

**WSR 10-08-001**  
**PERMANENT RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Docket U-090222, General Order R-559—Filed March 24, 2010, 1:22 p.m., effective April 24, 2010]

In the matter of adopting WAC 480-100-505 Smart grid technology report, relating to the review of PURPA standards in the Energy Independence and Security Act of 2007.

**1 STATUTORY OR OTHER AUTHORITY:** The Washington utilities and transportation commission (commission) takes this action under Notice No. WSR 10-01-196, filed with the state of Washington office of the code reviser (code reviser) on December 23, 2009. The commission brings this proceeding pursuant to RCW 80.01.040 and 80.04.160.

**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 any 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 with the staff memoranda dated February 25, 2010. 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 adopts WAC 480-100-505 Smart grid technology report.

**7 PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:** The commission filed a preproposal statement of inquiry (CR-101) on March 18, 2009, at WSR 09-07-096. The statement advised interested persons that the commission was examining whether to adopt six new federal standards in the Energy Independence and Security Act of 2007, Public Law 110-140 (EISA).<sup>1</sup> These standards include: (1) Integrated resource planning (electric) - Standard 16; (2) rate design to promote energy efficiency investment (electric) - Standard 17; (3) consideration of smart grid investments (electric) - Standard 18; (4) smart grid information (electric) - Standard 19; (5) energy efficiency (natural gas) - Standard 5; and (6) rate design to promote energy efficiency investment (natural gas) - Standard 6. The commission ultimately decided to terminate the rule making and close the docket with regard to all of the above standards except Standard 18(A) - Consideration of Smart Grid Investments - In General.

**8** 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 on the commission's lists of all registered electric and gas companies as well as attorneys representing these companies, persons that received notices in the commission's previous rule makings in Dockets UE-060649 and UE-061895, Washington state agencies with an interest in energy matters, and persons interested in electric and gas issues. The commission posted the relevant rule-making information on its internet web site at <http://www.utc.wa.gov/090222>. Together, the documents issued by the commission along with the comments received by the participants provide a complete and concise explanation of the agency's actions and its reasons for taking those actions.

**9** Pursuant to the notice, the commission received written comments from the following companies, organizations, and interested persons: Mr. Parker Holden (a resident of Olympia, Washington), MicroPlanet, Avista Corporation (Avista), Cascade Natural Gas Corporation (Cascade), PacifiCorp d/b/a Pacific Power & Light Company (PacifiCorp), the public counsel section of the Washington state attorney general's office (public counsel), and Puget Sound Energy, Inc. (PSE).

**10** The commission convened a stakeholder workshop on May 21, 2009, at the commission's office in Olympia, Washington. At the workshop, the commission posed several additional questions to stakeholders regarding electric utility Standard 16 for integrated resource planning and Standard 18 for smart grid investment.<sup>2</sup>

**11** During the workshop, several stakeholders requested that the commission allow an additional opportunity for comment to address questions raised during the workshop that could not be readily answered at that time.<sup>3</sup> The commission invited interested persons to comment on those subjects by June 1, 2009. By the June 1, 2009, deadline, Avista, PSE, PacifiCorp, public counsel, the NW Energy Coalition (NWEC) and The Energy Project filed written comments.

**12** On August 13, 2009, the commission convened a hearing to discuss further steps in this rule making including, but not limited to, termination of this rule making with regard to any of the new PURPA standards addressing electric and natural gas utility operations. At the hearing, the commission's staff recommended that the commission close the rule making for all standards except Standard 18(A) addressing smart grid technology.<sup>4</sup> With respect to Standard 18A, the staff recommended that the commission develop a rule requiring electric utilities to report to the commission the details of their evaluation and implementation of smart grid technologies.<sup>5</sup> Public counsel and NWEC were in attendance at the hearing. The Energy Project participated via the commission's conference bridge line.

**13** The commission issued Order 01 on September 14, 2009, terminating and closing the rule making with regard to electric utility Standards 16, 17, 18(B), 18(C), and 19 and natural gas Standards 5 and 6.<sup>6</sup> At the same time, the commission concluded that electric utility Standard 18(A) should receive further examination, and directed the staff to develop and circulate for comment a discussion draft rule that would

require electric utilities to file reports describing actions they have undertaken to evaluate or implement smart grid technology.<sup>7</sup>

14 On September 17, 2009, the commission invited interested persons to comment on the staff's discussion draft of a proposed rule relating to PURPA Standard 18(A) - Consideration of Smart Grid Investments - In General, by October 16, 2009. The commission received written comments from Avista, PacifiCorp, PSE, and public counsel.

15 **NOTICE OF PROPOSED RULE MAKING:** After consideration of the comments received on the discussion draft rule, the commission filed a notice of proposed rule making (CR-102) on December 23, 2009, at WSR 10-01-196. The commission scheduled this matter for oral comment and adoption under Notice No. WSR 10-01-196 at 1:30 p.m., Thursday, February 25, 2010, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA. The notice provided interested persons the opportunity to submit written comments to the commission by January 28, 2010.

16 **COMMENTERS (WRITTEN COMMENTS):** The commission received written comments from Avista and PSE. Neither Avista nor PSE expressed opposition to the proposed rule. Each provided comments that are primarily centered on the definition of smart grid, the type and level of detail in the reporting requirement, and the role the report should play in the regulatory process. Summaries of written comments and commission responses are contained in Appendix A, shown below, and made part of, this order.

17 **RULE-MAKING HEARING:** The commission considered the proposed rule for adoption at a rule-making hearing on Thursday, February 25, 2010, before Chairman Jeffrey D. Goltz, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. The commission heard oral comments from Lea Daeschel, representing public counsel. Ms. Daeschel stated that the proposed rule was the product of a collaborative process and that public counsel viewed the rule as a good result. No other interested person made oral comments.

18 **SUGGESTIONS FOR CHANGES THAT ARE REJECTED/ACCEPTED:** Written comments suggested changes to the proposed rule. The suggested changes and the commission's reason for rejecting or accepting the suggested changes are included in Appendix A:

**APPENDIX A**

**Summary of Written Comments**

**CR-102 DRAFT RULE - COMMENTS SUMMARY AND COMMISSION RESPONSE**

**to Comments Received on January 28, 2010, and at the February 25, 2010, Adoption Hearing**

**PURPA Rule Making on Energy Independence and Security Act of 2007 (EISA)  
Docket U-090222**

<b>State Consideration of Smart Grid</b>	
<b>Part A</b>	
(18) CONSIDERATION OF SMART GRID INVESTMENTS—	
(A) IN GENERAL.—Each state shall consider requiring that, prior to undertaking investments in nonadvanced grid technologies, an electric utility of the state demonstrate to the state that the electric utility considered an investment in a qualified smart grid system based on appropriate factors, including—	
(i) total costs;	
(ii) cost-effectiveness;	
(iii) improved reliability;	
(iv) security;	
(v) system performance; and	
(vi) societal benefit.	
<b>COMMISSION RESPONSE</b>	<b>COMMENTS</b>
We agree with Avista Utilities' (Avista) and Puget Sound Energy's (PSE) general comments that the rule should consider the smart grid demonstration projects (SGDG) and smart grid investment grant program (SGIG). The rule requires reporting on a utility's smart grid projects. We also view the rules as providing an educational opportunity for the commission as well as serving additional purposes.	The commission received written comments from Avista and PSE on its CR-102 draft rule. Avista suggests that it is important to consider the activities under SGDG and SGIG. Avista states that smart grid is a strategy to incorporate into the planning process rather than a technology. Avista also restates its interest in seeing the reporting rules serve an educational role. PSE also believes it is important to consider the SGDG and SGIG activities and lists some of the smart grid developments on the national level.
<b>COMMISSION RESPONSE</b>	<b>WAC 480-100-505 (2)(a) COMMENTS</b>
We are not persuaded that it is necessary for our definition of "smart grid function" to mirror the federal definition. The definition of these functions is an evolving term within the industry and does not yet have a consistent meaning among users in all circumstances. Some definitions in the proposed regulation may overlap with definitions of other functions and actions in the utility industry. While perhaps unavoidable, the overlap	Avista reiterates that it considers smart grid a "system of systems" rather than a separate definable "function." PSE states that the smart grid definition in the rule still does not align entirely with the federal definition in EISA 2007. PSE proposes specific language for part subsection (2)(a)(vi),(vii) and (viii). PSE is also concerned that some smart grid functions in the rule may already be covered under the definition of conservation.

<p>is not consequential to the purpose of the rule to provide for reports on the status and potential of the emerging smart grid technologies. PSE has presented no compelling reason that our definition must align perfectly with the current definition chosen by the federal government. We are not persuaded that the language as proposed should be altered to avoid any possible overlap in definitions or to conform to any current federal definition. Turning to PSE's suggestion regarding "power quality," we note that the proposed rule includes the phrase "improve reliability." This concept is sufficiently broad to include consideration of power quality. Consequently, PSE's suggested addition is not necessary. PSE's suggestion to remove the phrase "from customer-owned power facilities" in subsection (2)(a)(viii) would result in a broad definition that is already addressed in subsection (iv). The intent of the reporting requirement is to include information concerning smart grid functions that might be used to help integrate and manage customer-owned power facilities.</p>		<p>broad enough to include Avista's concept of smart grid as a "system of systems."</p>	
<p>PSE's recommended modification to subsection (2)(a)(vi) provides greater clarity without changing the meaning of the section. Therefore, we adopt this PSE recommendation. Finally, the reporting requirements as proposed are sufficiently</p>		<p><b>COMMISSION RESPONSE</b></p> <p>PSE's suggestion to add a cost-effectiveness test to the definition of smart grid project, while well-intentioned, is unnecessary. The proposed definition includes the phrase "a project designed to test the feasibility of smart grid technologies or customer acceptance of such." This phrase encompasses cost-effectiveness. The objective of the reporting rule is to provide information gained from smart grid projects, so we can see no reason at this early stage for the rule to state as a general conclusion that smart grid projects may not be cost-effective. We disagree with Avista's contention that reporting on smart grid projects is unnecessary. The reports anticipated in the early years of smart grid technologies will give the commission a better understanding of the importance of these technologies to the future of electrical service in the state of Washington.</p>	<p><b>WAC 480-100-505 (2)(b) COMMENTS</b></p> <p>Avista does not support the need to single out pilot activities. It asserts that pilot projects would function as a testing of new technologies for the purpose of lowering the future cost of implementing the smart grid technologies. Avista proposes some language for subsection (2)(b) defining smart grid pilot. PSE suggests that the rules recognize that smart grid pilots will not be cost-effective in-and-of themselves but lead to lower cost implementation of smart grid. PSE proposes a definition of smart grid pilot that reflects this concept.</p>
		<p><b>COMMISSION RESPONSE</b></p> <p>We agree that smart grid technologies should properly include technologies that can enhance development of distributed generation and products and programs on the customers' premises. PSE's suggested additional language is not necessary as</p>	<p><b>WAC 480-100-505 (2)(c) COMMENTS</b></p> <p>PSE states that the definition in the proposed rule may not include enabling customer products and programs behind the meter or enabling distributed generation and suggests language that explicitly includes it.</p>

"enabling customer products and program" is within the broad scope of definitions of the rule as written.	
<b>COMMISSION RESPONSE</b>	<b>WAC 480-100-505 (2)(d) COMMENTS</b>
Subsection (2)(d) does not limit the reporting requirement to smart grid technology for which the utilities have both an evaluation <i>and</i> an implementation plan. PSE's interpretation is not correct. Electric utilities must report on any smart grid technology that has been evaluated, whether accepted or rejected, is under current evaluation, or is the subject of an implementation plan.	PSE states that it interprets the language to mean that the utility is only required to submit a report describing smart grid technologies that it has both implementation plans for and an evaluation of.
<b>COMMISSION RESPONSE</b>	<b>WAC 480-100-505(3) COMMENTS</b>
The reporting rule as written is a prospective requirement intended to provide the commission and the public with a timely forward look at a fast developing group of technologies. The proposed schedule allows for utilities to report both on projects they are undertaking and projects they have completed. We find that the public interest is best served by retaining the September 1, 2010, reporting date.	In light of the SGIG and SGDG projects, Avista suggests that it would be premature to have the first report due in 2010 and suggests the first report not be due until September 1, 2011, and that the subsequent reports be in 2014 and 2017 at which time the reporting rule would sunset.
<b>COMMISSION RESPONSE</b>	<b>WAC 480-100-505 (4)(a) COMMENTS</b>
The term "full evaluation" does not appear in subsection (4)(a) of the proposed regulation. The intent of the reporting requirement is to include technologies the utility may be considering that are not yet fully commercially available. In fact, we intend the rule to be interpreted broadly	Avista suggests that smart grid technologies the utility has considered should be in the context of its intended use to improve the real-time grid operations that meet smart grid concepts for the "modern grid." Avista states that it will use its road map to provide a vision for smart grid improvements.

and see it as requiring electric utilities to report both on technologies that are considered for integration into the utility's system and to report on smart grid technologies the utility has considered even when its evaluations were brief. We interpret the rule to provide sufficient latitude to allow a utility to use its smart grid road map as a frame work for the report, as Avista suggests.	PSE suggests the inclusion of "commercially available" helps refine the focus of the report. PSE states that it interprets the language in subsection (4)(a) as only requiring it to submit a report describing smart grid technologies that it has both implementation plans for and an evaluation of. PSE also reads subsection (4)(a)(i)-(x) to require only the reporting of details that the utility has both considered and evaluated.
<b>COMMISSION RESPONSE</b>	<b>WAC 480-100-505 (4)(b) COMMENTS</b>
We do not see the need to align the smart grid reporting requirement to the integrated resource plan. Indeed, PSE submitted comments opposing a smart grid planning requirement similar to the integrated resource plan (IRP) rules. We decline to adopt PSE's suggested language and reiterate that our intent is for the reports to focus broadly and prospectively on technologies and applications the utility has considered, whether those technologies are mature or still in development.	Avista reiterates its cautionary statement that regulatory mandates, such as security, may require expenditures related to smart grid that are not cost-effective. PSE suggests the inclusion of "commercially available" to refine the focus of the report on mature technologies that will be able to deliver value and is more closely aligned to existing integrated resource planning rules.
<b>COMMISSION RESPONSE</b>	<b>WAC 480-100-505 (4)(c) COMMENTS</b>
The rule neither limits nor requires a utility's future actions. Indeed, it is our expectation that utilities will continually evaluate	PSE restates its concern that a utilities' timelines and plans should not proscribe the actions during that planning horizon or that the lack of

plans for smart grid projects and to consider new opportunities that may prove more efficient and more appropriate than plans previously included in a smart grid report. We conclude that PSE's recommended language is unnecessary.	plans should limit the utilities' actions.
<b>COMMISSION RESPONSE</b>	<b>WAC 480-100-505 (4)(d) COMMENTS</b>
The rule neither limits nor requires a utility's future actions. Indeed, it is our expectation that utilities will continually evaluate plans for smart grid projects and to consider new opportunities that may prove more efficient and more appropriate than plans previously included in a smart grid report. We conclude that PSE's recommended language is unnecessary.	PSE believes the language should not preclude the implementation of technologies not initially mentioned in previous reports.
<b>COMMISSION RESPONSE</b>	<b>WAC 480-100-505(8) (as proposed by commenters) COMMENTS</b>
The commission's regulations at WAC 480-07-160 (2)(a) already address the protection of confidential information. There is no need to explicitly reference the regulation in this new rule.	Avista and PSE repeat their need to have RCW 42.56.420 available for use to request an exemption from disclosure.
<b>COMMISSION RESPONSE</b>	<b>WAC 480-100-505(9) (as proposed by commenters) COMMENTS</b>
The purpose of the rule is to provide for reports that will inform the commission and the public about how utilities have considered, are evaluating, and are planning to integrate smart grid technologies. A utility will, as always, bear the burden of showing that its actions and investments are prudent when those actions and investments are reviewed in a rate-making context.	PSE and Avista suggests rule language that a utility shall not be subjected to "any penalties" for failing to implement smart grid technologies that it said it would in previous reports.

The information contained in smart grid reports required by the rule may be relevant in such reviews, but plans discussed in the reports neither limit nor require a utility's future actions. The added language suggested by PSE and Avista is unnecessary.	
<b>COMMISSION RESPONSE</b>	<b>WAC 480-100-505(10) (proposed by commenters) COMMENTS</b>
Our discussion above makes clear that the purpose of the smart grid reports is to provide information. The reports neither limit nor require particular utility actions or investments. Similarly, in other sections, our rules require utilities to file information regarding such matters as annual operating costs WAC 480-100-257 and reliability statistics and plans WAC 480-100-398. The utilities are obligated to comply with these filing requirements, but there is no need, absent a complaint from commission staff or another party, for the commission to determine formally whether each such filing complies with the relevant requirement. Avista's proposal might be appropriate if the smart grid reports were intended to determine definite utility actions, but that is not the case. We see no need for the rule to require formal determination of compliance.	Avista suggests that the commission should explain what actions it will take with the report after the compliance filing is made.
<b>COMMISSION RESPONSE</b>	<b>COMMENTS AT ADOPTION HEARING</b>
The commission considers cost-effectiveness an important ingredient in an	Public counsel stated their support for the inclusion of a requirement to report any cost-

analysis of smart grid and includes it in the reporting requirements to the extent a utility has performed the analysis.	effectiveness analysis the utility may have done on smart grid technologies.
--------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------

**19 COMMISSION DISCUSSION AND RESPONSE TO COMMENTS:**

The commission initiated this inquiry to determine whether adoption by rule of Standard 18(A), 16 U.S.C. § 2621 (d)(18)(A), for consideration of smart grid investment would be in the public interest and would be appropriate to implement the objectives of the Public Utilities Regulatory Policy Act to encourage: Conservation of energy supplied by electric utilities, optimal efficiency of electric utility facilities and resources, and equitable rates for electric customers. With that purpose in mind, we turn to the comments and recommendations received regarding the proposed rule.

**20 A. WAC 480-100-505 (2)(a):** Both Avista and PSE provided comments regarding the commission's proposed definition of the term "smart grid function." In its comments, PSE suggests that some smart grid functions may already be covered under the definition of conservation. Further, PSE asserts that the proposed rule does not align with the federal definition of smart grid. PSE proposes that subsection (2)(a)(vi) include the modifier "new" before "customer contracts." PSE also suggests that subsection (2)(a)(viii) include the phrase "power quality" and that the section should not include a specific reference to "customer-owned power facilities."

**21** With regard to subsection (2)(a)(vi), PSE offers an alternative phrasing. The proposed rule reads, "The ability to deliver two-way communication of real time prices or other contract terms and to enable customer demand response programs." PSE recommends modifying the language to, "The ability to use two-way communication to enable different customer contracts or programs, such as real time prices or demand response programs." Avista proposes that smart grid be defined as a "system of systems."

**22 Commission Discussion.** We are not persuaded that it is necessary for our definition of "smart grid function" to mirror the federal definition. The definition of these functions is an evolving term within the industry and does not yet have a consistent meaning among users in all circumstances. Some definitions in the proposed regulation may overlap with definitions of other functions and actions in the utility industry. While perhaps unavoidable, the overlap is not consequential to the purpose of the rule to provide for reports on the status and potential of the emerging smart grid technologies. PSE has presented no compelling reason that our definition must align perfectly with the current definition chosen by the federal government. We are not persuaded that the language as proposed should be altered to avoid any possible overlap in definitions or to conform to any current federal definition.

**23** Turning to PSE's suggestion regarding "power quality," we note that the proposed rule includes the phrase "improve reliability." This concept is sufficiently broad to include consideration of power quality. Consequently, PSE's suggested addition is not necessary.

**24** PSE's suggestion to remove the phrase "from customer-owned power facilities" in subsection (2)(a)(viii) would result in a broad definition that is already addressed in subsection (a)(iv). The intent of the reporting requirement is to include information concerning smart grid functions that might be used to help integrate and manage customer-owned power facilities.

**25** PSE's recommended modification to subsection (2)(a)(vi) provides greater clarity without changing the meaning of the section. Therefore, we adopt this PSE recommendation. Finally, the reporting requirements as proposed are sufficiently enough to include Avista's concept of smart grid as a "system of systems."

**26 B. WAC 480-100-505 (2)(b):** PSE proposes the addition of a cost-effectiveness test to the definition of smart grid project. PSE's proposed language includes a statement that smart grid projects may not be cost-effective. Avista contends that a specific requirement to report on smart grid projects is not necessary.

**27 Commission Discussion.** PSE's suggestion to add a cost-effectiveness test to the definition of smart grid project, while well-intentioned, is unnecessary. The proposed definition includes the phrase "a project designed to test the feasibility of smart grid technologies or customer acceptance of such." This phrase encompasses cost-effectiveness. The objective of the reporting rule is to provide information gained from smart grid projects, so we can see no reason at this early stage for the rule to state as a general conclusion that smart grid projects may not be cost-effective.

**28** We disagree with Avista's contention that reporting on smart grid projects is unnecessary. The reports anticipated in the early years of smart grid technologies will give the commission a better understanding of the importance of these technologies to the future of electrical service in the state of Washington.

**29 C. WAC 480-100-505 (2)(c):** PSE notes that the list of "smart grid technologies" does not include enabling customer products and programs behind the electric meter or enabling distributed generation. PSE suggests language that refers back to subsection (2)(a).

**30 Commission Discussion.** We agree that smart grid technologies should properly include technologies that can enhance development of distributed generation and products and programs on the customers' premises. PSE's suggested additional language is not necessary as "enabling customer products and program" is within the broad scope of definitions of the rule as written.

**31 D. WAC 480-100-505 (2)(d):** PSE asserts that it interprets the definition of "smart grid technology report" or "report" such that the utility is only required to submit a report describing technologies for which it possesses *both* implementation plans and an evaluation.

**32 Commission Discussion.** Subsection (2)(d) does not limit the reporting requirement to smart grid technology for which the utilities have both an evaluation *and* an implementation plan. PSE's interpretation is not correct. Electric utilities must report on any smart grid technology that has been evaluated, whether accepted or rejected, is under current evaluation, or is the subject of an implementation plan.

33 E. **WAC 480-100-505(3)**: Avista observes that the SGIG program and the SGDG projects funded under the federal American Recovery and Reinvestment Act of 2009, Public Law 111-5, are still in the beginning stages. It contends that requiring the first smart grid report to be due in 2010 would be premature because the results of these federally supported programs will not yet be known. Avista recommends that the first report not be due until September 1, 2011, with subsequent reports due in 2014 and 2017, at which time the reporting rule would sunset.

34 **Commission Discussion**. The reporting rule as written is a prospective requirement intended to provide the commission and the public with a timely forward look at a fast developing group of technologies. The proposed schedule allows for utilities to report both on projects they are undertaking and projects they have completed. We find that the public interest is best served by retaining the September 1, 2010, reporting date.

35 F. **WAC 480-100-505 (4)(a)**: PSE proposes that inclusion of the term "commercially available" would help refine the focus of the report. The language PSE proposes would require reporting on smart grid technologies only if the utility has both considered the technology for integration into its system and has completed a full evaluation of that technology. Avista recommends that a smart grid road map should be within the scope of the meaning of this section of the rule.

36 **Commission Discussion**. The term "full evaluation" does not appear in subsection (4)(a) of the proposed regulation. The intent of the reporting requirement is to include technologies the utility may be considering that are not yet fully commercially available. In fact, we intend the rule to be interpreted broadly and see it as requiring electric utilities to report both on technologies that are considered for integration into the utility's system and to report on smart grid technologies the utility has considered even when its evaluations were brief.

37 We interpret the rule to provide sufficient latitude to allow a utility to use its smart grid road map as a frame work for the report, as Avista suggests.

38 G. **WAC 480-100-505 (4)(b)**: PSE suggests the inclusion of the phrase "commercially available" to refine the focus of the report on mature technologies that will be able to deliver value and to more closely align the report to existing integrated resource planning rules.

39 **Commission Discussion**. We do not see the need to align the smart grid reporting requirement to the IRP. Indeed, PSE submitted comments opposing a smart grid planning requirement similar to the IRP rules. We decline to adopt PSE's suggested language and reiterate that our intent is for the reports to focus broadly and prospectively on technologies and applications the utility has considered, whether those technologies are mature or still in development.

40 H. **WAC 480-100-505 (4)(c) and (d)**: PSE asserts that a utility's timeline and plans should not preclude the utility from taking actions during the planning timeframe. In addition, PSE remarks that the report of a utility's plans and timeline should not bar the utility from acting upon valuable smart grid opportunities that may emerge outside of the details it has listed in the report.

41 **Commission Discussion**. The rule neither limits nor requires a utility's future actions. Indeed, it is our expectation that utilities will continually evaluate plans for smart grid projects and to consider new opportunities that may prove more efficient and more appropriate than plans previously included in a smart grid report. We conclude that PSE's recommended language is unnecessary.

42 I. **Confidentiality Protections**: Both PSE and Avista suggested language that would expressly provide for the protection of commercially sensitive information as well as information relating to the security of utility facilities.

43 **Commission Discussion**. The commission's regulations at WAC 480-07-160 (2)(a) already address the protection of confidential information. There is no need to explicitly reference the regulation in this new rule.

44 J. **Potential Penalties**: PSE and Avista have suggested additional language that would insulate utilities from being penalized for failing to implement smart grid technologies that were included in plans contained in previous smart grid reports.

45 **Commission Discussion**. The purpose of the rule is to provide for reports that will inform the commission and the public about how utilities have considered, are evaluating, and are planning to integrate smart grid technologies. A utility will, as always, bear the burden of showing that its actions and investments are prudent when those actions and investments are reviewed in a rate-making context. The information contained in smart grid reports required by the rule may be relevant in such reviews, but plans discussed in the reports neither limit nor require a utility's future actions. The added language suggested by PSE and Avista is unnecessary.

46 K. **Compliance Determination**: Avista proposed that the commission make a formal determination that a utility's smart grid report complies with the reporting requirement.

47 **Commission Discussion**. Our discussion above makes clear that the purpose of the smart grid reports is to provide information. The reports neither limit nor require particular utility actions or investments. Similarly, in other sections, our rules require utilities to file information regarding such matters as annual operating costs (WAC 480-100-257) and reliability statistics and plans (WAC 480-100-398). The utilities are obligated to comply with these filing requirements, but there is no need, absent a complaint from commission staff or another party, for the commission to determine formally whether each such filing complies with the relevant requirement. Avista's proposal might be appropriate if the smart grid reports were intended to determine definite utility actions, but that is not the case. We see no need for the rule to require formal determination of compliance.

48 **CHANGES FROM PROPOSAL**: The commission adopts the proposal with the following changes from the text noticed at WSR 10-01-196. WAC 480-100-505 (2)(a)(iv) has been revised slightly with such revision not changing the original meaning of the section.

49 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE**: After reviewing the entire record, the commission determines that WAC 480-100-505 should be adopted to read as set forth in Appendix B, 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.

<sup>1</sup>The EISA amended Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. § 2621(d), and amended Section 303(b) of PURPA, 15 U.S.C. § 3203(b).

<sup>2</sup>The questions posed to the stakeholders at the May 21, 2009, workshop are included in Appendix A of this order.

<sup>3</sup>These questions are included in Appendix A of this order.

<sup>4</sup>Staff Recommendation Memorandum to Commissioners Regarding PURPA Standards in the Energy Independence and Security Act of 2007, Docket U-090222, at 8 (July 30, 2009).

<sup>5</sup>*Id.*

<sup>6</sup>*In re Review of PURPA Standards in The Energy Independence and Security Act of 2007*, Docket U-090222, Order 01, ¶ 55.

<sup>7</sup>*Id.* at ¶ 56.

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

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

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

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

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

## ORDER

### 50 THE COMMISSION ORDERS:

51 The commission adopts WAC 480-100-505 to read as set forth in Appendix B, 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).

52 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, March 24, 2010.

Washington State Utilities and Transportation Commission

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

## APPENDIX B

### NEW SECTION

#### WAC 480-100-505 Smart grid technology report. (1)

Purpose. The purpose of this section is to establish requirements for each electric utility to submit periodic reports to the commission of the utility's evaluation of smart grid technologies that are available or likely soon to be available and any

plans for implementing smart grid technologies affecting or applicable to ratepayers of Washington state.

#### (2) Definitions.

(a) "Smart grid function" means one or more of the following:

(i) The ability to develop, store, send and receive digital information concerning electricity use, costs, prices, time of use, nature of use, storage, or other information relevant to management of the electricity grid, utility operations, or customer energy use.

(ii) The ability to sense local disruptions or changes in power flows on the electricity grid and to communicate such information instantaneously and automatically for purposes of enabling automatic protective responses or to inform the utility to make manual changes to sustain reliability and security or improve efficiency of grid operations.

(iii) The ability of the utility to deliver signals, measurements or communications to allow an end-use load device to respond automatically or in a manner programmed by its owner or operator without human action.

(iv) The ability to use digital information to operate functions on the electricity grid that were previously electro-mechanical or manual.

(v) The ability to use digital controls to manage and modify electricity demand, enable congestion management, assist in voltage control, provide operating reserves, or provide frequency regulation.

(vi) The ability to use two-way communication to enable different customer contracts or programs, such as real time prices or demand response programs.

(vii) The ability to manage new end-use services to reduce operating or power costs, improve reliability, or improve energy efficiency, such as charging electric vehicles.

(viii) The ability to use real time measurement of power generated from customer-owned power facilities to reduce operating or power cost, improve energy efficiency, or improve reliability.

(ix) The ability to use digital information to improve the reliability or efficiency of generating equipment in an integrated manner to improve flexibility, functionality, interoperability, cyber-security, situational awareness, and operational efficiency of the transmission and distribution system.

(b) "Smart grid pilot" means a project designed to test the feasibility of smart grid technologies or customer acceptance of such.

(c) "Smart grid technologies" means any technology intended to improve the reliability or efficiency, or to reduce the operating costs, of electrical transmission and distribution systems by enabling one or more smart grid functions. Smart grid technologies include, without limitation, measurement devices, communication equipment, information processing equipment and software, and control devices.

(d) "Smart grid technology report" or "report" means a report describing the utility's evaluation of, and any implementation plans for, smart grid technologies.

#### (3) Reporting requirement.

(a) Each electric utility must file with the commission a smart grid technology report no later than September 1, 2010, and a subsequent report no later than September 1st of each even-numbered year thereafter through September 2016.

(b) Unless otherwise ordered by the commission, this reporting requirement shall expire after the filing of the report due September 1, 2016.

(4) Content. At a minimum, the smart grid technology report must include:

(a) A description of the smart grid technologies the utility has considered for integration into its system, and the utility's evaluation of such technologies. The description required by this subsection shall contain details that the utility has considered and evaluated. Examples of such details include:

(i) Goal or purpose of the smart grid technologies described in the report;

(ii) Total costs of the deployment and use of smart grid technologies including meter or other equipment costs, installation costs, and any incremental administration costs including the cost of changes to data storage, processing and billing systems;

(iii) Overall cost-effectiveness of smart grid technologies planned to be implemented and, to the extent it can be quantified, possible impacts on customer bills;

(iv) Operational savings associated with meter reading or other utility functions;

(v) Effects on system capability to meet or modify energy or peak loads;

(vi) Effects on service reliability including storm damage response and recovery, outage frequency and duration and voltage quality;

(vii) Effects on integration of new utility loads, such as recharging batteries in electrically powered vehicles;

(viii) Cyber and physical security of utility operational information;

(ix) Cyber and physical security of customer information and effects, if any, on existing consumer protection policies;

(x) Interoperability and upgradability of technology and compliance with applicable national standards;

(xi) Customer acceptance and behavioral response;

(xii) Tariff and rate design changes necessary to implement the technology;

(xiii) Nonquantifiable societal benefits, if any; and

(xiv) Economic considerations recognizing the above-listed factors.

(b) Identification of any smart grid technologies that may be cost-effective and available for the utility and its customers during the subsequent ten-year period.

(c) A description of the utility's plans and timeline for implementing any smart grid technologies during the two years following submission of the report.

(d) After the first report, all subsequent reports should include information on the utility's progress on any smart grid technologies scheduled for implementation as stated in its previously filed reports and any smart grid pilot project the utility has undertaken.

(5) The smart grid technology report may include:

(a) The utility's assessment of the risk of investment in smart grid technologies and any recommendations for regulatory treatment, supported by the utility's rationale for such treatment.

(b) Any other factors considered by the utility.

(6) To the extent that some of the information required or allowed to be included in the report also is included in other reports, such as the utility's most recent integrated resource plan, the utility may incorporate that information by specific reference.

(7) The commission may consider the information contained in a smart grid technology report when it evaluates, in rate and other appropriate proceedings, the performance of the utility and its investments in transmission, distribution and metering infrastructure.

#### WSR 10-08-074

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed April 6, 2010, 12:58 p.m., effective May 7, 2010]

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

Purpose: The department is amending and adopting new rules in chapter 388-106 WAC, Long-term care services, as follows:

- Updating how the individual budget amount is calculated after the New Freedom participant is assigned a classification as a result of an assessment performed in CARE.
- Updating how unused funds from New Freedom individual budgets will be maintained and/or returned to the department.
- Clarifying what services are available under the New Freedom waiver.
- Updating the role of a designated New Freedom representative to not allow payment as a personal care provider.
- New WAC to address institutionalized participants and their budgets.
- New WAC to address what services are not allowed under New Freedom.
- Adding two applicable definitions for clarity.

Citation of Existing Rules Affected by this Order: Amending WAC 388-106-0010, 388-106-1400, 388-106-1405, 388-106-1422, 388-106-1435, 388-106-1445, and 388-106-1455.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 10-02-096 on January 6, 2010.

Changes Other than Editing from Proposed to Adopted Version: Editorial changes only.

A final cost-benefit analysis is available by contacting Karen Fitzharris, Home and Community Services, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2446, fax (360) 407-7582, e-mail Karen.Digre-Fitzharris@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 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 7, Repealed 0.

Date Adopted: April 6, 2010.

Susan N. Dreyfus  
Secretary

**AMENDATORY SECTION** (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood"** means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

(a) Understood: You express ideas clearly;

(b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you require some prompting to make self understood;

(c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

(d) Rarely/never understood. At best, understanding is limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet.)

**"Activities of daily living (ADL)"** means the following:

(a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.

(b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.

(c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

(i) Foot care if you are diabetic or have poor circulation;

or

(ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein.

(f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair.

(g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a boarding home or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) Walk in room, hallway and rest of immediate living environment: How you walk between locations in your room and immediate living environment.

(i) Medication management: Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) Toilet use: How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) Transfer: How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or vehicle.

(l) Personal hygiene: How you maintain personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

**"Aged person"** means a person sixty-five years of age or older.

**"Agency provider"** means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

**"Application"** means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

**"Assessment details"** means a summary of information that the department entered into the CARE assessment describing your needs.

**"Assessment or reassessment"** means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

**"Assistance available"** means the amount of informal support available if the need is partially met. The department

determines the amount of the assistance available using one of four categories:

- (a) Less than one-fourth of the time;
- (b) One-fourth to one-half of the time;
- (c) Over one-half of the time to three-fourths of the time;

or

- (d) Over three-fourths but not all of the time.

**"Assistance with body care"** means you need assistance with:

- (a) Application of ointment or lotions;
- (b) Trimming of toenails;
- (c) Dry bandage changes; or
- (d) Passive range of motion treatment.

**"Assistance with medication management"** means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are a person with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Intravenous or injectable medications may never be delegated. Administration may also be performed by a family member or unpaid caregiver if facility licensing regulations allow.

**"Authorization"** means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

**"Blind person"** means a person determined blind as described under WAC 388-511-1105 by the division of disability determination services of the medical assistance administration.

**"Categorically needy"** means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 388-475-0100 and chapter 388-513 WAC.

**"Client"** means an applicant for service or a person currently receiving services from the department.

**"Current"** means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

(a) Whether the behavior is easily altered or not easily altered; and

(b) The frequency of the behavior.

**"Decision making"** means your ability and actual performance in making everyday decisions about tasks or activities of daily living. The department determines whether you are:

(a) Independent: Decisions about your daily routine are consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) Modified independence/difficulty in new situations: You have an organized daily routine, are able to make decisions in familiar situations, but experience some difficulty in decision making when faced with new tasks or situations.

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempt to make decisions, although poorly.

(d) Severely impaired/no or few decisions: Decision making is severely impaired; you never/rarely make decisions.

**"Department"** means the state department of social and health services, aging and disability services administration or its designee.

**"Designee"** means area agency on aging.

**"Difficulty"** means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

(a) No difficulty in performing the activity;

(b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or

(c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

**"Disabling condition"** means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

**"Estate recovery"** means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 388-527 WAC.

**"Home health agency"** means a licensed:

(a) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

(i) Private duty nursing; or

(ii) Skilled nursing services under an approved medicaid waiver program.

**"Income"** means income as defined under WAC 388-500-0005.

**"Individual provider"** means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.

**"Disability"** is described under WAC 388-511-1105.

**"Informal support"** means a person or resource that is available to provide assistance without home and community

program funding. The person or resource providing the informal support must be age 18 or older.

**"Institution"** means medical facilities, nursing facilities, and institutions for the mentally retarded. It does not include correctional institutions. See medical institutions in WAC 388-500-0005.

**"Instrumental activities of daily living (IADL)"** means routine activities performed around the home or in the community and includes the following:

(a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to plan meals or clean up after meals. You must need assistance with actual meal preparation.

(b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).

(c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.

(e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment-includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

**"Long-term care services"** means the services administered directly or through contract by the aging and disability services administration and identified in WAC 388-106-0015.

**"Medicaid"** is defined under WAC 388-500-0005.

**"Medically necessary"** is defined under WAC 388-500-0005.

**"Medically needy (MN)"** means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

**"New Freedom consumer directed services (NFCDS)"** means a mix of services and supports to meet needs identified in ~~((the participant's))~~ your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide ~~((participants))~~ you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

(a) The design, delivery and evaluation of services and supports;

(b) Exercising control of decisions and resources, making their own decisions about health and well being;

(c) Determining how to meet their own needs;

(d) Determining how and by whom these needs should be met; and

(e) Monitoring the quality of services received.

**"New Freedom consumer directed services (NFCDS) participant"** means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

**"New Freedom spending plan (NFSP)"** means the plan developed by ~~((the))~~ you, as a New Freedom participant, within the limits of an individual budget, that details ~~((the participant's))~~ your choices to purchase specific NFCDS and provides required federal medicaid documentation.

**"Own home"** means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

**"Past"** means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

**"Personal aide"** is defined in RCW 74.39.007.

**"Personal care services"** means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

**"Physician"** is defined under WAC 388-500-0005.

**"Plan of care"** means assessment details and service summary generated by CARE.

**"Provider or provider of service"** means an institution, agency, or person:

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

**"Reasonable cost"** means a cost for a service or item that is consistent with the market standards for comparable services or items.

**"Representative"** means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

**"Residential facility"** means a licensed adult family home under department contract or licensed boarding home under department contract to provide assisted living, adult residential care or enhanced adult residential care.

**"Self performance for ADLs"** means what you actually did in the last seven days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the seven-day period and does not include support provided as

defined in WAC 388-106-0010. Your self performance level is scored as:

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other nonweight bearing assistance on three or more occasions. For bathing, limited assistance means physical help is limited to transfer only;

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

(i) You were not able (e.g., walking, if paralyzed);

(ii) No provider was available to assist; or

(iii) You declined assistance with the task.

**"Self performance for IADLs"** means what you actually did in the last thirty days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the thirty-day period. Your self performance is scored as:

(a) Independent if you received no help, set-up help, or supervision;

(b) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;

(c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;

(d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;

(e) Total dependence if you needed the activity fully performed by others; or

(f) Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment.

**"Service summary"** is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care needs, the list of formal and informal providers and what tasks they will provide, a provider schedule, referral needs/information, and dates and agreement to the services.

**"SSI-related"** is defined under WAC 388-475-0050.

**"Status"** means the amount of informal support available. The department determines whether the ADL or IADL is:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL; or

(d) Client declines, which means you do not want assistance with the task.

**"Supplemental Security Income (SSI)"** means the federal program as described under WAC 388-500-0005.

**"Support provided"** means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once.

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater self performance of the activity. (For example, set-up help includes but is not limited to giving or holding out an item or cutting food);

(c) One-person physical assist provided;

(d) Two- or more person physical assist provided; or

(e) Activity did not occur during entire seven-day period.

**"You/your"** means the client.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1400 What services may I receive under New Freedom consumer directed services (NFCDS)?** (1) In order for services, supports, and/or items to be purchased under New Freedom, they must:

(a) Be for your sole benefit;

(b) Be at a reasonable cost;

(c) Meet your identified needs and outcomes in the CARE assessment and address your health, safety, and welfare; and

(d) Be documented on your New Freedom spending plan.

(2) Your consultant may require a physician or other licensed professional, such as an occupational or physical therapist to recommend a specific purchase in writing. This recommendation is needed to ensure the service, support and/or item will increase, maintain, or delay decline of functional abilities, and to ensure the purchase supports your health and welfare.

(3) You may use your individual budget to purchase services ((that address an identified need in the CARE assessment)), supports, and/or items that fall into the following service categories ((are)):

((+)) (a) Personal assistance services, defined as supports involving the labor of another person to ((help participants)) assist you to carry out activities ((they)) you are unable to perform independently ((as identified in the CARE assessment)). Services may be provided in ((the participant's)) your home or in the community and may include:

((+)) (i) Direct personal care services defined as assistance with activities of daily living, as defined in WAC 388-106-0010;

((+)) (ii) Delegated ((health-related)) nursing tasks, per WAC ((388-71-05805 through)) 246-841-405 and 388-71-

05830. Providers of direct personal care services may be ~~(asked to do nurse-delegated tasks under supervision of a nurse)~~ delegated by a registered nurse to provide nurse-delegated tasks according to RCW 18.79.260 and WAC 246-840-910 through 246-840-970;

~~((e))~~ (iii) Homemaking, or assistance with instrumental activities of daily living (essential shopping, housework and meal preparation);

~~((f))~~ (iv) Other tasks or assistance with activities that support independent functioning, and are necessary due to your functional disability;

~~((g))~~ (v) Personal assistance with transportation.

~~((2))~~ (b) **Treatment and health maintenance**, defined as treatments or activities that are beyond the scope of the medicaid state plan that are necessary to promote your health and ability to live independently in the community and:

~~((a))~~ Are beyond the scope of the medicaid state plan that are necessary to promote the participant's health and ability to live and participate in the community;

~~((b))~~ (i) Are provided for the purpose of preventing further deterioration of your level of functioning, or improving or maintaining ~~((the participant's))~~ your current level of functioning; and

~~((c))~~ (ii) Are performed or provided by people with specialized skill, registration, certification or licenses as required by state law.

~~((3))~~ (c) **Individual directed goods, services and supports**, defined as services, equipment or supplies not otherwise provided through this waiver or through the medicaid state plan ~~(, and address an identified need in the CARE assessment);~~ and

~~((a))~~ (i) Will allow ~~((the participant))~~ you to function more independently; or

~~((b))~~ (ii) Increase your safety and welfare; or

~~((c))~~ (iii) Allow ~~((the person))~~ you to perceive, control, or communicate with ~~((their))~~ your environment.

~~((4))~~ (d) **Environmental or vehicle modifications**, defined as ~~(:~~

~~(a))~~ alterations to ~~((a participant's))~~ your residence or vehicle that ~~(:~~

~~(i))~~ are necessary to accommodate ~~((the participant's))~~ your disability and promote your functional independence, health, safety, and/or welfare ~~(, and~~

~~(ii))~~ Are not adaptations or improvements, which are of general utility or add to the total square footage.

~~(b)~~ Vehicles subject to modification must be owned by the participant or participant's family who reside with the participant; and

~~(i)~~ Must be in good working condition, licensed, and insured according to Washington state law; and

~~(ii)~~ Modifications demonstrate cost effectiveness when compared to available alternative transportation).

(i) Environmental modifications cannot be adaptations or improvements that are of general utility or merely add to the total square footage of the home.

(ii) Vehicles subject to modification must be owned by you or a member of your family who resides with you; must be in good working condition, licensed, and insured according to Washington state law; and be cost effective when compared to available alternative transportation.

~~((5))~~ (e) **Training and educational supports**, ~~((which are))~~ defined as supports beyond the scope of medicaid state plan services that are necessary to promote ~~((the participant's))~~ your health and ability to live and participate in the community and maintains, slows decline, or improves functioning and adaptive skills. Examples include:

~~((a))~~ (i) Training or education on ~~((participant))~~ your health issues, or personal skill development;

~~((b))~~ (ii) Training ~~(/)~~ or education to paid or unpaid caregivers related to ~~((the))~~ your needs ~~((of the participant))~~.

#### NEW SECTION

**WAC 388-106-1405 What services are not covered under New Freedom consumer directed services (NFCDS)?** Services, supports and/or items that cannot be purchased within New Freedom budgets, including, but not limited to:

(1) Services, supports and/or items covered by the state plan, medicare, or other programs or services.

(2) Any fees related to health or long-term care incurred by you, including co-pays, waiver cost of care (participation), or insurance.

(3) Home modifications that merely add square footage to your home.

(4) Vacation expenses other than the direct cost of provision of personal care services while on vacation (but you may not use New Freedom funds to pay travel expenses for your provider).

(5) Rent or room and board.

(6) Tobacco or alcohol products;

(7) Lottery tickets.

(8) Entertainment items such as television, cable, or DVD players.

(9) Vehicle purchases, maintenance or upgrades that do not include maintenance to modifications related to disability.

(10) Tickets and related costs to attend sporting or other recreational events.

(11) Routine household supplies and maintenance, basic food, clothing, and major household appliances.

(12) Pets and their related costs.

#### NEW SECTION

**WAC 388-106-1422 What happens to my New Freedom service dollar budget if I am temporarily hospitalized, placed in a nursing facility or intermediate care facilities for the mentally retarded (ICF/MR)?** If you are admitted to a hospital, nursing home or ICF/MR, you cannot access your New Freedom service budget during your stay.

If you are institutionalized for forty-five days or less and you intend to return to New Freedom when discharged, your service budget will be suspended. Upon discharge home, your service budget will be reinstated.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1435 Who can direct New Freedom consumer directed services (NFCDS)?** ~~((The))~~ You, as an

NFCDS participant (~~directs~~), direct your services. (~~The participant can~~) You may also designate, or a court may appoint, a representative to assist (~~them~~) you in directing your services, or to direct your services on your behalf. A New Freedom designated representative cannot also be your paid provider.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1445 How is the amount of the individual budget determined?** The department will calculate (~~the~~) your individual budget amount after (~~the NFCDS participant is~~) you are assigned a classification resulting from completion of the comprehensive assessment reporting and evaluation tool, CARE. The calculation will be based on:

(a) The (~~published~~) hourly (~~rate~~) wage as determined by the collective bargaining agreement for individual provider personal care paid by the department multiplied by the number of hours generated by the assessment, multiplied by a factor of .95, plus an amount equal to the average per participant expenditures for nonpersonal care supports purchased in the COPEs waiver. The average will be recalculated in July of each year.

(b) If (~~the participant~~) you select(~~s~~) a home care agency, an adjustment will be made for each hour of personal care identified in the NFSP for an amount equal to the difference between the published individual provider rate and home care agency rate.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

**WAC 388-106-1455 What happens to unused funds from my individual budget?** (1) Unused funds, up to three thousand dollars, may be held in reserve for future purchases documented in the NFSP. Reserves in excess of three thousand dollars may be maintained for planned purchases with approval from the department.

(2) Unused funds, up to five hundred dollars, may be held in reserve for future purchases not yet identified as planned purchases in their NFSP.

(3) Unused funds will revert back to the department under the following circumstances:

(a) You have funds over five hundred dollars that are not identified for planned purchases in your NFSP;

(b) You disenroll from New Freedom;

(c) You lose eligibility for New Freedom;

(d) You are hospitalized and/or placed in a nursing home or ICM/FR for over forty-five days; or

(e) You have reserved funds in excess of three thousand dollars held in reserve for future purchases not approved by the department.

## WSR 10-09-002

### PERMANENT RULES DEPARTMENT OF

### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed April 7, 2010, 2:00 p.m., effective May 8, 2010]

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

Purpose: The purpose of this new chapter is to implement the federal payment methodology for federally qualified health centers (FQHC) under Section 702 of the Benefit Improvement and Protection Act (BIPA) of 2000. The act replaced cost-based reimbursement methodology with medicaid FQHC prospective payment system (PPS). This rule will replace the emergency rule that is currently in effect under WSR 10-06-035. It describes the reimbursement methodology the department will use, as authorized under 42 U.S.C. 1396a(bb), to meet the legislature's intent that the department continue to meet federal payment standards for FQHCs with a lower overall level of appropriation as required under Sections 201 and 209 of the 2009-2011 final legislative budget.

Statutory Authority for Adoption: RCW 74.08.090; BIPA of 2000 Section 702; sections 201 and 209 of 2009-2011 budget bill.

Other Authority: 42 U.S.C. 1396a(bb).

Adopted under notice filed as WSR 10-01-162 on December 22, 2009.

Changes Other than Editing from Proposed to Adopted Version: **1. WAC 388-548-1100 Federally qualified health centers—Definitions.**

**Changed the word "plans" to "MCOs" in the following definition.**

**Enhancements (also called managed care enhancements) -** A monthly amount paid by the department to FQHCs for each client enrolled with a managed care organization (MCO). ~~Plans~~ MCOs may contract with FQHCs to provide services under managed care programs. FQHCs receive enhancements from the department in addition to the negotiated payments they receive from the MCOs for services provided to enrollees.

**Added a new definition:**

**Medical assistance** – The various healthcare programs administered by the department that provide federal and/or state-funded healthcare benefits to eligible clients.

**Revised the following definition**

**Rebasing** - The process of recalculating ~~the conversion factors, per diems, per case rates, or RCC rates using historical data~~ encounter rates using actual cost report data.

**2. WAC 388-548-1400 Federally qualified health centers—Reimbursement and limitations.**

**The department revised the language in the following subsections (2), (3), and (6) as follows:**

(2) Effective January 1, 2009, FQHCs have the choice to continue being reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a(bb), payments made under the APM must be at least as much as payments that would have been made under the PPS.

(3) The department calculates the FQHC's PPS encounter rate as follows:

(a) Until the FQHC's first audited ~~department~~ cost report is available, the department pays an average encounter rate of other similar FQHCs within the state, otherwise known as an interim rate;

(b) Upon availability of the FQHC's first audited medic-aid cost report, the department sets the clinic's encounter rate at one hundred percent of its total reasonable costs as defined in the cost report. The FQHC receives this rate for the remainder of the calendar year during which the audited cost report became available. Thereafter, the encounter rate is then inflated each January 1 by the medicare economic index (MEI) for primary care services.

(5) The department calculates the FQHC's APM encounter rate as follows:

(a) ~~For the period~~ Beginning January 1, 2009, the APM utilizes the FQHC base encounter rates, as described in WAC 388-548-1400 (4)(b).

(6) The department limits encounters to one per client, per day except in the following circumstances:

(a) The visits occur with different ~~doctors~~ healthcare professionals with different specialties; or

A final cost-benefit analysis is available by contacting Kevin Collins, P.O. Box 45510, Olympia, WA 98504-5510, phone (360) 725-2104, fax (360) 586-9727, e-mail collikm@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 6, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 0, Repealed 0.

Date Adopted: April 7, 2010.

Susan N. Dreyfus  
Secretary

## Chapter 388-548 WAC

### Federally Qualified Health Centers

#### NEW SECTION

**WAC 388-548-1000 Federally qualified health centers—Purpose.** This chapter establishes the department's:

(1) Requirements for enrollment as a federally qualified health center (FQHC) provider; and

(2) Reimbursement methodology for services provided by FQHCs to clients of medical assistance.

#### NEW SECTION

**WAC 388-548-1100 Federally qualified health centers—Definitions.** This section contains definitions of words or phrases that apply to this chapter. Unless defined in this chapter or WAC 388-500-0005, the definitions found in the Webster's New World Dictionary apply.

**APM index** - The alternative payment methodology (APM) is used to update APM encounter payment rates on an annual basis. The APM index is a measure of input price changes experienced by Washington's federally-qualified health center (FQHC) and rural health clinic (RHC) providers. The index is derived from the federal medicare economic index (MEI) and Washington-specific variable measures.

**Base year** - The year that is used as the benchmark in measuring a center's total reasonable costs for establishing base encounter rates.

**Cost report** - A statement of costs and provider utilization that occurred during the time period covered by the cost report. FQHCs must complete a cost report when there is a change in scope, rebasing of the encounter rate, or when the department sets a base rate.

**Encounter** - A face-to-face visit between a client and a FQHC provider (e.g., a physician, physician's assistant, or advanced registered nurse practitioner) who exercises independent judgment when providing services that qualify for an encounter rate.

**Encounter rate** - A cost-based, facility-specific rate for covered FQHC services, paid to an FQHC for each valid encounter it bills.

**Enhancements (also called managed care enhancements)** - A monthly amount paid by the department to FQHCs for each client enrolled with a managed care organization (MCO). MCOs may contract with FQHCs to provide services under managed care programs. FQHCs receive enhancements from the department in addition to the negotiated payments they receive from the MCOs for services provided to enrollees.

**Federally qualified health center (FQHC)** - An entity that has entered into an agreement with the centers for medicare and medicaid services (CMS) to meet medicare program requirements under 42 CFR 405.2434 and:

(1) Is receiving a grant under section 329, 330, or 340 of the public health service (PHS) act, or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under section 330 of the public health service act;

(2) Based on the recommendation of the PHS, is determined by CMS to meet the requirements for receiving such a grant;

(3) Was treated by CMS, for purposes of part B, as a comprehensive federally funded health center (FFHC) as of January 1, 1990; or

(4) Is an outpatient health program or facility operated by a tribe or tribal organizations under the Indian Self-Determination Act or by an Urban Indian organization receiving funding under Title V of the Indian Health Care Improvement Act.

**Fee-for-service** - A payment method the department uses to pay providers for covered medical services provided

to medical assistance clients, except those services provided under the department's prepaid managed care organizations or those services that qualify for an encounter rate.

**Interim rate** - The rate established by the department to pay an FQHC for covered FQHC services prior to the establishment of a permanent rate for that facility.

**Medical assistance** - The various healthcare programs administered by the department that provide federal and/or state-funded healthcare benefits to eligible clients.

**Rebasing** - The process of recalculating encounter rates using actual cost report data.

#### NEW SECTION

**WAC 388-548-1200 Federally qualified health centers—Enrollment.** (1) To enroll as a medical assistance provider and receive payment for services, a federally qualified health center (FQHC) must:

- (a) Receive FQHC certification for participation in the Title XVIII (medicare) program according to 42 CFR 491;
- (b) Sign a core provider agreement; and
- (c) Operate in accordance with applicable federal, state, and local laws.

(2) The department uses one of two timeliness standards for determining the effective date of a medicaid-certified FQHC.

(a) The department uses medicare's effective date if the FQHC returns a properly completed core provider agreement and FQHC enrollment packet within sixty calendar days from the date of medicare's letter notifying the center of the medicare certification.

(b) The department uses the date the signed core provider agreement is received if the FQHC returns the properly completed core provider agreement and FQHC enrollment packet sixty-one or more calendar days after the date of medicare's letter notifying the clinic of the medicare certification.

#### NEW SECTION

**WAC 388-548-1300 Federally qualified health centers—Services.** (1) The following outpatient services qualify for FQHC reimbursement:

- (a) Physician services specified in 42 CFR 405.2412.
- (b) Nurse practitioner or physician assistant services specified in 42 CFR 405.2414.
- (c) Clinical psychologist and clinical social worker services specified in 42 CFR 405.2450.
- (d) Visiting nurse services specified in 42 CFR 405.2416.
- (e) Nurse-midwife services specified in 42 CFR 405.2401.
- (f) Preventive primary services specified in 42 CFR 405.2448.

(2) The department pays for FQHC services when they are:

- (a) Within the scope of an eligible client's medical assistance program. Refer to WAC 388-501-0060 scope of services; and
  - (b) Medically necessary as defined WAC 388-500-0005.
- (3) FQHC services may be provided by any of the following individuals in accordance with 42 CFR 405.2446:

- (a) Physicians;
- (b) Physician assistants (PA);
- (c) Nurse practitioners (NP);
- (d) Nurse midwives or other specialized nurse practitioners;
- (e) Certified nurse midwives;
- (f) Registered nurses or licensed practical nurses; and
- (g) Psychologists or clinical social workers.

#### NEW SECTION

**WAC 388-548-1400 Federally qualified health centers—Reimbursement and limitations.** (1) Effective January 1, 2001, the payment methodology for federally qualified health centers (FQHC) conforms to 42 U.S.C. 1396a(bb). As set forth in 42 U.S.C. 1396a (bb)(2) and (3), all FQHCs that provide services on January 1, 2001, and through December 31, 2008, are reimbursed on a prospective payment system (PPS).

(2) Effective January 1, 2009, FQHCs have the choice to continue being reimbursed under the PPS or to be reimbursed under an alternative payment methodology (APM), as authorized by 42 U.S.C. 1396a (bb)(6). As required by 42 U.S.C. 1396a(bb), payments made under the APM must be at least as much as payments that would have been made under the PPS.

(3) The department calculates the FQHC's PPS encounter rate as follows:

(a) Until the FQHC's first audited cost report is available, the department pays an average encounter rate of other similar FQHCs within the state, otherwise known as an interim rate;

(b) Upon availability of the FQHC's first audited medicare cost report, the department sets the clinic's encounter rate at one hundred percent of its total reasonable costs as defined in the cost report. The FQHC receives this rate for the remainder of the calendar year during which the audited cost report became available. Thereafter, the encounter rate is then inflated each January 1 by the medicare economic index (MEI) for primary care services.

(4) For FQHCs in existence during calendar years 1999 and 2000, the department sets the payment prospectively using a weighted average of one hundred percent of the center's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The department adjusts a PPS base encounter rate to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 388-548-1500.

(b) The PPS base encounter rates are determined using audited cost reports and each year's rate is weighted by the total reported encounters. The department does not apply a capped amount to these base encounter rates. The formula used to calculate the base encounter rate is as follows:

$$\text{Specific FQHC Base Encounter Rate} = \frac{(1999 \text{ Rate} \times 1999 \text{ Encounters}) + (2000 \text{ Rate} \times 2000 \text{ Encounters})}{(1999 \text{ Encounters} + 2000 \text{ Encounters}) \text{ for each FQHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, the encounter rate is increased by the MEI for primary care services, and adjusted for any increase or decrease within the center's scope of services.

(5) The department calculates the FQHC's APM encounter rate as follows:

(a) Beginning January 1, 2009, the APM utilizes the FQHC base encounter rates, as described in WAC 388-548-1400 (4)(b).

(i) The base rates are adjusted to reflect any valid changes in scope of service between years 2002 and 2009.

(ii) The adjusted base rates are then inflated by each annual percentage, from years 2002 through 2009, of the APM index. The result is the year 2009 APM rate for each FQHC that chooses to be reimbursed under the APM.

(b) The department will ensure that the APM pays an amount that is at least equal to the PPS, the annual inflator used to increase the APM rates is the greater of the APM index or the MEI.

(c) The department will periodically rebase the APM rates. The department will not rebase rates determined under the PPS.

(6) The department limits encounters to one per client, per day except in the following circumstances:

(a) The visits occur with different healthcare professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

(7) FQHC services and supplies incidental to the provider's services are included in the encounter rate payment.

(8) Payments for nonFQHC services provided in an FQHC are made on a fee-for-service basis using the department's published fee schedules. NonFQHC services are subject to the coverage guidelines and limitations listed in chapters 388-500 through 557 WAC.

(9) For clients enrolled with a managed care organization, covered FQHC services are paid for by that plan.

(10) Only clients enrolled in Title XIX (medicaid) or Title XXI (CHIP) are eligible for encounter or enhancement payments. The department does not pay the encounter rate or the enhancement rate for clients in state-only medical programs. Services provided to clients in state-only medical programs are considered fee-for-service regardless of the type of service performed.

(11) For clients enrolled with a managed care organization (MCO), the department pays each FQHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 U.S.C. 1396a (bb)(5)(A).

(a) The FQHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each FQHC, the department performs an annual reconciliation of the enhancement payments. For each FQHC, the department will compare the amount actually paid to the amount determined by the following formula: (managed care

encounters times encounter rate) less FFS equivalent of MCO services. If the center has been overpaid, the department will recoup the appropriate amount. If the center has been underpaid, the department will pay the difference.

#### NEW SECTION

**WAC 388-548-1500 Federally qualified health centers—Change in scope of service.** (1) For centers reimbursed under the prospective payment system (PPS), the department considers a federally qualified health center (FQHC) change in scope of service to be a change in the type, intensity, duration, and/or amount of services provided by the FQHC. Changes in scope of service apply only to covered medicaid services.

(2) When the department determines that a change in scope of service has occurred after the base year, the department adjusts the FQHC's encounter rate to reflect the change.

(3) FQHCs must:

(a) Notify the department's FQHC program manager in writing, at the address published in the department's federally qualified health centers billing instructions, of any changes in scope of service no later than sixty calendar days after the effective date of the change; and

(b) Provide the department with all relevant and requested documentation pertaining to the change in scope of service.

(4) The department adjusts the encounter rate to reflect the change in scope of service using one or more of the following:

(a) A medicaid comprehensive desk review of the FQHC's cost report;

(b) Review of a medicare audit of the FQHC's cost report; or

(c) Other documentation relevant to the change in scope of service.

(5) The adjusted encounter rate will be effective on the date the change of scope of service is effective.

(6) For centers reimbursed under the alternative payment methodology (APM), the department considers an FQHC change in scope of service to be a change in the type of services provided by the FQHC. Changes in intensity, duration, and/or amount of services will be addressed in the next scheduled encounter rate rebase. Changes in scope of service apply only to covered medicaid services.

(7) When the department determines that a change in scope of service has occurred after the base year, the department adjusts the FQHC's encounter rate to reflect the change.

(8) FQHCs must:

(a) Notify the department's FQHC program manager in writing, at the address published in the department's FQHC billing instructions, of any changes in scope of service no later than sixty calendar days after the effective date of the change; and

(b) Provide the department with all relevant and requested documentation pertaining to the change in scope of service.

(9) The department adjusts the encounter rate to reflect the change in scope of service using one or more of the following:

(a) A medicaid comprehensive desk review of the FQHC's cost report;

(b) Other documentation relevant to the change in scope of service.

(10) The adjusted encounter rate will be effective on the date the change of scope of service is effective.

**WSR 10-09-008**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed April 8, 2010, 10:13 a.m., effective May 9, 2010]

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

Purpose: Adopts more accurate and descriptive names for the components of the state funding formula for the allotment of appropriations for school plant facilities. The legislation is based on recommendations made by the joint legislative task force on school construction funding, to promote clarity and transparency in the funding formula.

Citation of Existing Rules Affected by this Order: Amending chapters 392-341, 392-342, 392-343, 392-344, and 392-347 WAC.

Statutory Authority for Adoption: RCW 28A.525.020.

Adopted under notice filed as WSR 10-01-135 on December 21, 2009.

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 167, 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: March 24, 2010.

Randy Dorn  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-005 Authority.** This chapter is adopted pursuant to RCW 28A.525.020 which authorizes the superintendent of public instruction to prescribe rules and regulations governing the administration, control, terms, conditions, and disbursements of (~~moneys~~) state funding assis-

tance to school districts to assist them in providing school facilities. In accordance with RCW 28A.525.200, the only provisions of chapter 28A.525 RCW currently applicable to state funding assistance for school facilities are RCW 28A.525.030, 28A.525.040, 28A.525.050, 28A.525.162 through 28A.525.178.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-010 Purpose.** The purpose of this chapter is to set forth provisions applicable to a district's official application for state funding assistance, including conditions preceding, in the construction of school facilities.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-020 District application—Study and survey.** Prior to the superintendent of public instruction consideration of state funding assistance in providing school facilities, the board of directors of a school district shall file with the superintendent of public instruction an application for each school facility project, whether new construction or modernization of an existing facility, and shall request the superintendent of public instruction to study and survey existing and proposed school facilities within the district.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-025 State study and survey—Content.** The study and survey to be conducted by the superintendent of public instruction with the cooperation of the local school district shall include the following:

(1) An inventory and area analysis of existing school facilities within the district, a description of the types and kinds of systems and subsystems used in those facilities and their physical condition;

(2) A long-range (i.e., minimum of six years) educational and facilities plan setting forth the projected facility needs and priorities of the district based on the educational plan;

(3) Demographic data including population projections and projected economic growth and development;

(4) The ability of such district to provide capital funds by local effort;

(5) The existence of a school housing emergency;

(6) The need to improve racial balance and/or to avoid creation or aggravation of racial imbalance;

(7) The type and extent of new and/or additions to existing school facilities required and the urgency of need for such facilities;

(8) A cost/benefit analysis on the need to modernize and/or replace existing school facilities in order to meet current educational needs and the current state building code;

(9) The need and the estimated capital cost to restore, to design specifications, the major systems and subsystems in the facilities that have deteriorated due to deferred maintenance.

(10) A determination of the district's time line for completion of the school facilities project;

(11) An inventory of accessible unused or underutilized school facilities in neighboring school districts and the physical condition of such school facilities;

(12) The need for adjustments of school attendance areas among or within such districts; and

(13) Such other matters as the superintendent of public instruction deems pertinent to decision making in the allocation of funds for school facilities. Cooperation by the applicant school district in conducting the study and survey is a requisite for the superintendent of public instruction to complete the study and survey and to establish the eligibility of the district for state funding assistance in school facility construction.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-030 State study and survey—Local involvement.** When in the judgment of the superintendent of public instruction information is not readily available to complete the state study and survey or the superintendent of public instruction determines that an existing study and survey, although completed within the previous six years, is out of date, the superintendent of public instruction shall approve a district's request for a state ~~((assistance))~~ planning grant to offset all or a portion of the cost of acquiring such information unless it is determined that there is no possibility that the district will be eligible for state funding assistance within the next seventy-two months. ~~((Such assistance))~~ The state planning grant shall be based on a minimum flat ~~((grant))~~ amount for each enrollment category plus a variable allocation based on the district's estimated gross square footage of existing school facilities and in accordance with the following schedule:

Headcount Enrollment Categories

Enrollment of 1 to 500—Minimum state planning grant plus square footage allocation

Enrollment of 501 to 3,000—Minimum state planning grant plus square footage allocation

Enrollment of 3,001 to 10,000—Minimum state planning grant plus square footage allocation

Enrollment of above 10,000—Minimum state planning grant plus square footage allocation

The dollar amount for the minimum grants and the square footage allocations for these categories shall be established annually by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-037 Out of date state study and survey.** The ~~((state board of education, commencing January 1, 1985, or the))~~ superintendent of public instruction, commencing June 7, 2006, shall not grant approval of state funding assistance pursuant to WAC 392-341-040 to a district with-

out consideration of a state study and survey conducted within the preceding six years that addresses such project.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-040 State study and survey—Superintendent of public instruction approval or denial.** Upon receipt of a request for one or more project approvals and after review of the state study and survey, together with recommendations and comments, the superintendent of public instruction shall in accordance with WAC 392-341-045 take one of the following actions:

(1) Deny approval of state funding assistance for the construction and/or modernization of school facilities; or

(2) Grant approval of state funding assistance for the construction and/or modernization of school facilities by authorizing the maximum area ~~((allowance))~~ allocation eligible for state ~~((financial))~~ funding assistance for each school plant project approved and for which the superintendent of public instruction shall issue an appropriate SPI form and state any conditions that may or may not be applicable including whether eligibility was approved or denied for additional state funding assistance pursuant to WAC 392-343-115 for one or more approved school plant projects or whether such decision for any approved school plant project has been deferred due to insufficient factual information for a determination or due to a request by the district to present the necessary factual information to the superintendent of public instruction. Upon receipt of the superintendent of public instruction approval, the school district is authorized to prepare educational specifications pursuant to chapter 392-342 WAC. Project approval shall become null and void one year from the date of the superintendent of public instruction action unless the district:

(a) Obtains ~~((local))~~ capital funds to provide the ~~((districts share of the estimated cost))~~ local share required for state funding assistance;

(b) Completes the educational specifications pursuant to chapter 392-342 WAC; and

(c) Selects a site pursuant to chapter 392-342 WAC.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-043 Superintendent of public instruction commitment at project approval.** The superintendent of public instruction project approval pursuant to WAC 392-341-040 defines the type of project and the maximum allowable square footage in which the state conditionally agrees to participate. There is no commitment whatsoever by the superintendent of public instruction or the state to any project or to any amount of state funding assistance. The superintendent of public instruction reserves the right to amend and/or repeal any rule(s) respecting state funding assistance in school building construction. Such rule changes may be made regardless of the negative and/or positive impact of such changes upon the eligibility of any project for state funding assistance and/or the extent of eligibility of any project for state funding assistance.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-045 Approval criteria for state fund-  
ing assistance.** The superintendent of public instruction shall conditionally agree to state funding assistance for a school facility or facilities for a school district that demonstrates the following:

(1) The existence of unhoused students which for the purpose of this section shall mean current or projected enrolled students who are in excess of the capacity calculated for existing facilities within the district pursuant to chapter 392-343 WAC: Provided, That current or projected enrolled students shall not be designated as unhoused for a high school district of application which has a student enrollment of four hundred or less in grades nine through twelve, if the students involved or affected can be served without undue inconvenience in a neighboring school, or schools of larger size and the neighboring school district has indicated a willingness to serve, and has the capacity to house the applying district high school students; and

(2) The ability of the district to ~~((provide any necessary capital funds by local effort))~~ obtain capital funds to provide the local share required for state funding assistance: Provided, That the existence of unhoused students provision of subsection (1) of this section shall not be required for approval of the following school facilities projects: Interdistrict cooperative centers authorized by chapter 392-345 WAC, interdistrict transportation cooperatives authorized by chapter 392-346 WAC, and modernization and new construction authorized by chapter 392-347 WAC.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-060 Eligibility for state funding assistance for new construction—Definition—Contiguous school district.** As used in this chapter the term "contiguous school district" means a school district sharing a common boundary with another school district.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-065 Eligibility for state funding assistance for new construction—Definition—Negotiate in good faith.** As used in this chapter the term "negotiate in good faith" means approach a school district with an available and suitable school facility with the intent to enter into an agreement to lease the facility.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-070 Eligibility for state funding assistance for new construction—Survey of suitable school facilities in contiguous school districts that are unused or underutilized.** A school district applying for state funding assistance for new construction shall conduct a documented survey of suitable school facilities in contiguous school districts that are unused or underutilized.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-075 Eligibility for state funding assistance for new construction—Contents of survey.** The survey required in WAC 392-341-070 shall include at a minimum:

- (1) A listing of contiguous school districts.
- (2) Name and title of each person contacted regarding availability of facilities.
- (3) A listing of available facilities including location.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-080 Eligibility for state funding assistance for new construction—Application to superintendent of public instruction—Necessary documentation.** As part of the application submitted to the superintendent of public instruction, the district applying for state funding assistance for new construction shall include:

(1) A copy of the survey conducted pursuant to WAC 392-341-070.

(2) A board resolution certifying one of the following:

(a) No suitable space is available in any contiguous district;

(b) Space is available in a contiguous district but the facilities do not meet needs of the applicant district. The applicant district shall provide substantial evidence to support the unsuitability of the available facility;

(c) Space is available in a contiguous district but good faith negotiations did not lead to an agreement between the applicant district and the district containing the available facility. The applicant district shall provide substantial evidence to support the lack of lease agreement including a history of the negotiations and proposed offers by each district.

(3) Other information deemed pertinent by the applicant district.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-085 Eligibility for state funding assistance for new construction—Review of survey of available and suitable school plant facilities in contiguous school districts.** The superintendent of public instruction shall review and approve the applicant school boards certification and supporting documentation submitted pursuant to WAC 392-341-080, if the certification is complete, technically accurate, and complies with all applicable rules and regulations. Until this certification and supporting documentation is approved by the superintendent of public instruction, the school district's application for state funding assistance will not be given further consideration.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-090 Eligibility for state funding assistance for new construction—Approval by the superintendent of public instruction of applicant's school district**

**certification.** The superintendent of public instruction shall approve an applicant school district's certification of the unavailability of suitable school plant facilities in contiguous school districts if it is established to the superintendent of public instruction's satisfaction that vacant, available, and suitable school plant facilities neither exist nor are scheduled to exist within the foreseeable future in a contiguous school district.

**AMENDATORY SECTION** (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-341-200 Forms.** (~~Commencing January 1, 1986,~~) Forms applicable to provisions of this chapter for school facilities (~~(requested after such date)~~) shall be as follows:

(1) Applications for a state study and survey by a district pursuant to WAC 392-341-020 shall be designated as SPI Form D-1.

(2) State planning grants to districts pursuant to WAC 392-341-030 shall be awarded to such districts through SPI Form D-2.

(3) Applications for approval of a school project by a district pursuant to WAC 392-341-040 shall be designated as SPI Form D-3.

(4) Project approval for districts pursuant to WAC 392-341-040 shall be awarded to such district through SPI Form D-4.

**AMENDATORY SECTION** (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-342-005 Authority.** This chapter is adopted pursuant to RCW 28A.525.020 relating to authority of the superintendent of public instruction to prescribe rules and regulations governing the administration, control, terms, conditions, and disbursements of allocations to school districts to assist them in providing school facilities. In accordance with RCW 28A.525.200, the only provisions of chapter 28A.525 RCW currently applicable to state funding assistance for school facilities are RCW 28A.525.030, 28A.525.040, 28A.525.050, and 28A.525.162 through 28A.525.178.

**AMENDATORY SECTION** (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-342-020 Site review and evaluation.** The superintendent of public instruction together with the school district shall conduct a review and evaluation of sites for new and existing state funding assisted projects. In selecting sites for schools, a district shall consider the following:

(1) The property upon which the school facility is or will be located is free of all encumbrances that would detrimentally interfere with the construction, operation, and useful life of the facility;

(2) The site is of sufficient size to meet the needs of the facility. The minimum acreage of the site should be five usable acres and one additional usable acre for each one hundred students or portion thereof of projected maximum enrollment plus an additional five usable acres if the school contains any grade above grade six. A district considering the

use of a site that is less than the recommended minimum usable acreage should assure that:

(a) The health and safety of the students will not be in jeopardy;

(b) The internal spaces within the proposed facility will be adequate for the proposed educational program;

(c) The neighborhood in which the school facility is or will be situated will not be detrimentally impacted by lack of parking for students, employees, and the public; and

(d) The physical education and recreational program requirements will be met.

(3) A site review or predesign conference has been conducted with all appropriate local code agencies in order to determine design constraints;

(4) A geotechnical engineer has conducted a limited subsurface investigation to gather basic information regarding potential foundation and subgrade performance.

**AMENDATORY SECTION** (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-342-025 Racial imbalance prohibition—Definition and acceptance criteria.** The superintendent of public instruction shall not accept a site unless the applicant district provides assurances that its attendance policies for the proposed or modernized school facility will not create or aggravate racial imbalance within the boundaries of the applicant school district. For the purpose of this chapter, racial imbalance shall be defined as the situation that exists when minority enrollment (as defined by current federal categories) of a school plant facility is as follows:

(1) General rule. As a general rule—except for greater than fifty percent minority school districts—racial imbalance shall be defined as the situation that exists:

(a) When the combined minority enrollment of a school exceeds the district-wide combined minority percentage by twenty percentage points or more; or

(b) When a school's enrollment of a single minority group with a district-wide enrollment of less than thirty percent exceeds fifty percent; or

(c) When a school's enrollment of a single minority group with a district-wide enrollment of thirty percent or more exceeds the minority group's district-wide percentage by twenty percentage points or more.

(2) Greater than fifty percent minority districts. This is a school district with a district-wide combined minority enrollment that exceeds fifty percent. Racial imbalance in a greater than fifty percent minority, nonmultiracial school district shall be defined as existing:

(a) When the combined minority enrollment of a school varies from the district-wide combined minority percentage by more than plus or minus twenty-five percentage points; or

(b) When a school's enrollment of a single minority group with a district-wide enrollment of less than thirty percent exceeds fifty percent; or

(c) When a school's enrollment of a single minority group with a district-wide enrollment of thirty percent or more exceeds the minority group's district-wide percentage by twenty percentage points or more.

(3) Greater than fifty percent minority, multiracial districts. This is a school district with a district-wide combined minority enrollment that exceeds fifty percent and consists of two or more minority group enrollments which are each greater than twenty percent. Racial imbalance in a greater than fifty percent minority, multiracial school district shall be defined as existing:

(a) When the combined minority enrollment of a school varies from the district-wide combined minority percentage by more than plus or minus twenty-five percent percentage points; or

(b) When a school's enrollment of a single minority exceeds the combined district-wide minority percentage.

(4) Exclusions—This policy does not apply to:

(a) Public schools located on American Indian reservations; or

(b) School ~~((buildings))~~ facilities which are the sole site within a school district for the conduct of a regular or special needs program for students of the age(s) or grade level(s) served at the site; or

(c) Student enrollments in programs established and conducted to address extraordinary educational needs, such as bilingual orientation programs, where the assignment and enrollment of students are based solely upon their extraordinary educational needs, the enrollment of students in the program is limited to the duration of their extraordinary educational need, and adherence to the policy would defeat the educational purpose of the program.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-342-050 Option to request preliminary funding status prior to proceeding pursuant to WAC 392-342-040.** As used in chapters 392-342, 392-343, and 392-344 WAC, the term "preliminary funding status" shall mean the project shall be considered for approval pursuant to WAC 392-344-107 prior to projects without such preliminary funding status and shall be eligible for state funding assistance pursuant to the superintendent of public instruction rules pertaining to eligible square footage, ~~((area-cost allowance))~~ construction cost allocation for the fiscal year funded, and priorities in effect at the time such status is granted. Any district may request the superintendent of public instruction to grant preliminary funding status for any project ~~((with secured local))~~ that obtained capital funds to provide the local share required for state funding assistance and has the authority to proceed pursuant to WAC 392-342-040. The superintendent of public instruction shall grant such approval if in the judgment of the superintendent of public instruction such project will receive approval pursuant to WAC 392-344-107 within one year.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-342-057 The superintendent of public instruction project commitment at preliminary funded status.** When preliminary funding status for a project is requested and granted pursuant to WAC 392-342-050, the superintendent of public instruction commitment is limited to

the eligibility of the project for state funding assistance, the eligible square footage, the ~~((area))~~ construction cost ~~((allow-ance))~~ allocation for the fiscal year funded and the priority standing of the project as determined pursuant to the state ~~((building))~~ construction assistance rules in effect at that time. This commitment is effective only for the initial one-year period set forth at WAC 392-342-060. The superintendent of public instruction reserves the right to amend and/or repeal any rule(s) respecting state funding assistance in school ~~((building))~~ facility construction. Such rule changes may be made regardless of the impact upon the eligibility of any project and/or the extent of eligibility of any project for state funding assistance.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-342-200 Forms.** ~~((Commencing January 1, 1986,))~~ Forms applicable to the provisions of this chapter for school facilities ~~((projects after such date))~~ shall be as follows:

(1) Applications for preliminary funding status pursuant to WAC 392-342-050 shall be designated as SPI Form D-5.

(2) Grants of preliminary funding status pursuant to WAC 392-342-050 shall be given to districts through SPI Form D-6.

## Chapter 392-343 WAC

### STATE FUNDING ASSISTANCE IN PROVIDING SCHOOL PLANT FACILITIES—BASIC STATE SUPPORT

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-005 Authority.** This chapter is adopted pursuant to RCW 28A.525.020 relating to authority of the superintendent of public instruction to prescribe rules and regulations governing the administration, control, terms, conditions, and disbursements of allotments to school districts to assist them in providing school facilities. In accordance with RCW 28A.525.200, the only provisions of chapter 28A.525 RCW currently applicable to state funding assistance for school plant facilities are RCW 28A.525.030, 28A.525.040, 28A.525.050, and 28A.525.162 through 28A.525.178.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-010 Purpose.** The purpose of this chapter is to set forth provisions applicable to ~~((basic))~~ state ~~((support and))~~ funding assistance in the construction of school facilities, including the superintendent of public instruction approval criteria. The limitations set forth represent the level of state ~~((support))~~ funding assistance within moneys available and are not to be interpreted as maximum criteria to meet the educational requirements of all school districts, the determination of such criteria being the prerogative of respective school districts.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-015 State board policy.** (1) In the interpretation of the regulations in this chapter, the superintendent of public instruction shall be guided by the following state board of education policy:

(a) To equate insofar as possible the efforts by districts to provide capital moneys;

(b) To equalize insofar as possible the educational opportunities for the students of the state;

(c) To establish a level of state ~~((support))~~ funding assistance for the construction and modernization of school facilities consistent with moneys available; and

(d) To recognize that districts may have reasons to remove district facilities from current inventories and provide consistent statewide policies for removal.

(2) Nonhigh district participation in financing the cost of secondary school facilities shall be established pursuant to the provisions of chapter 28A.540 RCW.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-016 Rules determining eligibility and timing of state funding assistance.** The eligibility for and the amount of state funding assistance shall be determined as outlined in WAC 392-343-020. The prioritization and timing for receipt of state funding assistance for eligible projects shall be determined by WAC 392-343-500.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-020 Related factors and formula for determining amount of state funding assistance.** (1) The amount of state funding assistance to a school district to provide school facilities shall be determined on the basis of component factors, as hereinafter set forth in this chapter, relating to:

(a) The number of unhoused students;

(b) Space allocations;

(c) Reduction of the number of operating schools as per chapter 392-347 WAC;

(d) ~~((Area))~~ Construction cost ~~((allowance))~~ allocation for the fiscal year funded;

(e) Allowances for furniture and equipment purchases;

(f) The amount of insurance, federal, or other nontax source local moneys applied to a school facilities project;

(g) Certain specified costs which must be financed directly by the school district; and

(h) The amount of fees for professional services.

(2) State funding assistance for an approved project shall be derived by multiplying the state funding assistance percentage ~~((of state assistance))~~ determined pursuant to RCW 28A.525.166 by the following:

(a) The eligible construction cost which shall be calculated by multiplying the approved square foot area of the project as set forth in WAC 392-343-035 by the ~~((area))~~ construction cost ~~((allowance))~~ allocation as set forth in WAC 392-343-060;

(b) The cost of preparing educational specifications as set forth in WAC 392-343-065;

(c) The cost of architectural and engineering services as set forth in WAC 392-343-070;

(d) The cost of preparing and reviewing the energy conservation report as set forth in WAC 392-343-075;

(e) The cost of a value engineering study, a constructability review, and building commissioning as set forth in WAC 392-343-080;

(f) The construction cost savings—sharing incentive as set forth in WAC 392-343-085;

(g) The cost of furniture and equipment as set forth in WAC 392-343-095;

(h) The cost of special inspections and testing as set forth in WAC 392-343-100; and

(i) The cost of construction management as set forth in WAC 392-343-102.

Any cost in excess of the maximum allowable shall be financed entirely by the school district.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-025 State ~~((matching))~~ funding assistance percentage—General.** (1) The ~~((percentage of))~~ state funding assistance percentage for which a school district is eligible, if otherwise qualified under prevailing statutory provisions and rules and regulations of the superintendent of public instruction, shall be determined in accordance with the ~~((matching))~~ state funding assistance percentage formula set forth in RCW 28A.525.166.

(2) In the event the ~~((percentage of))~~ state funding assistance percentage to any school district computed in accordance with RCW 28A.525.166(2) is less than twenty percent and such school district otherwise is eligible for state funding assistance under statutory provisions and the superintendent of public instruction regulations, the percentage for such district shall be twenty percent of the ~~((matchable cost))~~ state allowable costs of the project.

(3) In addition to the computed ~~((percent of))~~ state funding assistance percentage as stated above, a school district as provided in RCW 28A.525.166(3), shall be entitled to additional percentage points determined by the average percentage of growth for the past three years. One percent shall be added to the computed ~~((percent of))~~ state funding assistance percentage for each average percent of student growth for the past three years, with a maximum addition of twenty percent. In no case shall the state ~~((dollars matched))~~ funding assistance exceed one hundred percent of the maximum allowable cost of the project.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-030 Applicable state ~~((matching))~~ funding assistance percentage for project.** Pursuant to provisions of RCW 28A.525.168, the ~~((percentage of))~~ state funding assistance percentage used for the allocation of state moneys shall be the highest amount prevailing at the time of:

(1) Passage of bonds and/or levies by the voters of the school district to ~~((meet the requirement for local funding))~~ provide the local share required for state funding assistance;

(2) The superintendent of public instruction project approval; or

(3) Superintendent of public instruction approval to bid.

In the event that a district is otherwise eligible to receive approval to bid one or more projects but a lack of state ~~((matching funds))~~ funding assistance precludes the issuance of such approval(s), the district shall retain the higher ~~((percentage of))~~ state funding assistance percentage as provided for in this section for such approval(s). This provision shall apply to all projects having received project approval by the state board of education after September 1, 1997, or by the superintendent of public instruction after June 6, 2006.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-032 Growth impact fees and mitigation payments.** Notwithstanding the financial requirements of WAC 392-343-030, districts may use growth impact fees as provided for in RCW 82.02.020, 82.02.050 through 82.02.100, 58.17.060 and 58.17.110 and mitigation payments as provided for in RCW 43.21C.060 of the State Environmental Policy Act to assist in capital construction projects. The impact fees and payments collected pursuant to the above cited statutes~~(s)~~ may be used by the district ~~((as))~~ to provide the local ((match)) funding share required for state ~~((assisted capital projects))~~ funding assistance and may not be substituted for the amount of state funding assistance that would otherwise be provided for school capital projects. ~~((Mitigation payments as provided for in RCW 43.21C.060 of the State Environmental Policy Act may be used by the district as local match funding and may not be substituted for the amount of state assistance that would otherwise be provided for school capital projects.))~~

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-035 Space allocations.** (1) State fund-ing assistance in the construction of school facilities for grades kindergarten through twelve and classrooms planned for the exclusive use of students with developmental disabilities shall be based on a space ~~((allowance))~~ allocation per enrolled student and for state ~~((matching))~~ funding assistance purposes shall be computed in accordance with the following table:

Grade or Area	Through June 30, 2006	Beginning July 1, 2006
	Maximum <del>((Matchable Area))</del>	Maximum <del>((Matchable Area))</del>
	<u>Space Allocation</u> Per Student	<u>Space Allocation</u> Per Student
Grades kindergarten through six	80 square feet	90 square feet

Grade or Area	Through June 30, 2006	Beginning July 1, 2006
	Maximum <del>((Matchable Area))</del>	Maximum <del>((Matchable Area))</del>
	<u>Space Allocation</u> Per Student	<u>Space Allocation</u> Per Student
Grades seven and eight	110 square feet	117 square feet
Grades nine through twelve	120 square feet	130 square feet
Classrooms for students with <u>developmental</u> disabilities	140 square feet	144 square feet

For purposes of this subsection, students with developmental disabilities shall be counted as one student for each such student assigned to a specially designated self-contained classroom for students with developmental disabilities for at least one hundred minutes per school day, calculated on actual headcount enrollment submitted to the superintendent of public instruction.

(2) State funding assistance for construction of vocational skill centers shall be based on one-half of students enrolled on October 1 and computed as follows:

Type of Facility	Maximum <del>((Matchable Area))</del> <u>Space Allocation</u> Per One-Half Enrolled Student
	Skill Centers

(3) Space ~~((allowance))~~ allocation for state ~~((matching))~~ funding assistance purposes for districts with senior or four-year high schools with fewer than four hundred students shall be computed in accordance with the following formula:

Number of Headcount Student-Grades 9-12	Maximum <del>((Matchable Area))</del> <u>Space Allocation</u> Per Facility
0-100	37,000 square feet
101-200	42,000 square feet
201-300	48,000 square feet
301-or more	52,000 square feet

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-045 Space allocations—Enrollment projection provisions.** In planning for construction of all school facilities, a school district shall estimate capacity needs on the basis of the following:

- (1) A three or five-year cohort survival enrollment projection for growth districts, whichever is greater;
- (2) A three or five-year cohort survival enrollment projection for a declining district, whichever is lesser;

(3) Actual enrollment of preschool students with developmental disabilities; and

(4) Supplemental information regarding district growth factors which may include but not be limited to the following types of information:

- (a) County live birth rates;
- (b) New housing starts;
- (c) Utility/telephone hookups; and
- (d) Economic/industrial expansion.

For the purpose of this section, kindergarten students and students with developmental disabilities shall be counted as provided under WAC 392-343-035 and all other grade one through twelve students shall be counted as October count day full-time equivalent students as reported to the superintendent of public instruction: Provided, That a school district which has or has had an annual average full-time equivalent enrollment of over five hundred, and which applied for and received additional state basic education allocation moneys based upon an enrollment increase after the first of the month enrollment count, may use the average of the two highest monthly full-time equivalent enrollment counts during the school year.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-050 Space allocations—Computing building capacity.** The net total area of a school facility eligible for state (~~(matching purposes)~~) funding assistance shall be calculated as follows:

(1) The capacity of existing buildings within the district based on the school district's assigned grade spans shall be computed in accordance with the tables set forth in WAC 392-343-035 and the square foot area analysis set forth in WAC 392-343-040.

(2) The number of students projected at each grade span shall be multiplied by appropriate numbers of square feet as set forth in WAC 392-343-035. (Note: The area generated at each grade level determines district eligibility, if any.)

(3) The amount of housing the district is eligible to construct at each grade span is determined by subtracting the area computed in subsection (2) of this section from the existing housing capacity at each grade span in the school district. Using this formula, over housing at the secondary grade level, grades nine through twelve, or elementary grade level, kindergarten through eight, will not negatively affect unhooded eligibility at the elementary grade level or secondary grade level respectively.

(4) Appropriate grade assignment is a local determination.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-053 State moneys for studies and surveys.** State (~~(moneys)~~) planning grant for school district studies and surveys conducted pursuant to chapter 392-341 WAC shall be available even though the superintendent of public instruction deems it necessary to order a priority approval process pursuant to WAC 392-343-054. At the beginning of each biennium, the superintendent of public instruction shall

estimate the amount of money(~~(s)~~) necessary for allocation to districts for studies and surveys and not make such money(~~(s)~~) available for any other purpose. In the event the estimated amount proves to be insufficient, the superintendent shall set aside additional money(~~(s)~~).

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-056 Funding during the period of a priority approval process order by the superintendent of public instruction.** During the period of a priority approval process imposed by order of the superintendent of public instruction school construction projects shall receive final approval pursuant to WAC 392-344-107 as follows:

(1) On or after July 1 following the superintendent of public instruction order for the implementation of a priority approval process the superintendent of public instruction shall rank all projects for which final approval has been requested pursuant to WAC 392-344-107 as per the applicable priority list in WAC 392-343-500. Only school construction projects with the superintendent of public instruction approval under WAC 392-341-045 and secured (~~(local)~~) capital funds to provide the local share required for state funding assistance by January 31 of the previous state fiscal year and eligible for final approval pursuant to WAC 392-344-107 by June 30 of the previous state fiscal year shall be placed on the priority list.

(2) Each fiscal year the superintendent of public instruction shall give final approval to school construction projects on the priority list pursuant to WAC 392-344-107 based on the level and conditions of legislative appropriations. For the purpose of this subsection the term "estimated revenue available for the state fiscal year" shall mean the estimated revenue from the common school construction fund for the current state fiscal year and the subsequent state fiscal year, the result of which is divided by two.

(3) In the event the superintendent of public instruction does not rescind the order for the implementation of a priority approval process by the close of the state fiscal year, school construction projects remaining on the priority list without final approval and, therefore, without secured funding status pursuant to WAC 392-344-107 shall be combined with new school construction projects that have secured (~~(local)~~) capital funds to provide the local share required for state funding assistance by January 31 of the state fiscal year and that are eligible, pursuant to WAC 392-344-107, for final approval by the close of the state fiscal year, and a new priority list shall be established on or after July 1 of the next state fiscal year and such remaining and new school construction projects shall be eligible for final approval pursuant to the provisions of subsections (1) and (2) of this section.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-057 State funding assistance—Deferred payment.** In the event state (~~(moneys are)~~) funding assistance is not sufficient for a school district project, a school district may proceed at its own financial risk. At such time state (~~(moneys)~~) funding assistance becomes available,

reimbursement may be made for the project provided the provisions of chapter 392-344 WAC have been complied with.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-060 Determining the ~~((area)) construction cost ((allowance)) allocation.~~** (1) The ~~((area)) construction cost ((allowance)) allocation~~ for state funding assistance shall apply to the cost of construction of the total facility and grounds, including state sales and use taxes generally levied throughout the state of Washington and excluding those local option sales and use taxes levied by political subdivisions.

(2) The ~~((area)) construction cost ((allowance)) allocation~~ used in calculating state ~~((financial)) funding~~ assistance for construction of school facilities shall be determined by the superintendent of public instruction using the prior year's ~~((area)) construction cost ((allowance)) allocation~~, plus a construction inflation factor.

(3) The superintendent of public instruction's office shall work with appropriate parties to develop a method for determining the annual construction inflation factor.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-065 Educational specifications.** (1) Only school facility projects which are complete new facilities or modernization projects pursuant to chapter 392-347 WAC are eligible for state funding assistance in the preparation of education specifications.

(2) The construction of interdistrict transportation cooperatives, or additions of less than fifteen thousand square feet to existing facilities, unless combined with modernization, are not eligible.

(3) The amount of state funding assistance for which a district is eligible for the preparation of educational specifications shall be the state ~~((matching)) funding assistance~~ percentage multiplied by the greater of the following:

(a) One quarter of one percent of the ~~((area)) construction cost ((allowance)) allocation~~ multiplied by the square foot area for the fiscal year funded; or

(b) Ten thousand dollars.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-070 Architectural and engineering services.** School districts shall select their architectural and engineering consultants in accordance with chapter 39.80 RCW. As required by RCW 39.80.050, the district shall negotiate a contract with the most qualified consultants at a price which the school district determines is fair and reasonable. In making its determination, the district shall take into account the estimated value of the services to be rendered based upon the scope and complexity of the project.

The ~~((allocation of state moneys for matching purposes for a school facility project shall be based on architectural and engineering services as defined by)) state maximum allowable cost for architecture and engineering services shall~~

be based on the latest edition of the *American Institute of Architects Handbook of Professional Practice* and calculated by the percentage(s) in relation to the square foot area of construction as calculated in WAC 392-343-040 and project type, as set forth below:

(1) **New construction projects:**

**Architectural and Engineering Team Fee ~~((Matching)) Funding Assistance~~ Limitations**

Square Feet of Construction	Percent of Construction Cost
0 - 3,699	10.0
3,700 - 7,349	9.0
7,350 - 10,999	8.75
11,000 - 14,649	8.5
14,650 - 18,299	8.25
18,300 - 25,699	8.0
25,700 - 36,699	7.75
36,700 - 54,999	7.5
55,000 - 73,399	7.25
73,400 - 100,999	7.0
101,000 - 128,449	6.75
128,450 - 155,999	6.5
156,000 - 183,499	6.25
183,500 & above	6.0

(2) **Modernization projects:**

For modernization projects, the limits of state ~~((participation)) funding assistance~~ shall be one and one-half times the amount calculated for new construction.

(3) **Combination projects:**

For those projects which include a combination of new construction and modernization, the limits of state participation shall be prorated as set forth in subsection (1) and (2) of this section.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-075 Energy conservation report.** In compliance with the provisions of chapter 39.35 RCW, school districts constructing school facilities shall complete an energy conservation report for any new construction or for additions to and modernization of existing school facilities which will be reviewed by the Washington state department of general administration. One copy of the energy conservation report, approved by the district board of directors, shall be filed with the superintendent of public instruction. The amount of state funding assistance for which a district is eligible for the preparation of the energy conservation report shall be the state ~~((matching)) funding assistance~~ percentage multiplied by ten thousand dollars. The amount of state funding assistance for which a district is eligible shall be the state ~~((matching)) funding assistance~~ percentage multiplied by the fee charged.

AMENDATORY SECTION (Amending WSR 08-09-023, filed 4/8/08, effective 5/9/08)

**WAC 392-343-080 Value engineering studies, constructability reviews, and building commissioning—Requirements and definition.** At the appropriate time in the design process for a school facility approved by the superintendent of public instruction, the district shall prepare a value engineering study, complete a constructability review, and perform building commissioning for all projects greater than fifty thousand square feet. Value engineering studies and constructability reviews shall be optional for projects larger than fifteen thousand square feet but less than fifty thousand square feet. Any project which includes fifteen thousand square feet or less shall be exempt from this requirement. For projects subject to chapter 39.35D RCW, building commissioning must be performed for all projects over five thousand square feet. For the purpose of this section, a value engineering study is defined as a cost control technique which is based on the use of a systematic, creative analysis of the functions of the facility with the objective of identifying unnecessary high costs or functions and/or identifying cost savings that may result in high maintenance and operation costs. The study shall consist of a forty-hour workshop involving a minimum of a five-person team pursuant to WAC 392-344-065. A constructability review is defined as a cost control technique which is based on the review of project documents by mechanical, electrical, structural, construction, and design professionals prior to a request for bids. The purpose of a constructability review is to identify potential claim or problem areas and deficiencies that may occur as a result of errors, ambiguities, omissions, discrepancies, and conflicts in design documents. The study shall consist of a forty-hour workshop involving a minimum of a five-person team pursuant to WAC 392-344-066. Building commissioning is defined as the process of verifying that the installation and performance of selected building systems meet or exceed the specified design criteria and therefore satisfy the design intent. Building commissioning shall include a physical inspection, functional performance testing, listing of noted deficiencies, and a final commissioning report. Building commissioning shall be performed by a professional agent or authority not contractually or otherwise financially associated with the project design team or contractor. A district shall be eligible for state fund-ing assistance for a value engineering study, a constructability review, and building commissioning for each qualifying project. ~~((The maximum amount of assistance for value engineering studies and constructability reviews of the study package shall be the state matching percentage multiplied by the greater of the following:~~

~~(1) Two-fifths of one percent of the area cost allowance multiplied by the square foot area for the fiscal year funded; or~~

~~(2) Twenty thousand dollars.~~

~~The maximum amount of assistance for building commissioning shall be as follows:~~

~~(a) Seven thousand five hundred dollars for projects larger than five thousand square feet but less than ten thousand square feet;~~

~~(b) Ten thousand dollars for projects ten thousand square feet but less than fifteen thousand square feet;~~

~~(e) The larger of the following for projects fifteen thousand square feet and above:~~

~~(i) Two-fifths of one percent of the area cost allowance multiplied by the square foot area for the fiscal year funded; or~~

~~(ii) Twenty thousand dollars;)) (1) The maximum amount of state funding assistance for value engineering studies and constructability reviews of the study package shall be the state funding assistance percentage multiplied by the greater of the following:~~

~~(a) Two-fifths of one percent of the construction cost allocation multiplied by the square foot area for the fiscal year funded; or~~

~~(b) Twenty thousand dollars.~~

~~(2) The maximum amount of state funding assistance for building commissioning shall be:~~

~~(a) Seven thousand five hundred dollars for projects larger than five thousand square feet but less than ten thousand square feet;~~

~~(b) Ten thousand dollars for projects ten thousand square feet but less than fifteen thousand square feet;~~

~~(c) The larger of the following for projects fifteen thousand square feet and above:~~

~~(i) Two-fifths of one percent of the construction cost allocation multiplied by the square foot area for the fiscal year funded; or~~

~~(ii) Twenty thousand dollars.~~

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-085 Construction cost savings—Sharing incentive.** The purpose of this section is to set forth provisions designed to further enhance cost effectiveness in the construction of exclusively new school facilities.

(1) Districts become eligible for a cost saving incentive equal to sixty percent of the state share of the construction cost savings if the cost of new construction at bid is less than the ~~((approved))~~ state ~~((matchable))~~ maximum allowable construction cost(-) as set forth in WAC 392-343-020 (2)(a).

(2) The state ~~((matched))~~ funding assistance fee for basic architectural and engineering services shall not be reduced if the project is bid and is awarded below the ~~((approved-state matchable construction cost))~~ state maximum allowable costs for architectural and engineering services (WAC 392-343-070) or the cost contracted for between the school district and architect/engineer, whichever is less.

(3) Any project attached to or adjacent to or otherwise designed to operate in conjunction with an existing facility and which contains additional area equal to or less than fifty percent of the area in the existing facility shall be classified as an addition and shall not be eligible for the cost saving incentive option authorized in this section.

(4) Districts shall not be eligible for a cost-saving incentive where the entire project, or any part of the project, qualifies for state ~~((support))~~ funding assistance under chapter 392-347 WAC.

(5) Receipt of a portion of the state share of construction cost savings shall not reduce the district's future eligibility

and entitlement to state funding assistance in providing school facilities and shall not result in the district receiving more than one hundred percent of the cost of construction.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-095 Support level—Furniture and equipment allowances.** (1) ~~((A-matchable))~~ State funding assistance allowance for furniture and equipment purchases shall be added to total construction cost of an approved school facilities project. The amount of state funding assistance for which a district is eligible shall be the eligible square foot area of the project multiplied by the ~~((area))~~ construction cost ~~((allowance))~~ allocation for the fiscal year funded and that product multiplied by:

- (a) Two percent for elementary schools;
  - (b) Three percent for middle and junior high schools;
  - (c) Four percent for high schools;
  - (d) Five percent for facilities for students with developmental disabilities;
  - (e) Five percent for interdistrict cooperative occupational skill centers; and
  - (f) Seven percent for interdistrict transportation cooperatives.
- (2) For those projects where the eligible square footage is allocated to grade spans which do not conform to those listed above, the equipment allowance shall be allocated based on eligibility as established in WAC 392-343-035.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-100 Special inspections and testing.** All special inspections and testing to be performed by independent sources as specified in the construction documents shall be ~~((matched))~~ allowed for state funding assistance in addition to the construction costs subject to the approval of the superintendent of public instruction. For the purposes of this section, special inspections shall be those special inspections required under the State Building Code.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-102 Construction management.** Prior to commencing with project design the district shall employ or contract personnel to perform professional construction management. Construction management shall be required for all projects greater than fifty thousand square feet and is optional for projects fifty thousand square feet or less. For the purpose of this section construction management is defined as the process of professional management applied to a construction program for the purpose of controlling time, cost, and quality.

The construction manager shall have appropriate and demonstrable experience in the management of construction projects including procurement, contract administration, scheduling, budgets, quality assurance, information management, and health and safety.

The amount of state funding assistance for which a district shall be eligible for construction management shall be the state ~~((matching))~~ funding assistance percentage multiplied by two and one-half percent of the ~~((area))~~ construction cost ~~((allowance))~~ allocation multiplied by the square foot area for the fiscal year funded.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-110 Support level—Federal moneys.** A school district determined to be eligible for moneys made available by acts of congress for school facility construction, including but not limited to Public Law 815 moneys, shall complete the following steps:

- (1) Make application for such moneys, which requirement shall be prerequisite for a preliminary or provisional allocation of state ~~((matching moneys))~~ funding assistance;
- (2) Furnish evidence of the availability of such federal moneys, which requirement shall be a prerequisite for a final allocation of state moneys: Provided, That nothing in this section shall restrict a school district from receipt of federal moneys otherwise provided for specific purposes in accordance with the conditions imposed by the federal government incumbent upon the recipient school district; and
- (3) Include the number of square feet in school facilities constructed with federal moneys and used for instructional purposes in the district's inventory which will decrease district eligibility for state ~~((moneys))~~ funding assistance by an equal number.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-115 Support level—Additional state funding assistance.** State funding assistance in addition to the amount determined pursuant to WAC 392-343-020 may be allowed for the purposes and in accordance with the requirements set forth in this section: Provided, That in no case shall the state funding assistance exceed one hundred percent of the amount calculated for ~~((matching))~~ state funding assistance purposes: In each of the following exceptions, either at the time the project is approved pursuant to WAC 392-341-040 or at any time prior to receiving secured funding status pursuant to WAC 392-344-107, written school district application for additional state funding assistance and the superintendent of public instruction approval is required:

- (1) A school facility subject to abatement and an order to vacate.

A school district required to replace a school facility determined to be hazardous to the safety and health of school children and staff—as evidenced by reports of architects or engineers licensed to practice in the state of Washington, the health agency having jurisdiction, and/or the fire marshal and building official having jurisdiction—shall be eligible for additional assistance if the voters of the school district authorize the issuance of bonds and/or the levying of excess taxes to meet the statutory limits. If the superintendent of public instruction determines that the voters of the school district have authorized the issuance of bonds to its legal limit, the superintendent of public instruction shall provide state

~~((financial))~~ funding assistance for the remaining cost of the building to a level not exceeding the ~~((area))~~ construction cost ~~((allowance))~~ allocation for the fiscal year funded: Provided, That at any time thereafter when the superintendent of public instruction finds that the capital financial position of such district has improved, the amount of the additional allocation provided pursuant to this subsection shall be recovered by deducting an amount equal to all or a portion of such additional allocation from any future state ~~((school facility construction funds))~~ funding assistance which might otherwise be provided to such district.

(2) Interdistrict cooperative centers.

In the financing of interdistrict cooperative projects as set forth in chapter 392-345 WAC, the superintendent of public instruction shall allocate at seventy-five percent of the total approved project cost determined eligible for state ~~((matching))~~ funding assistance purposes if the planned school facility meets the following criteria:

(a) Provides educational opportunities, including vocational skills programs, not otherwise provided; or

(b) Avoids unnecessary duplication of specialized or unusually expensive educational programs or facilities.

(3) School housing emergency.

A school district found by the superintendent of public instruction to have a school housing emergency requiring an allocation of state ~~((moneys))~~ funding assistance in excess of the amount allocable under the statutory formula may be considered for an additional allocation of ~~((moneys))~~ state funding assistance: Provided, That the school district must have authorized the issuance of bonds to its legal capacity to meet the statutory and the superintendent of public instruction fiscal requirements for state funding assistance in providing school facilities.

The total amount of state ~~((moneys))~~ funding assistance allocated shall be the total approved project cost determined eligible for state ~~((matching))~~ funding assistance purposes multiplied by the districts' regular ~~((match rate))~~ state funding assistance percentage as calculated pursuant to RCW 28A.525.166 plus twenty percent and not to exceed ninety percent in total: Provided further, That at any time thereafter when the superintendent of public instruction finds that the capital financial position of such district has improved, the amount of the additional allocation provided pursuant to this subsection shall be recovered by deducting an amount equal to all or a portion of such additional allocation from any future state school facility construction funds which might otherwise be provided to such district.

(4) Improved school district organization.

If two or more school districts reorganize into a single school district and the construction of new school facilities results in the elimination of a small high school with a full-time equivalent enrollment in grades 9-12 of less than four hundred students and/or an elementary school with a full-time equivalent enrollment of less than one hundred students, the superintendent of public instruction shall ~~((match))~~ provide state funding assistance based on the total approved cost of the project at seventy-five percent.

(5) Racial imbalance.

Any school district that contains a school facility which is racially imbalanced as defined in WAC 392-342-025 shall

receive state funding assistance under this subsection in the amount of an additional ten percentage points above the ~~((matching))~~ state funding assistance percentage as calculated pursuant to RCW 28A.525.116 (b) and (c) which will not exceed a total of ninety percent of the total approved cost of construction: Provided, school construction projects for racial balance that meet the following conditions shall be provided state funding assistance at seventy-five percent of the ~~((square foot))~~ construction cost ~~((allowance))~~ allocation for the fiscal year funded under the provisions of this subsection as they existed prior to the amendment of this subsection in 1993:

(a) Voter approved local ~~((matching))~~ funds were authorized before December 31, 1992;

(b) The superintendent of public instruction approved a comprehensive desegregation plan with specific construction and modernization projects under additional state funding assistance criterion in effect at that time, which will be identified on or before September 15, 1993; and

(c) The superintendent of public instruction confirms at the time of project approval pursuant to WAC 392-341-040 the continued existence of racial balance needs.

In the case of a school district which contains a racially imbalanced school facility the district must demonstrate that, as a result of new construction or modernization, the particular school facility will no longer be racially imbalanced, that the combined minority enrollment in the particular school facility will be reduced by more than ten percentage points, and that the above stated results will be obtained as a direct result of increased enrollment of nonminority students in the particular school facility: Provided, That the particular school facility shall remain racially balanced for a period of at least five years after the date of actual building occupancy: Provided further, That if the superintendent of public instruction finds that the school facility does not remain racially balanced for five years then the amount of additional state funding assistance provided pursuant to this subsection shall be recovered by deducting an amount equal to all of the additional allocation from any future state ~~((school facility construction funds))~~ funding assistance which might otherwise be provided to such district.

(6) Any project that has received approval for additional state funding assistance under provisions of this section as they existed prior to the amendment of this section in 1993 shall retain authorization for additional state funding assistance under the provisions in effect at the time of such approval.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-120 Costs to be financed entirely with school district funds.** The cost of the following areas, facilities, and items shall not be eligible for ~~((the))~~ state ~~((matching purposes))~~ funding assistance:

(1) The cost of area in excess of the space allocations as set forth in WAC 392-343-035;

(2) Acquisition cost of site;

(3) Maintenance and operation;

(4) Alterations, repair, and demolitions, except alterations necessary to connect new construction to an existing building;

(5) Central administration buildings;

(6) Stadia/grandstands;

(7) Costs incidental to advertising for bids, site surveys, soil testing for site purchase, and costs other than those connected directly with the construction of facilities;

(8) Bus garages, except interdistrict cooperatives;

(9) Sales and/or use taxes levied by local governmental agencies other than those sales and/or use taxes levied by the state of Washington;

(10) All costs in excess of state ~~((support level factors))~~ allocations established by the superintendent of public instruction for state ~~((participation))~~ funding assistance in financing school construction; and/or

(11) All costs associated with the purchase, installation, and relocation of portable classrooms.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-125 Unforeseen costs.** The superintendent of public instruction shall not provide additional state funding assistance for unforeseen circumstances related to the construction project after the filing of construction contract(s) with the superintendent of public instruction except those required by change to the state building code as set forth in chapter 19.27 RCW.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-405 Instructional space inventory of school facilities—Eligibility.** For purposes of determining district eligibility for state ~~((financial))~~ funding assistance for the new construction of school facilities, except for the new construction of school facilities for which an acceptable Form D-3 project request was on file with the superintendent of public instruction and local ~~((matching))~~ funds were secured prior to March 31, 1989, the superintendent of public instruction shall establish and maintain an instructional space inventory of all school facilities within the state of Washington. Such listing shall consist of the following:

(1) Facility name;

(2) Location (address);

(3) Gross square footage;

(4) Gross square footage of available instructional space (if different than subsection (3) of this section);

(5) Date of construction, additions, and/or modernizations; and

(6) Grade spans served in the facility.

School facilities that are surplus and under lease per the provision of RCW 28A.335.040 are considered to be available for instructional activities and shall be included in the instructional space inventory.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-425 Removal from instructional space inventory—Replacement.** A school facility shall be removed from the superintendent of public instruction's instructional space inventory after it has been replaced with a school facility accepted by the school district board of directors on a square footage basis through one of the following actions:

(1) The replacement school facility is wholly financed with local ~~((district))~~ funds; or

(2) The replacement school facility is constructed with state funding assistance authorized under the authority of chapter 392-347 WAC.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-500 State funding assistance—Priorities after June 30, 1992.** The priority system for the funding of school construction projects after June 30, 1992, shall be as follows: For all new construction and modernization projects for school districts, there will be a unique priority score determined by the elements and formulas contained in WAC 392-343-505 through 392-343-520. The total score shall be used to rank all projects that have secured local funding and state board of education approval after January 26, 1991, or the superintendent of public instruction approval after June 6, 2006, and are otherwise eligible for state funding assistance. The elements are divided into three groups:

(1) Common elements;

(2) New construction for growth elements; and

(3) Modernization or new-in-lieu of modernization elements.

In the case of a combined project (i.e., new construction for growth and modernization), the respective scores in each group will be prorated on the basis of each group's related gross square footage in the total project.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-505 State funding assistance—Common priority elements.** The four priority elements that are common to all projects are as follows:

(1) Type of space - Ten possible points. In this element the net assignable square feet (NASF) of a project are identified by planned space inventory category. Category One is space used for scheduled instruction and libraries (classrooms, laboratories, PE teaching space, libraries, and learning resource centers). Category Two is space used in support of instruction (assembly, student services, office space, and classroom/lab service and support). Category Three space is cafeteria/food service, spectator seating, covered play areas, and general support space. The formula for determining points prorates the NASF with weightings of ten for Category One, seven for Category Two, and four for Category Three as shown below.

NASF of Category One	X	10 points = X
NASF of Category Two	X	7 points = X
NASF of Category Three	X	4 points = X

Then: The sum of X divided by the sum of NASF equals points.

(2) Local priority - Five points. For this element, five maximum points are awarded to the district's first priority project. Each priority from there has one point deducted from it, to a minimum of zero points awarded.

(3) Joint funding - Five possible points. A binding agreement between the school district and another governmental entity for the joint financing of new construction or modernization of space which is not otherwise eligible for state funding assistance.

	Required Joint Funding 25% of total project cost
Total Project Cost Up to \$1,000,000	
Between \$1,000,000 and \$2,000,000	\$275,000
Between \$2,000,000 and \$3,000,000	\$300,000
Between \$3,000,000 and \$4,000,000	\$325,000
Between \$4,000,000 and \$5,000,000	\$350,000
Between \$5,000,000 and \$6,000,000	\$375,000
Between \$6,000,000 and \$7,000,000	\$400,000
Between \$7,000,000 and \$8,000,000	\$425,000
Between \$8,000,000 and \$9,000,000	\$450,000
Between \$9,000,000 and \$10,000,000	\$475,000
\$10,000,000 and over	\$500,000

(4) Modified calendar or schedule - Five possible points. For this element, up to five points utilizing the table below will be awarded to a project in a district which has adopted a modified school calendar or schedule that enables more students to use school buildings each year over what current state capacity standards at WAC 392-343-035 recognize for state funding assistance purposes. The modified calendar or schedule shall utilize either extended school day or additional days for instruction in the year. The enrollment percentage shall be calculated on the same grade span groupings as for eligibility in WAC 392-343-050. For the purpose of this subsection, the enrollment shall include all students enrolled at the facility as opposed to only those students in attendance.

Enrollment Percentage Increase Over Capacity	Priority Points
20 to above	5
16 to 19.9	4
12 to 15.9	3
8 to 11.9	2
4 to 7.9	1
Below 4	0

The scores for this group of elements will be determined after district compliance with the requirements of WAC 392-344-107.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-510 State funding assistance—New construction for growth priority factors.** The three factors that are related to new construction for growth are as follows:

(1) Projected percent unhoused - Fifty-five possible points. The district percent unhoused five years in the future is based on the projection of enrollment per WAC 392-343-045 for two grade categories, including preschool special education, compared to the formula capacity of existing space based on WAC 392-343-035 as computed per WAC 392-343-050.

If the projected district percent unhoused for the applicable grade category is equal to or greater than forty percent, full points are awarded. If the projected district percent unhoused is less than five percent but greater than zero percent, then a minimum of fifteen points are awarded. If the projected percent unhoused is between five percent and forty percent, then the forty remaining points (55-15) are proportionately awarded.

(2) Mid-range projection - Five possible points. This factor is to recognize the degree of immediacy of a district's capacity problem. The district's point score in subsection (1) of this section is first multiplied by .091 to reflect the relationship between the fifty-five possible points in subsection (1) of this section and the five points in this subsection. This produces the maximum points a project can be awarded in this factor. The actual points are determined by the relationship between the district's unhoused percentage three years in the future divided by the unhoused percentage five years in the future. For example, if a district received 43.57 points in subsection (1) of this section due to a projected thirty percent unhoused condition and its three-year projection is that it will be twenty-four percent unhoused, it will receive 3.17 points (i.e.,  $(43.57 \times .091) \times (24 \text{ percent} / 30 \text{ percent}) = 3.17$ ).

(3) Number of years unhoused - Five possible points. This factor is to recognize the duration of an unhoused problem. One point is awarded for each year the district has had an unhoused condition in the applicable grade category during the past five years, up to the five points maximum.

The scores shall be determined at the time of project approval per WAC 392-341-045. These scores shall be carried for a period of twenty-four months, at which time new scores shall be determined utilizing the then most current enrollment projections and facts. A district may request a redetermination of scores at any time.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-515 Modernization or new-in-lieu of modernization priority elements.** The three priority elements that are related to modernization or new-in-lieu projects are as follows:

(1) Health & safety - Twenty possible points. A maximum of sixteen points are awarded based on the evaluation contained in the Building Condition Evaluation Form (BCEF) (WAC 392-343-535) and are awarded as follows:

15 - 19 percent = 16 points, 20 - 24 percent = 15 points, 25 - 29 percent = 14 points, etc., until 95 percent at which no points are awarded.

The health and safety condition points are combined with an additional:

Two points if school does not meet seismic code requirements.

Two points if school is not asbestos free.

(2) Condition of building - Thirty possible points. The score is based on the Building Condition Evaluation Form (WAC 392-343-535) analysis for all categories other than access for persons with developmental disabilities. If the building condition score is thirty-one or less, then the maximum thirty points are awarded to the project. If the condition score is ninety-one or more, then no points are awarded. If the condition score is from thirty-two to ninety, the condition score is subtracted from ninety-one and multiplied by fifty percent to determine the points. In cases where projects affect multiple buildings, the BCEF score is weighted by the proportion of gross square feet (GSF) affected.

(3) Cost/benefit factor - Ten minus points possible. If the proposed project is a modernization and the BCEF score is less than forty, one point is deducted for each point the BCEF score is less than forty up to a total possible deduction of ten points.

If the proposed project is a new-in-lieu of modernization and the BCEF score is greater than sixty, one point is deducted for each point the BCEF score is higher than sixty to a total possible deduction of ten points.

The scores shall be determined at the time of project approval per WAC 392-341-045. These scores shall be carried until the district requests a redetermination.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-525 State funding assistance—Priorities for co-ops.** For cooperative projects approved by the superintendent of public instruction under the authority of chapters 392-345 and 392-346 WAC, the following priority scores shall be assigned with similar projects ranked in order of date of approval with the earliest date ranked highest:

Type of Interdistrict Cooperative Facility	Priority Score
Vocational Skill Centers	25
Transportation Centers	10
Other Cooperative Facilities	20

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-535 Existing building condition—Evaluation.** Building condition and health and safety evaluations for purposes of determining priority scores and completing building inventories shall be conducted and reported to the superintendent of public instruction, utilizing an evaluation model and reporting forms for building type, history,

equipment, condition, health and safety factors, and portables on site that shall be adopted and subject to revision from time to time by the superintendent of public instruction. The information provided by the district on these forms shall be subject to review by the staff or agents of the superintendent of public instruction, or to audit by the state auditor. Compliance with this requirement for all schools in a district is a requirement for the receipt of any state construction funding assistance for projects approved after January 26, 1991.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-343-615 Emergency repair grant applications—Repayment conditions.** Grants of emergency repair moneys shall be conditioned upon the written commitment and plan of the school district board of directors to repay the grant by waiving the school district's current or future eligibility for state ((building)) funding assistance under chapters 392-341 through 392-347 WAC, or with insurance payments, or with any judgment(s) that have been awarded, or with other means and sources of repayment. Any such written commitment and plan for repayment may subsequently be modified by mutual agreement between the school district board of directors and the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-005 Authority.** This chapter is adopted pursuant to RCW 28A.525.020 relating to authority of the superintendent of public instruction to prescribe rules and regulations governing the administration, control, terms, conditions, and disbursements of allotments to school districts to assist them in providing school facilities. In accordance with RCW 28A.525.200, the only provision of chapter 28A.525 RCW currently applicable to state funding assistance for school plant facilities are RCW 28A.525.030, 28A.525.040, 28A.525.050, and 28A.525.162 through 28A.525.178.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-010 Purpose.** The purpose of this chapter is to set forth the procedures governing all applications for state funding assistance, allocations of state funds, and disbursements by school districts and the superintendent of public instruction for school facility projects approved for state funding assistance by the superintendent of public instruction. The superintendent of public instruction shall prescribe and furnish forms for the purposes set forth in this chapter.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-025 Superintendent of public instruction review.** Upon completion of the study and survey by the superintendent of public instruction and review by district board of directors, the study and survey and an application for state funding assistance from the district for the project(s)

to be considered shall be reviewed by the superintendent of public instruction. Superintendent of public instruction approval of a proposed project(s) shall establish the maximum (~~(matchable)~~) eligible area and estimated amount of state (~~(financial)~~) funding assistance based upon the information furnished in the study and survey.

**AMENDATORY SECTION** (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-055 Architect-engineer contracts.** Architects and engineers employed on approved school facility projects involving state school (~~(building moneys)~~) funding assistance shall be licensed to practice in the state of Washington. Contract(s) between the school district and the architects and engineers shall stipulate the maximum amount of the fee and the duties, i.e., scope of work, to be performed as required in chapter 392-343 WAC.

**AMENDATORY SECTION** (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-075 Contracts—Filing.** The school district shall submit to the superintendent of public instruction one copy of the following contracts for projects approved by the superintendent of public instruction for state funding assistance:

- (1) Educational specifications (WAC 392-344-050);
- (2) Architect-engineer (WAC 392-344-055);
- (3) Energy conservation report (WAC 392-344-060);
- (4) Value engineering (WAC 392-344-065);
- (5) Constructability review (WAC 392-344-066);
- (6) Building commissioning (WAC 392-344-067);
- (7) Construction management (WAC 392-344-068).

**AMENDATORY SECTION** (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-080 Construction documents—Bids and contract provisions.** The construction documents shall include the following bid and contract provisions:

(1) Separate or combined bids. The school district shall determine if the bids for general, mechanical, or electrical are to be separate or combined.

(2) Combination projects. For those projects which include a combination of both new construction and modernization, bid documents shall provide for separate and distinct bids for each and shall, when combined, be the low bid for the project.

(3) Ineligible items. Items ineligible for state (~~(matching)~~) funding assistance shall be bid separate or as an alternate.

(4) Bid law. All items included in the construction documents shall be bid in accordance with RCW 28A.335.190 and 43.19.1906.

(5) Commercial all-risk property insurance. Provision for commercial all-risk property insurance is mandatory for all school facilities under construction. The insurance shall cover at a minimum the amount of the work in place and materials to be used in the project which is in place and on the site. A certificate of insurance shall be submitted to the

superintendent of public instruction that insurance is provided for by the contractor or the school district. Only costs for insurance provided for in the construction documents will be (~~(matched)~~) eligible for state funding assistance.

**AMENDATORY SECTION** (Amending WSR 08-20-008, filed 9/18/08, effective 10/19/08)

**WAC 392-344-085 Construction and other documents—Submittal.** (1) For the purpose of determining that the provisions set forth in chapters 392-341 through 392-344 WAC have been complied with prior to the opening of bids of any project to be financed with state (~~(moneys)~~) funding assistance, the school district shall have on file with the superintendent of public instruction the following:

(a) One copy of the construction documents forwarded by others;

(b) Cost estimate of construction on a form approved by the superintendent of public instruction, completed and signed by the architect-engineer;

(c) Signed copy or photocopy of letters of approval by other governmental agencies in accordance with WAC 392-344-090;

(d) Area analysis on a form approved by the superintendent of public instruction in accordance with chapter 392-343 WAC;

(e) Complete listing of construction special inspections and/or testing to be performed by independent sources that are included in the project pursuant to WAC 392-343-100;

(f) School district board acceptance of a value engineering report and its implementation.

The report shall include the following:

(i) A brief description of the original design;

(ii) A brief description of the value engineering methodology used;

(iii) The areas analyzed;

(iv) The design alternatives proposed;

(v) The cost changes proposed;

(vi) The alternates accepted; and

(vii) A brief statement explaining why each alternate not accepted was rejected;

(g) Certification by the school district that a constructability review report was completed.

The report shall include:

(i) A brief description of the constructability review methodology used;

(ii) The area analyzed;

(iii) The recommendations accepted; and

(iv) A brief statement explaining why each recommendation not accepted was rejected;

(h) Completed Building Condition Evaluation Forms (BCEF) as required by WAC 392-343-535 for every school facility in the district.

(2) If the above documents reflect an increase in square foot size from the application approved by the superintendent of public instruction as per WAC 392-344-025 which will result in an increase in state (~~(support)~~) funding assistance, a new application must be submitted to the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-107 Bid opening—Superintendent of public instruction approval.** (1) A school district shall not open bids until receiving written approval of the superintendent of public instruction. Such approval shall not be granted if more than one year has passed since the project received preliminary funding status pursuant to WAC 392-342-050.

(2) The superintendent of public instruction shall grant approval if moneys are available for state funding assistance and the required documents pursuant to WAC 392-344-075, 392-344-080, 392-344-085, 392-344-090, 392-344-095, and 392-344-100 are complete.

(3) If the superintendent of public instruction determines that the required documents are incomplete, the superintendent of public instruction shall hold the project and notify the school district in writing as to the incomplete items.

(4) If moneys are not available for state funding assistance in construction, the school district shall notify the superintendent of public instruction that they are proceeding with their own moneys with the expectation that they will be reimbursed as per WAC 392-343-057.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-1075 Superintendent of public instruction commitment when district is authorized to open bids.** When a district is granted approval to open bids pursuant to WAC 392-344-107, the superintendent of public instruction is committed as provided at WAC 392-344-107 as well as to all other state (~~(building)~~) funding assistance determinations including but not limited to additional state funding assistance and professional fees determined pursuant to state (~~(building)~~) funding assistance rules and regulations in effect at the time such approval to open bids is granted. This commitment is subject to the district's compliance with the time limitation for requesting an authorization for contract award as set forth in WAC 392-344-108.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-108 Condition precedent to approval to bid.** Any project for which the superintendent of public instruction authorizes a district to open bids pursuant to WAC 392-344-107 shall request an authorization for contract award pursuant to WAC 392-344-110 within ninety calendar days of receipt of approval pursuant to WAC 392-344-107: Provided, That the ninety-day period shall be automatically extended for an additional ninety calendar days if:

(1) The lowest legally acceptable base bid, exclusive of alternates, received by a district exceeds the cost estimate submitted to the superintendent of public instruction pursuant to WAC 392-344-085 by ten percent or more; and

(2) Prior to the expiration on or after June 15, 1989, of the initial ninety-day period the district has rejected, or hereafter rejects, all bids in order to solicit new bids.

A district which fails to request an authorization for contract award pursuant to WAC 392-344-110 within the time

period allowed by this section shall have its authority to proceed withdrawn. Districts with such projects withdrawn may reinitiate an application for state funding assistance by first reapplying for project approval pursuant to WAC 392-341-040.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-115 Authorization for contract award.** (1) Upon receipt of the items as per WAC 392-344-110, the superintendent of public instruction shall:

(a) Analyze the bids;

(b) Determine the amount of state (~~(moneys allocable))~~ funding assistance; and

(c) Make an allocation of state (~~(moneys))~~ funding assistance for construction and other items as per chapter 392-343 WAC.

(2) Authorization for contract award and allocation of state (~~(moneys))~~ funding assistance shall be contingent upon the following:

(a) The contract price for the construction has been established by competitive bid(s); and

(b) The school district has available sufficient local funds pursuant to chapter 392-341 WAC.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-125 Award of contract(s).** Upon receipt of authorization to award contract(s) from the superintendent of public instruction, the board of directors of the school district shall award contract(s) for construction of the school facility project no later than the expiration of the time period permitted by the terms and conditions of the bid(s) for the award of contract(s). Immediately following the awarding of contract(s), the board of directors of the school district shall forward to the superintendent of public instruction one copy of each properly executed contract, one copy of the contractor's cost breakdown, and one copy of the contract(s) payment schedule. Such cost breakdown and payment schedule shall be displayed on a form issued and approved by the superintendent of public instruction in accordance with WAC 392-344-085 (1)(b). All state funding assistance-related approvals granted by the superintendent of public instruction under this chapter shall lapse and be null and void if a school district fails to award contract(s) within the time period permitted by the terms and conditions of the bid(s), unless non-compliance is waived for extraordinary reasons by the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-130 Disbursement of moneys—Sequence of payments.** The order in which funds shall be disbursed for school facility construction shall be as follows:

(1) Prior to payment (~~(from))~~ of state (~~(moneys))~~ funding assistance, the school district shall make payments on all claims submitted until such time as the total amount of

(~~school district moneys~~) local funds obligated by the district have been expended.

(2) When local (~~moneys~~) funds have been expended as in subsection (1) of this section, payments (~~from~~) of state (~~moneys~~) funding assistance shall then be made: Provided, That for projects authorized for state funding assistance pursuant to WAC 392-344-115(2) after June 30, 1993, payment shall be made after receipt of written certification by the school district board of directors that the school facility project authorized for state (~~matching funds~~) funding assistance has been or will be completed according to the purposes for which the state (~~matching funds are~~) funding assistance is being provided.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-140 Disbursements of moneys by school district(s)—Superintendent of public instruction filing.** At such time as the total amount of (~~school district moneys~~) local funds obligated by the school district have been expended, a signed statement by an authorized agent of the board of directors comprising a listing of all payments to contractors and others, including retainage, shall be submitted to the superintendent of public instruction.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-145 Disbursement of moneys by superintendent of public instruction.** All school district claims for payment from state (~~moneys~~) funding assistance shall be submitted to the superintendent of public instruction on invoice vouchers provided by the superintendent of public instruction and shall be signed by the authorized agent of the school district. State warrants issued in payments, unless the school district agent designates a specific payee, shall be drawn payable to the school district. In all cases, warrants shall be transmitted to the school district for disposition.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-147 Retained percentage law related requirements.** (1) State (~~school building~~) funding assistance is conditioned upon a school district's compliance with the cash, or bond in lieu of cash, retained percentage requirements of chapter 60.28 RCW and this section. A school district may elect to administer compliance with all requirements of chapter 60.28 RCW or, in part, designate the superintendent of public instruction as agent of the school district for purposes of administering retained percentage moneys reserved under RCW 60.28.011.

(2) Under RCW 60.28.011, a school district either:

(a) Must provide for the reservation of five percent of all moneys earned by a contractor either by the district, deposited by the district in an interest-bearing account or placed in escrow as provided in RCW 60.28.011(4); or

(b) Must accept a bond submitted by the contractor from any portion of the retainage in a form acceptable to the superintendent of public instruction and the school district and

from a bonding company which meets the standards established at subsection (4)(b) of this section and by the school district, unless the school district can demonstrate good cause for refusing to accept the bond.

As a general rule, the superintendent of public instruction prefers and recommends the cash retainage option for reasons which include the security and ease of enforcement which the cash option affords.

(3) Cash retainage.

(a) If the school district reserves five percent of all moneys earned by the contractor in a retainage trust fund administered by the school district in accordance with RCW 60.28.011(1), moneys deposited in that trust fund (whether retained by the district, deposited by the district in an interest-bearing account, or placed in escrow), may be paid to the contractor without prior written consent by the superintendent of public instruction. The superintendent of public instruction shall make available to the school district model procedures and forms for setting up the trust fund selected by the contractor under RCW 60.28.011(4).

(b) At the request of the school district, the superintendent of public instruction may be designated as agent of the school district for cash retainage and will:

(i) Administer the retained percentage trust fund in accordance with RCW 60.28.011, inclusive of depositing, releasing and accounting for such moneys;

(ii) Establish and administer the retained percentage trust fund in accordance with the terms of chapter 60.28 RCW, and such terms as may be established by the superintendent of public instruction to ensure compliance with chapter 60.28 RCW, the security of trust fund moneys and efficient administration; and

(iii) Ensure that no moneys lawfully deposited in the retained percentage trust fund shall be paid to the contractor without the prior written consent of the superintendent of public instruction, except for the payment of interest earnings as may be required by law.

(4) If at the request of the contractor the bond in lieu of cash retained percentage option is implemented the following conditions apply:

(a) The bond shall be in terms and of a form approved and established by the superintendent of public instruction to ensure that the bond adequately addresses the purposes of chapter 60.28 RCW; and

(b) The bond shall be signed by a surety that is:

(i) Registered with the Washington state insurance commissioner; and

(ii) On the currently authorized insurance list published by the Washington state insurance commissioner.

(c) Whatever additional requirements for the bonding company as may be established by the school district.

(5) The release of retainage, whether cash or bond-in-lieu, shall be conditioned upon satisfactory compliance with the provisions of WAC 392-344-165.

AMENDATORY SECTION (Amending WSR 06-16-032, filed 7/25/06, effective 8/25/06)

**WAC 392-344-150 Changes in contract cost.** The final contract cost shall be determined after inclusion of the

net change due to additive and/or deductive change orders. If the final contract cost results in an increase above the original bid amount, the school district shall finance the entire increase. If the final contract cost results in a decrease from the original bid amount, the school district and the state shall share the amount of the decrease based on the ((~~matching ratio~~)) state funding assistance percentage in effect at the time of contract award. Copies of all change orders when executed and signed by the school district's authorized agent and the project architect/engineer shall be forwarded to the superintendent of public instruction.

### Chapter 392-347 WAC

#### STATE FUNDING ASSISTANCE IN PROVIDING SCHOOL PLANT FACILITIES—MODERNIZATION

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-347-005 Authority.** This chapter is adopted pursuant to RCW 28A.525.020 which authorizes the superintendent of public instruction to prescribe rules and regulations governing the administration, control, terms, conditions, and disbursements of moneys to school districts to assist them in providing school facilities. In accordance with RCW 28A.525.200, the only provisions of chapter 28A.525 RCW currently applicable to state funding assistance for school facilities are RCW 28A.525.030, 28A.525.040, and 28A.525.162 through 28A.525.178.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-347-007 Purpose.** The purpose of this chapter is to set forth provisions applicable to ((~~basic~~)) state ((~~support and~~)) funding assistance in the modernization of existing school facilities.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-347-013 Annually determined building replacement value.** The annually determined building replacement value for any building in any year is the state determined maximum ((~~area~~)) construction cost ((~~allowance~~)) allocation for July of that year times the gross square footage determined under WAC 392-343-040.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-347-015 Eligibility for state ((~~financial~~)) funding assistance.** (1) In order to be eligible for state ((~~financial~~)) funding assistance, a modernization project shall have as its principal purpose one or more of the following:

(a) Bringing a facility into compliance with current building and health codes when so required by state or local health or safety officials;

(b) Changing the grade span grouping by facility by the addition, deletion, or combination thereof of two or more grades within the affected facility;

(c) The reduction of the number of operating school facilities in a district by combining the remaining school facilities through modernization and new capital construction so as to achieve more cost effective and efficient operation in the combined school facility or facilities. In order to be eligible for state ((~~financial~~)) funding assistance, such a project shall result in additional space for at least 100 additional pupils and the following enrollment in any combined facility:

- (i) Elementary school facility—500 pupils;
- (ii) Middle or junior high school facility—700 pupils;
- (iii) Senior high school facility—850 pupils;

Provided, That modernization projects in school districts with a high school enrollment of less than 850 pupils need not comply with the enrollment figures set forth above: Provided further, That unless the district demonstrates the existence of unhoused students, state ((~~financial~~)) funding assistance for the new construction component of a combined modernization and new construction project shall be limited to the provision of WAC 392-347-040; or

(d) Meeting the educational program of the facility.

(2) School districts shall certify that a proposed modernization project will extend the life of the modernized school facility by at least twenty years.

(3) School districts shall be ineligible for state funding assistance for modernization of any school facility accepted by the school district board of directors prior to January 1, 1993, where the principal purpose of that modernization project is to:

(a) Restore building systems and subsystems that have deteriorated due to deferred maintenance;

(b) Perform piecemeal work on one section or system of a school facility;

(c) Modernize a facility or any section thereof which has been constructed within the previous twenty years;

(d) Modernize a facility or any section thereof which has received state funding assistance under the authority of this chapter within the previous twenty years;

(e) To modernize a senior high school facility in a district with a senior high school where there is existing space available to serve the students involved or affected in a neighboring senior high school without, in the judgment of the superintendent of public instruction, an undue increase in the cost of transporting the students to and from school, decrease in educational opportunity, or proportional increase in the cost of instruction pursuant to chapter 392-341 WAC.

(4) School facilities accepted by the school district board of directors after January 1, 1993, shall be ineligible for state funding assistance for modernization of the facility or any section thereof where:

(a) The facility was constructed and occupied within the previous thirty years;

(b) The facility received state funding assistance under the authority of this chapter within the previous thirty years.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-347-020 Formula for determining the amount of state funding assistance.** State funding assistance in an approved modernization project shall be derived by applying the ~~((percentage of))~~ state funding assistance percentage determined pursuant to provisions of RCW 28A.525.166 and WAC 392-343-025 to the eligible cost which shall be calculated by multiplying the approved square foot area of the modernization project by the ~~((area))~~ construction cost ~~((allowance))~~ allocation for the fiscal year funded, less any deductions as set forth in WAC 392-347-023 if applicable, by the factor in WAC 392-347-040 set forth, any cost in excess thereof shall be financed entirely by the school district.

AMENDATORY SECTION (Amending WSR 09-10-023, filed 4/28/09, effective 5/29/09)

**WAC 392-347-023 State funding assistance in post 1993 facilities.** As a condition precedent to receiving state funding assistance for modernization under WAC 392-347-015 or new-in-lieu of modernization under WAC 392-347-042, school districts that received state funding assistance for new and new-in-lieu school buildings and whose buildings were accepted as complete by school board of directors as of January 1, 1994, and later, shall adopt by board resolution and implement an asset preservation program (APP).

(1) Definitions: For purposes of this chapter:

(a) An asset preservation program is a systematic approach to ensure performance accountability; promote student health and safety by maintaining and operating building systems to their design capacity; maintain an encouraging learning environment; and extend building life, thus minimizing future capital needs.

(b) An asset preservation system is a system of tasks or projects that are active, reactive, or proactive in maintaining the day to day health, safety, and instructional quality of the school facility and tasks or projects that are proactive, predictive or preventative in maintaining the school facility over its thirty-year expected life cycle.

(c) A building condition evaluation is an evaluation of the condition of building components and systems using a standardized scoring matrix.

(d) A building condition standard is a numeric scoring table with a scale identifying the expected condition score for each year of the building's expected life cycle.

(2) The office of the superintendent of public instruction shall establish and adopt a uniform program of specifications, standards, and requirements for implementing and maintaining the asset preservation program.

(3) School districts with affected buildings under this chapter are required to:

(a) Adopt or implement an asset preservation system;

(b) Annually perform a building condition evaluation and report the condition of such building to the school district's board of directors no later than April 1st of each year;

(c) Thereafter in six year intervals during the thirty-year expected life span of the building, have a certified evaluator, as approved by the office of the superintendent of public

instruction, perform a building condition evaluation and report the condition to the school district's board of directors and to the office of the superintendent of public instruction no later than April 1st.

(4) A school district building affected under this chapter and that does not meet the minimum building condition standard score of forty points at the end of the thirty years from the accepted date shall:

(a) Have its allowable cost per square foot used to determine the amount of state funding assistance in any modernization project reduced at a rate of two percent for each point below forty points, not to exceed a total twenty percent reduction; or

(b) Be ineligible for state funding assistance when the building condition score is less than thirty points.

(5) The following schedule shall apply to school districts with buildings affected under this chapter, and the requirements set forth shall replace the former requirements of this section:

(a) Buildings accepted by the school board in 1994 must begin an asset preservation program in 2009, and shall fully implement the program within no more than one and one-half years;

(b) Buildings accepted by the school board in 1995 must begin an asset preservation program in 2010, and shall fully implement the program within no more than one year;

(c) Buildings accepted by the school board in 1996 through 2010 must begin an asset preservation program in 2011, and shall fully implement the program within no more than six months;

(d) Buildings accepted by the school board after December 31, 2010, must implement an asset preservation program within six months of facility acceptance.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-347-025 Space eligible for state ~~((financial))~~ funding assistance in modernization.** Student space ~~((allowance))~~ allocations and enrollment projection provisions for state ~~((matching purposes))~~ funding assistance.

(1) In planning for modernization in any school facility, under the provisions of WAC 392-347-015 (1)(a) and (b), a school district shall estimate capacity needs on the basis of a cohort survival enrollment as per WAC 392-343-045. Any space above and beyond a school district's estimated capacity needs as calculated on the basis of a five-year cohort survival or adjusted cohort survival enrollment shall not be eligible for state ~~((financial))~~ funding assistance in modernization.

(2) The changes to this section shall take effect January 1, 2006: Provided, That those districts having authorized bond issues and/or excess tax levies for their building funds for specific school construction projects as identified in ballot propositions on or before July 1, 2006, may, when requesting the superintendent of public instruction consideration of state funding assistance for such projects, determine, in computing the amount of eligible space for modernization, ~~((the state will match))~~ state funding assistance will be provided on the entire facility of three quarters of the overall square footage of the school districts' facilities is eligible for state ~~((finan-~~

erial)) funding assistance: Provided further, That the provision shall not be applicable to new construction in lieu of modernization facility projects authorized by this chapter.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-347-030 Certification of continued use.** Any school facilities modernized under WAC 392-347-015 must be used for at least five years beyond the completion of modernization. School directors will pass a resolution and submit it to the superintendent of public instruction that the modernized facility will be used for instructional purposes for five years after the completion of the project. If the school facility is not used for instructional purposes during this five-year period, the amount of state ~~((money))~~ funding assistance allocated and spent for the modernization project must be returned to the state school building construction fund. The five-year use requirement and the five year prohibition against additional modernization funding shall be waived in the event that a facility is rendered permanently unusable before the end of the five-year period by an unforeseen natural event. The definition of "unforeseen natural event" shall be as set forth in RCW 28A.150.290.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-347-035 Minimum project—Forty percent of replacement costs.** (1) State funding assistance in modernization of school facilities shall be limited to projects which may include an entire facility or one or more complete buildings within a facility for which the estimated cost of major structural change is not less than forty percent of the estimated cost of replacement. The estimated cost of major structural change shall not include the estimated capital costs associated with restoring building systems or subsystems due to deterioration as determined in the study and survey to be caused by deferred maintenance. The estimated cost of replacement shall be derived from multiplication of the total square foot area of the facility or facilities proposed for modernization by the ~~((area))~~ construction cost ~~((allowance))~~ allocation for the fiscal year funded as in WAC 392-343-045 set forth.

(2) The superintendent of public instruction may grant a waiver from subsection (1) of this section in the event of an unanticipated increase in the ~~((area))~~ construction cost ~~((allowance))~~ allocation that might cause prior approved projects expecting state funding assistance to become disqualified for such assistance.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-347-040 Maximum costs eligible for state ~~((matching purposes))~~ funding assistance—One hundred percent of replacement cost.** State funding assistance for modernization projects shall not exceed one hundred percent of the cost of new construction of a comparable school facility based on the prevailing level of state support as defined in

chapter 392-343 WAC. Costs exceeding one hundred percent shall be paid with local funds by the ~~((local))~~ district.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-347-042 Replacement option.** A district with space eligible for modernization pursuant to WAC 392-347-015 and 392-347-025 may elect to replace such space through new construction in lieu of modernization. In such case, the district shall apply for a new school facility in accordance with applicable rules and regulations pertaining to new school plant facilities and the local board shall certify that after the new construction is finally completed:

- (1) The existing building or space to be replaced will not be used for district instructional purposes; and
- (2) The existing building or space will be ineligible for any future state ~~((financial))~~ funding assistance.

Further, if the existing building or space is subsequently returned by the district to instructional purposes in whole or in part, the district shall become ineligible for any state ~~((construction financial))~~ funding assistance for a period of ten years from the date that the superintendent of public instruction sends written notice to members of the local board recognizing the return of the building in whole or in part to instructional purposes. Districts exercising this election shall be limited in state funding assistance to the provision of WAC 392-347-040. In the event the district elects to replace a facility and construct a new facility with more space than the facility being replaced, the additional space, in order to be eligible for state funding assistance shall meet the eligibility requirements for new construction or the new construction component requirement of WAC 392-347-015 (1)(c): Provided, That no new construction in lieu of modernization project may qualify for additional state funding assistance pursuant to WAC 392-343-115 unless the facility being replaced would have qualified pursuant to such section for additional state funding assistance as a modernization project.

(3) The superintendent of public instruction may waive the provisions of this section for a period it determines is appropriate to the particular situation. A waiver request must be submitted in writing to the superintendent of public instruction. The superintendent of public instruction shall review the waiver request and approve or deny the request. The waiver request shall include, but not be limited to, the following information:

- (a) Description of the district's planning process;
- (b) Rationale why the need for the waiver request was not anticipated;
- (c) The requested length of time of the waiver;
- (d) The availability of funding for proposed projects;
- (e) List of specific projects and timelines;
- (f) List of the specific student groups that will use the facility;
- (g) Rationale why this is the best use of facilities and public funds;
- (h) Assurance that the facility meets health and safety standards for occupancy.

AMENDATORY SECTION (Amending WSR 09-16-031 [06-16-031], filed 7/25/06, effective 8/25/06)

**WAC 392-347-045 Architect and engineering services.** In the allocation of state ~~((funds))~~ funding assistance for an approved modernization project, architectural and engineering services eligible for state ~~((matching purposes))~~ funding assistance shall not exceed one and one-half times the architectural and engineering services as in chapter 392-343 WAC set forth.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 09-16-031 [06-16-031], filed 7/25/06, effective 8/25/06)

**WAC 392-347-050 Study and survey of school district as prerequisite.** A survey of facilities proposed for modernization conducted under the direction of the superintendent of public instruction as per chapter 392-341 WAC shall be a prerequisite for consideration of an application for state ~~((participation in financing))~~ funding assistance of a modernization project.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 09-16-031 [06-16-031], filed 7/25/06, effective 8/25/06)

**WAC 392-347-055 Regulations governing.** In addition to the regulations hereinbefore in chapter 392-347 WAC prescribed; all regulations governing the basic assistance program prescribed in chapters 392-341, 392-342, 392-343, and 392-344 WAC shall govern administration of state ~~((participation))~~ funding assistance in financing modernization of school facilities: Provided, That compliance with those regulations not pertinent to modernization projects as determined by the superintendent of public instruction shall not be required.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

Box 47030, Olympia, WA 98504-7030, phone (360) 902-1181, fax (360) 902-1191, e-mail sab@dnr.wa.gov.

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

Date Adopted: March 24, 2010.

Clay Sprague  
Deputy Supervisor, Uplands

AMENDATORY SECTION (Amending Order 617, filed 2/25/94, effective 3/28/94)

**WAC 332-120-070 Application/permit form.** ~~((The following form shall be used when making application to remove or destroy a survey monument:))~~

## WSR 10-09-011

### PERMANENT RULES

### DEPARTMENT OF

### NATURAL RESOURCES

[Filed April 9, 2010, 11:55 a.m., effective May 10, 2010]

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

Purpose: Amending WAC 332-120-070 Application permit form and 332-130-025 Corner restoration—Recording form, removing forms from WAC.

Citation of Existing Rules Affected by this Order: Amending WAC 332-120-070 and 332-130-025.

Statutory Authority for Adoption: RCW 58.24.030, 58.24.040, 58.09.050, and 58.17.160.

Adopted under notice filed as WSR 10-01-142 on December 21, 2009.

A final cost-benefit analysis is available by contacting Gwen Gervellis, PLS, 1111 Washington Street S.E., P.O.

~~((STRICKEN GRAPHIC))~~

# APPLICATION FOR PERMIT TO REMOVE OR DESTROY A SURVEY MONUMENT

## PERMIT NO.

You are hereby authorized to remove or destroy  
the described survey monument(s):

AUTHORIZING SIGNATURE/DATE  
(DNR or Other Authorizing Agency)

### APPLICANT INFORMATION:

NAME: \_\_\_\_\_ TELEPHONE NO: \_\_\_\_\_ DATE: \_\_\_\_\_  
COMPANY OR AGENCY NAME AND ADDRESS: \_\_\_\_\_

I estimate that this work will be finished by (date)\_\_\_\_\_.

\_\_\_\_\_ I request a variance from the requirement to reference to the Washington Coordinate System. (Please provide your justification in the space below.)

The variance request is \_\_\_\_ approved; \_\_\_\_ not approved. (FOR DNR USE ONLY) Reason for not approving:

### MULTIPLE MONUMENTS:

\_\_\_\_\_ Check here if this form is being used for more than one monument. You must attach separate sheets showing the information required below for each monument affected. You must seal, sign and date each sheet.

### INDEXING INFORMATION FOR AN INDIVIDUAL MONUMENT:

- 1) THE MONUMENT IS LOCATED IN: SEC \_\_\_\_\_ TWP \_\_\_\_\_ RGE \_\_\_\_\_ 1/4-1/4 \_\_\_\_\_
- 2) ADDITIONAL IDENTIFIER: (e.g., BLM designation for the corner, street intersection, plat name, block, lot, etc.) \_\_\_\_\_

**MONUMENT INFORMATION:** Describe: 3) the monument/accessories found marking the position, 4) the temporary references set to remonument the position (include coordinates when applicable), and 5) the permanent monument(s) to be placed on completion (if a permanent witness monument(s) is set include the references to the original position).

SEAL/SIGNATURE/DATE SIGNED

(Form prescribed 2/94 by the Public Land Survey Office, Dept. of Natural Resources, pursuant to RCW 58.24.040 (8).)

~~STRICKEN GRAPHIC))~~

~~((STRICKEN GRAPHIC~~ \_\_\_\_\_

# COMPLETION REPORT FOR MONUMENT REMOVAL OR DESTRUCTION

(TO BE COMPLETED AND SENT TO THE DNR AFTER THE WORK IS DONE.)

\_\_\_\_\_ I have perpetuated the position(s) as per the detail shown on the application form.

\_\_\_\_\_  
SEAL/SIGNATURE/DATE SIGNED

OR

\_\_\_\_\_ I was unable to fulfill the plan as shown on the application form. Below is the detail of what I did do to perpetuate the original position(s). (If the application covered multiple monuments attach sheets providing the required information. Seal, sign and date each sheet.)

\_\_\_\_\_  
SEAL/SIGNATURE/DATE SIGNED

\_\_\_\_\_  
~~STRICKEN GRAPHIC))~~

All applications must be completed on forms provided by the department and following instructions provided by the department. Completed applications shall be filed at the department.

AMENDATORY SECTION (Amending WSR 97-02-071, filed 12/31/96, effective 1/31/97)

**WAC 332-130-025 Corner restoration—Recording form.** The record of corner information required to be filed with the county auditor by the Survey Recording Act shall be filed on a form ~~((substantially like the following:))~~

~~((STRICKEN GRAPHIC~~ \_\_\_\_\_

**LAND CORNER RECORD**

~~GRANTOR/SURVEYOR/PUBLIC OFFICER: This corner record correctly represents work performed by me or under my direction in conformance with the Survey Recording Act.~~

~~COMPANY OR AGENCY:~~

~~ADDRESS:~~

~~GRANTEE: PUBLIC~~ \_\_\_\_\_ ~~SEAL/SIGNATURE/DATE~~ \_\_\_\_\_

~~LEGAL: TWP; RGE: CORNER CODE:~~  
~~ADDITIONAL IDENTIFIER: (BLM designation, street or plat names, block, lot, etc.)~~

~~COUNTY:~~

~~WASHINGTON PLANE COORDINATES: N: E:~~

~~ORDER: ZONE: DATUM (Date of adjustment):~~

~~CORNER INFORMATION: Discuss the history, evidence found, and perpetuation of the corner. Diagram the references; provide the date of work; and, if applicable, a reference to a map of record and/or the field book/page no. Use the back, if needed.~~

This form is in compliance with the intent of RCW 65.04.045 and prescribed by the Public Land Survey Office, Department of Natural Resources - 1/97.

\_\_\_\_\_ ~~STRICKEN GRAPHIC))~~

((STRICKEN GRAPHIC \_\_\_\_\_

MARK THE CORNER LOCATION BELOW AND FILL IN THE CORNER CODE BLANK ON THE OTHER SIDE:  
For corners at the intersection of two lines, the corner code is the alphanumeric coordinate that corresponds to the appropriate intersection of lines.

For corners that are only on one line, the corner code is the line designation and the related line segment; i.e., a corner on line 5 between "B" and "C" is designated BC-5.

For corners that are between lines, the corner code is both line segments; i.e., a corner in the SE1/4 of the SE1/4 of section 18 is designated MN 4-5.

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25		
A																											A
B																											B
C			6		5		4		3		2		1														C
D																											D
E																											E
F																											F
G			7		8		9		10		11		12														G
H																											H
J																											J
K																											K
L			18		17		16		15		14		13														L
M																											M
N																											N
O																											O
P			19		20		21		22		23		24														P
Q																											Q
R																											R
S																											S
T			30		29		28		27		26		25														T
U																											U
V																											V
W																											W
X			31		32		33		34		35		36														X
Y																											Y
Z																											Z
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25		

RCW 58.09.060 (2) requires the following information on this form: an accurate description and location, in reference to the corner position, of all monuments and accessories (a) found at the corner and (b) placed or replaced at the corner; (c) basis of bearings used to describe or locate such monuments or accessories; and (d) corollary information that may be helpful to relocate or identify the corner position.

SPACE FOR ADDITIONAL COMMENT:

\_\_\_\_\_  
(STRICKEN GRAPHIC))

provided by the department and following instructions provided by the department.

**WSR 10-09-012**  
**PERMANENT RULES**  
**HORSE RACING COMMISSION**

[Filed April 9, 2010, 1:16 p.m., effective May 10, 2010]

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

Purpose: This clarifies further the differences between a license suspension and a revocation and an individual's ability to apply for a license during a revocation.

Citation of Existing Rules Affected by this Order: Amending WAC 260-12-010 Definitions.

Statutory Authority for Adoption: RCW 67.16-.020 [67.16.020].

Adopted under notice filed as WSR 10-06-073 on February 26, 2010.

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

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

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

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

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

Date Adopted: April 9, 2010.

Douglas L. Moore  
Deputy Secretary

AMENDATORY SECTION (Amending WSR 08-03-044, filed 1/10/08, effective 2/10/08)

**WAC 260-12-010 Definitions.** The definitions in this section apply throughout these rules unless the context requires otherwise.

(1) "Added money." Money added to the purse of a race by the association, or other fund, in the amount paid by owners for nominations, entry, and starting fees.

(2) "Allowance race." An overnight race for which there is no claiming price established.

(3) "Also eligible."

(a) A number of eligible horses, properly entered, which were not drawn for inclusion in a race, but which become eligible according to preference or lot if an entry is scratched prior to the scratch time deadline; or

(b) In a trial race, the next preferred contestant that is eligible to participate when an entry is scratched, pursuant to the written conditions of the race.

(4) "Apprentice jockey." A jockey who has not won a certain number of races within a specific period of time who is granted an extra weight allowance as provided in WAC 260-32-370(9).

(5) "Apprentice allowance." A weight allowance given to an apprentice jockey ranging from five to ten pounds.

(6) "Authorized agent." A person appointed by a written document signed by the owner with authority to act for the owner.

(7) "Association." Any person or persons, associations, or corporations licensed by the commission to conduct parimutuel wagering on a race meet.

(8) "Association grounds." All real property utilized by the association in the conduct of its race meeting, including the race track, grandstand, concession stands, offices, barns, stable area, and parking lots and any other areas under the jurisdiction of the commission.

(9) "Bar shoe." A special shoe with a solid bar that runs across the rear of the shoe for extra protection.

(10) "Bit." The metal mouthpiece on a bridle used to guide and control a horse.

(11) "Bleeder." A horse that demonstrates exercise induced pulmonary hemorrhaging.

(12) "Blinkers." A hood with different size cups to limit the peripheral vision of a horse.

(13) "Breakage." The remaining cents after parimutuel payoffs are rounded down to a dime or nickel.

(14) "Breeder." For thoroughbreds, the breeder is the owner of the horse's dam at the time of foaling. For quarter horses, appaloosas, arabians and paint horses, the breeder is the owner of the dam at the time of service.

(15) "Claiming." The act of buying a horse out of a race for a specific price.

(16) "Claim box." A box in a specified location where a claim must be deposited to be valid.

(17) "Claiming race." Races in which horses are entered subject to being claimed for a specified price.

(18) "Clerk of scales." An official who weighs the jockeys prior to and after each race.

(19) "Clocker." An official that times horses when horses are performing an official workout.

(20) "Colors." Racing silks with owners' distinct designs and color worn by jockeys while racing.

(21) "Colt." Male horse under the age of five.

(22) "Commission."

(a) The five-member commission established by RCW 67.16.012; or

(b) The state agency known as the Washington horse racing commission.

(23) "Condition book." A book issued by the racing secretary with specific eligibility conditions for scheduled races.

(24) "Coupled entry." Two or more horses running as a single betting interest for parimutuel wagering purposes.

(25) "Daily double." Type of wager calling for the selection of the winner of two consecutive races.

(26) "Dead heat." Two or more horses in an exact tie at the finish line.

(27) "Denial." The refusal to grant an applicant a license after the applicant has made application for a license, but prior to the individual performing the duties associated with the license.

(28) "Eligible." A horse that is qualified to start in a race as established by the racing secretary's conditions.

(29) "Engagement." A commitment given by a jockey or his/her agent to accept a mount in a specified race.

- (30) "Entry." (a) A horse eligible for and entered in a race. (b) Two or more horses which are entered or run in a race with common ownership.
- (31) "Equipment." Tack carried or used on a racehorse including whips, blinkers, tongue ties, muzzle, nosebands, bits, shadow rolls, martingales, breast plates, bandages, boots and plates.
- (32) "Exacta." A wager involving selecting the first two finishers in a race in exact order.
- (33) "Exercise rider." A person licensed by the commission to ride horses for the purpose of exercising.
- (34) "Field." The total horses scheduled to run in a race.
- (35) "Filly." A female horse four years and younger.
- (36) "Front leg wraps." Bandages that extend at least four inches up the horse's front legs for support.
- (37) "Furlong." One-eighth of a mile, two hundred twenty yards, or six hundred sixty feet.
- (38) "Furosemide." Generic term for a medication used for the treatment of bleeders.
- (39) "Furosemide list." A list of horses maintained by the official veterinarian eligible to race in this jurisdiction on furosemide.
- (40) "Gelding." A male horse that has been castrated.
- (41) "Groom." A person licensed by the commission who is employed by a licensed trainer to care for the trainer's horses.
- (42) "Handicap." (a) A race in which the racing secretary designates the weight to be carried for each horse. (b) Making wagering selections on the basis of a horse's past performances.
- (43) "Handle." Total amount of money wagered in the parimutuel pool for a race, race card, or a race meet.
- (44) "Horse." (a) A registered filly, mare, colt, horse, gelding or ridgling of a breed that is eligible to race in the state of Washington. (b) Any male horse five years old or older.
- (45) "Intact male." Any male horse, colt, or ridgling.
- (46) "Inquiry." A review of a race conducted by the board of stewards to determine if a racing violation was committed.
- (47) "Jockey." A person licensed by the commission to ride a horse in a race meet, whether a jockey or an apprentice jockey.
- (48) "Jockey fee." The money paid to a jockey for riding in a race.
- (49) "Maiden." A horse, which at the time of starting in a race, has never won a race on the flat in any country, at a track which is covered by a recognized racing publication showing the complete results of the race. A maiden who has been disqualified after finishing first is still considered a maiden.
- (50) "Mare." A female horse five years old or older.
- (51) "Minus pool." A mutuel pool caused when one horse is heavily bet and after all mandatory deductions there is not enough money in the pool to pay the legally prescribed minimum on each winning wager.
- (52) "Morning line." A handicapper's approximate odds quoted in the program.
- (53) "Mutuel field." A group of horses, with no common ties, coupled by the association for wagering purposes in a single race.
- (54) "Net pool price calculations." The method of calculating the parimutuel pools when international pools are conducted (WAC 260-48-800).
- (55) "Nerved" or "heel nerved." A horse upon which a digital neurectomy has been performed.
- (56) "Nomination." The naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee.
- (57) "Objection." When a claim of foul is lodged by a jockey, owner, or trainer following the running of the race.
- (58) "Official." (a) When the board of stewards has determined that the order of finish of a race is correct for the mutuel payouts. (b) An individual designated to perform functions to regulate a race meet.
- (59) "Off-track betting." Parimutuel wagering on horse races conducted at a location other than the racing association's grounds, often referred to as a satellite location.
- (60) "Optional claiming race." A race offered in which horses may be entered either for a claiming price or under specific allowance conditions.
- (61) "Overnight race." A contest for which entries close at a time set by the racing secretary.
- (62) "Overweight." Extra weight carried by the jockey that is greater than the listed weight in the official program.
- (63) "Owner." Any person licensed by the commission with an ownership interest in a horse, including a lessee. An interest only in the winnings of a horse does not constitute part ownership.
- (64) "Owners' bonus." A percentage of the gross mutuel pool the association is required by RCW 67.16.102 to withhold to be paid to owners of Washington bred horses at the conclusion of the meet based on the owner's horse finishing first, second, third or fourth.
- (65) "Paddock." Enclosure or area where horses are saddled prior to the post parade.
- (66) "Paddock judge." An official who monitors the saddling of the horses before a race to ensure consistent equipment on each horse and supervises the paddock.
- (67) "Penalty weight." Additional weight to be carried by the horse as stated in the condition book.
- (68) "Pick n." A type of wager requiring the patron to select the winners of a specified number of consecutive races.
- (69) "Pick three." A type of wager requiring the patron to select the winners of three consecutive races.
- (70) "Place." To finish second in a race.
- (71) "Poles." Markers positioned around the track indicating the distance to the finish line.
- (72) "Post." The starting position on the track.
- (73) "Post parade." Horses passing in front of the stewards stand and public prior to warming up for the race.
- (74) "Post position." Position assigned to the horse to break from the starting gate determined by lot at the time of the draw of the race.

(75) "Post time." The scheduled time for the horses to arrive at the starting gate for a race.

(76) "Purse." The amount of prize money offered by the racing association for each race.

(77) "Protest." A complaint filed regarding a horse running in a race that is filed in writing with the board of stewards.

(78) "Quinella." A wager in which the patron selects the first two finishers regardless of order.

(79) "Race meet." The dates of live horse racing that have been approved by the commission. (Also refer to RCW 67.16.010.)

(80) "Racing plates." Shoes designed for racehorses, usually made of aluminum.

(81) "Racing secretary." An official who drafts conditions of each race and accepts entries and conducts the post position draw of the races.

(82) "Receiving barn." Structure where horses may be identified prior to proceeding to the paddock.

(83) "Recognized race meet." Any race meet involving parimutuel wagering held under the sanction of a racing authority.

(84) "Revocation." The cancellation of an existing license for a minimum of ~~((twelve months))~~ three hundred sixty-five days and up to an indefinite period of time (e.g., life-time). Individuals revoked are ineligible ~~((to reapply))~~ for a license during the period of revocation. Individuals revoked are banned from all facilities under the jurisdiction of the commission during the period of their revocation.

(85) "Ridgling." A male horse with one or both testicles undescended.

(86) "Scale of weights." Fixed weight assignments to be carried by horses according to age, sex, distance, and time of year.

(87) "Scratch." Withdrawing an entered horse from the race after the closing of entries.

(88) "Scratch time." The established deadline for the withdrawal of entries from a scheduled performance.

(89) "Sex allowance." Weight allowance given to fillies and mares when competing against males.

(90) "Show." To finish third in a race.

(91) "Simulcast." Broadcasting a live race from another racing association for purposes of parimutuel wagering on that race, or sending a broadcast of a live race to another racing association for purposes of parimutuel wagering on that race.

(92) "Stake race." A race for which nominations close more than seventy-two hours in advance of its running and for which owners or nominators contribute money toward its purse, or a race for which horses are invited by an association to run for a guaranteed purse of thirty thousand dollars or more without payment of nomination, entry, or starting fees.

(93) "Stallion." A male horse or colt which can be used for breeding purposes.

(94) "Standard price calculations." A method of calculating the parimutuel payoffs used mostly when calculating pools nationally.

(95) "Starter."

(a) A horse is a "starter" for a race when the stall doors of the starting gate open in front of it at the time the starter dispatches the horses; or

(b) An official responsible for dispatching the horses from the starting gate.

(96) "Starter's list." A list, maintained by the official starter, of horses that have been unruly when loading in the starting gate. Horses on the starter's list are ineligible to enter.

(97) "Starter race." An allowance or handicap race restricted to horses who have started for a specific claiming price or less.

(98) "Stewards." The officials designated by the commission responsible for enforcing the rules of racing.

(99) "Stewards' list." A list, maintained by the stewards, of horses which are ineligible to enter for various reasons, e.g., poor performance, ownership disputes, etc.

(100) "Suspension." The ~~((cancellation))~~ temporary loss of license privileges for a ~~((set amount))~~ specific period of time (not to exceed three hundred sixty-five days), or until specific conditions are met. All suspensions for a specific period of time will be in calendar days; with the exception of riding suspensions, which will be race days. ~~((Individuals suspended may reapply for a license at the end of their suspensions. Individuals applying for a license in the same race year are not required to pay license fees.))~~ Individuals suspended may be banned from all facilities under the jurisdiction of the commission during the period of their suspension.

(101) "Test barn." The enclosure to which selected horses are taken for post race testing.

(102) "Tongue tie." Bandage or other apparatus used to tie down a horse's tongue to prevent the tongue from getting over the bit, which can affect the horse's breathing and the jockey's ability to control the horse.

(103) "Trifecta." A wager picking the first three finishers in exact order in a specific race.

(104) "Turf course." A racing surface comprised of grass.

(105) "Veterinarian's list." A list of horses ineligible to enter due to sickness, lameness, or other conditions as determined by an official veterinarian.

(106) "Walk over." A race that has only one participant.

(107) "Washington bred." A horse that was foaled in the state of Washington.

(108) "Weigh-in." The clerk of scales weighing of a jockey immediately follows the race.

(109) "Weigh-out." The clerk of scales weighing of a jockey prior to a race.

(110) "Weight allowance." A reduction in weight to be carried by a horse as established by the conditions for each race.

(111) "Workout" or "official workout." An exercise at moderate to extreme speed for a predetermined distance of a horse as required in WAC 260-40-105 to make a horse eligible to be entered or run in a race.

**WSR 10-09-013**  
**PERMANENT RULES**  
**HORSE RACING COMMISSION**

[Filed April 9, 2010, 1:18 p.m., effective May 10, 2010]

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

Purpose: The rule is amended to remain consistent with changes made to WAC 260-24-510 to address the appeal time for riding violations.

Citation of Existing Rules Affected by this Order: Amending WAC 260-08-675 Hearing before the commission.

Statutory Authority for Adoption: RCW 67.16.020.

Adopted under notice filed as WSR 10-06-074 on February 26, 2010.

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

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

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

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

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

Date Adopted: April 9, 2010.

Douglas L. Moore  
Deputy Secretary

AMENDATORY SECTION (Amending WSR 08-07-039, filed 3/13/08, effective 4/13/08)

**WAC 260-08-675 Hearing before the commission.**

Any person against whom a ruling is made by the stewards or the executive secretary may request a hearing before the commission to challenge the ruling. However, a decision by the stewards concerning the disqualification or nondisqualification of a horse due to a foul or riding infraction during the running of a race is final and will not be reviewed by the commission.

(1) Requests for a hearing before the commission must be filed with an office of the commission within seven days of service of the stewards' or executive secretary's ruling, with the exception of riding violations.

(2) The request must include: The name, address, telephone number and the signature of the person making the request and a statement of the basis for the challenge to the ruling.

(3) The commission will conduct an adjudicative proceeding according to the provisions of chapter 34.05 RCW, Administrative Procedure Act, and chapter 260-08 WAC, Practice and procedure.

(4) Any person requesting a hearing before the commission will be heard in person or by counsel. A person appearing before the commission may submit his or her case

entirely in writing, provided this is specified at the time of the filing of the request for hearing with the commission and this procedure is given written approval by the commission.

(5) All communications to the commission with respect to a stewards' or executive secretary's ruling must be in writing, and all papers filed with the commission shall be the property of the commission.

**WSR 10-09-021**  
**PERMANENT RULES**  
**GAMBLING COMMISSION**

[Order 666—Filed April 13, 2010, 9:43 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: We provide forms used for reporting annual progress to the licensee. These forms notify licensees that the form should be returned no later than one hundred twenty days after their fiscal year end. Before the rules simplification project (RSP), our rules required charitable and nonprofit licensees to provide several pieces of information demonstrating that they met required progress toward meeting their stated purpose. The former version of this rule required this information to be submitted to the commission no later than one hundred twenty days after the end of the licensee's fiscal year. The licensee could also request an extension to submit the forms. This requirement was originally part of one long rule. During RSP, the long rule was broken into two rules and the one hundred twenty day requirement and the extension were omitted from one of the rules. This amendment restores:

(1) The one hundred twenty day reporting requirement for our largest charitable and nonprofit licensees to report the required annual progress after the end of each fiscal year; and

(2) The licensee's ability to request an extension to submit the forms; and

(3) Housekeeping: Minor wording changes to subsections (1) and (2), "and" was added consistently between subsections, and subsections were renumbered.

Citation of Existing Rules Affected by this Order: Amending WAC 230-07-145.

Statutory Authority for Adoption: RCW 9.46.070.

Adopted under notice filed as WSR 10-05-102 on February 17, 2010.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 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: April 13, 2010.

Susan Arland  
Rules Coordinator

**WSR 10-09-024**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**  
[Filed April 13, 2010, 11:27 a.m., effective May 14, 2010]

AMENDATORY SECTION (Amending Order 609, filed 4/24/07, effective 1/1/08)

**WAC 230-07-145 Reporting annual progress.** Charitable or nonprofit licensees in Groups III, IV, and V must report annually their progress toward meeting their stated purpose in the format we prescribe.

~~((This))~~ (1) The report must explain the type and scope of activities which licensees conducted during their last annual fiscal accounting period~~(-In addition,); and~~

(2) The report must include, at least:

~~((1))~~ (a) A brief history of the licensed organization, including its stated charitable or nonprofit purpose(s); and

~~((2))~~ (b) A written statement setting out their goals for meeting their stated charitable or nonprofit purpose(s) in the future; and

~~((3))~~ (c) The number of full and regular members; and

~~((4))~~ (d) A list of contributions, scholarships, grants, or sponsorships made during the period. This list must include:

~~((a))~~ (i) The name of each organization or individual receiving a contribution from the licensee. The licensee may use the phrase "individual contribution" in place of the recipient. If the recipient is not named in the report, the licensee must maintain records to verify and identify the recipient of each individual contribution; and

~~((b))~~ (ii) Whether funds awarded were from gambling income or other funds; and

~~((5))~~ (e) Gross income from all nongambling activities and the source of the income; and

~~((6))~~ (f) The revenue and expenses for any nongambling sales activities, presented separately, when conducted primarily in conjunction with gambling activities; and

~~((7))~~ (g) Total expenses for both charitable or nonprofit services; and

~~((8))~~ (h) The percentage or extent to which the licensee used net gambling income for charitable as distinguished from nonprofit purposes; and

~~((9))~~ (i) The details of any loans, contracts, or other business transactions with related parties that cumulatively exceed one thousand dollars during the period. "Related parties" means officers, board members, key employees, or members of the licensed organization, including direct relatives of each(-); and

(3) The report must be submitted no later than one hundred twenty days following the end of the organization's fiscal year.

(4) We may grant an organization additional time to submit the report if a written request is received before the due date. The president of the organization must sign any request for additional time and include a statement explaining the hardship causing the delay, and the expected date the required report(s) will be submitted.

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

Purpose: To change the number of days continuing education may be deferred for licensees or certificate holders returning from military service and to repeal rule allowing applicants qualifying education credit for teaching.

Citation of Existing Rules Affected by this Order: Repealing WAC 308-125-065 Education credit for teachers of approved real estate appraisal courses; and amending WAC 308-125-090 Continuing education required.

Statutory Authority for Adoption: RCW 18.140.030 (1), (7), (8), and (15).

Adopted under notice filed as WSR 10-06-087 on March 1, 2010.

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

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

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

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

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

Date Adopted: April 13, 2010

Walt Fahrner  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-23-079, filed 11/19/07, effective 1/1/08)

**WAC 308-125-090 Continuing education required.**

(1) As a prerequisite to renewal of certification or licensure, the holder of a certificate or license shall present evidence satisfactory to the director of successful completion of the continuing education requirements of this section.

(2) The continuing education requirements for renewal of certification or licensure shall be the completion by the applicant of twenty-eight hours of instruction in courses or seminars which have received the approval of the director. Courses must be completed within the term of certification or licensure immediately preceding renewal. An applicant shall not receive credit in consecutive renewals for courses that have the same or very similar content and are deemed comparable by the department. The holder of a certificate or license will present evidence of successful completion of the seven-hour National USPAP update course or its equivalent.

(3) In order for courses or seminars to be accepted under subsection (2) of this section, the course or seminar must be a minimum of two hours in length and be directly related to real estate appraising. However, a maximum of one-half of

the continuing education hours required for renewal can be in two-hour seminars or courses.

(4) An examination is not required for courses or seminars taken for continuing education classroom hours.

(5) Up to one-half of the requirement under subsection (2) of this section may be met by participation other than as a student in educational process and programs approved by the director including teaching, program development, and authorship of textbooks and other written instructional materials. ~~((Credit for instructing any given course or seminar can only be awarded once))~~ A licensee or certificate holder may receive continuing education credit for teaching an approved real estate appraisal course. Once a licensee or certificate holder has received credit for teaching an approved real estate appraiser course, the credential holder shall not receive credit for teaching that course or any substantially similar course on any subsequent occasion, with the exception of the Uniform Standards of Professional Appraisal Practice, USPAP, 7-hour update.

(6) Courses or seminars taken to satisfy the continuing education requirement for real estate appraisers, should include coverage of real estate appraisal related topics, such as:

- (a) Ad valorem taxation.
- (b) Arbitrations, dispute resolution.
- (c) Business courses related to practice of real estate appraisal and consulting.
- (d) Construction estimating.
- (e) Ethics and standards of professional practice, USPAP.
- (f) Land use planning, zoning, and taxation.
- (g) Management, leasing, brokerage, timesharing.
- (h) Property development, partial interests.
- (i) Real estate appraisal (valuations/evaluations).
- (j) Real estate financing and investment.
- (k) Real estate law, easements and legal interests.
- (l) Real estate litigation, damages and condemnation.
- (m) Real estate related computer applications.
- (n) Real estate securities and syndication.
- (o) Real property exchange.
- (p) Appraisal and consulting report writing.
- (q) Such other presentations approved by the director.

(7) The director may approve continuing education credit for attendance at one real estate appraiser commission meeting of no more than seven hours.

(8) The director may defer completion of continuing education for licensees or certificate holders returning from military service active duty and place the license or certificate in an active status for a period of ~~((one hundred eighty))~~ ninety days pending completion of education. If the licensee or certificate holder fails to comply with the continuing education requirement within said ~~((one hundred eighty))~~ ninety days, the license or certificate will revert to an expired status.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 308-125-065	Education credit for teachers of approved real estate appraisal courses.
-----------------	--------------------------------------------------------------------------

#### **WSR 10-09-025 PERMANENT RULES DEPARTMENT OF LICENSING**

[Filed April 13, 2010, 11:28 a.m., effective May 14, 2010]

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

Purpose: Correct education requirements for the general classification and clarify the requirements for acceptability of qualifying education courses.

Citation of Existing Rules Affected by this Order: Amending WAC 308-125-030 Examination prerequisite general classification and 308-125-050 Education courses—Pre-examination.

Statutory Authority for Adoption: RCW 18.140.030 (1), (7), (8), and (15).

Adopted under notice filed as WSR 10-06-105 on April 6 [March 3], 2010.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 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: April 13, 2010

Walt Fahrer  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-06-069, filed 2/28/06, effective 4/1/06)

**WAC 308-125-030 Examination prerequisite general classification.** The general real estate appraiser classification applies to the appraisal of all types of real property.

(1) As a prerequisite to taking the examination for certification as a state-certified general real estate appraiser, an applicant shall present evidence satisfactory to the director that he/she has successfully completed not less than one hundred eighty classroom hours of qualifying education as approved by the director. Each applicant must successfully

complete a thirty classroom hour course in the basic principles of real estate appraising and a fifteen classroom hour course in the Uniform Standards of Professional Appraisal Practice as part of the one hundred eighty classroom hours of course work: Provided, That effective November 1, 2007, the required number of classroom hours is three hundred in the following core modules:

- (a) Basic appraisal principles, thirty hours.
- (b) Basic appraisal procedures, thirty hours.
- (c) The National USPAP course or equivalent, fifteen hours.
- (d) General appraiser market analysis and highest and best use, thirty hours.
- (e) Statistics, modeling and finance, fifteen hours.
- (f) General appraiser sales comparison approach, thirty hours.
- (g) General appraiser site valuation and cost approach, thirty hours.
- (h) General appraiser income approach, sixty hours.
- (i) General appraiser report writing and case studies, thirty hours.
- (j) Appraisal subject matter electives, thirty hours.

(2) An original certification as a state-certified general real estate appraiser shall not be issued to any person who does not possess three thousand hours of appraisal experience obtained continuously over a period of not less than thirty months in Washington or in another state having comparable certification requirements.

(3) To fulfill the experience requirement, a candidate must have at least one thousand five hundred hours of nonresidential appraisal experience.

(4) Effective January 1, 2008, applicants for the certified general license must possess a bachelor's degree or higher in any field of study or, in lieu of the required degree, thirty semester credit hours covering the following subject matter courses:

- (a) English composition;
- (b) Principles of economics (micro ~~((€))~~ and macro);
- (c) Finance;
- (d) Algebra, geometry or, higher mathematics;
- (e) Statistics;
- (f) Introduction to computers: Word processing/spreadsheets;
- (g) Business or real estate law; and
- (h) Two elective courses in accounting, geography, agricultural economics, business management, or real estate; as approved by the appraiser qualifications board and the director, in addition to the required qualifying core curriculum requirements.

AMENDATORY SECTION (Amending WSR 06-06-069, filed 2/28/06, effective 4/1/06)

**WAC 308-125-050 Educational courses—Preexamination.** (1) To be accepted under WAC 308-125-030(1), 308-125-040(1), and 308-125-045(1), courses must:

- (a) Be a minimum of fifteen classroom hours in length;
- (b) Include an examination;
- (c) Be directly related to real estate appraising; and

(d) Be approved by the director as identified in the appraiser program's publication *Approved Courses, Real Estate Appraisers*; or

(e) Be approved by the appraiser qualifications board and approved by the director.

(2) The following limitations may apply to course work submitted to the department for approval:

(a) A correspondence course may be acceptable to meet classroom hour requirements only if each course meets the following conditions:

(i) The course has been presented by an accredited college or university which offers correspondence courses in other disciplines;

(ii) An individual successfully completes a written examination administered at a location by an official approved by the college or university; or

(iii) The content and length of the course meet the requirements for real estate appraisal-related courses established by the appraiser qualifications board and approved by the director.

(b) Video and remote television educational courses may be used to meet the classroom hour requirements only if each course meets the following conditions:

(i) The course has been presented by an accredited college or university which offers similar courses in other disciplines;

(ii) An individual successfully completes a written examination administered at a location by an official approved by the college or university; or

(iii) The content and length of the course meet the requirements for real estate appraisal-related courses established by the appraiser qualifications board and approved by the director.

(c) An applicant shall not receive "dual credit" for courses that have the same or very similar content and are deemed comparable by the department, even if an applicant completes the courses through different course providers.

(3) Copies of official transcript of college records or certificates of course completion will be considered as satisfactory evidence for education requirements.

(4) Preexamination review seminars or examination preparation seminars will not be approved for clock hour credit.

(5) An application shall be submitted for approval not less than ninety days preceding the course start date. Course approval expiration shall be three years from the date of approval, except for the Uniform Standards of Professional Appraisal Practice courses or seminars having a definite date.

(6) All courses approved by the appraiser qualifications board will continue to be accepted by the department as approved courses until the expiration date.

(7) Appraisal course providers who have received the appraiser qualifications board's course approval are not required to submit course material or content materials to the department for approval. The course provider shall submit a secondary provider course content approval application to the department.

**WSR 10-09-030**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Health and Recovery Services Administration)  
 [Filed April 13, 2010, 2:28 p.m., effective May 14, 2010]

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

Purpose: These amendments are necessary to describe the payment methodology the department will use for rural health clinics, as authorized by 42 U.S.C. 1396a(bb).

Citation of Existing Rules Affected by this Order: Amending WAC 388-549-1100, 388-549-1400, and 388-549-1500.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.510, 74.09.522.

Other Authority: 42 U.S.C. 1396a(bb), 42 C.F.R. 405.2472, 42 C.F.R. 491.

Adopted under notice filed as WSR 10-01-163 on December 22, 2009.

Changes Other than Editing from Proposed to Adopted Version:

**1. WAC 388-549-1100 Rural health clinics—Definitions.**

**Changed the word "plans" to "MCOs" in the following definition:**

**Enhancements (also called managed care enhancements)**—A monthly amount paid by the department to FQHCs for each client enrolled with a managed care organization (MCO). ~~Plans~~ MCOs may contract with FQHCs to provide services under managed care programs. FQHCs receive enhancements from the department in addition to the negotiated payments they receive from the MCOs for services provided to enrollees.

**Added a new definition:**

**Medical assistance**—The various healthcare programs administered by the department that provide federal and/or state-funded healthcare benefits to eligible clients.

**Revised the following proposed definition:**

**Rebasing**—~~The process of recalculating the conversion factors, per diems, per case rates, or RCC rates using historical data encounter rates using actual cost report data.~~

**2. WAC 388-549-1400 Rural health clinics—Reimbursement and limitations.**

The department revised the language in the following subsections as follows:

(1) Effective January 1, 2009, RHCs have the choice to continue being reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), ~~in accordance with as authorized by 42 USC 1396a (bb)(6). As required by 42 U.S.C. 1396a(bb), payments made under the APM must be at least as much as payments that would have been made under the PPS.~~

(4) The department calculates the RHC's APM encounter rate as follows:

(a) ~~For the period~~ Beginning January 1, 2009, the APM utilizes RHC base encounter rates as described in WAC 388-549-1400 (3)(b). The base rates are inflated by each annual percentage, from years 2002 through 2009, of the APM index. The result is the year 2009 APM rate for each RHC that chooses to be reimbursed under the APM.

(5) The department pays for one encounter, per client, per day except in the following circumstances:

(a) The visits occur with different ~~doctors~~ healthcare professionals with different specialties; or

A final cost-benefit analysis is available by contacting Irina Lusby, P.O. Box 5510, Olympia, WA 98504-5510, phone (360) 725-1882, fax (360) 586-9727, e-mail lusbyis@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: April 13, 2010.

Susan N. Dreyfus  
Secretary

AMENDATORY SECTION (Amending WSR 08-05-011, filed 2/7/08, effective 3/9/08)

**WAC 388-549-1100 Rural health clinics—Definitions.** This section contains definitions of words and phrases that apply to this chapter. Unless defined in this chapter or WAC 388-500-0005, the definitions found in the Webster's New World Dictionary apply.

**"APM index"**—The alternative payment methodology (APM) is used to update APM encounter payment rates on an annual basis. The APM index is a measure of input price changes experienced by Washington's federally qualified health center (FQHC) and rural health clinic (RHC) providers.

**"Base year"**—The year that is used as the benchmark in measuring a clinic's total reasonable costs for establishing base encounter rates.

**("Change in scope of service"**—A change in the type, intensity, duration, or amount of service.)

**"Encounter"**—A face-to-face visit between a client and a qualified rural health clinic (RHC) provider (e.g., a physician, physician's assistant, or advanced registered nurse practitioner) who exercises independent judgment when providing services that qualify for an encounter rate.

**"Encounter rate"**—A cost-based, facility-specific rate for covered RHC services, paid to a rural health clinic for each valid encounter it bills.

**"Enhancements"** (also called ~~((healthy options (HO)))~~ managed care enhancements)—A monthly amount paid to RHCs for each client enrolled with a managed care organization (MCO). ~~((Plans))~~ MCOs may contract with RHCs to provide services under ~~((healthy options))~~ managed care pro-

grams. RHCs receive enhancements from the department in addition to the negotiated payments they receive from the MCOs for services provided to enrollees.

**"Fee-for-service"**—A payment method the department uses to pay providers for covered medical services provided to medical assistance clients, except those services provided under the department's prepaid managed care organizations or those services that qualify for an encounter (~~(rate)~~) payment.

**"Interim rate"**—The rate established by the department to pay a rural health clinic for covered RHC services prior to the establishment of a ~~((prospective payment system (PPS)))~~ permanent rate for that facility.

**"Medical assistance"**—The various healthcare programs administered by the department that provide federal and/or state-funded benefits to eligible clients.

**"Medicare cost report"**—The cost report is a statement of costs and provider utilization that occurred during the time period covered by the cost report. RHCs must complete and submit a report annually to medicare.

**"Mobile unit"**—The objects, equipment, and supplies necessary for provision of the services furnished directly by the RHC are housed in a mobile structure.

**"Permanent unit"**—The objects, equipment and supplies necessary for the provision of the services furnished directly by the clinic are housed in a permanent structure.

**"Rebasing"**—The process of recalculating encounter rates using actual cost report data.

**"Rural area"**—An area that is not delineated as an urbanized area by the Bureau of the Consensus.

**"Rural health clinic (RHC)"**—A clinic, as defined in 42 CFR 405.2401(b), that is primarily engaged in providing RHC services and is:

- Located in a rural area designated as a shortage area as defined under 42 CFR 491.2;
- Certified by medicare as a RHC in accordance with applicable federal requirements; and
- Not a rehabilitation agency or a facility primarily for the care and treatment of mental diseases.

**"Rural health clinic (RHC) services"**—Outpatient or ambulatory care of the nature typically provided in a physician's office or outpatient clinic ~~((and the like))~~ or similar setting, including specified types of diagnostic examination, laboratory services, and emergency treatments. The specific list of services which must be made available by the clinic can be found under 42 CFR part 491.9.

AMENDATORY SECTION (Amending WSR 08-05-011, filed 2/7/08, effective 3/9/08)

**WAC 388-549-1400 Rural health clinics—Reimbursement and limitations.** (1) ~~((For rural health clinics~~

$$\text{Specific RHC Base Encounter Rate} = \frac{(1999 \text{ Rate} \times 1999 \text{ Encounters}) + (2000 \text{ Rate} \times 2000 \text{ Encounters})}{(1999 \text{ Encounters} + 2000 \text{ Encounters}) \text{ for each RHC}}$$

(c) Beginning in calendar year 2002 and any year thereafter, the encounter rate is increased by the MEI and adjusted for any increase or decrease in the clinic's scope of services.

~~((3))~~ (4) The department calculates the RHC's APM encounter rate as follows:

~~(RHC) certified by medicare on and after January 1, 2001, the department pays RHCs an encounter rate per client, per day using a prospective payment system (PPS) as required by 42 USC 1396a(bb) for RHC services))~~ Effective January 1, 2001, the payment methodology for rural health clinics (RHC) conforms to 42 USC 1396a(bb). RHCs that provide services on January 1, 2001 through December 31, 2008 are reimbursed on a prospective payment system (PPS).

Effective January 1, 2009, RHCs have the choice to continue being reimbursed under the PPS or be reimbursed under an alternative payment methodology (APM), as authorized by 42 USC 1396a (bb)(6). As required by 42 U.S.C. 1396a (bb), payments made under the APM must be at least as much as payments that would have been made under the PPS.

~~((a))~~ (2) The department calculates the RHC's PPS encounter rate for RHC core services as follows:

~~((b))~~ (a) Until the RHC's first audited medicare cost report is available, the department pays an average encounter rate of other similar RHCs ~~((such))~~ whether the RHC is classified as hospital-based or free-standing within the state, otherwise known as an interim rate.

~~((c))~~ (b) Upon availability of the RHC's audited medicare cost report, the department sets the clinic's encounter rate at one hundred percent of its costs as defined in the cost report divided by the total number of encounters the clinic has provided during the time period covered in the audited cost report. The RHC will receive this rate for the remainder of the calendar year during which the audited cost report became available. The encounter rate is then inflated each January 1 by the medicare economic index (MEI) for primary care services.

~~((d))~~ (3) For RHCs in existence during calendar years 1999 and 2000, the department sets the payment prospectively using a weighted average of one hundred percent of the clinic's total reasonable costs for calendar years 1999 and 2000 and adjusted for any increase or decrease in the scope of services furnished during the calendar year 2001 to establish a base encounter rate.

(a) The department adjusts a PPS base encounter rate to account for an increase or decrease in the scope of services provided during calendar year 2001 in accordance with WAC 388-549-1500.

(b) The PPS base encounter rates are determined using medicare's audited cost reports and each year's rate is weighted by the total reported encounters. The department does not apply a capped amount to these base encounter rates. The formula used to calculate the base encounter rate is as follows:

(a) Beginning January 1, 2009, the APM utilizes RHC base encounter rates as described in WAC 388-549-1400 (3)(b). The base rates are inflated by each annual percentage from years 2002 through 2009, of the APM index. The result

is the year 2009 APM rate for each RHC that chooses to be reimbursed under the APM.

(b) To ensure that the APM pays an amount that is at least equal to the PPS in accordance with 42 USC 1396a (bb)(6), the annual inflator used to increase the APM rates is the greater of the APM index or the MEI.

(c) The department periodically rebases the APM rates. The department does not rebase rates determined under the PPS.

(d) When rebasing the APM encounter rates, the department applies a productivity standard to the number of visits performed by each practitioner group (physicians and mid-levels) to determine the number of encounters to be used in each RHC's rate calculation. The productivity standards are determined by reviewing all available RHC cost reports for the rebasing period and setting the standards at the levels necessary to allow ninety-five percent of the RHCs to meet the standards. The encounter rates of the clinics that meet the standards are calculated using each clinic's actual number of encounters. The encounter rates of the other five percent of clinics are calculated using the productivity standards. This process is applied at each rebasing, so the actual productivity standards may change each time encounter rates are rebased.

(5) The department pays for one encounter, per client, per day except in the following circumstances:

(a) The visits occur with different ~~((doctors))~~ healthcare professionals with different specialties; or

(b) There are separate visits with unrelated diagnoses.

~~((4))~~ (6) RHC services and supplies incidental to the provider's services are included in the encounter rate payment.

~~((5))~~ (7) ~~((Services other than RHC services that are provided in an RHC are not included in the RHC encounter rate.))~~ Payments for non-RHC services provided in an RHC are made on a fee-for-service basis using the department's published fee schedules. Non-RHC services are subject to the coverage guidelines and limitations listed in chapters 388-500 through 388-557 WAC.

~~((6))~~ (8) For clients enrolled with a managed care organization, covered RHC services are paid for by that plan.

~~((7))~~ (9) The department does not pay the encounter rate or the enhancements for clients in state-only programs. Services provided to clients in state-only programs are considered fee-for-service, regardless of the type of service performed.

(10) For clients enrolled with a managed care organization (MCO), the department pays each RHC a supplemental payment in addition to the amounts paid by the MCO. The supplemental payments, called enhancements, are paid in amounts necessary to ensure compliance with 42 USC 1396a (bb)(5)(A).

(a) The RHCs receive an enhancement payment each month for each managed care client assigned to them by an MCO.

(b) To ensure that the appropriate amounts are paid to each RHC, the department performs an annual reconciliation of the enhancement payments. For each RHC, the department will compare the amount actually paid to the amount determined by the following formula: (managed care encounters times encounter rate) less fee-for-service equiva-

lent of MCO services. If the clinic has been overpaid, the department will recoup the appropriate amount. If the clinic has been underpaid, the department will pay the difference.

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

**AMENDATORY SECTION** (Amending WSR 08-05-011, filed 2/7/08, effective 3/9/08)

**WAC 388-549-1500 Rural health clinics—Change in scope of service.** (1) For clinics reimbursed under the prospective payment system (PPS), the department considers a rural health clinic's (RHC) change in scope of service to be a change in the type, intensity, duration, and/or amount of services provided by the RHC. Changes in scope of service apply only to covered medicaid services.

~~((2))~~ (a) When the department determines that a change in scope of service has occurred after the base year, the department will adjust the RHC's ~~((prospective payment system (PPS)))~~ encounter rate to reflect the change.

~~((3))~~ (b) RHCs must:

~~((a))~~ (i) Notify the department's RHC program manager in writing, at the address published in the department's rural health clinic billing instructions, of any changes in scope of service no later than sixty days after the effective date of the change; and

~~((b))~~ (ii) Provide the department with all relevant and requested documentation pertaining to the change in scope of service.

~~((4))~~ (c) The department adjusts the ~~((PPS))~~ encounter rate to reflect the change in scope of service using one or more of the following:

~~((a))~~ (i) A medicaid comprehensive desk review of the RHC's cost report;

~~((b))~~ (ii) Review of a medicare audit of the RHC's cost report; or

~~((c))~~ (iii) Other documentation relevant to the change in scope of service.

~~((5))~~ (d) The adjusted encounter rate will be effective on the date the change of scope of service is effective.

(2) For clinics reimbursed under the alternative payment methodology (APM), the department considers an RHC change in scope of service to be a change in the type of services provided by the RHC. The department addresses changes in intensity, duration, and/or amount of services in the next scheduled encounter rate rebase. Changes in scope of service apply only to covered medicaid services.

(a) When the department determines that a change in scope of service has occurred after the base year, the department adjusts the RHC's encounter rate to reflect the change.

(b) RHCs must:

(i) Notify the department's RHC program manager in writing, at the address published in the department's rural health clinic billing instructions, of any changes in scope of service no later than sixty calendar days after the effective date of the change; and

(ii) Provide the department with all relevant and requested documentation pertaining to the change in scope of service.

(c) The department adjusts the encounter rate to reflect the change in scope of service using one or more of the following:

(i) A medicaid comprehensive desk review of the RHC's cost report;

(ii) Review of a medicare audit of the RHC's cost report, if available; or

(iii) Other documentation relevant to the change in scope of service.

(d) The adjusted encounter rate will be effective on the date the change of scope of service is effective.

### WSR 10-09-032

#### PERMANENT RULES

#### GAMBLING COMMISSION

[Order 667—Filed April 14, 2010, 10:27 a.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: Former WAC 230-30-070 stated:

"Punch board and pull-tab prizes shall be closely controlled to ensure players are not defrauded.

(1) All prizes from the operation of punch boards and pull-tabs shall be awarded in cash or in merchandise."

This language was inadvertently left out during the rules simplification project (RSP). This amendment restores the requirement that punch board and pull-tab operators are required to pay all pull-tab prizes in either cash or merchandise. Furthermore, based on discussions with licensees at the January 2010 commission meeting and the February 2010 study session, language was added to codify the long standing practice of allowing players to trade in winning pull-tabs for additional pull-tabs. See below for details.

Citation of Existing Rules Affected by this Order: Amending WAC 230-14-090.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0273.

Adopted under notice filed as WSR 10-03-075 on January 19, 2010.

Changes Other than Editing from Proposed to Adopted Version: At the January 2010 commission meeting, several licensees testified they would like to see language added to the rule to incorporate the long standing practice of allowing players to "trade in" winning pull-tabs for additional pull-tabs. Staff added language to address this which was discussed at the February 11, 2010, study session. Based on comments at the February study session, language was amended and discussed at the March 12, 2010, commission meeting. Based on licensee comments at the March meeting, language was amended for the April 9, 2010, commission meeting. At the April commission meeting, language was adopted to codify this long standing agency practice of allowing players to trade in winning pull-tabs for additional pull-tabs.

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: April 13, 2010.

Susan Arland  
Rules Coordinator

AMENDATORY SECTION (Amending Order 614, filed 8/10/07, effective 1/1/08)

**WAC 230-14-090 Controlling prizes.** Punch board and pull-tab operators must:

(1) Protect players from fraud and game manipulation.

(2) Award all prizes won.

(3) Only award cash or merchandise as prizes. A player who has won a cash prize may make a request to the person redeeming the winning pull-tab that the player be given additional pull-tabs instead of cash. An operator may agree to such a request.

(4) Not offer to pay cash instead of merchandise prizes.

~~((4))~~ (5) Not award additional punches or tabs as a prize. Prizes, however, may involve the opportunity to advance and win a larger prize on the same punch board or pull-tab series. Operators must award an immediate additional opportunity to advance called a bonus prize when offered in a bonus pull-tab series or a step-up prize when offered on a punch board.

### WSR 10-09-040

#### PERMANENT RULES

#### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed April 14, 2010, 2:10 p.m., effective May 15, 2010]

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

Purpose: Adopts more accurate and descriptive names for the components of the state funding formula for the allotment of appropriations for school plant facilities. The legislation is based on recommendations made by the joint legislative task force on school construction funding, to promote clarity and transparency in the funding formula.

Citation of Existing Rules Affected by this Order: Amending chapters 392-345 and 392-346 WAC.

Statutory Authority for Adoption: RCW 28A.525.020.

Adopted under notice filed as WSR 10-01-135 on December 21, 2009.

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 167, 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: April 12, 2010.

Randy Dorn  
Superintendent of  
Public Instruction

### Chapter 392-345 WAC

#### STATE FUNDING ASSISTANCE IN PROVIDING SCHOOL PLANT FACILITIES—INTERDISTRICT COOPERATION IN FINANCING SCHOOL PLANT CONSTRUCTION

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-345-005 Authority.** This chapter is adopted pursuant to RCW 28A.525.020 relating to authority of the superintendent of public instruction to prescribe rules and regulations governing the administration, control, terms, conditions and disbursements of allotments to school facilities. In accordance with RCW 28A.525.200, the only provisions of chapter 28A.525 RCW currently applicable to state fund-ing assistance for school plant facilities are RCW 28A.525.-030, 28A.525.040, 28A.525.050, and 28A.525.162 through 28A.525.178.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-345-020 Cooperative plan subject to the superintendent of public instruction approval.** Any interdistrict financial plan for construction or modernization of school facilities utilizing state (~~moneys~~) funding assistance in the financing of the proposed project, shall require approval by the superintendent of public instruction prior to carrying into effect the provisions of such plan. The superintendent of public instruction approval is only required for projects utilizing state (~~moneys~~) funding assistance.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-345-025 Application provisions.** For projects utilizing state (~~moneys~~) funding assistance, the host district shall submit a written application to the superintendent of public instruction which shall include but not be limited to the following documents and data:

(1) A joint resolution by the board of directors of all participating school districts which shall:

(a) Confer contractual authority and subsequent ownership on the board of directors in which jurisdiction the school facility is to be located (host district) or, in the event of modernization, the board of directors in which jurisdiction the facility is located (host district);

(b) Designate such board of directors of the host district as the legal applicant. Evidence shall be submitted that the said resolution has been incorporated in the official record of the board of directors of each participating school district; and

(c) Certify that the facility shall be used for the purpose for which it was constructed unless an exception is granted by the superintendent of public instruction.

(2) Copy of contracts(s) between applicant district and participating school districts prepared in accordance with provisions in WAC 392-345-030.

(3) A statement defining the education program or services to be offered and the number and grade level(s) by district of all students to be housed in the proposed new or modernized facility.

(4) A description of the proposed project including size in terms of square feet and the estimated cost of construction including professional services, sales tax, site acquisition and site development.

(5) An area map indicating location of schools within the participating school districts and the location of the proposed new or modernized school facility.

(6) A statement certifying that a separate account has been established into which participating districts make deposits in order to pay for all future minor repair and renovation costs.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-345-035 Approval of program or services by superintendent of public instruction.** Approval by the superintendent of public instruction of the educational program or services to be offered in the proposed new or modernized facility and the proposed administration of such program or services shall be a prerequisite for approval by the superintendent of public instruction of an interdistrict cooperative financial plan for construction of new or modernization of facilities when state (~~moneys are~~) funding assistance is provided.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-345-040 Dissolution provisions.** (1) Procedures for the dissolution of the operation of school facilities pursuant to an interdistrict cooperative agreement shall not be instituted prior to the expiration of ten years after the date of the superintendent of public instruction approval of the financial plan for the construction of such school facilities when such facilities were constructed with state (~~moneys~~) fund-ing assistance: Provided, That a request for dissolution prior to such ten-year period may be approved when, in the judg-

ment of the superintendent of public instruction, there is substantiation of sufficient cause therefor.

(2) Any plan for dissolution as described in subsection (1) of this section shall be submitted to the superintendent of public instruction for review and approval prior to proceeding with dissolution action.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-345-045 Interdistrict cooperation in financing school construction—Project construction approval required—Rules and regulations governing.** A project to be constructed under interdistrict cooperative financing pursuant to provisions of RCW 28A.335.160 shall be subject to approval by the superintendent of public instruction only when state ~~((funds are))~~ funding assistance is involved in the financing thereof and shall be in conformity with the applicable rules and regulations hereinafter prescribed. The applicant school district shall be responsible for compliance with said rules and regulations.

(1) Projects financed with state funding assistance.

(a) All rules and regulations promulgated by the superintendent of public instruction relating to school building construction shall govern the approval of an application for state funding assistance in financing an interdistrict cooperative project except such rules deemed by the superintendent of public instruction to be inapplicable to the said construction: Provided, That in the interest of program improvement and/or improvement in equalization of educational opportunities, the pertinent requirements relating to eligibility on the basis of number of unhousehold children may be waived as shall be determined by the superintendent of public instruction.

(b) In determining the amount of state funding assistance, the principle to be applied shall be that each participating district, otherwise eligible for state funding assistance, shall receive such assistance on the basis of the computed area ratio. The amount that each participating district shall provide may be the percentage proportion that the value of its taxable property bears to the total value of taxable property of all participating districts or such other amounts as set forth in the contract submitted as are accepted and approved by the superintendent of public instruction.

(2) Application for additional state funding assistance. In the financing of interdistrict cooperative projects, applications for state funding assistance, in addition to the amount determined allocable under basic state support level provisions, shall be judged by the superintendent of public instruction on the basis of the need for said facilities for the expressed purpose of:

(a) Providing educational opportunities, including vocational skills programs not otherwise provided;

(b) Avoiding unnecessary duplication of specialized or unusually expensive educational programs or facilities; or

(c) Improving racial balance within and among participating districts.

(3) Determination of amount of additional state funding assistance. When in the judgment of the superintendent of public instruction an expressed need exists for an interdistrict cooperative project to achieve one or more of the expressed

purposes as set forth in subsection (2) of this section and additional state funding assistance in financing said joint construction is necessary to meet such need, additional state funding assistance may be allowed in an amount to be determined by the superintendent of public instruction: Provided, That the total amount allotted shall not exceed ninety percent of the total project cost determined eligible for state ~~((matching))~~ funding assistance purposes: Provided further, That the total funds available to the superintendent of public instruction for the biennial period are sufficient to meet statewide needs for state funding assistance in providing necessary school facilities to individual school districts as well as for this purpose.

## Chapter 392-346 WAC

### STATE FUNDING ASSISTANCE IN PROVIDING SCHOOL PLANT FACILITIES—INTERDISTRICT TRANSPORTATION COOPERATIVES

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-346-005 Authority.** This chapter is adopted pursuant to RCW 28A.525.020 which authorizes the superintendent of public instruction to prescribe rules and regulations governing the administration, control, terms, conditions, and disbursements of moneys to school districts to assist them in providing school facilities. In accordance with RCW 28A.525.200, the only provisions of chapter 28A.525 RCW currently applicable to state funding assistance for school facilities are RCW 28A.525.030, 28A.525.040, 28A.525.050, and 28A.525.162 through 28A.525.178.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-346-010 Purpose.** The purpose of this chapter is to set forth provisions applicable prior to a district's application for state funding assistance in the construction of interdistrict transportation cooperative facilities. Except as otherwise noted in this chapter, the rules and regulations which apply to state funding assistance in financing school facilities set forth below shall apply to the construction of interdistrict transportation cooperatives:

(1) ~~((Basic))~~ State ~~((support))~~ funding assistance: WAC 392-343-040, 392-343-060, and 392-343-070 through 392-343-125.

(2) Procedural regulations: WAC 392-344-055 through 392-344-170.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-346-015 Interdistrict transportation cooperative members—Definition.** As used in this chapter:

(1) "Participating member" means a district in a cooperative which anticipates making full use of all the services offered by the cooperative and provides its agreed share of ~~((matching))~~ local funds required by the superintendent of

public instruction. A participating member must be a member of the cooperative for at least ten years.

(2) "Contract member" means a district which contracts to use the services of the cooperative as outlined in the initial agreement for at least three years. At a minimum, contracts for service shall include lubrication, oil and filter changes on a regular basis.

(3) "Applicant district" means the school district in which the proposed interdistrict transportation cooperative facility is to be located or in which the facility proposed for modernization is located. It shall be the responsibility of said applicant district to submit the application for financial plan approval.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-346-020 Interdistrict transportation cooperative—Cooperative plan subject to the superintendent of public instruction approval.** Any financial plan for construction of an interdistrict transportation cooperative utilizing state ((moneys)) funding assistance in the financing of the proposed project, shall require approval by the superintendent of public instruction prior to implementing the provisions of such plan. The superintendent of public instruction approval is only required for projects utilizing state ((mon-ey)) funding assistance.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-346-025 Application provisions.** For projects utilizing state ((moneys)) funding assistance, the host school district shall submit a written application to the superintendent of public instruction which shall include but not be limited to the following documents and data:

(1) A joint resolution by the board of directors of all participating school districts which shall:

(a) Confer contractual authority and subsequent ownership on the board of directors in which jurisdiction the facility is to be located or, in the event of modernization, in which jurisdiction the facility is located (host district);

(b) Designate such board of directors as the legal applicant; and

(c) A copy of the official record of the board of directors of each participating school district indicating that the resolution has been formally adopted.

(2) Copy of contract(s) between districts prepared in accordance with chapter 392-345 WAC.

(3) A written description of services to be offered in the proposed interdistrict transportation cooperative, including number of districts involved and whether or not cooperating members are participating districts or contract districts; the number of buses from each participating and contract district to be serviced, and number of bus miles traveled per year for each participating and contract district.

(4) A description of the proposed project including square footage and the estimated cost of construction including professional services, sales tax, site costs, and site development.

(5) An area map indicating location of the facility in relationship to the participating and contract school districts.

(6) A statement certifying that a separate account has been established into which participating districts make deposits in order to pay for all future minor repair and renovation costs.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-346-035 Approval—The superintendent of public instruction.** Approval by the superintendent of public instruction of services to be offered in the proposed interdistrict transportation cooperative and the proposed district administration of such program or services shall be a prerequisite for approval by the superintendent of public instruction of an interdistrict cooperative financial plan for construction of new facilities or modernization of existing facilities when state ((moneys are)) funding assistance is provided.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-346-040 Dissolution provisions.** (1) Procedures for the dissolution of the operation of interdistrict cooperatives under an interdistrict cooperative agreement shall not be instituted prior to the expiration of ten years after the date of the superintendent of public instruction approval of the financial plan for the construction of such school facilities when such facilities were constructed with state ((moneys)) funding assistance: Provided, That a request for dissolution prior to the expiration of ten years may be approved when in the judgment of the superintendent of public instruction there is substantiation of sufficient cause therefor.

(2) Any plan for dissolution as described in subsection (1) of this section shall be submitted to the superintendent of public instruction for review and written approval prior to proceeding with dissolution action.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-346-045 Interdistrict transportation cooperative—Types.** Except as otherwise noted, the amount of the final allocation of state ((funds)) funding assistance in the construction of an approved interdistrict transportation cooperative facility shall be based on the number of buses in actual service and the number of buses for which the cooperative has contracted from other districts at the time of application and in accordance with the following cooperative types and square footage allowances:

Type	Number of Buses	Square Footage	
		Minimum	Maximum
One	96 or more	21,000	Negotiable
Two	46-95	15,000	20,999
Three	0-45	10,000	14,999

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-346-050 Site review and evaluation.** The superintendent of public instruction together with the proposing district(s) shall conduct an on-site review and evaluation of sites for new and existing state (~~(assisted)~~) funding assistance projects. In selecting sites, the district(s) should assure that:

(1) The property upon which the facility is or will be located is free and clear of all encumbrances that would detrimentally interfere with the construction and operation or useful life of the facility.

(2) The site is of sufficient size to meet the needs of the facility.

(3) A geotechnical engineer has conducted a limited sub-surface investigation to gather basic information regarding potential foundation and subgrade performance.

(4) The site accessibility is convenient and efficient for participating and contract school districts with the least amount of disturbance to the area in which it is located.

(5) The site topography is conducive to desired site development.

(6) A site review or predesign conference has been conducted with all local code agencies in order to determine design constraints.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-346-060 Design team—Architect/engineering services.** Architect/engineering service fees for (~~(matching)~~) state funding assistance purposes shall be determined pursuant to WAC 392-343-070.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-346-065 Support level—Furniture and equipment allowances.** An allowance for furniture and equipment purchases shall be added to the total construction costs of a project determined eligible for state (~~(matching)~~) funding assistance. The equipment allowance shall be determined by multiplying the approved square foot area of the project by the (~~(area)~~) construction cost (~~(allowance)~~) allocation of state support for the fiscal year funded and that product multiplied by seven percent.

AMENDATORY SECTION (Amending WSR 06-16-031, filed 7/25/06, effective 8/25/06)

**WAC 392-346-070 Interdistrict transportation cooperatives—State funding assistance.** In the financing of an approved interdistrict transportation cooperative, the superintendent of public instruction shall provide ninety percent of the total approved project cost determined eligible for state (~~(matching purposes)~~) funding assistance.

**WSR 10-09-041  
PERMANENT RULES  
YAKIMA VALLEY  
COMMUNITY COLLEGE**

[Filed April 14, 2010, 3:23 p.m., effective June 1, 2010]

Effective Date of Rule: June 1, 2010.

Purpose: The purpose of these time, place and manner regulations is to establish procedures and reasonable controls for the use of college facilities for both noncollege and college groups when individuals and groups exercise their right to engage in first amendment activities.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 10-05-027 on February 9, 2010.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 9, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, 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 9, Amended 0, Repealed 0.

Date Adopted: April 8, 2010.

Suzanne West  
Rules Coordinator

**Chapter 132P-142 WAC**

**USE OF YAKIMA VALLEY COMMUNITY COLLEGE  
DISTRICT 16 FACILITIES FOR FIRST AMEND-  
MENT ACTIVITIES**

NEW SECTION

**WAC 132P-142-010 Title.** This chapter shall be known as Use of Yakima Valley Community College District 16 Facilities for First Amendment Activities.

NEW SECTION

**WAC 132P-142-015 Definitions.** For the purposes of this policy noncollege groups shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of Yakima Valley Community College (YVCC) or who are not officially affiliated or associated with a recognized student organization or a recognized employee group of the college.

For purposes of this policy, college groups shall mean individuals who are currently enrolled students or current employees of Yakima Valley Community College or who are affiliated with a recognized student organization or a recognized employee group of the college.

The college is a limited public forum for noncollege groups. The limited public forum does not include college buildings or athletic fields. College buildings, rooms, and athletic fields may be rented in accordance with the college's facilities use policy.

#### NEW SECTION

**WAC 132P-142-020 Statement of purpose.** Yakima Valley Community College District 16 is an educational institution provided and maintained by the people of the state of Washington. The public character of the college does not grant to individuals an unlimited license to engage in activity that limits, interferes with, or otherwise disrupts the normal activities for and to which the college's buildings, facilities, and grounds are dedicated and said buildings, facilities, and grounds are not available for unrestricted use by noncollege groups. While said buildings, facilities, and grounds are not available for unlimited use by college groups, it is recognized that Yakima Valley Community College students and employees should be accorded opportunity to utilize the facilities and grounds of the college to the fullest extent possible.

The purpose of these time, place, and manner regulations is to establish procedures and reasonable controls for the use of college facilities for both noncollege and college groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of noncollege groups or college groups who are interested in using the campus for purposes of constitutionally protected speech, assembly, or expression.

#### NEW SECTION

**WAC 132P-142-030 First amendment activities and protection of the college mission.** The college recognizes and supports the rights of groups and individuals to engage in first amendment activities. This policy shall be interpreted and construed to support such activities while simultaneously balancing the needs and interests of the college to fulfill its mission as an educational institution of the state of Washington.

#### NEW SECTION

**WAC 132P-142-040 Request for use of facilities.** Subject to the regulations and requirements of this policy, college or noncollege groups may use the campus limited forum for those activities protected by the first amendment. Examples of first amendment activities would include, but not be limited to, informational picketing, petition circulation, the distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, mass protests, meetings to display group feelings or sentiments and/or other types of constitutionally protected assemblies to share information, perspective, or viewpoints.

Noncollege groups that intend to be on campus to engage in first amendment activities (hereinafter "the event") shall provide notice to the college security department no later than forty-eight hours prior to the event along with the following information:

- (1) The name, address, and telephone number of the individual, group, entity or organization sponsoring the event (hereinafter "the sponsoring organization"); and
- (2) The name, address, and telephone number of a contact person for the sponsoring organization; and
- (3) The date, time, and requested location of the event; and
- (4) The nature and purpose of the event; and
- (5) The type of sound amplification devices to be used in connection with the event, if any; and
- (6) The estimated number of people expected to participate in the event.

Signs shall be no larger than three feet by five feet and no individual may carry more than one sign.

If more than thirty people are expected to participate in the event, the college shall specify the campus location.

The use of sound amplification devices is limited to the limited public forum area as long as the sound amplification device is used at a volume that does not disrupt or disturb the normal use of classrooms, offices, or laboratories or any previously scheduled college event or activity.

College groups are encouraged to notify the college security department no later than forty-eight hours in advance of an event. However, unscheduled events are permitted so long as the event does not interfere with any other function occurring at the facility.

Events shall be held within the college's hours of operation. College group events shall not last longer than eight hours from beginning to end. Noncollege events shall not last longer than five hours from beginning to end.

Information may be distributed as long as it is not obscene or libelous or does not advocate unlawful conduct. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information. To avoid excessive littering of the campus and/or greatly increased work requirements for college physical plant employees, groups are asked to cooperate with the college in limiting the distribution of information leaflets or pamphlets to the limited public forum site. Leafletting cars in YVCC parking lots is prohibited.

Speech that does no more than propose a commercial transaction shall not occur in connection with the event.

The limited public forum used by the group should be cleaned up and left in its original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary clean-up or for the repair of damaged property.

All fire, safety, sanitation, or special regulations specified for the event are to be obeyed.

The college cannot and will not provide equipment, utility connections, or hook-ups for purposes of first amendment activities conducted pursuant to this policy.

The event must not obstruct vehicular, bicycle, pedestrian or other traffic or otherwise interfere with ingress or egress to the college, or to college buildings or facilities, or to college activities or events.

The event must not create safety hazards or pose unreasonable safety risks.

The event must not interfere with college operations or educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students.

The event must not materially infringe on the rights and privileges of college students, employees, or invitees to the college.

The event must also be in accordance with any other applicable regulations and policies of Yakima Valley Community College, local ordinances and/or state or federal laws.

The use of intoxicants is prohibited on campus unless expressly authorized by the college. Smoking is not permitted, except in designated areas.

#### NEW SECTION

**WAC 132P-142-050 Additional requirements for noncollege groups.** The limited public forum may not be used on the same date as any previously scheduled college event or activity at the site (aside from regularly scheduled classes) where it is reasonably anticipated that more than one hundred fifty people on the Yakima Campus (one hundred at other college sites) will attend the college event or activity.

#### NEW SECTION

**WAC 132P-142-060 The role of the president in first amendment decisions.** The president of the college may authorize first amendment activities that are reasonably determined not to cause disruption of college activities despite a literal violation of this policy statement. Such determinations shall be made without consideration of the content or message of the first amendment activities.

The president of the college or designee may at any time, terminate, cancel, or prohibit the event if it is determined, after proper inquiry, that the event does constitute or will constitute a clear and present danger to the college's orderly operation.

#### NEW SECTION

**WAC 132P-142-070 Criminal trespass.** Any person determined to be violating these regulations is subject to an order from the college security department to leave the college campus. Persons failing to comply with such an order to leave the college campus are subject to arrest for criminal trespass.

#### NEW SECTION

**WAC 132P-142-080 Posting of a bond and hold harmless statement.** When using college facilities, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with the college's facility use policy.

When the college grants permission to a college group or noncollege group to use its facilities, it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

**WSR 10-09-045**  
**PERMANENT RULES**  
**COLUMBIA RIVER**  
**GORGE COMMISSION**

[Filed April 15, 2010, 10:21 a.m., effective June 1, 2010]

Effective Date of Rule: June 1, 2010.

Purpose: The commission repealed 350-090, 350-100, and 350-110. The commission used these rules in the mid-1990s to regulate land use development in Hood River, Clark, and Wasco counties. All three of these counties now administer their own land use ordinances, which replace the commission's administration of these rules. Rule 350-081-0012 [350-81-012] authorizes the commission to regulate land use development in these counties again if these counties repeal their scenic area land use ordinances.

Citation of Existing Rules Affected by this Order:  
Repealing 350-90-010, 350-90-020, 350-90-030, 350-90-040, 350-90-050, 350-90-060, 350-90-070, 350-90-080, 350-90-090, 350-90-100, 350-90-110, 350-90-120, 350-90-130, 350-90-140, 350-90-150, 350-90-160, 350-90-170, 350-90-180, 350-90-190, 350-90-200, 350-90-210, 350-90-220, 350-90-230, 350-90-240, 350-90-250, 350-90-260, 350-90-270, 350-90-280, 350-90-290, 350-90-300, 350-90-310, 350-90-320, 350-90-330, 350-90-340, 350-90-350, 350-90-360, 350-90-370, 350-90-380, 350-90-390, 350-90-400, 350-90-410, 350-90-420, 350-90-430, 350-90-440, 350-90-450, 350-90-460, 350-90-470, 350-90-480, 350-90-490, 350-90-500, 350-90-510, 350-90-520, 350-90-530, 350-90-540, 350-90-550, 350-90-560, 350-90-570, 350-90-580, 350-90-590, 350-90-600, 350-90-610, 350-90-620, 350-90-630, 350-100-010, 350-100-020, 350-100-030, 350-100-040, 350-100-050, 350-100-060, 350-100-070, 350-100-080, 350-100-090, 350-100-100, 350-100-110, 350-100-120, 350-100-130, 350-100-140, 350-100-150, 350-100-160, 350-100-170, 350-100-180, 350-100-190, 350-100-200, 350-100-210, 350-100-220, 350-100-230, 350-100-240, 350-100-250, 350-100-260, 350-100-270, 350-100-280, 350-100-290, 350-100-300, 350-100-310, 350-100-320, 350-100-330, 350-100-340, 350-100-350, 350-100-360, 350-100-370, 350-100-380, 350-100-390, 350-100-400, 350-100-410, 350-100-420, 350-100-430, 350-100-440, 350-100-450, 350-100-460, 350-100-470, 350-100-480, 350-100-490, 350-100-500, 350-100-510, 350-100-520, 350-100-530, 350-100-540, 350-100-550, 350-100-560, 350-100-570, 350-100-580, 350-100-590, 350-100-600, 350-100-610, 350-100-620, 350-100-630, 350-110-010, 350-110-020, 350-110-030, 350-110-040, 350-110-050, 350-110-060, 350-110-070, 350-110-080, 350-110-090, 350-110-100, 350-110-110, 350-110-120, 350-110-130, 350-110-140, 350-110-150, 350-110-160, 350-110-170, 350-110-180, 350-110-190, 350-110-200, 350-110-210, 350-110-220, 350-110-230, 350-110-240, 350-110-250, 350-110-260, 350-110-270, 350-110-280, 350-110-290, 350-110-300, 350-110-310, 350-110-320, 350-110-330, 350-110-340, 350-110-350, 350-110-360, 350-110-370, 350-110-380, 350-110-390, 350-110-400, 350-110-410, 350-110-420, 350-110-430, 350-110-440, 350-110-450, 350-110-460, 350-110-470, 350-110-480, 350-110-490, 350-110-500, 350-110-510, 350-110-520, 350-110-530, 350-110-540, 350-110-550, 350-110-560, 350-110-570, 350-110-580, 350-110-590, 350-110-600, 350-110-610, 350-110-620, and 350-110-630.

Statutory Authority for Adoption: RCW 43.97.015.

Other Authority: ORS 196.150; 16 U.S.C. 544c(b).

Adopted under notice filed as WSR 10-04-121 on February 3, 2010.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 189.

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: April 13, 2010.

Nancy A. Andring  
Rules Coordinator

**WSR 10-09-049**

**PERMANENT RULES**

**DEPARTMENT OF REVENUE**

[Filed April 15, 2010, 11:20 a.m., effective May 16, 2010]

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

Purpose: The purpose of WAC 458-30-262 is to provide county assessors with the rate of interest and property tax component used in valuing farm and agricultural land classified under chapter 84.34 RCW (the open space program).

This rule was recently amended to provide the information for assessment year 2010 (WSR 10-02-025). This amendment did not, however, correctly identify 2010 as the assessment year to which the values apply. The department is amending the rule to correct this oversight. There is no change to the rate of interest and property tax component values.

Citation of Existing Rules Affected by this Order: Amending WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component.

Statutory Authority for Adoption: RCW 84.34.055 and 84.34.141.

Adopted under notice filed as WSR 10-04-106 on February 3, 2010.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 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: April 15, 2010.

Alan R. Lynn  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-02-025, filed 12/29/09, effective 1/1/10)

**WAC 458-30-262 Agricultural land valuation—Interest rate—Property tax component.** For assessment year (~~(2009)~~) 2010, the interest rate and the property tax component that are to be used to value classified farm and agricultural lands are as follows:

- (1) The interest rate is 7.53 percent; and
- (2) The property tax component for each county is:

COUNTY	PERCENT	COUNTY	PERCENT
Adams	1.22	Lewis	0.90
Asotin	1.25	Lincoln	1.15
Benton	1.15	Mason	0.90
Chelan	0.95	Okanogan	0.94
Clallam	0.83	Pacific	1.14
Clark	1.01	Pend Oreille	0.86
Columbia	1.09	Pierce	1.09
Cowlitz	1.03	San Juan	0.50
Douglas	0.95	Skagit	0.90
Ferry		Skamania	0.79
Franklin	1.34	Snohomish	0.91
Garfield	1.12	Spokane	1.13
Grant	1.22	Stevens	0.94
Grays Harbor	1.08	Thurston	0.99
Island	0.69	Wahkiakum	0.79
Jefferson	0.79	Walla Walla	1.14
King	0.88	Whatcom	0.94
Kitsap	0.90	Whitman	1.27
Kittitas	0.73	Yakima	1.12
Klickitat	0.84		

**WSR 10-09-050**

**PERMANENT RULES**

**DEPARTMENT OF REVENUE**

[Filed April 15, 2010, 11:28 a.m., effective May 16, 2010]

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

Purpose: WAC 458-20-104 explains the small business B&O tax credit. WAC 458-61A-202 applies to transfers of real property by inheritance or devise which are not subject to the real estate excise tax.

These rules are being amended for the sole purpose of implementing E2SB 5688 (chapter 521, Laws of 2009). E2SB 5688 requires agencies to "amend their rules to reflect the intent of the legislature to ensure that all privileges,

immunities, rights, benefits, or responsibilities granted or imposed by statute to an individual because that individual is or was a spouse in a marital relationship are granted or imposed on equivalent terms to an individual because that individual is or was in a state registered domestic partnership."

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-104 Small business tax relief based on income of business and 458-61A-202 Inheritance or devise.

Statutory Authority for Adoption: E2SB 5688 (chapter 521, Laws of 2009).

Adopted under notice filed as WSR 10-04-022 on January 26, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 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 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: April 15, 2010.

Alan R. Lynn  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 04-14-052, filed 6/30/04, effective 7/31/04)

**WAC 458-20-104 Small business tax relief based on income of business.** (1) **Introduction.** This rule explains the business and occupation (B&O) tax credit for small businesses provided by RCW 82.04.4451. This credit is commonly referred to as the small business B&O tax credit or small business credit (SBC). The amount of small business B&O tax credit available on a tax return can increase or decrease, depending on the reporting frequency of the account and the net B&O tax liability for that return. This rule also explains the public utility tax income exemption provided by RCW 82.16.040. The public utility tax exemption is a fixed amount, or threshold, based on the reporting frequency assigned to the account. Readers should refer to WAC 458-20-22801 (Tax reporting frequency—Forms) for an explanation of how the department of revenue (department) assigns a particular reporting frequency to each account. Readers may also want to refer to WAC 458-20-101 for an explanation of Washington's tax registration and tax reporting requirements.

This rule provides examples that identify a number of facts and then state a conclusion regarding the applicability of the income exemption for the public utility tax or small business B&O tax credit. These examples should be used

only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **The public utility tax income exemption.** Persons subject to public utility tax (PUT) are exempt from payment of this tax for any reporting period in which the gross taxable amount reported under the combined total of all public utility tax classifications does not equal or exceed the maximum exemption for the assigned reporting period. The public utility tax exemption amounts are:

for taxpayers reporting monthly . . . . .	\$2,000 per month
for taxpayers reporting quarterly . . . . .	\$6,000 per quarter
for taxpayers reporting annually . . . . .	\$24,000 per annum

(a) **What if the taxable income equals or exceeds the maximum exemption?** If the taxable income for a reporting period equals or exceeds the maximum exemption, tax must be remitted on the full taxable amount.

(b) **How does the exemption apply if a business does not operate for the entire tax reporting period?** The public utility tax maximum exemptions apply to the entire tax reporting period, even though the business may not have operated during the entire period.

(c) **Do taxable amounts for B&O tax or other taxes affect this exemption?** The public utility tax exemption is not affected by taxable amounts reported in the B&O tax section or any of the other tax sections of the tax return.

(d) **Example.** Taxpayer registers with the department and is assigned a quarterly tax reporting frequency. Taxpayer begins business activities on February 1st. During the two months of the first quarter that the taxpayer is in business, taxpayer's public utility gross income is seven thousand dollars. After deductions provided by chapter 82.16 RCW (Public utility tax) are computed, the total taxable amount is five thousand dollars. In this case, the taxpayer does not owe any public utility tax because the taxable amount of five thousand dollars is less than the six thousand dollar exemption threshold for quarterly taxpayers. The fact that the taxpayer was in business during only two months out of the three months in the quarter has no effect on the threshold amount. However, if there were no deductions available to the taxpayer, the taxable amount would have been seven thousand dollars. The public utility tax would then have been due on the full taxable amount of seven thousand dollars.

(3) **The small business B&O tax credit.** Persons subject to the B&O tax may be eligible to claim a small business B&O tax credit against the amount of B&O tax otherwise due. The small business B&O tax credit operates completely independent of the public utility tax exemption described above in subsection (2) of this rule. RCW 82.04.4451 authorizes the department to create a tax credit table for use by all taxpayers when determining the amount of their small business B&O tax credit. Taxpayers must use the tax credit table to determine the appropriate amount of their small business B&O tax credit. A tax credit table for each of the monthly, quarterly, and annual reporting frequencies is provided in

subsection (7) of this rule. The statute provides that taxpayers who use the tables will not owe any more tax than if they used the statutory credit formula to determine the amount of the credit.

(a) **How is the credit applied if a business does not operate during the entire tax reporting period?** The small business B&O tax credit applies to the entire reporting period, even though the business may not have been operating during the entire period.

(b) **Can a husband and wife or partners in a state registered domestic partnership both take the credit?** Spouses or state registered domestic partners operating distinct and separate businesses are each eligible for the small business B&O tax credit. For both spouses or both domestic partners to qualify, each must have a separate tax reporting number and file ~~((their))~~ his or her own business tax returns.

(c) **How do I determine the amount of the credit?** Taxpayers eligible for the small business B&O tax credit must follow the steps outlined in subsection (5) of this rule to determine the amount of credit available. Taxpayers who have other B&O tax credits to apply on a tax return, in addition to the small business B&O tax credit, may use the multiple B&O tax credit worksheet in subsection (4) of this rule before determining the amount of small business B&O tax

credit available. Subsection (7) of this rule contains the tax credit tables that correspond with the monthly, quarterly, and annual reporting frequencies.

(d) **Can I carryover the small business B&O tax credit to future tax reporting periods?** Use of the small business B&O tax credit may not result in a B&O tax liability of less than zero, and thus there will be no unused credit.

(e) **Do I have to report and pay retail sales tax even if I do not owe any B&O tax?** Persons making retail sales must collect and pay all applicable retail sales taxes even if B&O tax is not due. There is no comparable retail sales tax exemption.

(4) **Multiple business and occupation tax credit worksheet.** The small business B&O tax credit should be computed after claiming any other B&O tax credits available under Title 82 RCW (Excise taxes). Examples of other B&O tax credits to be taken before computing the small business B&O tax credit include the multiple activities tax credit, high technology credit, commute trip reduction credit, pollution control credit, and cogeneration fee credit. The following multiple B&O tax credit worksheet describes the process taxpayers must follow to apply credits in the appropriate order. Refer to subsection (6) of this rule for an example illustrating the use of the multiple B&O tax credit worksheet.

MULTIPLE B&O TAX CREDIT WORKSHEET

- |    |                                                                                                                                                                                |          |
|----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| 1. | Determine the total Business and Occupation (B&O) tax due from the B&O section of your excise tax return.                                                                      | \$ _____ |
| 2. | Add together the credit amounts taken for:                                                                                                                                     |          |
|    | Multiple Activities Tax Credit from Schedule C (if applicable).                                                                                                                | \$ _____ |
|    | (Add any other B&O tax credits from Title 82 RCW that will be applied to this return period.)                                                                                  | \$ _____ |
|    | Total (Enter 0 if none of these credits are being taken.)                                                                                                                      | \$ _____ |
| 3. | Subtract line 2 from line 1. This is the total B&O tax allowable for the Small Business Credit.                                                                                | \$ _____ |
| 4. | Find the tax credit table which matches the reporting frequency assigned to the account, then find the total B&O tax due amount which includes your figure from item 3, above. |          |
| 5. | Read across to the next column. This is the amount of the Small Business Credit to be used on the excise tax return.                                                           | \$ _____ |

(5) **Using the tax credit table to determine your small business B&O tax credit.** The following steps explain how to use the small business B&O tax credit table:

(a) **Step one.** Determine the total B&O tax amount due from the excise tax return. This amount will normally be the total of the tax amounts due calculated for each classification in the B&O tax section of the excise tax return. However, if additional B&O tax credits will be taken on the return, refer to subsection (4) of this rule and the multiple B&O tax credit worksheet before going to step two.

(b) **Step two.** Find the small business B&O tax credit table that matches the assigned reporting frequency (i.e., the monthly table shown in subsection (7)(b) of this rule, the quarterly table in subsection (7)(c) of this rule, or the annual table in subsection (7)(d) of this rule).

(c) **Step three.** Find the "If Your Total Business and Occupation Tax is" column of the tax credit table and come

down the column until you find the range of amounts which includes the total B&O tax due figure obtained from the excise tax return or multiple B&O tax credit worksheet.

(d) **Step four.** Read across to the "Your Small Business Credit is" column. The figure shown is the amount of the small business B&O tax credit that can be claimed on the "Small Business B&O Tax Credit" line in the "Credits" section of the excise tax return.

(6) **Example.** ABC reports quarterly. This quarter, ABC reports one hundred ninety dollars under the wholesaling classification and seventy dollars under the manufacturing classification for a total B&O tax liability of two hundred sixty dollars. ABC completes Schedule C, and determines it is entitled to a multiple activities tax credit (MATC) of seventy dollars. Using the multiple B&O tax credit worksheet, ABC enters two hundred sixty dollars on line one, enters seventy dollars on line two, and enters one hundred ninety dol-

lars on line three (line two subtracted from line one). Line three, one hundred ninety dollars is the total B&O tax. ABC will use this amount to determine whether it is eligible for a small business B&O tax credit.

(7) **Tax credit tables.** Corresponding tax credit tables for the monthly, quarterly, and annual reporting frequencies appear below. Taxpayers must use the tax credit table that corresponds to their assigned reporting frequency to determine the correct amount of small business B&O tax credit available.

(a) **Example illustrating the use of the small business B&O tax credit tables.** The facts are the same as in the previous example in subsection (6) of this rule. After completing the multiple B&O tax credit worksheet, ABC has one hundred ninety dollars of B&O tax liability left for potential application of the small business B&O tax credit. ABC refers to the quarterly small business B&O tax credit table, which is located below in subsection (7)(c) of this rule, and finds the "If Your Total Business and Occupation Tax is" column. Following down that column, ABC finds the tax range of one hundred eighty six to one hundred ninety one dollars and comes over to the "Your Small Business Credit is" column, which shows that a credit in the amount of twenty-five dollars is available. Before calculating the total amount due for the tax return, ABC enters its small business B&O tax credit of twenty-five dollars in the "Credits" section.

(b) **Monthly filers.** Persons assigned a monthly reporting frequency must use the following table to determine if they are eligible for a small business B&O tax credit.

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At Least	But Less Than	
\$0	\$36	The Amount of Business and Occupation Tax Due
\$36	\$41	\$35
\$41	\$46	\$30
\$46	\$51	\$25
\$51	\$56	\$20
\$56	\$61	\$15
\$61	\$66	\$10
\$66	\$71	\$5
\$71	or more	\$0

(c) **Quarterly filers.** Persons assigned a quarterly reporting frequency must use the following table to determine if they are eligible for a small business B&O tax credit.

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At least	But Less Than	
\$0	\$106	The Amount of Business and Occupation Tax Due
\$106	\$111	\$105
\$111	\$116	\$100

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At least	But Less Than	
\$116	\$121	\$95
\$121	\$126	\$90
\$126	\$131	\$85
\$131	\$136	\$80
\$136	\$141	\$75
\$141	\$146	\$70
\$146	\$151	\$65
\$151	\$156	\$60
\$156	\$161	\$55
\$161	\$166	\$50
\$166	\$171	\$45
\$171	\$176	\$40
\$176	\$181	\$35
\$181	\$186	\$30
\$186	\$191	\$25
\$191	\$196	\$20
\$196	\$201	\$15
\$201	\$206	\$10
\$206	\$211	\$5
\$211	or more	\$0

(d) **Annual filers.** Persons assigned an annual reporting frequency must use the following table to determine if they are eligible for a small business B&O tax credit.

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At Least	But Less Than	
\$0	\$421	The Amount of Business and Occupation Tax Due
\$421	\$426	\$420
\$426	\$431	\$415
\$431	\$436	\$410
\$436	\$441	\$405
\$441	\$446	\$400
\$446	\$451	\$395
\$451	\$456	\$390
\$456	\$461	\$385
\$461	\$466	\$380
\$466	\$471	\$375
\$471	\$476	\$370
\$476	\$481	\$365
\$481	\$486	\$360
\$486	\$491	\$355
\$491	\$496	\$350

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At Least	But Less Than	
\$496	\$501	\$345
\$501	\$506	\$340
\$506	\$511	\$335
\$511	\$516	\$330
\$516	\$521	\$325
\$521	\$526	\$320
\$526	\$531	\$315
\$531	\$536	\$310
\$536	\$541	\$305
\$541	\$546	\$300
\$546	\$551	\$295
\$551	\$556	\$290
\$556	\$561	\$285
\$561	\$566	\$280
\$566	\$571	\$275
\$571	\$576	\$270
\$576	\$581	\$265
\$581	\$586	\$260
\$586	\$591	\$255
\$591	\$596	\$250
\$596	\$601	\$245
\$601	\$606	\$240
\$606	\$611	\$235
\$611	\$616	\$230
\$616	\$621	\$225
\$621	\$626	\$220
\$626	\$631	\$215
\$631	\$636	\$210
\$636	\$641	\$205
\$641	\$646	\$200
\$646	\$651	\$195
\$651	\$656	\$190
\$656	\$661	\$185
\$661	\$666	\$180
\$666	\$671	\$175
\$671	\$676	\$170
\$676	\$681	\$165
\$681	\$686	\$160
\$686	\$691	\$155
\$691	\$696	\$150
\$696	\$701	\$145
\$701	\$706	\$140
\$706	\$711	\$135
\$711	\$716	\$130

If Your Total Business and Occupation Tax is:		Your Small Business Credit is:
At Least	But Less Than	
\$716	\$721	\$125
\$721	\$726	\$120
\$726	\$731	\$115
\$731	\$736	\$110
\$736	\$741	\$105
\$741	\$746	\$100
\$746	\$751	\$95
\$751	\$756	\$90
\$756	\$761	\$85
\$761	\$766	\$80
\$766	\$771	\$75
\$771	\$776	\$70
\$776	\$781	\$65
\$781	\$786	\$60
\$786	\$791	\$55
\$791	\$796	\$50
\$796	\$801	\$45
\$801	\$806	\$40
\$806	\$811	\$35
\$811	\$816	\$30
\$816	\$821	\$25
\$821	\$826	\$20
\$826	\$831	\$15
\$831	\$836	\$10
\$836	\$841	\$5
\$841	or more	\$0

AMENDATORY SECTION (Amending WSR 08-24-095, filed 12/2/08, effective 1/2/09)

**WAC 458-61A-202 Inheritance or devise.** (1) **Introduction.** Transfers of real property by inheritance or devise are not subject to the real estate excise tax. For the purpose of this exemption, it does not matter whether the real property transferred was encumbered by underlying debt at the time it was inherited or devised.

(2) **Nonpro rata distributions.** A nonpro rata distribution is one in which the transfer of real property to the heirs or devisees may not be in proportion to their interests. For example, Aunt Mary wills her entire estate equally to her three nieces. The estate consists of her primary residence, a cottage at the ocean, and significant cash assets, among other things. Rather than take title to the two parcels of real estate in all three names, the estate may be distributed by deeding the primary residence to Meg, the oceanfront property to Beth, and the majority of the cash assets to Jo. Such distribution by a personal representative of a probated estate or by the trustee of a trust is not subject to the real estate excise tax if the transfer is authorized under the nonintervention powers of

a personal representative under RCW 11.68.090 or under the nonpro rata distribution powers of a trustee under RCW 11.98.070(15), if no consideration is given to the personal representative or the trustee for the transfer. For the purpose of this section, consideration does not include the indebtedness balance of any real property that is encumbered by a security lien.

(3) **Subsequent transfers.** A transfer of property from an heir to a third party is subject to the real estate excise tax. Examples:

(a) Steve inherits real property from his mother's estate. He sells the property to his son for \$50,000. The transfer of the property from the estate to Steve is exempt from real estate excise tax. The subsequent sale of the property to his son is a taxable event, and tax is due based upon the full sales price of \$50,000.

(b) Susan inherits real property from her father's estate. She decides to sell it to a friend on a real estate contract for \$100,000. Tax is due on the \$100,000.

(c) Sheri and her two sisters inherit their father's home, valued at \$180,000, in equal portions. Sheri wants sole ownership of the home but there are not "in-kind" assets of sufficient value to be distributed by the personal representative to her two sisters in a nonpro rata distribution. In order to take title directly from the personal representative, Sheri pays each of her sisters \$60,000, and they quitclaim their right to the property under the will. Tax is due on the total of \$120,000 paid for the property.

(4) **Community property or right of survivorship.** The transfer of real property to a surviving spouse or surviving domestic partner in accordance with a community property agreement or a survivorship clause is not subject to real estate excise tax.

(5) **Joint tenants.** The transfer of real property upon the death of a joint tenant to the remaining joint tenants under right of survivorship is not subject to the real estate excise tax.

(6) **Life estates and remainder interests.** The conveyance of a life estate to the grantor with a remainder interest to another party is not a taxable transfer if no consideration passes. For example, Nate and Libby convey their property to their son, Rex, retaining a life estate for themselves. The transaction is not subject to real estate excise tax because Rex pays no consideration. Upon the deaths of Nate and Libby, the title will vest in Rex and no real estate excise tax is due. However, if Nate and Libby convey their property to Rex, retaining a life estate for themselves, and Rex pays any consideration for his future interest, the transaction is taxable. Tax is due on the total consideration paid.

(7) **Documentation.** In order to claim this exemption, the following documentation must be provided:

(a) **Community property agreement.** If the property is being transferred under the terms of a community property agreement, copies of the recorded agreement and certified copy of the death certificate;

(b) **Trusts.** If property is being transferred under the terms of a testamentary trust without probate, a certified copy of the death certificate, and a copy of the trust agreement showing the authority of the grantor;

(c) **Probate.** In the case of a probated will, a certified copy of the letters testamentary, or in the case of intestate administration, a certified copy of the letters of administration, showing that the grantor is the court appointed executor/executrix or administrator;

(d) **Joint tenants and remainder interests.** A certified copy of the death certificate is recorded to perfect title;

(e) **Court order.** If the property is being transferred pursuant to a court order, a certified copy of the court order requiring the transfer of property, and confirming that the grantor is required to do so under the terms of the order.

(f) **Other.** If the community property interest of the decedent is being transferred to a surviving spouse or surviving domestic partner absent the documentation set forth in (a) through (e) of this subsection, a certified copy of the death certificate and a signed affidavit from the surviving spouse or surviving domestic partner affirming that he or she is the sole and rightful heir of the property.

#### WSR 10-09-061

#### PERMANENT RULES DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed April 19, 2010, 6:58 a.m., effective May 20, 2010]

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

Purpose: The health and recovery services administration is amending the intake evaluation, individual service plan, and clinical record WACs to allow mental health providers more flexibility in meeting the needs of individuals while still meeting the statutory requirements for collecting client history data.

Citation of Existing Rules Affected by this Order: Amending WAC 388-865-0420, 388-865-0425, and 388-865-0430.

Statutory Authority for Adoption: RCW 71.05.560, 71.24.035 (5)(c), and 71.34.380.

Adopted under notice filed as WSR 10-02-098 on January 6, 2010.

Changes Other than Editing from Proposed to Adopted Version: **WAC 388-865-0420 (2)(d)(i):**

Presenting problem(s) as described by the individual, including a review of any documentation of a mental health condition provided by the individual. It must be inclusive of people who provide active support to the individual, if the individual so requests, or if the individual is under thirteen years of age;

#### **WAC 388-865-0420 (2)(d)(iv):**

Sufficient clinical information to justify the provisional diagnosis using diagnostic and statistical manual (DSM IV TR) criteria, or its successor;

#### **WAC 388-865-0420 (2)(d)(v):**

An identification of risk of harm to self and others, including suicide/homicide. Note: A referral for provision of emergency/crisis services, consistent with WAC 388-865-0452, must be made if indicated in the risk assessment;

**WAC 388-865-0425:**

~~In collaboration with the individual, or their parent or other legal representative if applicable, the clinician The community mental health agency must develop a consumer-driven, strength-based individual service plan that meets the individual's unique mental health needs. The individual service plan must be developed in collaboration with the individual, or the individual's parent or other legal representative if applicable. The service plan must:~~

**WAC 388-865-0425(1):**

Be initiated with at least one goal identified by the individual, or their parent or other legal representative if applicable, at the intake evaluation or the first session following the intake evaluation.

**WAC 388-865-0425(7):**

Demonstrate the individual's participation in the development of the individual service plan. Participation may be demonstrated by the individual's signature, and/or individual's quotes and/or individual's comments documented in the plan. Participation must include family or significant others as requested by the individual. If the provider developing the plan is not a mental health professional, the plan must also document review approval by a mental health professional.

**WAC 388-865-0425(9):**

With the individual's consent, or their parent or other legal representative if applicable, coordinate with any systems or organizations the individual identifies as being relevant to the individual's treatment. This includes coordination with any individualized family service plan (IFSP) when serving children under three years of age.

**WAC 388-865-0430:**

The licensed community ~~support service provider~~ mental health agency must maintain a clinical record for individual served in a manner consistent with WAC 388-865-0435, 388-865-0436, or any successors.

**WAC 388-865-0430 (3)(f):**

Discharge summaries and/or evaluations stemming from outpatient or inpatient ~~psychiatric~~ mental health services received within the last five years, when available.

**WAC 388-865-0430(13):**

Documentation of confidential information that has been released without the consent of the ~~consumer including, but not limited to~~ individual under the provisions in RCW 70.02.050, 71.05.390, and 71.05.630, and the Health Insurance Portability and Accountability Act (HIPAA);

**WAC 388-865-0430(15):**

~~Demonstration of collaboration with the individual must include family or significant others as requested by the individual;~~ (16) A description of the individual's strengths and resources;

A final cost-benefit analysis is available by contacting Kevin Sullivan, P.O. Box 45504, Olympia, WA 98504-5504, phone (360) 725-1344, fax (360) 586-9727, e-mail kevin.sullivan@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: April 19, 2010.

Susan N. Dreyfus  
Secretary

AMENDATORY SECTION (Amending WSR 07-06-050, filed 3/2/07, effective 4/2/07)

**WAC 388-865-0420 Intake evaluation.** (1) ~~((The intake evaluation or brief intake evaluation must be provided by a mental health professional and:~~

~~(a) Be initiated prior to the provision of any noncrisis mental health services;~~

~~(b) Be initiated within ten working days of the request for services;~~

~~(c) Be developed in collaboration with the consumer;~~

~~(d) Be inclusive of input of people who provide active support to the consumer, if the consumer requests or if the consumer is under age thirteen;~~

~~(e) Be completed within thirty working days of the initiation of the intake evaluation; and~~

~~(f) Include a consent for treatment or a copy of detention or involuntary treatment order.~~

~~(2) Except as when a brief intake evaluation as described in WAC 388-865-0420(4) is provided, a full intake evaluation must include:~~

~~(a) A description of the presenting problem, presented needs;~~

~~(b) A description of the consumer's and family's strengths;~~

~~(c) Consumer's needs and desired outcomes in the consumer's own words;~~

~~(d) Consumer's culture/cultural history (including, but not limited to, ethnicity or race, and religion);~~

~~(e) History of other disorders, substance/alcohol abuse, developmental disability, any other relevant disability, and treatment, if any;~~

~~(f) Medical history, hospitalizations, treatment, past and current medications;~~

~~(g) Mental health services history, past and current medication;~~

~~(h) Assessment of suicide/homicide and self harm risk. A referral for provision of emergency/ crisis services, consistent with WAC 388-865-0452, must be made if indicated in the risk assessment;~~

~~(i) Sufficient information to justify the provisional diagnosis;~~

~~(j) Documentation showing the consumer has been asked if they are under the supervision of the department of corrections or juvenile court;~~

(k) If the consumer is a child:

(i) Developmental history;

(ii) Parental goals and desired outcomes (if consent is obtained or not required due to age or state custody); and

(iii) Family and/or placement issues, including, if appropriate, family dynamics, placement disruptions, and current placement needs.

(3) If seeking any of the information required in subsection (2) of this section presents a barrier to the provision of services for the consumer, any portion of the intake may be left incomplete providing the reason for the omission is clearly documented in the clinical record.

(4) A brief intake evaluation may be used when it is reasonably believed services to the consumer will be completed within a six-month period. A brief intake evaluation may also be substituted for a full intake evaluation if a consumer is resuming services after being out of services for a period of less than twelve months and had received a full intake evaluation as part of the previous service provision. A brief intake evaluation must include:

(a) A description of presenting problem, presented needs, desired outcomes, and consumer strengths identified by both the consumer and the clinician;

(b) Sufficient information to justify the provisional diagnosis;

(c) The consumer's current physician and prescribed medications;

(d) Current and historical substance use/abuse or other co-occurring disorders including developmental disabilities;

(e) Mental health services history including past and current medications;

(f) Assessment of suicide/homicide and self-harm risk. A referral for provision of emergency/crisis services, consistent with WAC 388-865-0452, must be made if indicated in the risk assessment;

(g) Documentation that the consumer has been asked if they are under the supervision by the department of corrections or juvenile court; and

(h) Identification of mutually agreed upon outcomes that are expected to be accomplished within the six-month period that will be the treatment plan. This treatment plan will be used in place of the treatment plan required in WAC 388-865-0425.

(5) In cases where a consumer initially receives services based on a brief intake evaluation, the community support service provider must complete the additional elements required in a full intake evaluation if the consumer is expected to continue to receive services after six months. In these cases a treatment plan must be developed that meets all the requirements of WAC 388-865-0425.

(6) If seeking any of the information required in subsection (4) of this section presents a barrier to the provision of services for the consumer, any portion of the intake may be left incomplete providing the reason for the omission is clearly documented in the clinical record. All individuals receiving community mental health outpatient services, with the exception of crisis, stabilization, and rehabilitation case management services, must have an intake evaluation. The purpose of an intake evaluation is to gather information to determine if a mental illness exists which is a covered diag-

nosis under Washington state's section 1915(b) capitated waiver program, and if there are medically necessary state plan services to address the individual's needs. (For a listing of the covered diagnoses and state plan services go to: [http://www.dshs.wa.gov/pdf/hrsa/mh/Waiver\\_2008\\_2010\\_PIHP\\_NEW\\_%200408\\_with\\_final\\_revisions.pdf](http://www.dshs.wa.gov/pdf/hrsa/mh/Waiver_2008_2010_PIHP_NEW_%200408_with_final_revisions.pdf))

(2) The intake evaluation must:

(a) Be provided by a mental health professional.

(b) Be initiated within ten working days from the date on which the individual or their parent or other legal representative requests services and completed within thirty working days of the initiation of the intake.

(c) Be culturally and age relevant.

(d) Document sufficient information to demonstrate medical necessity as defined in the state plan, and must include:

(i) Presenting problem(s) as described by the individual, including a review of any documentation of a mental health condition provided by the individual. It must be inclusive of people who provide active support to the individual, if the individual so requests, or if the individual is under thirteen years of age;

(ii) Current physical health status, including any medications the individual is taking;

(iii) Current substance use and abuse and treatment status (GAIN-SS);

(iv) Sufficient clinical information to justify the provisional diagnosis using diagnostic and statistical manual (DSM IV TR) criteria, or its successor;

(v) An identification of risk of harm to self and others, including suicide/homicide. Note: A referral for provision of emergency/crisis services, consistent with WAC 388-865-0452, must be made if indicated in the risk assessment;

(vi) Whether they are under the supervision of the department of corrections; and

(vii) A recommendation of a course of treatment.

AMENDATORY SECTION (Amending WSR 01-12-047, filed 5/31/01, effective 7/1/01)

**WAC 388-865-0425 Individual service plan.** ((Community support service providers must provide consumers with an individual service plan that meets his or her unique needs. Individualized and tailored care is a planning process that may be used to develop a consumer-driven, strength-based, individual service plan. The individual service plan must:

(1) Be developed collaboratively with the consumer and other people identified by the consumer within thirty days of starting community support services. The service plan should be in language and terminology that is understandable to consumers and their family, and include goals that are measurable;

(2) Address age, cultural, or disability issues of the consumer;

(3) Include measurable goals for progress toward rehabilitation, recovery and reintegration into the mainstream of social, employment and educational choices, involving other systems when appropriate;

(4) Demonstrate that the provider has worked with the consumer and others at the consumer's request to determine his/her needs in the following life domains:

- (a) Housing;
- (b) Food;
- (c) Income;
- (d) Health and dental care;
- (e) Transportation;
- (f) Work, school or other daily activities;
- (g) Social life; and
- (h) Referral services and assistance in obtaining supportive services appropriate to treatment, such as substance abuse treatment.

(5) Document review by the person developing the plan and the consumer. If the person developing the plan is not a mental health professional, the plan must also document review by a mental health professional. If the person developing the plan is not a mental health specialist required per WAC 388-865-405(5) there must also be documented consultation with the appropriate mental health specialist(s);

(6) Document review and update at least every one hundred eighty days or more often at the request of the consumer;

(7) In the case of children:

(a) Be integrated with the individual education plan from the education system whenever possible;

(b) If the child is under three, the plan must be integrated with the individualized family service plan (IFSP) if this exists, consistent with Title 20, Section 1436)) The community mental health agency must develop a consumer-driven, strength-based individual service plan that meets the individual's unique mental health needs. The individual service plan must be developed in collaboration with the individual, or the individual's parent or other legal representative if applicable. The service plan must:

(1) Be initiated with at least one goal identified by the individual, or their parent or other legal representative if applicable, at the intake evaluation or the first session following the intake evaluation.

(2) Be developed within thirty days from the first session following the intake evaluation.

(3) Address age, cultural, or disability issues identified by the individual, or their parent or other legal representative if applicable, as relevant to treatment.

(4) Include treatment goals or objectives that are measurable and that allow the provider and individual to evaluate progress toward the individual's identified recovery goals.

(5) Be in language and terminology that is understandable to individuals and their family.

(6) Identify medically necessary service modalities, mutually agreed upon by the individual and provider, for this treatment episode.

(7) Demonstrate the individual's participation in the development of the individual service plan. Participation may be demonstrated by the individual's signature and/or quotes documented in the plan. Participation must include family or significant others as requested by the individual. If the provider developing the plan is not a mental health professional, the plan must also document approval by a mental health professional.

(8) Include documentation that the individual service plan was reviewed at least every one hundred eighty days. It should also be updated to reflect any changes in the individual's treatment needs or as requested by the individual, or their parent or other legal representative if applicable.

(9) With the individual's consent, or their parent or other legal representative if applicable, coordinate with any systems or organizations the individual identifies as being relevant to the individual's treatment. This includes coordination with any individualized family service plan (IFSP) when serving children under three years of age.

(10) If an individual disagrees with specific treatment recommendations or is denied a requested treatment service, they may pursue their rights under WAC 388-865-0255.

AMENDATORY SECTION (Amending WSR 06-17-114, filed 8/18/06, effective 9/18/06)

**WAC 388-865-0430 Clinical record.** The licensed community ((support service provider)) mental health agency must maintain a clinical record for each ((consumer and safeguard the record against loss, defacement, tampering, or use by unauthorized persons)) individual served in a manner consistent with WAC 388-865-0435, 388-865-0436, or any successors. The clinical record must contain:

(1) An intake evaluation;

(2) Evidence that the consumer rights statement was provided to the ((consumer)) individual, or their parent or other legal representative if applicable;

(3) ((A copy of any advance directives, powers of attorney or letters of guardianship provided by the consumer;)) Documentation that the provider requested a copy of and inserted into the clinical record if provided, any of the following:

(a) Mental health advance directives;

(b) Medical advance directives;

(c) Powers of attorney;

(d) Letters of guardianship, parenting plans and/or court order for custody;

(e) Least restrictive alternative order(s);

(f) Discharge summaries and/or evaluations stemming from outpatient or inpatient mental health services received within the last five years, when available.

(4) ((The)) Any crisis ((treatment)) plan ((when appropriate)) that has been developed;

(5) The ((individualized)) individual service plan and all ((changes in)) revisions to the plan;

(6) Documentation that services are provided by or under the clinical supervision of a mental health professional;

(7) Documentation ((that services are provided by, or under the clinical supervision, or the clinical)) of any clinical consultation ((of)) or oversight provided by a mental health specialist((-Consultation must occur within thirty days of admission and periodically thereafter as specified by the mental health specialist));

(8) ((Periodic)) Documentation of ((the course of treatment and));

(a) All service encounters;

(b) Objective progress toward established goals ((for rehabilitation, recovery and reintegration into the mainstream

~~of social, employment and educational choices)) as outlined in the treatment plan; and~~

~~(c) How any major changes in the individual's circumstances were addressed.~~

~~(9) ((A notation of extraordinary events affecting the consumer;~~

~~(10)) Documentation ((of)) that any mandatory reporting of abuse, neglect, or exploitation ((of consumers)) consistent with chapters 26.44 and 74.34 RCW has occurred;~~

~~((11)) (10) Documentation that the department of corrections was notified by the provider when ((a consumer)) an individual on ((an)) a less restrictive alternative or department of corrections order for mental health treatment informs ((them)) the provider that ((they are)) the individual is under supervision by the department of corrections. Notification can be either written or oral. If oral notification, it must be confirmed by a written notice, including e-mail and fax. The disclosure to department of corrections does not require the person's consent((;)).~~

~~(a) If the individual has been given relief from disclosure by the committing court, the individual must provide a copy of the court order to the treating community mental health agency (CMHA).~~

~~(b) There must be documentation that an evaluation by a designated mental health professional (DMHP) was requested in the following circumstance:~~

~~(i) The mental health provider becomes aware of a violation of the court-ordered treatment of an individual when the violation concerns public safety; and~~

~~(ii) The individual's treatment is a less restrictive alternative and the individual is being supervised by the department of corrections.~~

~~((12)) (11) ((If the consumer has been given relief by the committing court it must be confirmed in writing;~~

~~(13) When the mental health provider becomes aware of a violation that relates to public safety of court-ordered treatment of a consumer who is both in a less restrictive alternative and is being supervised by the department of corrections, documentation that an evaluation by a designated mental health professional was requested;~~

~~(14)) Either documentation of informed consent to treatment ((and medications)) by the ((consumer)) individual or ((legally responsible other)) parent or other legal representative or if treatment is court ordered, a copy of the detention or involuntary treatment order;~~

~~(12) Documentation that the individual, or their parent or other legal representative if applicable, are informed about the benefits and possible side effects of any medications prescribed for the individual in language that is understandable;~~

~~((15)) (13) Documentation of confidential information that has been released without the consent of the ((consumer including, but not limited to)) individual under the provisions in RCW 70.02.050, 71.05.390 ((and)), 71.05.630, and the Health Insurance Portability and Accountability Act (HIPAA);~~

~~(14) For individuals receiving community support services, the following information must be requested from the individual and the responses documented:~~

~~(a) The name of any current primary medical care provider;~~

~~(b) Any current physical health concerns;~~

~~(c) Current medications and any related concerns;~~

~~(d) History of any substance use/abuse and treatment;~~

~~(e) Any disabilities or special needs;~~

~~(f) Any previously accessed inpatient or outpatient services and/or medications to treat a mental health condition; and~~

~~(g) Information about past or current trauma and abuse.~~

~~(15) A description of the individual's strengths and resources; and~~

~~(16) A description of the individual's self-identified culture.~~

## WSR 10-09-073

### PERMANENT RULES

### DEPARTMENT OF LICENSING

[Filed April 19, 2010, 2:05 p.m., effective May 20, 2010]

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

Purpose: Amend WAC 308-391-106 Methods of payment, add option to pay by credit or debit card when conducting UCC transactions in person.

Citation of Existing Rules Affected by this Order: Amending WAC 308-391-106.

Statutory Authority for Adoption: RCW 62A.9A-526.

Adopted under notice filed as WSR 09-23-019 on November 6, 2009.

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: April 19, 2010.

Walt Fahrner  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 09-12-067, filed 5/29/09, effective 6/29/09)

**WAC 308-391-106 Methods of payment.** Filing fees and search fees may be paid by the following methods:

(1) Cash. Payment in cash is accepted if paid in person at the filing office.

(2) Checks. Personal checks, cashier's checks, and money orders made payable to the filing office are accepted for payment provided that the drawer (or the issuer in the case of a cashier's check or money order) is deemed creditworthy by the filing office in its discretion. Checks may be made

payable in an amount to be filled in by the filing office if the filing office is clearly authorized to fill in the amount.

(3) Electronic funds transfer. The filing office may accept payment via electronic funds transfer under National Automated Clearing House Association (NACHA) rules from remitters who have entered into appropriate NACHA-approved arrangements for electronic transfers with the UCC filing office and who authorize the relevant transfer under those arrangements and rules.

(4) Credit cards. The filing office accepts payment by credit cards issued by approved issuers. Remitters must provide the card number, the expiration date of the card, the name of the card issuer, the name of the person or entity to whom the card was issued, the billing address for the card, and any other information required by the filing office to complete the transaction. Payment will not be deemed tendered until the issuer or its agent has ~~((confirmed))~~ authorized payment. This method of payment is accepted for on-line services ~~((only))~~ and in person at the public service counter.

(5) The filing office accepts payment for bulk data by check or electronic funds transfer, except weekly updates which must be paid by electronic funds transfer.

**WSR 10-09-088**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed April 20, 2010, 2:42 p.m., effective June 1, 2010]

Effective Date of Rule: June 1, 2010.

Purpose: The occupational safety and health administration (OSHA) has recently revised several of their rules surrounding personal protective equipment (PPE) to incorporate by reference more current versions of national consensus standards. The department is updating our rules to remain as-effective-as OSHA as mandated by statute. These changes will make clear which version of national consensus standards the department will use to enforce PPE requirements.

**WAC 296-56-60109 Eye protection.**

- Updated the American National Standards [Institute] (ANSI) reference.
- Added the following language: Employers may provide alternate eye and face protection if they can demonstrate such devices are at-least-as-effective-as those constructed in accordance with one of the above consensus standards.

**WAC 296-56-60111 Head protection.**

- Updated the ANSI reference.

**WAC 296-56-60113 Foot protection.**

- Updated references relating to ANSI.
- Added language saying employers may use alternate footwear if they can demonstrate it is at-least-as-effective-as those constructed in accordance with one of the above consensus standards.

**WAC 296-304-09005 Eye and face protection.**

- Updated the ANSI reference.
- Added the following language: Employers may provide alternate eye and face protection if they can demonstrate such devices are at-least-as-effective-as those constructed in accordance with one of the above consensus standards.

**WAC 296-304-09011 Head protection.**

- Updated the ANSI reference.
- Added the following language: Employers may use alternate head protection if they can demonstrate such devices are at-least-as-effective-as those constructed in accordance with one of the above consensus standards.

**WAC 296-304-09013 Foot protection.**

- Updated references relating to ANSI.
- Added language saying employers may use alternate footwear if they can demonstrate it is at-least-as-effective-as those constructed in accordance with one of the above consensus standards.

**WAC 296-800-16050 Make sure your employees use appropriate eye and face protection.**

- Updated the ANSI reference.
- Added the following language: Employers may provide alternate eye and face protection if they can demonstrate such devices are at-least-as-effective-as those constructed in accordance with one of the above consensus standards.

**WAC 296-800-16055 Make sure your employees use appropriate head protection.**

- Updated the ANSI reference.
- Added the following language: Employers may use alternate head protection if they can demonstrate such devices are at-least-as-effective-as those constructed in accordance with one of the above consensus standards.

**WAC 296-800-16060 Make sure your employees use appropriate foot protection.**

- Updated references relating to ANSI.
- Added language saying employers may use alternate footwear if they can demonstrate it is at-least-as-effective-as those constructed in accordance with one of the above consensus standards.

Citation of Existing Rules Affected by this Order: Amending WAC 296-56-60109 Eye protection, 296-56-60111 Head protection, 296-56-60113 Foot protection, 296-304-09005 Eye and face protection, 296-304-09011 Head protection, 296-304-09013 Foot protection, 296-800-16050 Make sure your employees use appropriate eye and face protection, 296-800-16055 Make sure your employees use appropriate head protection, and 296-800-16060 Make sure your employees use appropriate foot protection.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 10-04-094 on February 2, 2010.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 9, 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 9, 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 9, Repealed 0.

Date Adopted: April 20, 2010.

Judy Schurke  
Director

AMENDATORY SECTION (Amending WSR 00-21-103, filed 10/18/00, effective 2/1/01)

**WAC 296-56-60109 Eye protection.** (1)(a) When employees perform work hazardous to the eyes, the employer shall provide eye protection equipment (~~marked or labeled as meeting the manufacturing specifications of American National Standards Practice for Occupational and Educational Eye and Face Protection, ANSI Z87.1-1989, and shall direct that it be used~~) that complies with ANSI Z87.1, American National Standard Practice for Occupational and Educational Eye and Face Protection, edition 1989, revision 1998, or edition 2003.

Employers may provide alternate eye and face protection if they can demonstrate such devices are at least as effective as those constructed in accordance with one of the above consensus standards.

(b) For employees wearing corrective spectacles, eye protection equipment required by (a) of this subsection shall be of a type which can be worn over spectacles. Prescription ground safety lenses may be substituted if they provide equivalent protection.

(c) For additional requirements covering eye protection against radiant energy, see WAC 296-56-60235(8).

(2) Eye protection equipment shall be maintained in good condition.

(3) Used eye protection equipment shall be cleaned and disinfected before reissuance to another employee.

AMENDATORY SECTION (Amending WSR 00-21-103, filed 10/18/00, effective 2/1/01)

**WAC 296-56-60111 Head protection.** (1) Employees exposed to impact, falling or flying objects, or electric shocks or burns shall wear protective hats.

(2) (~~Protective hats shall bear identifying marks or labels indicating compliance with the manufacturing provisions of American National Standard Safety Requirements~~

~~for Industrial Head Protection, ANSI Z89.1-1986.))~~ The employer must ensure that all protective helmets comply with one of the following consensus standards:

- ANSI Z89.1-2003, American National Standard for Industrial Head Protection.

- ANSI Z89.1-1997, American National Standard for Industrial Head Protection.

- ANSI Z89.1-1986, American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements.

Employers may use alternate head protection if they can demonstrate such devices are at least as effective as those constructed in accordance with one of the above consensus standards.

(3) Protective hats previously worn shall be cleaned and disinfected before issuance by the employer to another employee.

AMENDATORY SECTION (Amending WSR 99-02-024, filed 12/30/98, effective 3/30/99)

**WAC 296-56-60113 Foot protection.** (1) The employer shall ensure that each affected employee wears protective footwear when working in areas where there is a danger of foot injuries due to falling or rolling objects or objects piercing the sole.

(2) (~~Protective shoes shall bear identifying marks or labels indicating compliance with the manufacturing provisions of American National Standard for Men's Safety Toe Footwear, ANSI Z41.1-1991.))~~ The employer must ensure that all protective footwear complies with one of the following consensus standards:

- ASTM F-2412-2005, Standard Test Methods for Foot Protection, and ASTM F-2413-2005, Standard Specification for Performance Requirements for Protective Footwear.

- ANSI Z41-1999, American National Standard for Personal Protection—Protective Footwear.

- ANSI Z41-1991, American National Standard for Personal Protection—Protective Footwear.

Employers may use alternate footwear if they can demonstrate it is at least as effective as those constructed in accordance with one of the above consensus standards.

(3) The employer shall, through means such as vendors or local stores, make safety shoes readily available to all employees.

AMENDATORY SECTION (Amending WSR 98-02-006, filed 12/26/97, effective 3/1/98)

**WAC 296-304-09005 Eye and face protection.** (1) The employer must provide each affected employee with eye and face protection according to the following requirements:

(a) Each affected employee must use appropriate eye or face protection when exposed to eye or face hazards caused by flying particles, molten metal, liquid chemicals, acid or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.

(b) Each affected employee must use eye or face protection that provides side protection when there is a hazard from flying objects. A detachable side protector (e.g., a clip-on or

slide-on side shield) that meets the requirements of this section is acceptable.

(c) Each affected employee who wears prescription lenses must:

- Use eye protection that incorporates the prescription in its design; or
- Be protected by eye protection that can be worn over prescription lenses without disturbing the proper position of either the PPE or the prescription lenses.

(d) Each affected employee must use equipment with filter lenses of a shade that provides appropriate protection from injurious light radiation. Tables I-1A and I-1B lists the appropriate shade numbers for various operations. If filter lenses are used in goggles worn under a helmet with a lens, the shade number of the lens in the helmet may be reduced so that the shade numbers of the two lenses will equal the value shown in the Tables I-1A and I-1B.

(2) The employer must ensure that all protective eye and face devices (~~meet the following criteria:~~

~~(a) Protective eye and face devices purchased after February 20, 1995, comply with the American National Standards Institute, ANSI Z87.1-1989, "Practice for Occupational and Educational Eye and Face Protection," or the employer demonstrates that the devices are equally effective.~~

~~(b) Eye and face protective devices purchased before February 20, 1995,)) comply with (((")ANSI Z87.1, American National Standard Practice for Occupational and Educational Eye and Face Protection, ((Z87.1-1979, " or the employer demonstrates that the devices are equally effective)) edition 1989, revision 1998, or edition 2003.~~

Employers may use alternate eye and face protection if they can demonstrate such devices are at least as effective as those constructed in accordance with one of the above consensus standards.

AMENDATORY SECTION (Amending WSR 98-02-006, filed 12/26/97, effective 3/1/98)

**WAC 296-304-09011 Head protection.** (1) The employer must provide each affected employee with head protection according to the following requirements:

(a) Each affected employee wears a protective helmet when working in areas where there is a potential for injury to the head.

(b) Each affected employee wears a protective helmet designed to reduce electrical shock hazards where there is potential for electric shock or burns from contact with exposed electrical conductors that could contact the head.

(2) The employer must ensure that all protective helmets (~~meet the following criteria:~~

~~(a) Protective helmets purchased before February 20, 1995, comply with the "American National Standard Safety Requirements for Industrial Head Protection, Z89.1-1969," or the employer demonstrates that they are equally effective.~~

~~(b) Protective helmets purchased after February 20, 1995, comply with ANSI Z89.1-1986, "Personnel Protection—Protective Headwear for Industrial Workers Requirements," or the employer demonstrates that they are equally effective)) comply with one of the following consensus standards:~~

• ANSI Z89.1-2003, American National Standard for Industrial Head Protection.

• ANSI Z89.1-1997, American National Standard for Industrial Head Protection.

• ANSI Z89.1-1986, American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements.

Employers may use alternate head protection if they can demonstrate such devices are at least as effective as those constructed in accordance with one of the above consensus standards.

AMENDATORY SECTION (Amending WSR 98-02-006, filed 12/26/97, effective 3/1/98)

**WAC 296-304-09013 Foot protection.** (1) The employer must ensure that each affected employee wears protective footwear when working in areas where:

- There is a danger of foot injuries from falling or rolling objects;
- There is a danger of foot injuries from objects piercing the sole; or
- Where an employee's feet are exposed to electrical hazards.

(2) The employer must ensure that all protective footwear (~~meets the following criteria:~~

~~(a) Protective footwear purchased before February 20, 1995, complies with the ANSI standard "USA Standard for Men's Safety Toe Footwear," ANSI Z41-1983, or the employer demonstrates that footwear is equally effective.~~

~~(b) Protective footwear purchased after February 20, 1995, complies with ANSI Z41-1991, "American National Standard for Personal Protection—Protective Footwear," or the employer demonstrates that footwear is equally effective)) complies with one of the following consensus standards:~~

• ASTM F-2412-2005, Standard Test Methods for Foot Protection, and ASTM F-2413-2005, Standard Specification for Performance Requirements for Protective Footwear.

• ANSI Z41-1999, American National Standard for Personal Protection—Protective Footwear.

• ANSI Z41-1991, American National Standard for Personal Protection—Protective Footwear.

Employers may use alternate footwear if they can demonstrate it is at least as effective as those constructed in accordance with one of the above consensus standards.

AMENDATORY SECTION (Amending WSR 02-16-047, filed 8/1/02, effective 10/1/02)

**WAC 296-800-16050 Make sure your employees use appropriate eye and face protection.** You must:

- Make sure that employees exposed to hazards that could injure their eyes and/or face use appropriate protection. Examples of these hazards include:
  - Flying particles.
  - Molten metal.
  - Liquid chemicals.
  - Acids or caustic liquids.
  - Chemical gases or vapors.

- Any light that could injure the eyes such as lasers, ultraviolet, or infrared light.
- Objects that puncture.
- Make sure employees exposed to hazards from flying objects have eye protection with side protection, such as safety glasses with clip-on or slide-on side shields.
- Make sure eye protection for employees who wear prescription lenses:
  - Incorporates the prescription into the design of the eye protection; or
  - Is large enough to be worn over the prescription lenses without disturbing them.
- Make sure PPE used to protect the eyes and face meet the ~~((following specific ANSI (American National Standards Institute) standards. Most commercially available PPE is marked with the specific ANSI requirements.~~
  - ~~PPE bought before February 20, 1995, must meet ANSI standard Z87.1-1968.~~
  - ~~PPE bought on or after February 20, 1995, must meet ANSI standard Z87.1-1989.~~
  - ~~If you use eye or face protection that does not meet these ANSI standards, you must show they are equally effective)) specifics of either the 1989 version, the 1998 revision, or the 2003 version of ANSI Z87.1, American National Standard Practice for Occupational and Education Eye and Face Protection.~~

Other protective eye and face protection devices may be used if the employer demonstrates that they are at least as effective as those constructed in accordance with one of the above consensus standards.

Note: ANSI is the American National Standards Institute that publishes nationally recognized safety and health requirements. Their address is:  
ANSI (American National Standards Institute)  
1819 L Street NW  
Washington, DC 20036  
Phone: (202) 293-8020  
Fax: (202) 293-9287  
<http://www.ansi.org>

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-16055 Make sure your employees use appropriate head protection.** You must:

- (1) Make sure employees wear appropriate protective helmets.
  - Where employees are exposed to hazards that could cause a head injury. Examples of this type of hazard include:
    - Flying or propelled objects.
    - Falling objects or materials.
  - Where employees are working around or under scaffolds or other overhead structures.
  - That helmets meet the ~~((following specific ANSI standards (most commercially available PPE is marked with specific ANSI requirements):~~
    - ~~Protective helmets bought before February 20, 1995, must meet ANSI standard Z89.1-1969.~~
    - ~~Protective helmets bought after February 20, 1995, must meet ANSI standard Z89.1-1986.~~
    - ~~If)) specifications of either the 1997 or 2003 version of ANSI Z89.1, American National Standard for Industrial~~

Head Protection, or the 1986 version of ANSI Z89.1, American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements.

– You may use protective helmets that do not meet these ANSI standards ~~((, you must show))~~ if you can demonstrate that they are equally effective as those constructed in accordance with the above ANSIs.

(2) Make sure employees working near exposed electrical conductors that could contact their head wear a protective helmet designed (that meet the above ANSI standards) to reduce electrical shock hazard.

- Caps with metal buttons or metal visors must **not** be worn around electrical hazards.

(3) Make sure employees working around machinery or in locations that present a hair-catching or fire hazard wear caps or head coverings that completely cover their hair.

- Employees must wear a hair net that controls all loose ends when:

- Hair is as long as the radius of pressure rolls with exposed in-running nip points.

- Hair is twice as long as the circumference of exposed revolving shafts or tools in fixed machines.

- Employees must wear a hair covering of solid material when:

- The employee is exposed to an ignition source and may run into an area containing class-1 flammable liquids, such as ether, benzene, or combustible atmospheres if their hair is on fire.

AMENDATORY SECTION (Amending WSR 01-11-038, filed 5/9/01, effective 9/1/01)

**WAC 296-800-16060 Make sure your employees use appropriate foot protection.** You must:

- (1) Use appropriate foot protection.
  - Where employees are exposed to hazards that could injure their feet. Examples of these hazards are:
    - Falling objects
    - Rolling objects
    - Piercing/cutting injuries
    - Electrical hazards
  - That meets ~~((specific ANSI requirements. (Most commercially available PPE is marked with specific ANSI requirements.)~~
    - ~~PPE bought before February 20, 1995, must meet ANSI standard Z41.1-1967.~~
    - ~~PPE bought after February 20, 1995, must meet ANSI standard Z41-1994)) the specifications of one of the following consensus standards:~~
      - ASTM F-2412-2005, Standard Test Methods for Foot Protection, and ASTM F-2413-2005, Standard Specification for Performance Requirements for Protective Footwear.
      - ANSI Z41-1999, American National Standard for Personal Protection—Protective Footwear.
      - ANSI Z41-1991, American National Standard for Personal Protection—Protective Footwear.
    - ~~((If you use foot protection))~~ Protective footwear that does not meet these ((ANSI)) standards((-)) may be used if you ((must show)) demonstrate that it is equally effective as

that constructed in accordance with one of the above consensus standards.

(2) Make sure your employees wear calks or other suitable footwear to protect against slipping while they are working on top of logs.

**WSR 10-09-089**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed April 20, 2010, 2:44 p.m., effective July 1, 2010]

Effective Date of Rule: July 1, 2010.

Purpose: Division of occupational safety and health (DOSH) believes that the revisions made to the acetylene standard by this adoption does not compromise the safety of employees, and instead enhances employee protection. For example, the updated acetylene standard includes mandatory requirements for acetylene piping systems, has special requirements for high-pressure piping systems, and prohibits storage of acetylene cylinders in confined spaces - requirements that are not included in the current standards developing organizations (SDO) standards. The updated SDO standards also provide employers with new and more extensive information than the current standards, which should facilitate compliance.

The revisions have made the requirements of DOSH's acetylene standard consistent with current industry practices, thereby eliminating confusion and clarifying employer obligations. Eliminating confusion and clarifying employer obligations should increase employee safety while reducing compliance costs.

The Compressed Gas Association (CGA) published several editions of these SDO standards after we adopted them in 1973, and one of these standards (i.e., Compressed Gas Association Pamphlet G-1.4-1966), is no longer available for purchase from CGA. Therefore, to ensure that employers have access to the latest safety requirements for managing acetylene, this rule making is adopting the requirements specified in the most recent versions of the SDO standards.

**WAC 296-24-31001 Cylinders.**

- Updated the compressed gas association pamphlet reference.

**WAC 296-24-31003 Piped systems.**

- Updated references relating to the National Fire Protection Association (NFPA) and CGA.
- Added language to allow compliance with earlier additions if applicable.

**WAC 296-24-31005 Generators and filling cylinders.**

- Updated references relating to the NFPA.
- Added language to allow compliance with earlier additions if applicable.

Citation of Existing Rules Affected by this Order: Amending WAC 296-24-31001 Cylinders, 296-24-31003 Piped systems, and 296-24-31005 Generators and filling cylinders [cylinders].

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 10-02-105 on January 6, 2010.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 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: April 20, 2010.

Judy Schurke  
Director

AMENDATORY SECTION (Amending Order 73-5, filed 5/9/73)

**WAC 296-24-31001 Cylinders.** Employers must ensure that the in-plant transfer, handling, storage, and ((utilization)) use of acetylene in cylinders ((shall be in accordance with Compressed Gas Association Pamphlet G-1-1966)) comply with the provisions of CGA Pamphlet G-1-2003 (Acetylene) (Compressed Gas Association, Inc., 11th ed., 2003).

AMENDATORY SECTION (Amending Order 73-5, filed 5/9/73)

**WAC 296-24-31003 Piped systems.** ((The piped systems for the in-plant transfer and distribution of acetylene shall be designed, installed, maintained, and operated in accordance with Compressed Gas Association Pamphlet G-1.3-1959.)) (1) Employers must comply with Chapter 9 (Acetylene Piping) of NFPA 51A-2006 (Standard for Acetylene Charging Plants) (National Fire Protection Association, 2006 ed., 2006).

(2) When employers can demonstrate that the facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders were installed prior to February 16, 2006, these employers may comply with the provisions of Chapter 7 (Acetylene Piping) of NFPA 51A-2001 (Standard for Acetylene Charging Plants) (National Fire Protection Association, 2001 ed., 2001).

(3) The provisions of subsection (2) of this section also apply when the facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders were approved for construction or installation prior to February 16, 2006, but constructed and installed on or after that date.

Note: For additional information on acetylene piping systems, see CGA G-1.2-2006, Part 3 (Acetylene Piping) (Compressed Gas Association, Inc., 3rd ed., 2006).

**AMENDATORY SECTION** (Amending Order 73-5, filed 5/9/73)

**WAC 296-24-31005 Generators and filling cylinders.**

~~((Plants for the generation of acetylene and the charging (filling) of acetylene cylinders shall be designed, constructed, and tested in accordance with the standards prescribed in Compressed Gas Association Pamphlet G-1.4-1966)) (1) Employers must ensure that facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders comply with the provisions of NFPA 51A-2006 (Standard for Acetylene Charging Plants) (National Fire Protection Association, 2006 ed., 2006).~~

(2) When employers can demonstrate that the facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders were constructed or installed prior to February 16, 2006, these employers may comply with the provisions of NFPA 51A-2001 (Standard for Acetylene Charging Plants) (National Fire Protection Association, 2001 ed., 2001).

(3) The provisions of subsection (2) of this section also apply when the facilities, equipment, structures, or installations were approved for construction or installation prior to February 16, 2006, but constructed and installed on or after that date.

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

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

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

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

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

Date Adopted: April 14, 2010.

Francea L. McNair  
Executive Director

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 10-11 issue of the Register.

**WSR 10-09-110**

**PERMANENT RULES**

**OLYMPIC REGION**

**CLEAN AIR AGENCY**

[Filed April 21, 2010, 11:45 a.m., effective May 22, 2010]

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

Purpose: Rule 1.4 was changed to expand the definition of "Owner" to include all potential parties. Definitions that were not used within the regulations were deleted. Rule 2.2 was moved to Rule 1.10. The reference to Rule 2.2 in Rule 6.1.2 was removed. Rule 7.7 was deleted as it was less stringent than current state rule and was deemed no longer necessary. Rule 8.1 was changed to be consistent with current state law.

Citation of Existing Rules Affected by this Order: Repealing Rules 7.7, 2.2; and amending Rules 1.4, 1.10, 6.1.2, 8.1.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 10-04-087 on February 2, 2010.

Changes Other than Editing from Proposed to Adopted Version: The definition of volatile organic compounds (VOC) was amended to exempt dimethyl carbonate and propylene carbonate as VOCs. This change is consistent with the United States Environmental Protection Agency exemption for the same chemicals on February 20, 2009. The text of Rule 8.1.7 was simplified to improve clarity. The intent of the rule was not modified.