A pharmacy claims processing system capable of receiving and adjudicating claims on-line.

"Practice of pharmacy" - The practice of and responsibility for:

- (1) Accurately interpreting prescription orders;
- (2) Compounding drugs;
- (3) Dispensing, labeling, administering, and distributing of drugs and devices;
- (4) Providing drug information to the client that includes, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices;
- (5) Monitoring of drug therapy and use;
- (6) Proper and safe storage of drugs and devices;
- (7) Documenting and maintaining records;
- (8) Initiating or modifying drug therapy in accordance with written guidelines or protocols previously established and approved for a pharmacist's practice by a practitioner authorized to prescribe drugs; and
- (9) Participating in drug use reviews and drug product selection.

"Practitioner" - An individual who has met the professional and legal requirements necessary to provide a health care service, such as a physician, nurse, dentist, physical therapist, pharmacist or other person authorized by state law as a practitioner.

"Preferred drug" - Drug(s) of choice within a selected therapeutic class that are selected based on clinical evidence of safety, efficacy, and effectiveness.

"Preferred drug list (PDL)" - The department's list of drugs of choice within selected therapeutic drug classes.

"Prescriber" - A physician, osteopathic physician/surgeon, dentist, nurse, physician assistant, optometrist, pharmacist, or other person authorized by law or rule to prescribe drugs. See WAC 246-863-100 for pharmacists' prescriptive authority.

"Prescription" - An order for drugs or devices issued by a practitioner authorized by state law or rule to prescribe drugs or devices, in the course of the practitioner's professional practice, for a legitimate medical purpose.

"Prescription drugs" - Drugs required by any applicable federal or state law or regulation to be dispensed by pre-

scription only or that are restricted to use by practitioners only.

"Prospective drug use review (Pro-DUR)" - A process in which a request for a drug product for a particular client is screened, before the product is dispensed, for potential drug therapy problems.

"Reconstitution" - The process of returning a single active ingredient, previously altered for preservation and storage, to its approximate original state. Reconstitution is not compounding.

"Retrospective drug use review (Retro-DUR)" - The process in which drug utilization is reviewed on an ongoing periodic basis to identify patterns of fraud, abuse, gross overuse, or inappropriate or not medically necessary care.

"Risk/benefit ratio" - The result of assessing the side effects of a drug or drug regimen compared to the positive therapeutic outcome of therapy.

"Single source drug" - A drug produced or distributed under an original new drug application approved by the Food and Drug Administration (FDA).

"Substitute" - To replace a prescribed drug, with the prescriber's authorization, with:

- (1) An equivalent generic drug product of the identical base or salt as the specific drug product prescribed; or
- (2) A therapeutically equivalent drug other than the identical base or salt.

"Systematic review" - A specific and reproducible method to identify, select, and appraise all the studies that meet minimum quality standards and are relevant to a particular question. The results of the studies are then analyzed and summarized into evidence tables to be used to guide evidence-based decisions.

"Terminated NDC" - (({a})) An eleven-digit national drug code (NDC) that is discontinued by the manufacturer for any reason. The NDC may be terminated immediately due to health or safety issues or it may be phased out based on the product's shelf life.

"Therapeutic alternative" - A drug product that contains a different chemical structure than the drug prescribed, but is in the same pharmacologic or therapeutic class and can be expected to have a similar therapeutic effect and adverse reaction profile when administered to patients in a therapeutically equivalent dosage.

"Therapeutic class" - A group of drugs used for the treatment, remediation, or cure of a specific disorder or disease.

"Therapeutic interchange" - To dispense a therapeutic alternative to the prescribed drug when an endorsing practitioner who has indicated that substitution is permitted, prescribes the drug. See therapeutic interchange program (TIP).

"Therapeutic interchange program (TIP)" - The process developed by participating state agencies under RCW 69.41.190 and 70.14.050, to allow prescribers to endorse a Washington preferred drug list, and in most cases, requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

"Therapeutically equivalent" - Drug products that contain different chemical structures but have the same efficacy and safety when administered to an individual, as determined by:

- (1) Information from the Food and Drug Administration (FDA);
- (2) Published and peer-reviewed scientific data;
- (3) Randomized controlled clinical trials; or
- (4) Other scientific evidence.

"Tiered dispensing fee system" - A system of paying pharmacies different dispensing fee rates, based on the individual pharmacy's total annual prescription volume and/or the drug delivery system used.

"True unit dose delivery" - A method in which each patient's medication is delivered to the nursing facility in quantities sufficient only for the day's required dosage.

"Unit dose drug delivery" - True unit dose or modified unit dose delivery systems.

"Usual and customary charge" - The fee that the provider typically charges the general public for the product or service.

"Washington preferred drug list (Washington PDL)" - The list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for purchase of drugs in state-operated health care programs.

"Wholesale acquisition cost" - The price paid by a wholesaler for drugs purchased from a manufacturer.

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

WAC 388-530-3000 When the department requires authorization. Pharmacies must obtain authorization for covered drugs, devices, or drug-related supplies in order to receive reimbursement as described in this section.

(1) The department's pharmacists and medical consultants:

(a) Have determined that authorization for the drug, device, or drug-related supply is required, as described in WAC 388-530-3100; or

(b) Have not yet reviewed the manufacturer's dossier of drug information submitted in the Academy of Managed Care Pharmacy (AMCP) format.

(2) The drug, device, or drug-related supply is in the therapeutic drug class on the Washington preferred drug list and the product is one of the following:

(a) Nonpreferred as described in WAC 388-530-4100; and

(i) The prescriber is a nonendorsing practitioner; or

(ii) The drug is designated as exempt from the therapeutic interchange program per WAC 388-530-4100(6) or 388-530-4150 (2)(c);

(b) Preferred for a special population or specific indication and has been prescribed by a nonendorsing practitioner under conditions for which the drug, device, or drug-related supply is not preferred; or

(c) Determined to require authorization for safety.

(3) For the purpose of promoting safety, efficacy, and effectiveness of drug therapy, the department identifies clients or groups of clients who would benefit from further clinical review.

(4) The department designates the prescriber(s) as requiring authorization because the prescriber(s) is under

department review or is sanctioned for substandard quality of care.

(5) Utilization data indicate there are health and safety concerns or the potential for misuse and abuse. Examples of utilization concerns include:

(a) Multiple prescriptions filled of the same drug in the same calendar month;

(b) Prescriptions filled earlier than necessary for optimal therapeutic response;

(c) Therapeutic duplication;

(d) Therapeutic contraindication;

(e) Excessive dosing, excessive duration of therapy, or subtherapeutic dosing as determined by FDA labeling or the compendia of drug information; and

(f) ~~((Number of brand prescriptions filled per calendar month; and~~

~~(g)))~~ Number of prescriptions filled per month in total or by therapeutic drug class.

(6) The pharmacy requests reimbursement in excess of the maximum allowable cost and the drug has been prescribed with instructions to dispense as written.

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

WAC 388-530-3200 The department's authorization process. (1) The department may establish automated ways for pharmacies to meet authorization requirements for specified drugs, devices, and drug-related supplies, or circumstances as listed in WAC 388-530-3000(4) including, but are not limited to:

(a) Use of expedited authorization codes as published in the department's prescription drug program billing instructions and numbered memoranda;

(b) Use of specified values in national council of prescription drug programs (NCPDP) claim fields;

(c) Use of diagnosis codes; and

(d) Evidence of previous therapy within the department's claim history.

(2) When the automated requirements in subsection (1) of this section do not apply or cannot be satisfied, the pharmacy provider must request authorization from the department before dispensing. The pharmacy provider must:

(a) Ensure the request states the medical diagnosis and includes medical justification for the drug, device, drug-related supply, or circumstance as listed in WAC 388-530-3000(4); and

(b) Keep documentation on file of the prescriber's medical justification that is communicated to the pharmacy by the prescriber at the time the prescription is filled. The records must be retained for the period specified in WAC 388-502-0020 (1)(c).

(3) When the department receives the request for authorization:

(a) The department acknowledges receipt:

(i) Within twenty-four hours if the request is received during normal state business hours; or

(ii) Within twenty-four hours of opening for business on the next business day if received outside of normal state business hours.

(b) The department reviews all evidence submitted and takes one of the following actions within fifteen business days:

- (i) Approves the request;
- (ii) Denies the request if the requested service is not medically necessary; or
- (iii) Requests the prescriber submit additional justifying information.

(A) The prescriber must submit the additional information within ten days of the department's request.

(B) The department approves or denies the request within five business days of the receipt of the additional information.

(C) If the prescriber fails to provide the additional information within ten days, the department will deny the requested service. The department sends a copy of the request to the client at the time of denial.

(4) The department's authorization may be based on, but not limited to:

- (a) Requirements under this chapter and WAC 388-501-0165;
- (b) Client safety;
- (c) Appropriateness of drug therapy;
- (d) Quantity and duration of therapy;
- (e) Client age, gender, pregnancy status, or other demographics; and
- (f) The least costly therapeutically equivalent alternative ~~((between two or more products of equal effectiveness))~~.

(5) The department evaluates request for authorization of covered drugs, devices, and drug-related supplies that exceed limitations in this chapter on a case-by-case basis in conjunction with subsection (4) of this section and WAC 388-501-0169.

(6) If a provider needs authorization to dispense a covered drug outside of normal state business hours, the provider may dispense the drug without authorization only in an emergency. The department must receive justification from the provider within seventy-two hours of the fill date, excluding weekends and Washington state holidays, to be paid for the emergency fill.

(7) The department may remove authorization requirements under WAC 388-530-3000 for, but not limited to, the following:

- (a) Prescriptions written by specific practitioners based on consistent high quality of care; or
- (b) Prescriptions filled at specific pharmacies and billed to the department at the pharmacies' lower acquisition cost.

(8) Authorization requirements in WAC 388-530-3000 are not a denial of service.

(9) Rejection of a claim due to the authorization requirements listed in WAC 388-530-3000 is not a denial of service.

(10) When a claim requires authorization, the pharmacy provider must request authorization from the department. If the pharmacist fails to request authorization as required, the department does not consider this a denial of service.

(11) Denials that result as part of the authorization process will be issued by the department in writing.

(12) The department's authorization:

- (a) Is a decision of medical appropriateness; and
- (b) Does not guarantee payment.

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

WAC 388-530-4100 Washington preferred drug list (PDL). Under RCW 69.41.190 and 70.14.050, the department, and other state agencies cooperate in developing and maintaining the Washington preferred drug list.

(1) Washington state contracts with evidence-based practice center(s) for systematic reviews of drug(s).

(2) The pharmacy and therapeutics (P&T) committee reviews and evaluates the safety, efficacy, and outcomes of prescribed drugs, using evidence-based information provided by the evidence-based practice center(s).

(3) The P&T committee makes recommendations to state agencies as to which drug(s) to include on the Washington PDL, under chapter 182-50 WAC.

(4) The appointing authority makes the final selection of drugs included on the Washington PDL.

(5) Drugs in a drug class on the Washington PDL, that have been studied by the evidence-based practice center(s) and reviewed by the P&T committee, and which have not been selected as preferred are considered nonpreferred drugs and are subject to the therapeutic interchange program (TIP) and dispense as Written (DAW) rules under WAC 388-530-4150.

(6) Drugs in a drug class on the Washington PDL that have not been studied by the evidence-based practice center(s) and have not been reviewed by the P&T committee will be treated as nonpreferred drugs not subject to the dispense as written (DAW) or the therapeutic interchange program (TIP).

(7) A nonpreferred drug, which the department determines as covered, is considered for authorization after the client has:

(a) Tried and failed or is intolerant to at least one preferred drug; and

(b) Met department established criteria for the nonpreferred drug.

(8) Drugs in a drug class on the Washington PDL may be designated as preferred drugs for special populations or specific indications.

(9) Drugs in a drug class on the Washington PDL may require authorization for safety.

(10) ~~Combination drugs ((are not on the Washington PDL and are considered for authorization according to WAC 388-530-3100))~~ that have been studied by the evidence-based practice center and have reviewed by the P&T committee may be included in the Washington PDL.

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

WAC 388-530-4150 Therapeutic interchange program (TIP). This section contains the department's rules for the endorsing practitioner therapeutic interchange program (TIP). TIP is established under RCW 69.41.190 and 70.14.-050. The statutes require state-operated prescription drug programs to allow physicians and other prescribers to endorse a Washington preferred drug list (PDL) and, in most cases, requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

(1) The therapeutic interchange program (TIP) applies only to drugs:

- (a) Within therapeutic classes on the Washington PDL;
- (b) Studied by the evidence-based practice center(s);
- (c) Reviewed by the P&T committee; and
- (d) Prescribed by an endorsing practitioner.

(2) TIP does not apply:

- ~~(a) To drugs that require authorization;~~
- ~~(b) To drugs with specific limitations;~~

~~(c))~~ When the pharmacy and therapeutics (P&T) committee determines that TIP does not apply to the therapeutic class on the PDL; or

~~((c))~~ (b) To a drug prescribed by a nonendorsing practitioner.

(3) A practitioner who wishes to become an endorsing practitioner must specifically enroll with the health care authority (HCA) as an endorsing practitioner, under the provisions of chapter 182-50 WAC.

(4) When an endorsing practitioner writes a prescription for a client for a nonpreferred drug, or for a preferred drug for a special population or indication other than the client's population or indication, and indicates that substitution is permitted, the pharmacist must:

(a) Dispense a preferred drug in that therapeutic class in place of the nonpreferred drug; and

(b) Notify the endorsing practitioner of the specific drug and dose dispensed.

(5) When an endorsing practitioner determines that a nonpreferred drug is medically necessary, all of the following apply:

(a) The practitioner must indicate that the prescription is to be dispensed as written (DAW);

(b) The pharmacist dispenses the nonpreferred drug as prescribed; and

(c) The department does not require prior authorization to dispense the nonpreferred drug in place of a preferred drug except when the drug requires authorization for safety.

(6) In the event the following therapeutic drug classes are on the Washington PDL, pharmacists will not substitute a preferred drug for a nonpreferred drug in these therapeutic drug classes when the endorsing practitioner prescribes a refill (including the renewal of a previous prescription or adjustments in dosage, and samples):

- (a) Antipsychotic;
- (b) Antidepressant;
- (c) Chemotherapy;
- (d) Antiretroviral;
- (e) Immunosuppressive; or

(f) Immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

WAC 388-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies. (1) The department covers:

(a) Outpatient drugs, including over-the-counter drugs, as defined in WAC 388-530-1050, subject to the limitations and requirements in this chapter, when:

(i) The drug is approved by the Food and Drug Administration (FDA);

(ii) The drug is for a medically accepted indication as defined in WAC 388-530-1050;

(iii) The drug is not excluded from coverage under WAC 388-530-2100; ~~((and))~~

(iv) The manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS). Exceptions to the drug rebate requirement are described in WAC 388-530-7500 which describes the drug rebate program; and

(v) Prescribed by a provider with prescriptive authority (see exceptions for family planning and emergency contraception for women eighteen years of age and older in WAC 388-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 388-530-2000 (1)(g).

(b) Family planning drugs, devices, and drug-related supplies per chapter 388-532 WAC and as follows:

(i) Over-the-counter (OTC) family planning drugs, devices, and drug-related supplies without a prescription when the department determines it necessary for client access and safety.

(ii) Family planning drugs that do not meet the federal drug rebate requirement in WAC 388-530-7500 on a case-by-case basis; and

(iii) Contraceptive patches, contraceptive rings, and oral contraceptives, only when dispensed in at least a three-month supply, unless otherwise directed by the prescriber. There is no required minimum for how many cycles of emergency contraception may be dispensed.

(c) Prescription vitamins and mineral products, only as follows:

(i) When prescribed for clinically documented deficiencies;

(ii) Prenatal vitamins, when prescribed and dispensed to pregnant women; or

~~(iii) Fluoride ((varnish for children under the early and periodic screening, diagnosis, and treatment (EPSDT) program))~~ prescribed for clients under the age of twenty-one.

(d) Drug-related devices and drug-related supplies as an outpatient pharmacy benefit when:

(i) Prescribed by a provider with prescribing authority;

(ii) Essential for the administration of a covered drug;

(iii) Not excluded from coverage under WAC 388-530-2100; and

(iv) Determined by the department, that a product covered under chapter 388-543 WAC Durable medical equipment and supplies should be available at retail pharmacies.

(e) Preservatives, flavoring and/or coloring agents, only when used as a suspending agent in a compound.

(f) Over-the-counter (OTC) drugs, without a prescription, to promote smoking cessation only for clients who are eighteen years of age or older and participating in a department-approved smoking cessation program. Limitation extensions as described in WAC 388-501-0169 are prohibited for the age and counseling requirements in this section.

(g) Prescription drugs to promote smoking cessation only for clients who are eighteen years of age or older and participating in a department-approved smoking cessation program. Limitation extensions as described in WAC 388-501-0169 are prohibited for the age and counseling requirements in this section.

~~(2) ((Coverage determinations for the department are decided by:~~

~~(a) The department in consultation with federal guidelines; or~~

~~(b) The drug use review (DUR) board; and~~

~~(c) The department's medical consultants and the department's pharmacist(s).~~

~~(3)) The department does not reimburse for any drug, device, or drug-related supply not meeting the coverage requirements under this section.~~

AMENDATORY SECTION (Amending WSR 07-20-049, filed 9/26/07, effective 11/1/07)

WAC 388-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies. (1) The department does not cover:

(a) A drug that is:

(i) Not approved by the Food and Drug Administration (FDA); or

(ii) Prescribed for a nonmedically accepted indication, including diagnosis, dose, or dosage schedule that is not evidenced-based.

(b) A drug prescribed:

(i) For weight loss or gain;

(ii) For infertility, frigidity, impotency;

(iii) For sexual or erectile dysfunction; or

(iv) For cosmetic purposes or hair growth;~~(v) To promote tobacco cessation, except as described in~~

~~WAC 388-533-0400(20) tobacco cessation for pregnant women).~~

(c) Drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.

(d) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.

(e) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee.

(f) A product:

(i) With an obsolete national drug code (NDC) for more than two years;

(ii) With a terminated NDC;

(iii) Whose shelf life has expired; or

(iv) Which does not have an eleven-digit NDC.

(g) Any drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children).

(h) Free pharmaceutical samples.

(i) Over-the-counter or prescription drugs to promote smoking cessation unless the client is eighteen years old or older and participating in a department-approved cessation program.

(2) A client can request an exception to rule (ETR) as described in WAC 388-501-0160.

WSR 08-21-108

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed October 16, 2008, 1:50 p.m., effective November 16, 2008]

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

Purpose: DSHS is removing references to hospital expenses to comply with federal regulations.

Citation of Existing Rules Affected by this Order: Amending WAC 388-416-0020.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500.

Adopted under notice filed as WSR 08-18-048 on August 29, 2008.

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

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

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

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

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

Date Adopted: October 13, 2008.

Stephanie E. Schiller

Rules Coordinator

AMENDATORY SECTION (Amending WSR 98-16-044, filed 7/31/98, effective 9/1/98)

WAC 388-416-0020 Certification periods for the noninstitutional(~~ized~~) medically needy (MN) program.

(1) The certification period for the noninstitutional(~~ized~~) medically needy (MN) program (~~(begins))~~ for clients with countable income equal to or below the medically needy income level (MNIL):

(a) Begins on the first day of the month in which ((hospital expenses equal the spenddown amount)) eligibility is established; ((~~or~~)) and

(b) ~~((On the day that spenddown is met, when hospital expenses are less than the spenddown amount or no hospital~~

~~expenses are involved))~~ Is approved for twelve calendar months.

~~(2) The certification period ((continues through the last day of the final month of the base period as described in chapter 388-519 WAC))~~ for the noninstitutional MN program for clients with countable income above the MNIL:

~~(a) Begins on the day that spenddown is met; and~~

~~(b) Continues through the last day of the final month of the base period as described in WAC 388-519-0110.~~

~~(3) ((The))~~ A retroactive MN certification period ((can begin up to)) may be established for any or all of the three months immediately prior to the month of application ((as described in chapter 388-519 WAC)).

~~(4) ((The certification period for MN clients with income below the medically needy income level (MNIL) is twelve months))~~ Expenses used to meet the spenddown liability for the current or the retroactive certification periods are the responsibility of the client. The department is not responsible to pay for any expense or portion of an expense which has been used to meet the spenddown liability. See WAC 388-519-0110.

~~(5) A new application must be submitted for each subsequent certification period for which medically needy coverage is requested.~~

WSR 08-21-133

PERMANENT RULES

LIQUOR CONTROL BOARD

[Filed October 20, 2008, 10:30 a.m., effective November 20, 2008]

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

Purpose: As part of the liquor control board's on-going rules review process, chapter 314-76 WAC has been reviewed for relevance, clarity, and accuracy.

Citation of Existing Rules Affected by this Order:
Repealing WAC 314-76-010.

Statutory Authority for Adoption: RCW 66.08.030.

Adopted under notice filed as WSR 08-16-137 on August 6, 2008.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 5, Amended 0, Repealed 1.

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

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

Date Adopted: September 24 [October 20], 2008.

Lorraine Lee
Chairman

Chapter 314-76 WAC

PROCESSING SPECIAL ORDERS OF LIQUOR FROM THE BOARD

NEW SECTION

WAC 314-76-015 What is the purpose of this chapter? The purpose of this chapter is to describe the process for obtaining liquor from the board that is not regularly available through the board's retail stores. This process is known as a special order.

NEW SECTION

WAC 314-76-020 Who may special order liquor from the board? (1) An individual who is twenty-one years of age or older may request a special order for liquor from the board. The liquor must be for his or her personal use and not for resale.

(2) A person licensed to sell liquor by the drink at retail to customers at the person's licensed premises may request a special order for liquor from the board.

NEW SECTION

WAC 314-76-025 What liquor products may be special ordered? (1) Liquor products, except industrial alcohol, available for wholesale purchase in the United States may be available in the state of Washington through a special order at the discretion of the board.

(2) All liquor products must have federal label approval. Wine and beer products must have Washington state label approval.

(3) Special order requests will be subject to a supplier's minimum order quantity, typically one full case of product.

NEW SECTION

WAC 314-76-030 Are there special requirements for a special order? The board may require prepayment or a deposit from a customer for a special order. All sales of special ordered items are final and may not be returned to the board, unless the product is defective.

NEW SECTION

WAC 314-76-035 How does an individual place a special order? A special order must be placed through a state or contract liquor store or directly to the board's purchasing division. Products must be picked up at the designated state or contract liquor store.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-76-010

Special order of liquor by customers.

WSR 08-21-134
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed October 20, 2008, 12:26 p.m., effective October 28, 2008]

Effective Date of Rule: October 28, 2008.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The emergency WAC (filed as WSR 08-14-103 on June 30, 2008) for WAC 388-478-0005 expires on October 28, 2008. Under RCW 34.05.380(3), the department is requesting that the permanent rule take effect on October 28, 2008, which is less than the standard thirty-one days. State law, ESHB 2687 section 207 (1)(e), required the department to increase the temporary assistance for needy families (TANF) grant amounts effective July 1, 2008. State family assistance (SFA) and refugee cash assistance (RCA) use the same grant standards as TANF, which is supported by C.F.R. Title 45, Volume 2, Chapter IV, Part 400, section 400.60, RCW 74.08A.100 and 74.04.770.

An earlier effective date keeps the department in compliance with state law and supports families by maintaining the increased grant amount. In addition, the earlier effective date means the department does not have to file a second emergency in order to cover the period that the permanent WAC is filed, but not in effect.

Purpose: The department is amending by permanent adoption WAC 388-478-0005 Cash assistance need and payment standards and grant maximum. The amendments comply with ESHB 2687 section 207 (1)(e) requiring a 3% increase in the payment standards for temporary assistance for needy families (TANF).

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0005.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08A.100, 74.04.770, and 74.08.090.

Other Authority: ESHB 2687, section 207 (1)(e).

Adopted under notice filed as WSR 08-17-108 on August 20, 2008.

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

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

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

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

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

Date Adopted: October 15, 2008.

Stephanie E. Schiller
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-05-010, filed 2/6/04, effective 3/8/04)

WAC 388-478-0005 Cash assistance need and payment standards and grant maximum. (1) Need standards for cash assistance programs represent the amount of income required by individuals and families to maintain a minimum and adequate standard of living. Need standards are based on assistance unit size and include basic requirements for food, clothing, shelter, energy costs, transportation, household maintenance and operations, personal maintenance, and necessary incidentals.

(2) Payment standards for assistance units in medical institutions and other facilities are based on the need for clothing, personal maintenance, and necessary incidentals (see WAC 388-478-0040 and 388-478-0045).

(3) Need and payment standards for persons and families who do not reside in medical institutions and other facilities are based on their obligation to pay for shelter.

(a) Eligibility and benefit levels for persons and families who meet the requirements in WAC 388-478-0010 are determined using standards for assistance units with an obligation to pay shelter costs.

(b) Eligibility and benefit levels for all other persons and families are determined using standards for assistance units who have shelter provided at no cost.

(c) For recent arrivals to Washington state who apply for temporary assistance for needy families (TANF), see WAC 388-468-0005.

(4) The monthly grant for an assistance unit containing eight or more persons cannot exceed the grant maximum (~~of one thousand seventy five dollars~~) payment standard for a family of eight listed in WAC 388-478-0020(1).

WSR 08-21-144
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Management Services Administration)

[Filed October 21, 2008, 11:17 a.m., effective November 21, 2008]

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

Purpose: These DSHS rules promote compliance with federal rules and clarify DSHS rule language implementing Parts IV and V of chapter 34.05 RCW. These rules make changes to the authority of the administrative law judge and review judge in WAC 388-02-0215, 388-02-0217, and 388-02-0600 and are necessary to comply with federal rules, including 42 C.F.R. 431.10 (e)(3) and 45 C.F.R. 205.100 (b)(3), that prohibit DSHS from delegating final decision-making authority in medicaid-funded and TANF-funded cases. These rules permit review of hearing decisions for medicaid-funded and TANF-funded cases by a DSHS review judge upon request of either party. WAC 388-02-0218 is added for clarification to reflect the authority given to review judges under WAC 388-96-904. These rules clarify, update, and make other changes to chapter 388-02 WAC in order to improve efficiency, accuracy, and consistency in DSHS hearings and the review process.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-02-0524 and 388-02-0527; and amending WAC 388-02-0010, 388-02-0215, 388-02-0530, 388-02-0550, 388-02-0555, 388-02-0560, 388-02-0565, 388-02-0570, 388-02-0575, 388-02-0580, 388-02-0585, 388-02-0590, 388-02-0595, and 388-02-0600.

Statutory Authority for Adoption: RCW 34.05.020, 34.05.220.

Other Authority: 42 C.F.R. 431.10 (e)(3); 45 C.F.R. 205.100 (b)(3); chapter 34.05 RCW, Parts IV and V.

Adopted under notice filed as WSR 08-09-105 on April 21, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-02-0550(2), 388-02-0580(4), and 388-02-0590(5) have been modified so that these subsections are no longer applicable to requests by DSHS for the following: Corrected orders, review by a review judge, or more time to respond to a review request.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 2, Repealed 2; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 12, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 14, Repealed 2.

Date Adopted: October 15, 2008.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

WAC 388-02-0010 What definitions apply to this chapter? The following definitions apply to this chapter:

"Administrative law judge (ALJ)" means an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not DSHS employees or DSHS representatives.

"BOA" means the DSHS board of appeals.

"Business days" means all days except Saturdays, Sundays and legal holidays.

"Calendar days" means all days including Saturdays, Sundays and legal holidays.

"Deliver" means giving a document to someone in person.

"Documents" means papers, letters, writings, or other printed or written items.

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

"DSHS representative" means an employee of DSHS, a DSHS contractor, or an assistant attorney general authorized to represent DSHS in an administrative hearing. DSHS representatives include, but are not limited to, claims officers and fair hearing coordinators.

"Final order" means an order that is the final DSHS decision.

"Hearing" means a proceeding before ~~((OAH))~~ an ALJ or review judge that gives a party an opportunity to be heard in disputes about DSHS programs. For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 388 of the Washington Administrative Code, chapter 10-08 WAC, or other law.

"Initial order" is a hearing decision made by an ALJ that may be reviewed by a BOA review judge ~~((pursuant to WAC 388-02-0215(4)))~~ at either party's request.

"Judicial review" means a superior court's review of a final order.

"Mail" means placing the document in the mail with the proper postage.

"OAH" means the office of administrative hearings, a separate state agency from DSHS.

"Party" means ~~((a person or entity))~~:

(1) DSHS; or

(2) A person or entity:

(a) Named in a DSHS action;

~~((2))~~ (b) To whom a DSHS action is directed; or

~~((3))~~ (c) Allowed to participate in a hearing to protect an interest as authorized by law or rule.

~~((4))~~ DSHS is also a party.)

"Prehearing conference" means a proceeding scheduled and conducted by an ALJ or review judge in preparation for a hearing.

"Prehearing meeting" means an informal voluntary meeting that may be held before any prehearing conference or hearing.

"Program" means a DSHS organizational unit and the services that it provides, including services provided by DSHS staff and through contracts with providers. Organizational units include, but are not limited to, administrations and divisions.

"Record" means the official documentation of the hearing process. The record includes ~~((tape))~~ recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

"Review" means ~~((the act of reviewing))~~ a review judge evaluating initial orders entered by an ALJ and making the final agency decision as provided by RCW 34.05.464, or issuing final orders.

"Review judge" means ~~((an attorney employed by the DSHS board of appeals (BOA) who is the reviewing officer in RCW 34.05.464 for cases listed in WAC 388-02-0215(4)))~~ a decision-maker with expertise in DSHS rules who is an attorney and serves as the reviewing officer under RCW 34.05.464. In some cases, review judges conduct hearings and enter final orders. In other cases, they review initial orders and may make changes to correct any errors in an ALJ's initial order. When reviewing initial orders or conduct-

ing hearings, review judges enter final orders. Review judges are employed by DSHS, are located in the DSHS board of appeals (BOA), and are not part of the DSHS program involved in the review.

"**Rule**" means a state regulation. Rules are found in the Washington Administrative Code (WAC).

"**Stay**" means an order temporarily halting the DSHS decision or action.

"**You**" means any individual or entity that has a right to be involved with the DSHS hearing process, which includes a party or a party's representative. "You" does not include DSHS or its representative.

AMENDATORY SECTION (Amending WSR 06-16-008, filed 7/20/06, effective 8/20/06)

WAC 388-02-0215 What is the authority of the ALJ?

(1) The ALJ must hear and decide the issues de novo (anew) based on what is presented during the hearing.

(2) As needed, the ALJ may:

- (a) Determine the order for presenting evidence;
- (b) Issue subpoenas or orders directing witnesses to appear or bring documents;
- (c) Rule on objections, motions, and other procedural matters;
- (d) Rule on an offer of proof made to admit evidence;
- (e) Admit relevant evidence;
- (f) Impartially question witnesses to develop the record;
- (g) Call additional witnesses and request exhibits to complete the record;
- (h) Give the parties an opportunity to cross-examine witnesses or present more evidence against the witnesses or exhibits;
- (i) Keep order during the hearing;
- (j) Allow or require oral or written argument and set the deadlines for the parties to submit argument or evidence;
- (k) Permit others to attend, photograph or electronically record hearings, but may place conditions to preserve confidentiality or prevent disruption;
- (l) Allow a party to waive rights given by chapters 34.05 RCW or 388-02 WAC, unless another law prevents it;
- (m) Decide whether a party has a right to a hearing;
- (n) Issue protective orders;
- (o) Consider granting a stay if authorized by law or DSHS rule; and
- (p) Take any other action necessary and authorized under these or other rules.

(3) The ALJ administers oaths or affirmations and takes testimony.

(4) ~~((The ALJ enters an initial order in those cases where the parties may request review of an initial order by a review judge. Cases where the parties may request review of an initial order by a review judge are those relating to:~~

- ~~(a) Adult family home licenses under chapter 388-76 WAC;~~
- ~~(b) Boarding home licenses under chapter 388-78A WAC;~~
- ~~(c) Resident protection program findings under WAC 388-97-077;~~

~~(d) Nursing home licenses under WAC 388-97-550 through 388-97-695;~~

~~(e) DSHS findings of abandonment, abuse, financial exploitation or neglect under chapters 74.34, 74.39, 74.39A RCW and chapters 388-71 and 388-101 WAC;~~

~~(f) Where the client has requested a hearing under WAC 388-71-0560, the termination of a provider for placing clients in imminent jeopardy under RCW 74.39A.095(7) and WAC 388-71-0551;~~

~~(g) Where the client has requested a hearing under WAC 388-71-0560, the termination of a provider due to inadequate performance or inability to deliver quality care under RCW 74.39A.095(7) and WAC 388-71-0540 and 388-71-0551;~~

~~(h) Where the client has requested a hearing under WAC 388-71-0560, the denial of a contract to a provider due to inability of the provider to appropriately meet the care needs of clients under RCW 74.39A.095(8) and WAC 388-71-0546;~~

~~(i) Where the client has requested a hearing under WAC 388-71-0560, the denial or termination of a contract and subsequent denial of payment to a provider due to a disqualifying crime or lack of character, competence, or suitability to maintain the health, safety, and well-being of clients under RCW 43.20A.710(5) and WAC 388-71-0540 (3) through (5);~~

~~(j) Social service eligibility under chapter 388-71 WAC, and under chapter 388-106 WAC, except for financial eligibility requirements;~~

~~(k) Domestic violence perpetrator treatment program certification under chapter 388-60 WAC;~~

~~(l) Licensing or certification of homes, programs, facilities, providers, and agencies serving children, juveniles, expectant mothers and developmentally disabled persons under chapter 74.15 RCW and chapters 388-140, 388-145, 388-147, 388-148 and 388-160 WAC;~~

~~(m) Child protective services findings of abuse and neglect under RCW 26.44.125 and chapter 388-15 WAC;~~

~~(n) Adoption support under WAC 388-27-0120 through 388-27-0390, for which a hearing has been held under WAC 388-27-0365;~~

~~(o) Child day care licenses under chapter 74.15 RCW and chapters 388-150, 388-151, 388-155, 388-295 and 388-296 WAC;~~

~~(p) Background checks of protective payees under WAC 388-460-0025, for which a hearing has been held under WAC 388-460-0070;~~

~~(q) Background checks of child care providers and other persons under WAC 388-290-0143, for which a hearing has been held under WAC 388-290-0260 as part of the working connections child care program;~~

~~(r) Background checks of persons acting in the place of a parent under WAC 388-454-0006, for which a hearing has been held under WAC 388-472-0005 (1)(j);~~

~~(s) Claims of good cause for not cooperating with the division of child support under WAC 388-422-0020;~~

~~(t) Parent address disclosure under WAC 388-14A-2114 through 388-14A-2140;~~

~~(u) Chemical dependency treatment provider certification under chapter 388-805 WAC;~~

~~(v) Community residential services and support certification under chapter 388-101 WAC;~~

~~(w) Denial or termination of eligibility for services under WAC 388-825-030 and 388-825-035, for which a hearing has been held under WAC 388-825-120 (1)(a);~~

~~(x) Development or modification of an individual service plan under WAC 388-825-050, for which a hearing has been held under WAC 388-825-120 (1)(b);~~

~~(y) Authorization, denial, reduction, or termination of services under WAC 388-825-055, for which a hearing has been held under WAC 388-825-120 (1)(c);~~

~~(z) Licensed community facilities under RCW 74.15.210 and WAC 388-730-0090;~~

~~(aa) Community mental health and involuntary treatment program licenses under WAC 388-865-0480;~~

~~(bb) Medical, dental, or transportation services, for which a hearing has been held under WAC 388-526-2610;~~

~~(cc) Medical provider overpayments, for which a hearing has been held under WAC 388-502-0230(5) or 388-502-0240(17); or~~

~~(dd) Background checks under WAC 388-06-0110 that result in denial of authorization for unsupervised access to children or to individuals with developmental disabilities, for which a hearing has been held under WAC 388-06-0240(1); or~~

~~(ee) Cases for which a right to a hearing existed, if the request for a hearing was received by OAH or DSHS on or before November 14, 2002, and WAC 388-740-0060 and 388-891-0275 did not apply.~~

~~(5) The ALJ makes the final decision and enters the final order in all cases except those cases set forth in subsection (4) of this section.~~

~~(6) A review judge has the same authority as an ALJ when presiding at a hearing)) The ALJ enters initial or final orders as provided for in WAC 388-02-0217.~~

NEW SECTION

WAC 388-02-0217 When do ALJs conduct the hearing and enter the hearing decision as an initial order or a final order? (1) As provided for in WAC 388-02-0218, ALJs do not conduct hearings involving cases brought by contractors for the delivery of nursing facility services under WAC 388-96-904(5).

(2) ALJs conduct the hearing and enter the hearing decision as a final order only in cases pertaining to:

(a) Eligibility for the following programs:

(i) Food assistance;

(ii) General assistance, except for general assistance expedited Medicaid (GAX);

(iii) Refugee assistance; or

(iv) Telephone assistance.

(b) Child support under chapter 388-14A WAC, except for cases relating to parent address disclosure under WAC 388-14A-2114 through 388-14A-2140 or claims of good cause for not cooperating with the division of child support under WAC 388-14A-2040 through 388-14A-2075 and WAC 388-422-0020;

(c) Juvenile parole revocation under chapter 388-740 WAC;

(d) Juvenile rehabilitation cost reimbursement under chapter 388-720 WAC;

(e) Vocational rehabilitation services under chapter 388-891 WAC; or

(f) Vendor overpayments, except for provider overpayment cases where the hearing is requested by a provider under chapter 388-502 or 388-502A WAC.

(3) ALJs conduct the hearing and enter the hearing decision as an initial order in all other cases.

NEW SECTION

WAC 388-02-0218 When do review judges conduct the hearing and enter final orders? (1) Review judges conduct the hearing and enter the final order in cases where a contractor for the delivery of nursing facility services requests an administrative hearing under WAC 388-96-904(5). Any party dissatisfied with a decision or an order of dismissal of a review judge may request reconsideration from the review judge as provided by this chapter and WAC 388-96-904(12). Following a review judge's decision, you, but not DSHS, may file a petition for judicial review as provided by this chapter and WAC 388-96-904(13).

(2) A review judge has the same authority as an ALJ, as described in WAC 388-02-0215, when conducting a hearing.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

WAC 388-02-0530 What if a party disagrees with the ALJ's decision? (1) If a party disagrees with an ALJ's initial or final order because of a clerical error, the party may ask for a corrected decision from the ALJ as provided in WAC 388-02-0540 through 388-02-0555.

(2) If a party disagrees with an initial order (~~for a case listed in WAC 388-02-0215(4))~~ and wants it changed, the party must request review by ~~((BOA))~~ a review judge as provided in WAC 388-02-0560 through 388-02-0595.

If a party wants to stay the DSHS action until review of the initial order is completed, the party must request a stay from a review judge.

(3) Final orders entered by ALJs may not be reviewed by ~~((BOA))~~ a review judge.

(4) If a party disagrees with an ALJ's final order, the party may request reconsideration as provided in WAC 388-02-0605 through 388-02-0635. You may also petition for judicial review of the final order as stated in WAC 388-02-0640 through 388-02-0650. You do not need to file a request for reconsideration of the final order before petitioning for judicial review. DSHS may not request judicial review of an ALJ's or review judge's final order.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

WAC 388-02-0550 How much time do the parties have to ask for a corrected ALJ decision? (1) The parties must ask ~~((OAH))~~ the ALJ for a corrected decision on or before the tenth calendar day after the order was mailed.

(2) If you ask the ALJ to correct a decision, the time period provided by this section for requesting a corrected decision of an initial order, and the time it takes the ALJ to deny the request or make a decision regarding the request for

a corrected initial order, do not count against any deadline, if any, for a review judge to enter a final order.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

WAC 388-02-0555 What happens when a party requests a corrected ALJ decision? (1) When a party requests a corrected initial or final order, the ALJ must either:

(a) Send all parties a corrected order; or
(b) Deny the request within three business days of receiving it.

(2) If the ALJ corrects an initial order and a party does not request review, the corrected initial order becomes final twenty-one calendar days after the original initial order was mailed.

(3) If the ALJ denies a request for a corrected initial order (~~((for a case listed in WAC 388-02-0215(4)))~~) and the party still wants the hearing decision changed, the party must request review (~~((from BOA))~~) by a review judge.

(4) Requesting an ALJ to (~~(corrected)~~) correct the initial order (~~((for a case listed in WAC 388-02-0215(4)))~~) does not automatically extend the deadline to request review of the initial order by (~~(BOA))~~ a review judge. (~~((A))~~) When a party needs more time to request review of an initial order, the party (~~(may))~~ must ask for more time to request review (~~((when needed))~~) as permitted by WAC 388-02-0580(2).

(5) If the ALJ denies a request for a corrected final order and you still want the hearing decision changed, you must request judicial review.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

WAC 388-02-0560 What is review of an initial order by a review judge? (1) (~~(Review occurs when a party disagrees or wants a change in an initial order, other than correcting a clerical error))~~ Review by a review judge is available to a party who disagrees with the ALJ's initial order.

(2) (~~((A party must request review of an initial order for a case listed in WAC 388-02-0215(4) from the BOA))~~) If a party wants the initial order changed, the party must request that a review judge review the initial order.

(3) (~~((The review judge considers the request, the initial order, and record, before deciding if the initial order may be changed))~~) If a request is made for a review judge to review an initial order, it does not mean there is another hearing conducted by a review judge.

(4) (~~((Review does not include another hearing by the BOA))~~) The review judge considers the request, the initial order, and the record, and may hear oral argument, before deciding if the initial order should be changed.

(5) (~~(BOA))~~ Review judges may not review ALJ final orders.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0565 What evidence does the review judge consider (~~((in a decision))~~) in reviewing an initial

order? (1) The review judge, in most cases, only considers evidence given at the original hearing before the ALJ.

(2) The review judge may allow the parties to make oral argument (~~((on review))~~) when reviewing initial orders.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

WAC 388-02-0570 Who may request review of an initial order? (1) Any party may request (~~(BOA))~~ a review judge to review (~~((an))~~) the initial order (~~((for a case listed in WAC 388-02-0215(4)))~~).

(2) If more than one party requests review, each request must meet the deadlines in WAC 388-02-0580.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

WAC 388-02-0575 ((What must)) How does a party ((include in the)) request review ((request))? A party must make the review request in writing, send it to BOA, and clearly identify the:

(1) Parts of the initial order with which the party disagrees; and

(2) Evidence supporting the party's position.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

WAC 388-02-0580 What is the deadline for requesting review (~~((of cases listed in WAC 388-02-0215(4)))~~) by a review judge? (1) BOA must receive the written review request on or before the twenty-first calendar day after the initial order was mailed.

(2) A review judge may extend the deadline if a party:

(a) Asks for more time before the deadline expires; and

(b) Gives a good reason for more time.

(3) A review judge may accept a review request after the twenty-one calendar day deadline only if:

(a) The BOA receives the review request on or before the thirtieth calendar day after the deadline; and

(b) A party shows good reason for missing the deadline.

(4) If you ask a review judge to review an ALJ decision, the time period provided by this section for requesting review of an initial order, including any extensions, does not count against any deadline, if any, for a review judge to enter the final order.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

WAC 388-02-0585 Where does a party send ((a)) the request ((to)) for review (~~((a case listed in WAC 388-02-0215(4)))~~) by a review judge? (1) A party must send (~~((a))~~) the request (~~((to review a case listed in WAC 388-02-0215(4)))~~) for review of the initial order to BOA at the address given in WAC 388-02-0030. A party should also send a copy of the review request to the other parties.

(2) After receiving a party's review request, BOA sends a copy to the other parties, their representatives, and OAH (~~((and representatives giving them time to respond))~~). The other

parties and their representatives may respond as described in WAC 388-02-0590.

AMENDATORY SECTION (Amending WSR 00-18-059, filed 9/1/00, effective 10/2/00)

WAC 388-02-0590 How does ~~((a))~~ the party that is not requesting review respond to the review request? (1) A party does not have to respond to the review request. A response is optional.

(2) If a party decides to respond~~((s))~~, that party must send the response so that BOA receives it on or before the seventh business day after the date the other party's review request was mailed to the party by BOA.

(3) The party must send a copy of the response to ~~((any))~~ all other ~~((party))~~ parties or their representatives.

(4) ~~((If a party needs more time to respond, the party must contact BOA by))~~ A review judge may extend the deadline in subsection (2) of this section if a party asks for more time before the deadline to respond expires and gives a good reason.

(5) If you ask for more time to respond, the time period provided by this section for responding to the review request, including any extensions, does not count against any deadline, if any, for a review judge to enter the final order. A review judge may accept and consider a party's response even if it is received after the deadline.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

WAC 388-02-0595 What happens after the response deadline? (1) After the response deadline, the record on review is closed unless there is a good reason to keep it open.

(2) A review judge is assigned to ~~((the))~~ review the initial order after the record is closed. To find out which judge is assigned, call BOA.

(3) After the record is closed, the assigned review judge:

(a) Reviews the ~~((ease))~~ initial order; and

(b) Enters a final order that affirms, changes, dismisses or reverses the initial order; or

(c) ~~((Remands (returns)))~~ Returns the case to OAH for further action.

AMENDATORY SECTION (Amending WSR 02-21-061, filed 10/15/02, effective 11/15/02)

WAC 388-02-0600 What is the authority of the review judge? (1) ~~((A review judge may only review the cases listed in WAC 388-02-0215(4)))~~ Review judges review initial orders and enter final orders. Review judges may return cases to OAH for further action. ~~((A))~~

(2) The review judge has the same decision-making authority as ~~((an))~~ the ALJ when reviewing initial orders in the following cases, but must consider the ALJ's opportunity to observe the witnesses:

(a) Licensing, certification and related civil fines;

(b) Rate-making proceedings; ~~((and))~~

(c) Parent address disclosure;

(d) Temporary assistance to needy families (TANF);

(e) Working connections child care (WCCC);

(f) Medical assistance eligibility;

(g) Medical or dental services funded by Title XIX of the Social Security Act;

(h) Adoption support services; and

(i) Eligibility for client services funded by Title XIX of the Social Security Act and provided by the aging and disability services administration.

~~((2))~~ (3) In all other cases, ~~((a))~~ the review judge may only change the ~~((hearing decision))~~ initial order if:

(a) There are irregularities, including misconduct of a party or misconduct of the ALJ or abuse of discretion by the ALJ, that affected the fairness of the hearing;

(b) The findings of fact are not supported by substantial evidence based on the entire record;

(c) The decision includes errors of law;

(d) The decision needs to be clarified before the parties can implement it; or

(e) Findings of fact must be added because the ALJ failed to make an essential factual finding. The additional findings must be supported by substantial evidence in view of the entire record and must be consistent with the ALJ's findings that are supported by substantial evidence based on the entire record.

~~((3))~~ (4) Review judges ~~((have the authority to enter final orders for the cases listed in WAC 388-02-0215(4)))~~ may not review ALJ final orders. See WAC 388-02-0217 for cases in which the ALJ enters a final order.

~~((4))~~ Review judges may remand cases listed in WAC 388-02-0215(4) to the ALJ for further action) (5) A review judge conducts the hearing and enters the final order in cases covered by WAC 388-02-0218.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-02-0524 In what cases does the ALJ enter the hearing decision as an initial order?

WAC 388-02-0527 In what cases does the ALJ enter the hearing decision as a final order?

WSR 08-21-150

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed October 21, 2008, 3:04 p.m., effective November 21, 2008]

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

Purpose: The rule making is in response to *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 153 P.3d 846 (2007). In that case, the court concluded that RCW 49.46.130(1) requires overtime compensation for hours worked over forty per week for interstate driving, including hours spent working out of state. Current rules require overtime pay for truck drivers only for their hours worked within Washington.

These rules are not consistent with the decision and need to be amended.

The court's ruling directly affects two regulations with corresponding policies and enforcement practices. The court's decision has invalidated portions of WAC 296-128-011 and 296-128-012 where the rules define hours for purposes of overtime provisions as hours worked only within Washington state. Language will also be added that requires the department to review compensation systems submitted by employers, and approve such compensation systems retroactively if the department's review finds that they complied with *Bostain* and RCW 49.46.130 (2)(f).

Citation of Existing Rules Affected by this Order: Amending WAC 296-128-011 and 296-128-012.

Statutory Authority for Adoption: RCW 43.22.270 and 49.46.130.

Adopted under notice filed as WSR 08-15-178 on July 23, 2008.

Changes Other than Editing from Proposed to Adopted Version: WAC 296-128-012(3) "relied on WAC 296-128-011(1)" was replaced with "employed drivers who worked over forty hours a week consisting of both in-state and out-of-state hours anytime." Further, the last sentence of the proposed regulation was deleted. The sentence stated as follows: "Approval of a reasonably equivalent compensation system under this subsection shall constitute continuing approval for the period the employer uses the compensation system." These changes were made in response to public comments received.

There are three changes from the CR-102 proposed amendments.

First, the department made a technical change by deleting the reference to "(2)(f)" when referring to RCW 49.46.130. We deleted it based on review of RCW 49.46.130 (2)(f), the provision that creates the "reasonably equivalent to time-and-a-half" exemption. The deletion also makes the statutory reference consistent with the statutory reference in WAC 296-128-012 (1)(a).

Second, the department deleted the last sentence of the proposed regulation. It reads as follows: "Approval of a reasonably equivalent compensation system under this subsection shall constitute continuing approval for the period the employer uses the compensation system."

The department does not intend to, by promulgating the proposed regulation, impinge on rights of workers to receive reasonably equivalent overtime wages. The use of the word "shall" in the sentence appears to provide automatic continuing approval regardless of changes in circumstances into the future, potentially rendering it not reasonably equivalent in practice. The department believes that employers may need to make adjustments for unforeseen changes or circumstances for a reasonably equivalent system to be valid in the future.

While deleting this sentence from the proposed regulation, the department will be including additional language in approval letters to employers. That approval language will contain a statement that changes in circumstances may affect continuing approval. This will provide employers and employees the notice and knowledge that continuing approval is based on consistency with the plan.

Third, the department changed the language in the second sentence of WAC 296-128-012(3). That sentence now begins with the language, "An employer who employed drivers who worked over forty hours a week consisting of both in-state and out-of-state hours anytime..." The intent of the proposed subsection is to offer, for a discrete period of time, the benefit of a process for scrutiny to all employers with interstate drivers with out-of-state overtime hours. The department changed the proposed language to reflect that the subsection applies only to employers with interstate drivers.

A final cost-benefit analysis is available by contacting Sally Elliott, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail yous235@lni.wa.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 2, Repealed 0.

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

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

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

Date Adopted: October 21, 2008.

Judy Schurke
Director

AMENDATORY SECTION (Amending WSR 89-22-120, filed 11/1/89, effective 12/2/89)

WAC 296-128-011 Special recordkeeping requirements. (1) In addition to the records required by WAC 296-128-010, employers who employ individuals as truck or bus drivers subject to the provisions of the Federal Motor Carrier Act shall maintain records indicating the base rate of pay, the overtime rate of pay, the hours worked by each employee for each type of work, and the formulas and projected work hours used to substantiate any deviation from payment on an hourly basis pursuant to WAC 296-128-012. The records shall indicate the period of time for which the base rate of pay and the overtime rate of pay are in effect.

For the purposes of this section and WAC 296-128-012, "base rate of pay" means the amount of compensation paid per hour or per unit of work in a workweek of forty hours or less. A base rate of pay shall be established in advance of the work performed and may be based on hours or work units such as mileage, performance of specified duties, or a specified percentage of the gross proceeds charged for specified work. A base rate of pay shall not be established that will result in compensation at less than the minimum wage prescribed in RCW 49.46.020. "Overtime rate of pay" means the amount of compensation paid for hours worked (~~within the~~

state of Washington)) in excess of forty hours per week and shall be at least one and one-half times the base rate of pay.

(2) The records required by this section shall be made available by the employer at the request of the department. Any current or past employee may obtain copies of the formula, the base rate of pay, the overtime rate of pay, and that employee's records. Job applicants seeking employment by the employer as truck or bus drivers subject to the provisions of the Federal Motor Carrier Act, may obtain copies of the formula, the base rate of pay, and the overtime rate of pay.

AMENDATORY SECTION (Amending WSR 89-22-120, filed 11/1/89, effective 12/2/89)

WAC 296-128-012 Overtime for truck and bus drivers. (1)(a) The compensation system under which a truck or bus driver subject to the provisions of the Federal Motor Carrier Act is paid shall include overtime pay at least reasonably equivalent to that required by RCW 49.46.130 for working ((within the state of Washington)) in excess of forty hours a week. To meet this requirement, an employer may, with notice to a truck or bus driver subject to the provisions of the Federal Motor Carrier Act, establish a rate of pay that is not on an hourly basis and that includes in the rate of pay compensation for overtime. An employer shall substantiate any deviation from payment on an hourly basis to the satisfaction of the department by using the following formula or an alternative formula that, at a minimum, compensates hours worked ((within the state of Washington)) in excess of forty hours per week at an overtime rate of pay and distributes the projected overtime pay over the average number of hours projected to be worked. The following formula is recommended for establishing a uniform rate of pay to compensate work that is not paid on an hourly basis and for which compensation for overtime is included:

1. Define work unit first. E.g., miles, loading, unloading, other.
2.
$$\frac{\text{Average number of work units}}{\text{per hour}} = \frac{\text{Average number of work units accomplished per week}}{\text{Average number of hours projected to be worked per week}}$$
3.
$$\text{Weekly Base Rate} = \text{Number of units per hour} \times 40 \text{ hours} \times \text{base rate of pay}$$
4.
$$\text{Weekly Overtime rate} = \text{Number of units per hour} \times \text{number of hours over 40} \times \text{overtime rate of pay}$$
5.
$$\text{Total weekly pay} = \text{Weekly base rate plus weekly overtime rate}$$
6.
$$\text{Uniform rate of pay} = \frac{\text{Total weekly pay}}{\text{Total work units}}$$

Example: A truck driver is paid on a mileage basis for a two hundred thirty mile trip performed about ten times a week. The base rate of pay is twenty cents a mile. The overtime rate of pay is thirty cents a mile. The average length of the trip is four and one-half hours.

1.
$$\frac{2300 \text{ mi.}}{\text{per week}} \text{ divided by } \frac{45 \text{ hours}}{\text{per week}} = \frac{51.1 \text{ miles}}{\text{per hour}}$$
2. (a) 51.1 miles/hour times 40 hours times .20/mile = \$408.80
 (b) 51.1 miles/hour times 5 hours = 255.5 miles
 (c) 255.5 miles times .30/mile = \$76.65
 (d) \$408.80 plus \$76.65 = \$485.45 divided by 2300 miles = 21.1 cents mile

(b) In using a formula to determine a rate of pay, the average number of hours projected to be worked and the average number of work units accomplished per week shall reflect the actual number of hours worked and work units projected to be accomplished by persons performing the same type of work over a representative time period within the past two years consisting of at least twenty-six consecutive weeks.

(c) The department may evaluate alternative rates of pay and formulas used by employers in order to determine whether the rates of pay established under this section result in the driver receiving compensation reasonably equivalent to one and one-half times the base rate of pay for actual hours worked ((within the state of Washington)) in excess of forty hours per week.

(2) Where an employee receives a different base rate of pay depending on the type of work performed, the rate that is paid or used for hours worked ((within the state of Washington)) in excess of forty hours per week shall be at least the overtime rate of pay for the type of work in which most hours were worked.

(3) Compensation plans before March 1, 2007. An employer who employed drivers who worked over forty hours a week consisting of both in-state and out-of-state hours anytime before March 1, 2007, may, within ninety days of the adoption of this subsection, submit a proposal consistent with subsection (1) of this section to the department for approval of a reasonably equivalent compensation system. The employer shall submit information to substantiate its proposal consisting of at least twenty-six consecutive weeks over a representative time period between July 1, 2005, and March 1, 2007. The department shall then determine if the compensation system includes overtime that was at least reasonably equivalent to that required by RCW 49.46.130.

Note 1: On March 1, 2007, the Washington state supreme court ruled that overtime rate of pay includes hours worked within and outside the state of Washington for Washington-based employees. *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 153 P.3d 846 (2007).

Note 2: The adoption date of this subsection is October 21, 2008.