

WSR 05-20-079
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed October 4, 2005, 4:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-10-085.

Title of Rule and Other Identifying Information: The department is proposing to amend chapter 388-78A WAC, Boarding home licensing rules, WAC 388-78A-2020 Definitions, 388-78A-2050 Resident characteristics, 388-78A-2100 On-going assessments, 388-78A-2120 Monitoring residents' well-being, 388-78A-2270 Resident controlled medications, 388-78A-2280 Medication organizers, 388-78A-2300 Food and nutrition services, 388-78A-2360 Adult day care, 388-78A-2380 Restricted egress, 388-78A-2470 Criminal history background checks, 388-78A-2480 TB tests, 388-78A-2490 Specialized training for developmental disabilities, 388-78A-2500 Specialized training for mental illness, 388-78A-2510 Specialized training for dementia, 388-78A-2520 Administrator qualifications, 388-78A-2660 Resident rights, 388-78A-2700 Safety measures and disaster preparedness, 388-78A-2910 Applicable building codes, 388-78A-2920 Area for nursing supplies and equipment, 388-78A-2930 Communication system, 388-78A-2940 Two-way intercom systems, 388-78A-2960 Sewage and liquid waste disposal, 388-78A-2990 Heating-cooling—Temperature, 388-78A-3010 Resident room—Room furnishings-storage, 388-78A-3030 Toilet rooms and bathrooms, 388-78A-3040 Laundry, 388-78A-3090 Maintenance and housekeeping, 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required, and 388-78A-3220 Appeal rights. The department is proposing to add new WAC 388-78A-2305 Food sanitation.

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on December 6, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 7, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., December 6, 2005.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by December 2, 2005, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendments to chapter 388-78A WAC:

- Make the rule clearer;
- Eliminate redundancies and inconsistencies with other rules and statutes;

- Expand options for boarding homes to provide adult day services and thereby create more options for consumers;
- Respond in part to chapter 505, Laws of 2005; and
- Create more training options for boarding home administrators.

Reasons Supporting Proposal: If the proposed rule is not adopted:

- Sections of chapter 388-78A WAC would not be consistent with other statutes and administrative rules;
- Certain sections would be unclear or ambiguous;
- Elements of some sections would duplicate other sections;
- Boarding home licensees would have fewer options for providing adult day services;
- The department would not be as responsive to the issues that were the basis for chapter 505, Laws of 2005; and
- Boarding home administrators would have their training options narrowed.

Statutory Authority for Adoption: RCW 18.20.090.

Statute Being Implemented: Chapter 18.20 RCW, chapter 505, Laws of 2005.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Portions of this proposed amendment address issues that were brought to the 2005 legislature by the boarding home industry and addressed in chapter 505, Laws of 2005.

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting: Denny McKee, 4500 10th Avenue S.E., Lacey, WA 98503, (360) 725-2590; Implementation and Enforcement: Joyce Stockwell, 4500 10th Avenue S.E., Lacey, WA 98503, (360) 725-2401.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There are no required costs to boarding homes associated with implementing these proposed amendments. Per RCW 19.85.030(1), the proposed rule will not impose more than minor costs on the industry and therefore a small business economic impact statement is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Denny McKee, 4500 10th Avenue S.E., Lacey, WA 98503, phone (360) 725-2590, fax (360) 438-7903, e-mail mckeedd@dshs.wa.gov.

September 29, 2005

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2020 Definitions. "Abandonment" means action or inaction by a person with a duty of care for a

vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another;

(5) **"Financial exploitation"** means the illegal or improper use of the property, income, resources, or trust funds of the ~~(resident)~~ vulnerable adult by any person for any person's profit or advantage.

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Adult day ~~(care)~~ services" means care and services provided to individuals on the boarding home premises for a period of less than twenty-four continuous hours and does not involve an overnight stay.

"Ambulatory" means capable of walking or traversing a normal path to safety without the physical assistance of another individual:

(1) **"Nonambulatory"** means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) **"Semiambulatory"** means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

"Applicant" means the person, as defined in this section, that has submitted, or is in the process of submitting, an application for a boarding home license.

"Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

"Bathing fixture" means a bathtub, shower or sit-down shower.

"Bathroom" means a room containing at least one bathing fixture.

"Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, a boarding home that is licensed for three to six residents prior to or on July 1, 2000, may maintain its boarding home license as long as it is continually licensed as a boarding home. "Boarding home" does not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department of Housing and Urban Development. "Boarding home" may also include persons associated with the boarding home to carry out its duties under this chapter.

"Building code" means the building codes and standards adopted by the Washington state building code council.

"Caregiver" means anyone providing hands-on personal care to another person including, but not limited to: Cuing, reminding or supervision of residents, on behalf of a boarding home, except volunteers who are directly supervised. Direct supervision means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or who has been exempted from the basic training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Construction review services" means the office of construction review services within the Washington state department of health.

"Continuing care contract" means, as stated in RCW 70.38.025, a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

"Continuing care retirement community" means, as stated in RCW 70.38.025, an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Contractor" means an agency or person who contracts with a licensee to provide resident care, services or equipment.

"Crimes relating to financial exploitation" means the same as "crimes relating to financial exploitation" as defined in RCW 43.43.830 or 43.43.842.

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

"Dietitian" means an individual certified under chapter 18.138 RCW.

"Document" means to record, with signature, title, date and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, accident, occurrence or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events or activities that are required by law, rule or policy.

"Domiciliary care" means:

(1) Assistance with activities of daily living provided by the boarding home either directly or indirectly; or

(2) Health support services, if provided directly or indirectly by the boarding home; or

(3) Intermittent nursing services, if provided directly or indirectly by the boarding home.

"Enforcement remedy" means one or more of the department's responses to a boarding home's noncompliance with chapter 18.20 RCW and this chapter, as authorized by RCW 18.20.190.

"Food service worker" means according to chapter 246-217 WAC an individual who works (or intends to work) with or without pay in a food service establishment and handles unwrapped or unpackage food or who may contribute to the transmission of infectious diseases through the nature of his/her contact with food products and/or equipment and facilities. This does not include persons who simply assist residents with meals.

"General responsibility for the safety and well-being of the resident" means the provision of the following:

(1) Prescribed general low sodium diets;

(2) Prescribed general diabetic diets;

(3) Prescribed mechanical soft foods;

(4) Emergency assistance;

(5) Monitoring of the resident;

(6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;

(7) Coordinating health care services with outside health care providers consistent with WAC 388-78A-2350;

(8) Assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;

(9) Observation of the resident for changes in overall functioning;

(10) Blood pressure checks as scheduled;

(11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or

(12) Medication assistance as permitted under RCW 69.41.085 and as described in RCW 69.41.010 and chapter 246-888 WAC.

"Harm" means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

"Health support services" means any of the following optional services:

(1) Blood glucose testing;

(2) Puree diets;

(3) Calorie controlled diabetic diets;

(4) Dementia care;

(5) Mental health care; or

(6) Developmental disabilities care.

"Independent living unit" means:

(1) Independent senior housing;

(2) Independent living unit in a continuing care retirement community or other similar living environments;

(3) Boarding home unit where domiciliary services are not provided; or

(4) Boarding home unit where one or more items listed under "general responsibilities" are not provided.

"Independent senior housing" means an independent living unit occupied by an individual or individuals sixty or more years of age.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Licensee" means the person, as defined in this chapter, to whom the department issues the boarding home license.

"Licensed resident bed capacity" means the resident occupancy level requested by the licensee and approved by the department. All residents receiving domiciliary care or the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section count towards the licensed resident bed capacity. Adult day (~~care~~) services clients do not count towards the licensed resident bed capacity.

"Majority owner" means any person that owns:

(1) More than fifty percent interest; or

(2) If no one person owns more than fifty percent interest, the largest interest portion; or

(3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

"Manager" means the person defined in this chapter, providing management services on behalf of the licensee.

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

"Maximum facility capacity" means the maximum number of individuals that the boarding home may serve at any one time, as determined by the department.

(1) The maximum facility capacity includes all residents and respite care residents and adult day (~~care~~) services clients.

(2) The maximum facility capacity is equal to the lesser of:

(a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3); or

(b) Twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); or

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-3030; or

(d) For boarding homes licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC 388-78A-3050; or

(e) For boarding homes licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC 388-78A-3050.

(3) For the purposes of providing adult day services consistent with WAC 388-78A-2360, one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional sixty square feet of day room area greater than the area produced by multiplying the total number of approved bed spaces by twenty square feet, provided that:

(a) There is a least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

(b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); and

(c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

"Medication assistance" means assistance with self-administration of medication rendered by a nonpractitioner to a resident of a boarding home in accordance with chapter 246-888 WAC.

"Medication organizer" means a container with separate compartments for storing oral medications organized in daily doses.

"Medication service" means any service provided either directly or indirectly by a boarding home related to medication administration, medication administration provided through nurse delegation, medication assistance, or resident self-administration of medication.

"Neglect" means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety.

"Nonresident individual" means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in a boarding home and may receive one or more of the services listed in WAC 388-78A-2030 (2)(a) through (g), but may not receive domiciliary care as defined in this section, directly or indirectly by the facility, and may not receive the items or services listed under general

responsibility for the safety and well-being of the resident as defined in this section.

"Nonpractitioner" means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter 69.41 RCW.

"Nurse" means an individual currently licensed under chapter 18.79 RCW as either a:

(1) **"Licensed practical nurse"** (LPN); or

(2) **"Registered nurse"** (RN).

"Over-the-counter (OTC) medication" means any medication that may be legally purchased without a prescriptive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association or any other legal or commercial entity.

"Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

"Practitioner" includes a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

"Prescribed medication" means any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe drugs.

"Problem" means a violation of any WAC or RCW applicable to the operation of a boarding home:

(1) **"Recurring problem"** means, for all purposes other than those described in RCW 18.20.400, that the department has cited the boarding home for a violation of WAC or RCW and the circumstances of (a) or (b) of this subsection are present:

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(c) If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient.

(d) When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that boarding home if any person affiliated with the new licensee was affiliated with the prior licensee at the same boarding home. A person is considered affiliated with the licensee if the person is an applicant for the boarding home license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(2) **"Serious problem"** means:

(a) There has been a violation of a WAC or RCW; and

(b) Significant harm has actually occurred to a resident;
or

(c) It is likely that significant harm or death will occur to a resident.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected. When a change in licensees occurs, the new licensee is responsible for correcting any remaining violations that may exist, including complying with any plan of correction in effect immediately prior to the change in licensees.

"Prospective resident" means an individual who is seeking admission to a licensed boarding home and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

"Reasonable accommodation" and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the boarding home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of boarding home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the boarding home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Resident" means an individual who:

(1) Chooses to reside in a boarding home, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the boarding home;

(3) Receives basic services; and

(4) Receives one or more of the services listed under general responsibility for the safety and well-being of the res-

ident, and may receive domiciliary care or respite care provided directly, or indirectly, by the boarding home.

"Resident's representative" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the boarding home and to receive information from the boarding home if there is no legal representative. The resident's representative may not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88.010 (1)(e).

"Respite care" means short-term care for any period in excess of twenty-four continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

"Restraint" means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) Confinement, unless agreed to as provided in WAC 388-78A-2370;

(2) **"Chemical restraint"** which means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms; and

(3) **"Physical restraint"** which means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.

"Room" means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom or closet.

"Significant change" means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

"Special needs" means a developmental disability, mental illness, or dementia.

"Staff person" means any boarding home employee or temporary employee or contractor, whether employed or retained by the licensee or any management company, or volunteer.

"State fire marshal" means the director of fire protection under the direction of the chief of the Washington state patrol.

"Toilet" means a disposal apparatus used for urination and defecation, fitted with a seat and flushing device.

"**Volunteer**" means an individual who interacts with residents without reimbursement.

"**Vulnerable adult**" means "vulnerable adult" as defined in chapter 74.34 RCW. For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"**WAC**" means Washington Administrative Code.

"**WISHA**" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the Washington state department of labor and industries.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2050 Resident characteristics. The boarding home may admit and retain an individual as a resident in a boarding home only if:

(1) The boarding home can safely and appropriately serve the individual with appropriate available staff providing:

(a) The scope of care and services described in the boarding home's disclosure information, except if the boarding home chooses to provide additional services consistent with RCW 18.20.300(4); and

(b) The reasonable accommodations required by state or federal law, including providing any specialized training to caregivers that may be required according to WAC 388-78A-2490 through 388-78A-2510;

(2) The individual does not require the frequent presence and frequent evaluation of a registered nurse, excluding those individuals who are receiving hospice care or individuals who have a short-term illness that is expected to be resolved within fourteen days as long as the boarding home has the capacity to meet the individual's identified needs; and

(3) The individual is ambulatory, unless the boarding home is approved by the Washington state director of fire protection to care for semiambulatory or nonambulatory residents.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2100 On-going assessments. The boarding home must:

(1) Complete a full assessment addressing the elements set forth in WAC 388-78A-2090 for each resident at least annually;

(2) Complete an assessment specifically focused on a resident's identified problems and related issues:

(a) Consistent with the resident's change of condition as specified in WAC 388-78A-2120; (~~(b)~~)

(b) When the resident's negotiated service agreement no longer addresses the resident's current needs and preferences;

(c) When the resident has an injury requiring the intervention of a practitioner.

(3) Ensure the staff person performing the on-going assessments is qualified to perform them.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2120 Monitoring residents' well-being. The boarding home must:

(1) Observe each resident consistent with his or her assessed needs and negotiated service agreement;

(2) Identify any changes in the resident's physical, emotional, and mental functioning that are a:

(a) Departure from the resident's customary range of functioning; or

(b) Recurring condition in a resident's physical, emotional, or mental functioning that has previously required intervention by others.

(3) Evaluate ~~((the change identified in the resident per subsection (2) of this section)), in order to determine if there is a need for further action((, including, but not limited to, assessment));~~

(a) The changes identified in the resident per subsection (2) of this section; and

(b) Each resident when an accident or incident that is likely to adversely affect the resident's well-being, is observed by or reported to staff persons.

~~(4) ((Ensure that changes that may require further action by the boarding home are documented in the resident's record, including dates, times, and facts;~~

~~(5) Assess a resident consistent with WAC 388-78A-2100 if assessment is identified as needed;~~

~~(6) Update the negotiated service agreement as needed; and~~

~~(7)) Take appropriate action in response to each resident's changing needs.~~

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2270 Resident controlled medications. (1) The boarding home must ensure all medications are stored in a manner that prevents each resident from gaining access to another resident's medications.

(2) The boarding home must allow a resident((s who are assessed to be capable of self-administration or self-administration with assistance)) to control and secure the medications ((they)) that he or she self-administers or self-administers with assistance if the boarding home assesses the resident to be capable of safely and appropriately storing his or her own medications and the resident desires to do so.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2280 Medication organizers. (1) The boarding home must ensure no staff person other than a nurse or licensed pharmacist fills medication organizers for residents.

(2) ((A)) The boarding home must ensure that any nurse ((may)) who fills a medication organizer for a resident ((only when)) labels the medication organizer with:

(a) ((The resident understands the use of the medications that have been prescribed for him or her; and

~~(b) The resident is totally independent with self-administration of medications when using a medication organizer, except for the physical assistance required to fill the medication organizer, or the resident can safely direct others to administer his or her medications; and~~

~~(c) Staff persons have no further responsibility for:~~

~~(i) Storing the resident's medication; or~~

~~(ii) Providing any additional medication assistance to the resident beyond filling the medication organizer; or~~

~~(iii) Providing medication administration services to the resident.~~

~~(d) The medication organizer carries a label that clearly identifies:~~

~~(i) The name of the resident;~~

~~(ii) The name of the medications in the organizer;~~

and

~~(iii) The frequency of the dosage.~~

~~(3) The boarding home must ensure a licensed pharmacy has filled the medication organizer any time the boarding home is:~~

~~(a) Involved in storing the resident's medications;~~

~~(b) Providing medication assistance to the resident; or~~

~~(c) Providing medication administration services to the resident.)~~

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2300 Food and nutrition services. (1)

The boarding home must:

(a) Provide a minimum of three meals a day:

(i) At regular intervals;

(ii) With no more than fourteen hours between the evening meal and breakfast, unless the boarding home provides a nutritious snack after the evening meal and before breakfast.

(b) Provide sufficient time and staff support for residents to consume meals;

(c) Ensure all menus:

(i) Are written at least one week in advance and delivered to residents' rooms or posted where residents can see them, except as specified in (f) of this subsection;

(ii) Indicate the date, day of week, month and year;

(iii) Include all food and snacks served that contribute to nutritional requirements;

(iv) Are ~~(retained)~~ kept at least six months;

(v) Provide a variety of foods; and

(vi) Are not repeated for at least three weeks, except that breakfast menus in boarding homes that provide a variety of daily choices of hot and cold foods are not required to have a minimum three-week cycle.

(d) Prepare on-site, or provide through a contract with a food service establishment located in the vicinity and that meets the requirements of chapter 246-215 WAC, palatable, attractively served meals and nourishments that meet the current recommended dietary allowances established by the Food and Nutrition Board, National Research Council, adjusted for:

(i) Age, gender and activities, unless medically contraindicated; and

(ii) Individual preferences to the extent reasonably possible.

(e) Substitute foods, when changes in the current day's menu are necessary, of equal nutrient value and record changes on the original menu;

(f) Make available and known to residents alternate choices in entrees for midday and evening meals that are of comparable quality and nutritional value. The boarding home is not required to post alternate choices in entrees on the menu one week in advance, but must record on the menus the alternate choices in entrees that are served;

(g) Develop, make known to residents, and implement a process for residents to express their views and comment on the food services; and

(h) Maintain a dining area or areas approved by the department with a seating capacity for fifty percent or more of the residents per meal setting, or ten square feet times the licensed resident bed capacity, whichever is greater.

(2) The boarding home must plan in writing, prepare on-site or provide through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC, and serve to each resident as ordered:

(a) Prescribed general low sodium, general diabetic, and mechanical soft food diets according to a diet manual. The boarding home must ensure the diet manual is:

(i) Available to and used by staff persons responsible for food preparation;

(ii) Approved by a dietitian; and

(iii) Reviewed and updated as necessary or at least every five years.

(b) Prescribed nutrient concentrates and supplements when prescribed in writing by a health care practitioner.

(3) The boarding home may provide to a resident at his or her request and as agreed upon in the resident's negotiated service agreement, nonprescribed:

(a) Modified or therapeutic diets;

(b) Nutritional concentrates or supplements.

~~(4) The boarding home must manage food, and maintain any on-site food service facilities in compliance with chapter 246-215 WAC, Food service sanitation, except that boarding homes licensed for sixteen or fewer beds may use domestic or home-type kitchen appliances, provided that:~~

~~(a) If a home-type mechanical dishwasher was installed before September 1, 2004, the boarding home must:~~

~~(i) Operate it according to manufacturer directions; and~~

~~(ii) Ensure the dishwasher is supplied with water heated to 155°F or more.~~

~~(b) If a home-type mechanical dishwasher is installed after September 1, 2004, the boarding home must ensure the dishwasher has:~~

~~(i) A high temperature final rinse water at a minimum of 180°F measured by the gauge;~~

~~(ii) A high temperature final rinse resulting in a minimum of 160°F measured at the surface of the utensil;~~

~~(iii) A continuous supply of water heated to 155°F throughout its operating cycle; or~~

~~(iv) An automatically dispensed approved concentration of chemical sanitizer as described in 21 C.F.R. Part 178.~~

~~(5) The boarding home must ensure employees working as food service workers obtain a food worker card according to chapter 246-217 WAC.~~

~~(6) The boarding home must ensure a resident obtains a food worker card according to chapter 246-217 WAC whenever:~~

~~(a) The resident is routinely or regularly involved in the preparation of food to be served to other residents;~~

~~(b) The resident is paid for helping to prepare food; or~~

~~(c) The resident is preparing food to be served to other residents as part of an employment-training program.))~~

NEW SECTION

WAC 388-78A-2305 Food sanitation. The boarding home must:

(1) Manage food, and maintain any on-site food service facilities in compliance with chapter 246-215 WAC, Food service;

(2) Ensure employees working as food service workers obtain a food worker card according to chapter 246-217 WAC; and

(3) Ensure a resident obtains a food worker card according to chapter 246-217 WAC whenever:

(a) The resident is routinely or regularly involved in the preparation of food to be served to other residents;

(b) The resident is paid for helping to prepare food; or

(c) The resident is preparing food to be served to other residents as part of an employment-training program.

Adult Day Care

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2360 Adult day ((eare)) services. (1) The boarding home may, but is not required to, provide an adult day ((eare)) services program for nonresidents.

(2) If adult day ((eare is)) services are provided, the boarding home must:

(a) Ensure each adult day ((eare)) services client receives appropriate supervision and agreed upon care and services during the time spent in the day ((eare)) services program;

(b) Ensure the care and services provided to adult day ((eare)) services clients do not compromise the care and services provided to boarding home residents;

(c) Ensure the total number of residents plus adult day ((eare)) services clients does not exceed the boarding home's maximum facility capacity;

(d) Only accept adult day ((eare)) services clients who are appropriate for boarding home care and services, consistent with WAC 388-78A-2050;

(e) Provide sufficient furniture for the comfort of day ((eare adults)) services clients, in addition to furniture provided for residents;

(f) Notify appropriate individuals specified in the client's record and consistent with WAC 388-78A-2640 when there is a significant change in the condition of an adult day ((eare)) services client;

(g) Investigate and document incidents and accidents involving adult day ((eare)) services clients consistent with WAC 388-78A-2700;

(h) Maintain a separate register of adult day ((eare)) services clients; and

(i) Maintain a resident record for each adult day ((eare)) services client.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2380 Restricted egress. A boarding home must ensure all of the following conditions are present before moving residents into units or buildings with exits that may restrict a resident's egress:

(1) Each resident, or a person authorized under RCW 7.70.065 to provide consent on behalf of the resident, consents to living in such unit or building.

(2) Each resident assessed as being cognitively and physically able to safely leave the boarding home is able to do so independently without restriction.

(3) Each resident, assessed as being cognitively able to safely leave the boarding home and who has physical challenges that make exiting difficult, is able to leave the boarding home when the resident desires and in a manner consistent with the resident's negotiated service agreement.

(4) Each resident who is assessed as being unsafe to leave the boarding home unescorted is able to leave the boarding home consistent with his or her negotiated service agreement.

(5) Areas from which egress is restricted are equipped throughout with an approved automatic fire detection system and automatic fire sprinkler system electrically interconnected with a fire alarm system that transmits an alarm off site to a twenty-four hour monitoring station.

(6) Installation of special egress control devices in all proposed construction issued a project number by construction review services on or after September 1, 2004 for construction related to this section, must conform to standards adopted by the state building code council.

(7) Installation of special egress control devices in all construction issued a project number by construction review services ((prior to)) before September 1, 2004 for construction related to this section, must conform to the following:

(a) The egress control device must automatically deactivate upon activation of either the sprinkler system or the smoke detection system.

(b) The egress control device must automatically deactivate upon loss of electrical power to any one of the following:

(i) The egress control device itself;

(ii) The smoke detection system; or

(iii) The means of egress illumination.

(c) The egress control device must be capable of being deactivated by a signal from a switch located in an approved location.

(d) An irreversible process which will deactivate the egress control device must be initiated whenever a manual force of not more than fifteen pounds is applied for two seconds to the panic bar or other door-latching hardware. The egress control device must deactivate within an approved

time period not to exceed a total of fifteen seconds. The time delay must not be field adjustable.

(e) Actuation of the panic bar or other door-latching hardware must activate an audible signal at the door.

(f) The unlatching must not require more than one operation.

(g) A sign must be provided on the door located above and within twelve inches of the panic bar or other door-latching hardware reading:

"Keep pushing. The door will open in fifteen seconds. Alarm will sound."

The sign lettering must be at least one inch in height and must have a stroke of not less than one-eighth inch.

(h) Regardless of the means of deactivation, relocking of the egress control device must be by manual means only at the door.

(8) The boarding home must have a system in place to inform and permit visitors, staff persons and appropriate residents how they can exit without sounding the alarm.

(9) Units or buildings from which egress is restricted are equipped with a secured outdoor space for walking which:

(a) Is accessible to residents without staff assistance;

(b) Is surrounded by walls or fences at least seventy-two inches high;

(c) Has areas protected from direct sunshine and rain throughout the day;

(d) Has walking surfaces that are firm, stable, slip-resistant and free from abrupt changes and are suitable for individuals using wheelchairs and walkers; and

(e) Has suitable outdoor furniture.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2470 Criminal history background checks. (1) This section applies to any individual associated with the licensee or boarding home who may have unsupervised access to residents, including but not limited to:

(a) Employees;

(b) Managers;

(c) Volunteers who are not residents;

(d) Contractors; and

(e) Students.

(2) The boarding home must:

(a) Ensure any individual associated with the licensee or boarding home who may have unsupervised access to residents has had a background check of conviction records, pending charges and disciplinary board decisions completed within the past two years, and is repeated every two years thereafter, and that individual has not been:

(i) Convicted of a crime against children or other persons as defined in RCW 43.43.830 or 43.43.842;

(ii) Convicted of ~~((a))~~ crimes relating to financial exploitation as defined in RCW 43.43.830 or 43.43.842;

(iii) Found in any disciplinary board final decision to have abused a vulnerable adult as defined in RCW 43.43.830;

(iv) The subject in a protective proceeding under chapter 74.34 RCW;

(v) Convicted of criminal mistreatment; or

(vi) Found by the department to have abused, neglected, or exploited a minor or vulnerable person, provided the individual was offered an administrative hearing to contest the finding, and the finding was upheld, or the individual failed to timely appeal the finding.

(b) Not hire or retain, directly or by contract, or accept as a volunteer, any individual prohibited from having unsupervised access to residents~~((s))~~ under (a) of this subsection, except as provided in subsection (6) of this section and RCW 43.43.842.

~~((c))~~ Not hire, directly or by contract, or accept as a volunteer, any individual who may have unsupervised access to residents, prior to receiving favorable results of the background check except as specified in subsection (2) of this section.

~~((d))~~ (3) Prior to first starting his or her duties, the boarding home must:

(a) Require each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents to disclose, consistent with RCW 43.43.834(2), whether he or she:

(i) Has been convicted of a crime, including any of the following as defined in RCW 43.43.830:

(A) All crimes against children or their persons;

(B) All crimes relating to financial exploitation; and

(C) All crimes relating to drugs;

(ii) Has had findings made against him or her in any civil adjudicative proceeding as defined in RCW 43.43.830; or

(iii) Has both convictions for (i) and findings made against him or her under (ii).

(b) Require each individual making the disclosures required in subsection (3)(a) of this section:

(i) To make the disclosures in writing;

(ii) To swear under penalty of perjury that the contents of the disclosure are accurate; and

(iii) To sign the disclosure statement.

(4) Prior to first starting his or her duties, the boarding home must take one or more of the following three actions for each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents:

(a) Initiate a background check on the individual through the department, which includes taking the following actions:

(i) Informing ~~((every))~~ the individual ~~((who is associated with the boarding home and who will have unsupervised access to residents in the boarding home,))~~ that a background check is required. ~~((This requirement includes, but is not limited to, the following:~~

(i) Employees;

(ii) Managers;

(iii) Volunteers who are not residents;

(iv) Contractors; and

(v) Students;

~~((e))~~ Require) (ii) Requiring the individual ~~((s identified in ~~((d))~~ of this subsection))~~ to complete and sign a DSHS background authorization form prior to the individual having unsupervised access to residents;

~~((f))~~ (iii) Submitting all background check authorization forms to the department's;

~~((†))~~ (A) Aging and disability services administration with the initial application for licensure; and

~~((†))~~ (B) Background check central unit ~~((every two years for each individual identified in (d) of this subsection. A background check result is only valid for two years from the date it is conducted))~~ for currently licensed boarding homes.

~~((g))~~ (iv) Verbally informing the named individual of his/her individual background check results and offering to provide him or her a copy of the background check results within ten days of receipt~~((s))~~.

(b) Obtain from the individual's prior employer a copy of the completed criminal background inquiry information for the individual, subject to the following conditions:

(i) The prior employer was a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW:

(ii) The nursing home, boarding home or adult family home providing completed criminal background inquiry information for the individual is reasonably known to be the individual's most recent employer:

(iii) No more than twelve months has elapsed from the date the individual was employed by the nursing home, boarding home or adult family home and the date of the individual's current application:

(iv) The background inquiry for the individual is no more than two years old; and

(v) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in RCW 43.43.842.

(c) When using staff persons from a home health, hospice, or home care agency licensed under chapter 70.127 RCW, or a nursing pool registered under chapter 18.52C RCW, the boarding home must establish, maintain and follow a written agreement with the agency or pool to ensure the requirements of subsection (2) of this section are met for the agency or pool staff who may work in the boarding home.

~~((h))~~ (5) The boarding home must ensure that all disclosure statements, and background check results obtained by the boarding home, are:

~~((†))~~ (a) Maintained on-site in a confidential and secure manner;

~~((†))~~ (b) Used for employment purposes only;

~~((†))~~ (c) Not disclosed to any individual except:

~~((A))~~ (i) The individual named on the background check result;

~~((B))~~ (ii) Authorized state and federal employees;

~~((C))~~ (iii) The Washington state patrol auditor; and

~~((D))~~ (iv) As otherwise authorized in chapter 43.43 RCW.

~~((†))~~ (d) Retained and available for department review:

~~((A))~~ (i) During the individual's employment or association with a facility; and

~~((B))~~ (ii) At least two years following termination of employment or association with a facility.

~~((Z))~~ (6) The boarding home may conditionally hire, directly or by contract, an individual having unsupervised

access to residents pending a background inquiry, provided the boarding home:

(a) Obtains a criminal history background check authorization form from the individual prior to the individual beginning work;

(b) Submits the criminal history background check authorization form to the department no later than one business day after the individual started working; and

(c) Has received three positive references for the individual.

~~((Z))~~ (7) The department may require the boarding home or any other individual associated with the boarding home who has unsupervised access to residents to complete additional disclosure statements or background inquiries if the department has reason to believe that offenses specified under RCW 43.43.830 have occurred since completion of the previous disclosure statement or background inquiry.

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

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2480 TB tests. (1) The boarding home must ensure each staff person, except for volunteers and contractors, is screened for tuberculosis, as follows:

(a) Except when a staff person provided the boarding home with documentation of a previous positive Mantoux skin test, a staff person hired before September 1, 2004 must have had:

(i) A tuberculin skin test by the Mantoux method within six months preceding the date of employment in the boarding home; and

(ii) A second tuberculin skin test within one to three weeks after a negative Mantoux test if the staff person was thirty-five years of age or older at the time of hiring.

(b) A staff person hired on or after September 1, 2004 must have a baseline two-step skin test initiated within three days of being hired unless the staff person meets the requirements in ~~((b))~~ (c) or ~~((e))~~ (d) of this subsection. The skin tests must be:

(i) Given no less than one and no more than three weeks apart;

(ii) By intradermal (Mantoux) administration of purified protein derivative (PPD);

(iii) Read between forty-eight and seventy-two hours following administration, by trained personnel; and

(iv) Recorded in millimeters of induration.

~~((b))~~ (c) A staff person needs to have only a one-step skin test within three days of being hired if:

(i) There is documented history of a negative result from previous two-step testing; or

(ii) There was a documented negative result from one-step skin testing in the previous twelve months.

~~((e))~~ (d) A staff person does not need to be skin tested for tuberculosis if he/she has:

(i) Documented history of a previous positive skin test consisting of ten or more millimeters of induration; or

(ii) Documented evidence of adequate therapy for active disease; or

(iii) Documented evidence of adequate preventive therapy for infection.

(d) If a skin test results in a positive reaction, the boarding home must:

(i) Ensure that the staff person has a chest X ray within seven days;

(ii) Report positive chest X rays to the appropriate public health authority; and

(iii) Follow precautions ordered by a physician or public health authority.

(2) The boarding home must:

(a) ~~((Retain))~~ Keep in the boarding home for the duration of the staff person's employment, and at least two years following termination of employment, records of:

(i) Tuberculin test results;

(ii) Reports of X-ray findings; and

(iii) Physician or public health official orders.

(b) Provide staff persons with a copy of the records specified in (a) of this subsection:

(i) During the time the staff person is employed in the boarding home, limited to one copy per report; and

(ii) When requested by the staff person.

(3) The boarding home must ensure that caregivers caring for a resident with suspected tuberculosis comply with the WISHA standard for respiratory protection.

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 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2490 Specialized training for developmental disabilities. (1) The boarding home must provide caregivers with specialized training, consistent with chapter 388-112 WAC, to serve residents with developmental disabilities, whenever at least one of the residents in the boarding home ~~((is:~~

~~(1) A person who meets the eligibility criteria for services defined in chapter 388-825 WAC; or~~

~~(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism), and:~~

~~(a) The condition was manifested before the person reached eighteen;~~

~~(b) The condition is likely to continue indefinitely; and~~

~~(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:~~

~~(i) Self-care;~~

~~(ii) Understanding and use of language;~~

~~(iii) Learning;~~

~~(iv) Mobility;~~

~~(v) Self-direction; and~~

~~(vi) Capacity for independent living)) has a developmental disability as defined in WAC 388-823-0040, that is the resident's primary special need.~~

~~(2) Nothing in this section is intended to require additional specialty training beyond that required by WAC 388-112-0115.~~

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2500 Specialized training for mental illness. (1) The boarding home must provide caregivers with specialized training, consistent with chapter 388-112 WAC, to serve residents with mental illness, whenever at least one of the residents in the boarding home has a mental illness that is the resident's primary special need and is a person who has been diagnosed with or treated for an Axis I or Axis II diagnosis, as described in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision*, and:

~~((+))~~ (a) Who has received the diagnosis or treatment within the previous two years; and

~~((=))~~ (b) Whose diagnosis was made by, or treatment provided by, one of the following:

~~((*)~~ (i) A licensed physician;

~~((b))~~ (ii) A mental health professional;

~~((e))~~ (iii) A psychiatric advanced registered nurse practitioner; or

~~((+))~~ (iv) A licensed psychologist.

~~(2) Nothing in this section is intended to require additional specialty training beyond that required by WAC 388-112-0115.~~

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2510 Specialized training for dementia. (1) The boarding home must provide caregivers with specialized training, consistent with chapter 388-112 WAC, to serve residents with dementia, whenever at least one of the residents in the boarding home has a dementia that is the resident's primary special need and has symptoms consistent with dementia as assessed per WAC 388-78A-2090(7).

~~(2) Nothing in this section is intended to require additional specialty training beyond that required by WAC 388-112-0115.~~

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2520 Administrator qualifications. (1) The licensee must appoint an administrator who is at least twenty-one years old and who is not a resident, and is qualified to perform the administrator's duties specified in WAC 388-78A-2560.

(2) The licensee must only appoint as a boarding home administrator an individual who meets at least one of the following qualifications listed in (a) through (f) of this subsection:

(a) The individual was actively employed as a boarding home administrator and met existing qualifications on September 1, 2004;

(b) The individual holds a current Washington state nursing home administrator license in good standing;

(c) Prior to assuming duties as a boarding home administrator, the individual has met the qualifications listed in both (c)(i) and (ii) of this subsection:

(i) Obtained certification of completing a recognized administrator training course consisting of a minimum of twenty-four hours of instruction or equivalent on-line training or certification of passing an administrator examination, from or endorsed by a department-recognized national accreditation health or personal care organization such as:

(A) The American Association of Homes and Services for the Aging; or

(B) The American College of Health Care Administrators; or

~~(C)~~ (C) The American Health Care Association; or

~~((C))~~ (D) The Assisted Living Federation of America;

or

~~((D))~~ (E) The National Association of Board of Examiners of Long Term Care Administrators.

(ii) Three years paid experience:

(A) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

(d) The individual holds an associate degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either (d)(i), (ii) or (iii) of this subsection:

(i) Obtains certification of completing a recognized administrator training course consisting of a minimum of twenty-four hours of instruction or equivalent on-line training, or certification of passing an administrator examination, within six months of beginning duties as the administrator, from or endorsed by a department-recognized national accreditation health or personal care organization such as:

(A) The American Association of Homes and Services for the Aging; or

(B) The American College of Health Care Administrators; or

~~(C)~~ (C) The American Health Care Association; or

~~((C))~~ (D) The Assisted Living Federation of America;

or

~~((D))~~ (E) The National Association of Board of Examiners of Long Term Care Administrators.

(ii) Has two years paid experience:

(A) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

(ii) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

(e) The individual holds a bachelor's degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either (e)(i), (ii) or (iii) of this subsection:

(i) Obtains certification of completing a recognized administrator training course consisting of a minimum of twenty-four hours of instruction or equivalent on-line training, or certification of passing an administrator examination, within six months of beginning duties as the administrator, from or endorsed by a department-recognized national accreditation health or personal care organization such as:

(A) The American Association of Homes and Services for the Aging; or

(B) The American College of Health Care Administrators; or

~~(C)~~ (C) The American Health Care Association; or

~~((C))~~ (D) The Assisted Living Federation of America;

or

~~((D))~~ (E) The National Association of Board of Examiners of Long Term Care Administrators.

(ii) Has one year paid experience:

(A) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

(ii) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

(f) ~~(Prior to)~~ Before assuming duties as an administrator, the individual has five years of paid experience:

(i) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(ii) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2660 Resident rights. The boarding home must:

- (1) Comply with chapter 70.129 RCW, Long-term care resident rights;
- (2) Ensure all staff persons provide care and services to each resident consistent with chapter 70.129 RCW;
- (3) Not use restraints on any resident;
- (4) Promote and protect the residents' exercise of all rights granted under chapter 70.129 RCW;
- (5) Provide care and services to each resident in compliance with applicable state statutes related to substitute health care decision making, including chapters 7.70, 70.122, 11.88, 11.92, and 11.94 RCW; ~~((and))~~
- (6) Reasonably accommodate residents consistent with applicable state and/or federal law; and
- (7) Not allow any staff person or resident to abuse or neglect any resident.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2700 Safety measures and disaster preparedness. (1) The boarding home must take necessary action to promote the safety of each resident whenever the resident is on the boarding home premises or under the supervision of staff persons, consistent with the resident's negotiated service agreement.

- (2) The boarding home must:
 - (a) Maintain the premises free of hazards;
 - (b) Maintain any vehicles used for transporting residents in a safe condition;
 - (c) Investigate and document investigative actions and findings for any alleged or suspected neglect or abuse or exploitation, accident or incident jeopardizing or affecting a resident's health or life. The boarding home must:
 - (i) Determine the circumstances of the event;
 - (ii) When necessary, institute and document appropriate measures to prevent similar future situations if the alleged incident is substantiated; and
 - (iii) Protect other residents during the course of the investigation.
 - (d) Provide appropriate hardware on doors of storage rooms, closets and other rooms to prevent residents from being accidentally locked in;
 - (e) Provide, and ~~((advise))~~ tell staff persons of, a means of emergency access to resident-occupied bedrooms, toilet rooms, bathing rooms, and other rooms;
 - (f) Provide emergency lighting or flashlights in all areas of the boarding home. For all boarding homes first issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must provide emergency lighting in all areas of the boarding home;
 - (g) Make sure first-aid supplies are:
 - (i) Readily available and not locked;
 - (ii) Clearly marked;
 - (iii) Able to be moved to the location where needed; and

(iv) Stored in containers that protect them from damage, deterioration, or contamination.

- (h) Make sure first-aid supplies are appropriate for:
 - (i) The size of the boarding home;
 - (ii) The services provided;
 - (iii) The residents served; and
 - (iv) The response time of emergency medical services.
- (i) Develop and maintain a current disaster plan describing measures to take in the event of internal or external disasters, including, but not limited to:
 - (i) On-duty staff persons' responsibilities;
 - (ii) Provisions for summoning emergency assistance;
 - (iii) Plans for evacuating residents from area or building;
 - (iv) Alternative resident accommodations;
 - (v) Provisions for essential resident needs, supplies and equipment including water, food, and medications; and
 - (vi) Emergency communication plan.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2910 Applicable building codes. (1) Newly licensed boarding homes and construction in existing boarding homes must meet the requirements of all the current building codes and applicable sections of this chapter.

(2) Existing licensed boarding homes must continue to meet the building codes in force at the time of their initial licensing.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2920 Area for nursing supplies and equipment. (1) If the boarding home provides intermittent nursing services, the boarding home must provide on the boarding home premises for the safe and sanitary:

- (a) Storage and handling of clean and sterile nursing equipment and supplies; and
 - (b) Cleaning and disinfecting of soiled nursing equipment.
- (2) For all boarding homes first issued a project number by construction review services on or after September 1, 2004 for construction related to this section, in which intermittent nursing services are provided, or upon initiating intermittent nursing services within an existing boarding home, the boarding home must provide the following two separate rooms in each boarding home building, accessible only by staff persons:
- (a) A "clean" utility room for the purposes of storing and preparing clean and sterile nursing supplies, equipped with:
 - (i) A work counter or table;
 - (ii) A handwashing sink, with soap and paper towels or other approved hand-drying device; and
 - (iii) Locked medication storage, if medications are stored in this area, that is separate from all other stored items consistent with WAC 388-78A-2260.
 - (b) A "soiled" utility room for the purposes of storing soiled linen, cleaning and disinfecting soiled nursing care equipment, and disposing of refuse and infectious waste, equipped with:
 - (i) A work counter or table;

- (ii) A two-compartment sink for handwashing and equipment cleaning and sanitizing;
- (iii) A clinical service sink or equivalent for rinsing and disposing of waste material;
- (iv) Soap and paper towels or other approved hand-drying device; and
- (v) Locked storage for cleaning supplies, if stored in the area.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2930 Communication system. (1) The boarding home must:

(a) Provide residents and staff persons with the means to summon on-duty staff assistance (~~((from))~~):

- (i) From resident units;
- (ii) From common areas accessible to residents;
- (iii) From corridors accessible to residents; and
- (iv) For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, all bathrooms (~~((and))~~), all toilet rooms (~~((in boarding homes issued a project number by construction review services on or after September 1, 2004))~~), resident living rooms and sleeping rooms.

(b) Provide residents, families, and other visitors with a means to contact a staff person inside the building from outside the building after hours.

(2) The boarding home must provide one or more non-pay telephones:

- (a) In each building located for ready access by staff persons; and
- (b) On the premises (~~((for))~~) with reasonable access and privacy by residents.

(3) In boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must equip each resident room with(~~(=~~

~~(a) An))~~ two telephone lines.

(4) If a boarding home that is issued a project number by construction services on or after September 1, 2004 chooses to install an intercom system, the intercom system must be equipped with a mechanism that allows a resident to control:

- ~~((+))~~ (a) Whether or not announcements are broadcast into the resident's room; and
 - ~~((+))~~ (b) Whether or not voices or conversations within the resident's room can be monitored or listened to by persons outside the resident's room.
- ~~((b) Two telephone lines.))~~

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2940 Two-way intercom systems. The boarding home may use a two-way intercom system between staff persons and residents in other rooms only when:

- (1) A resident initiates the contact; or
- (2) Staff persons announce to the resident that the intercom has been activated at the time it is activated, and:
 - (a) The resident and any others in the room agree to continue the contact;

(b) ~~((A visible signal is activated in the resident's room at all times the intercom is in operation; and~~

~~((+))~~ The boarding home deactivates the intercom when the conversation is complete; and

(c) The boarding home ensures each resident is aware the intercom is operating at all times the intercom is in use in the resident's room.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2960 Sewage and liquid waste disposal. The boarding home must:

(1) Ensure that all sewage and waste water drain into a municipal sewage disposal system (~~((in accordance with))~~ according to chapter 246-271 WAC, if available; or

(2) Provide on-site sewage disposal systems designed, constructed, and maintained as required by chapters 246-272 and 173-240 WAC, and local ordinances(~~(; and~~

~~(3) Provide a grease interceptor when the boarding home has an on-site commercial kitchen or septic system in accordance with chapter 246-272 WAC)).~~

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2990 Heating-cooling—Temperature. The boarding home must:

(1) Equip each resident-occupied building with an approved heating system capable of maintaining a minimum temperature of 70°F per the building code. The boarding home must:

(a) Maintain the boarding home at a minimum temperature of 60°F during sleeping hours; and

(b) Maintain the boarding home at a minimum of 68°F during waking hours, except in rooms:

(i) Designated for activities requiring physical exertion; or

(ii) Where residents can individually control the temperature in their own living units, independent from other areas.

(2) Equip each resident-occupied building with a mechanical air cooling system or equivalent capable of maintaining a temperature of 75°F in communities where the design dry bulb temperature exceeds 85°F for one hundred seventy-five hours per year or two percent of the time, as specified in the latest edition of "*Recommended Outdoor Design Temperatures—Washington State*," published by the Puget Sound chapter of the American Society of Heating, Refrigeration, and Air-Conditioning Engineers;

(3) Equip each boarding home issued a project number by construction review services on or after September 1, 2004 for construction related to this section, with a backup source of heat in enough common areas to keep all residents adequately warm during interruptions of normal heating operations;

(4) Prohibit the use of portable space heaters unless approved in writing by the Washington state director of fire protection; and

(5) Equip each resident sleeping room and resident living room in boarding homes issued a project number by con-

struction review services on or after September 1, 2004 for construction related to this section, with individual temperature controls located between thirty and forty-eight inches above the floor capable of maintaining room temperature plus or minus 3°F from setting, within a range of minimum 60°F to maximum 85°F.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3010 Resident room—Room furnishings-storage. (1) The boarding home must ensure each resident has a sleeping room that has:

(a) Eighty or more square feet of usable floor space in a one-person sleeping room;

(b) Seventy or more square feet of usable floor space per individual in a sleeping room occupied by two or more individuals, except:

(i) When a resident sleeping room is located within a private apartment; and

(ii) The private apartment includes a resident sleeping room, a resident living room, and a private bathroom; and

(iii) The total square footage in the private apartment equals or exceeds two hundred twenty square feet excluding the bathroom; and

(iv) There are no more than two residents living in the apartment; and

(v) Both residents mutually agree to share the resident sleeping room; and

(vi) All other requirements of this section are met, then the two residents may share a sleeping room with less than one hundred forty square feet.

(c) A maximum sleeping room occupancy of:

(i) Four individuals if the boarding home was licensed before July 1, 1989, and licensed continuously thereafter; and

(ii) Two individuals if the boarding home, after June 30, 1989:

(A) Applied for initial licensure; or

(B) Applied to increase the number of resident sleeping rooms; or

(C) Applied to change the use of rooms into sleeping rooms.

(d) Unrestricted direct access to a hallway, living room, outside, or other common-use area;

(e) One or more outside windows with:

(i) Window sills at or above grade, with grade extending horizontally ten or more feet from the building; and

(ii) Adjustable curtains, shades, blinds, or equivalent for visual privacy.

(f) One or more duplex electrical outlets per bed if the boarding home was initially licensed after July 1, 1983;

(g) A light control switch located by the entrance for a light fixture in the room;

(h) An individual towel and washcloth rack or equivalent, except when there is a private bathroom attached to the resident sleeping or living room, the individual towel and washcloth rack may be located in the attached private bathroom;

(i) In all boarding homes issued a project number by construction review services on or after September 1, 2004 for

construction related to this section, and when requested by a resident in a boarding home licensed on or (~~prior to~~) before September 1, 2004, provide a lockable drawer, cupboard or other secure space measuring at least one-half cubic foot with a minimum dimension of four inches;

(j) Separate storage facilities for each resident in or immediately adjacent to the resident's sleeping room to adequately store a reasonable quantity of clothing and personal possessions;

(k) A configuration to permit all beds in the resident sleeping room to be spaced at least three feet from other beds unless otherwise requested by all affected residents.

(2) The boarding home must ensure each resident sleeping room contains:

(a) A comfortable bed for each resident, except when two residents mutually agree to share a bed. The bed must be thirty-six or more inches wide for a single resident and fifty-four or more inches wide for two residents, appropriate for size, age and physical condition of the resident and room dimensions, including, but not limited to:

(i) Standard household bed;

(ii) Studio couch;

(iii) Hide-a-bed;

(iv) Day bed; or

(v) Water bed, if structurally and electrically safe.

(b) A mattress for each bed which:

(i) Fits the bed frame;

(ii) Is in good condition; and

(iii) Is at least four inches thick unless otherwise requested or necessary for resident health or safety.

(c) One or more comfortable pillows for each resident;

(d) Bedding for each bed, in good repair; and

(e) Lighting at the resident's bedside when requested by the resident.

(3) The boarding home must not allow a resident sleeping room to be used as a passageway or corridor.

(4) The boarding home may use or allow use of carpets and other floor coverings only when the carpet is:

(a) Securely fastened to the floor or provided with non-skid backing; and

(b) Kept clean and free of hazards, such as curling edges or tattered sections.

(5) The boarding home must ensure each resident has either a sleeping room or resident living room that contains a sturdy, comfortable chair appropriate for the age and physical condition of the resident. This requirement does not mean a boarding home is responsible for supplying specially designed orthotic or therapeutic chairs, including those with mechanical lifts or adjustments.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3030 Toilet rooms and bathrooms. (1)

The boarding home must provide private or common-use toilet rooms and bathrooms to meet the needs of each resident.

(2) The boarding home must provide each toilet room and bathroom with:

(a) Water resistant, smooth, low gloss, nonslip and easily cleanable materials;

- (b) Washable walls to the height of splash or spray;
- (c) Grab bars installed and located to minimize accidental falls including one or more grab bars at each:
 - (i) Bathing fixture; and
 - (ii) Toilet.
- (d) Plumbing fixtures designed for easy use and cleaning and kept in good repair; and
- (e) Adequate ventilation to the outside of the boarding home. For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, must provide mechanical ventilation to the outside.

(3) The boarding home must provide each toilet room with a:

- (a) Toilet with a clean, nonabsorbent seat free of cracks;
 - (b) Handwashing sink in or adjacent to the toilet room.
- For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the handwashing sink must be in the toilet room or in an adjacent private area that is not part of a common use area of the boarding home; and

(c) Suitable mirror with adequate lighting for general illumination.

(4) For boarding homes approved for construction or initially licensed after August 1, 1994, the boarding home must provide a toilet and handwashing sink in, or adjoining, each bathroom.

(5) When providing common-use toilet rooms and bathrooms, the boarding home must provide toilets and handwashing sinks for residents in the ratios of one toilet and one handwashing sink for every eight residents or fraction as listed in the following table:

Number of Residents	Number of Toilets*	Number of Handwashing Sinks
1-8	1	1
9-16	2	2
17-24	3	3
25-32	4	4
33-40	5	5
41-48	6	6
49-56	7	7
57-64	8	8
65-72	9	9
73-80	10	10
81-88	11	11
89-96	12	12
97-104	13	13
105-112	14	14
113-120	15	15
121-128	16	16
129-136	17	17
137-144	18	18
145-152	19	19
153-160	20	20

Number of Residents	Number of Toilets*	Number of Handwashing Sinks
161-168	21	21
169-176	22	22
177-184	23	23

*When two or more toilets are contained in a single bathroom, they are counted as one toilet.

(6) When providing common-use toilet rooms and bathrooms, the boarding home must provide bathing fixtures for residents in the ratio of one bathing fixture for every twelve residents or fraction thereof as listed in the following table:

Number of Residents	Number of Bathing Fixtures
1-12	1
13-24	2
25-36	3
37-48	4
49-60	5
61-72	6
73-84	7
85-96	8
97-108	9
109-120	10
121-132	11
133-144	12
145-160	13
161-172	14
173-184	15
185-196	16

(7) When providing common-use toilet rooms and bathrooms, the boarding home must:

- (a) Designate toilet rooms containing more than one toilet for use by men or women;
- (b) Designate bathrooms containing more than one bathing fixture for use by men or women;
- (c) Equip each toilet room and bathroom designed for use by, or used by, more than one person at a time, in a manner to ensure visual privacy for each person using the room. The boarding home is not required to provide additional privacy features in private bathrooms with a single toilet and a single bathing fixture located within a private apartment;
- (d) Provide a handwashing sink with soap and single use or disposable towels, blower or equivalent hand-drying device in each toilet room, except that single-use or disposable towels or blowers are not required in toilet rooms or bathrooms that are located within a private apartment;
- (e) Provide reasonable access to bathrooms and toilet rooms for each resident by:
 - (i) Locating a toilet room on the same floor or level as the sleeping room of the resident served;
 - (ii) Locating a bathroom on the same floor or level, or adjacent floor or level, as the sleeping room of the resident served; ~~(and)~~

(iii) Providing access without passage through any kitchen, pantry, food preparation, food storage, or dishwashing area, or from one bedroom through another bedroom; and

(f) Provide and ensure toilet paper is available at each common-use toilet.

(8) In boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must ensure fifty percent of all the bathing fixtures in the boarding home are roll-in type showers that have:

(a) One-half inch or less threshold;

(b) A minimum size of thirty-six inches by forty-eight inches; and

(c) Single lever faucets located within thirty-six inches of the seat so the faucets are within reach of persons seated in the shower.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3040 Laundry. (1) The boarding home must provide laundry and linen services on the premises, or by commercial laundry.

(2) The boarding home must handle, clean, and store linen according to acceptable methods of infection control. The boarding home must:

(a) Provide separate areas for handling clean laundry and soiled laundry;

(b) Ensure clean laundry is not processed in, and does not pass through, areas where soiled laundry is handled;

(c) Ensure areas where clean laundry is stored are not exposed to contamination from other sources; and

(d) Ensure all staff persons wear((s)) gloves and uses other appropriate infection control practices when handling soiled laundry.

(3) The boarding home must use washing machines that have a continuous supply of hot water with a temperature of 140°F measured at the washing machine intake, or that automatically dispense a chemical sanitizer as specified by the manufacturer, whenever the boarding home washes:

(a) Boarding home laundry;

(b) Boarding home laundry combined with residents' laundry into a single load; or

(c) More than one resident's laundry combined into a single load.

(4) The boarding home or a resident washing an individual resident's personal laundry, separate from other laundry, may wash the laundry at temperatures below 140°F and without the use of a chemical sanitizer.

(5) The boarding home must ventilate laundry rooms and areas to the outside of the boarding home, including areas or rooms where soiled laundry is held for processing by off site commercial laundry services.

(6) The boarding home must locate laundry equipment in rooms other than those used for open food storage, food preparation or food service.

(7) For all boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home

must provide a laundry area where residents' may do their personal laundry that is:

(a) Equipped with:

(i) A utility sink;

(ii) A table or counter for folding clean laundry;

(iii) At least one washing machine and one clothes dryer; and

(iv) Mechanical ventilation to the outside of the boarding home.

(b) Is arranged to reduce the chances of soiled laundry contaminating clean laundry.

(8) The boarding home may combine areas for soiled laundry with other areas when consistent with WAC 388-78A-3110.

(9) The boarding home may combine areas for handling and storing clean laundry with other areas when consistent with WAC 388-78A-3120.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3090 Maintenance and housekeeping.

(1) The boarding home must:

(a) Provide a safe, sanitary and well-maintained environment for residents;

(b) Keep exterior grounds, boarding home structure, and component parts safe, sanitary and in good repair;

(c) Keep facilities, equipment and furnishings clean and in good repair;

(d) Ensure each resident or staff person maintains the resident's quarters in a safe and sanitary condition; and

(e) Equip a housekeeping supply area on the premises with:

(i) A utility sink or equivalent means of obtaining and disposing of mop water, separate from food preparation and service areas;

(ii) Storage for wet mops, ventilated to the outside of the boarding home; and

(iii) Locked storage for cleaning supplies.

(2) For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must provide housekeeping supply room(s):

(a) Located on each floor of the boarding home, except only one housekeeping supply room is required for boarding homes licensed for sixteen or fewer beds when there is a means other than using a stairway, for transporting mop buckets between floors;

(b) In proximity to laundry and kitchen areas; and

(c) Equipped with:

(i) A utility sink or equivalent means of obtaining and disposing of mop water, away from food preparation and service areas;

(ii) Storage for wet mops;

(iii) Locked storage for cleaning supplies; and

(iv) Mechanical ventilation to the outside of the boarding home.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required. (1) The department must deny, suspend, revoke or refuse to renew a boarding home license if any person described in subsection (2) of this section who has unsupervised access to residents, is:

(a) Convicted of a crime against ~~((a))~~ children or other persons or ~~((a))~~ crimes ~~((related))~~ relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842; or

(b) Found by a court in a protection proceeding or in a civil damages lawsuit under chapter 74.34 RCW to have abused, neglected, abandoned or exploited a vulnerable adult; or

(c) Found in any dependency action under chapter 13.34 RCW to have sexually assaulted, neglected, exploited, or physically abused any minor; or

(d) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused, exploited, or physically abused any minor; or

(e) Found in any final decision issued by a disciplinary board to have sexually or physically abused or neglected or exploited any minor or any vulnerable adult, or has a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW.

(2) This section applies to any boarding home:

(a) Applicant;

(b) Partner, officer or director;

(c) Manager or managerial employee; or

(d) Owner of five percent or more of the applicant:

(i) Who is involved in the operation of the boarding home; or

(ii) Who may have direct access to the boarding home residents; or

(iii) Who controls or supervises the provision of care or services to the boarding home residents; or

(iv) Who exercises control over daily operations.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-3220 Appeal rights. (1) An applicant or boarding home;

(a) May contest an enforcement remedy imposed by the department pursuant to RCW 18.20.190 according to the provisions of chapter 34.05 RCW and chapters 10-08 and 388-02 WAC;

(b) Must file any request for an adjudicative proceeding with the Office of Administrative Hearings at the mailing address specified in the notice of imposition of an enforcement remedy within twenty-eight days of receiving the notice.

(2) Orders of the department imposing licensing suspension, stop-placement, or conditions for continuation of a

license are effective immediately upon notice and shall continue pending any hearing.

WSR 05-21-103
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed October 18, 2005, 1:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-139.

Title of Rule and Other Identifying Information: The Division of Child Support (DCS) is proposing amendments to WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-2005 When does an application for public assistance automatically become an application for support enforcement services?, 388-14A-2025 What services does the division of child support provide for a nonassistance support enforcement case?, 388-14A-2035 Do I assign my rights to support when I receive public assistance?, 388-14A-2036 What does assigning my rights to support mean?, 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support?, and 388-14A-3350 Are there any limits on how much back support the division of child support can seek to establish?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on December 6, 2005, at 10:00 a.m.

Date of Intended Adoption: December 7, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., December 6, 2005.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by December 2, 2005, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DCS seeks to clarify when a claim for child support starts as a result of the family receiving Medicaid or medical-only assistance.

Reasons Supporting Proposal: DCS is amending these rules for clarity and client satisfaction.

Statutory Authority for Adoption: RCW 74.08.090, 74.20A.055, 74.20A.310.

Statute Being Implemented: RCW 26.18.170, 74.20A.-055, 74.20A.056.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Nancy Koptur, DCS HQ, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS rules relating to liability for care of dependents are exempt from preparing a further analysis under RCW 34.05.328 (5)(b)(vii).

October 11, 2005

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 05-14-101, filed 6/30/05, effective 7/31/05)

WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement? For purposes of this chapter, the following definitions apply:

"Absence of a court order" means that there is no court order setting a support obligation for the noncustodial parent (NCP), or specifically relieving the NCP of a support obligation, for a particular child.

"Absent parent" is a term used for a noncustodial parent.

"Accessible coverage" means health insurance coverage which provides primary care services to the children with reasonable effort by the custodian.

"Accrued debt" means past-due child support which has not been paid.

"Administrative order" means a determination, finding, decree or order for support issued under RCW 74.20A.055, 74.20A.056, or 74.20A.059 or by another state's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

- (1) An order entered under chapter 34.05 RCW;
- (2) An agreed settlement or consent order entered under WAC 388-14A-3600; and
- (3) A support establishment notice which has become final by operation of law.

"Agency" means the Title IV-D provider of a state. In Washington, this is DCS.

"Agreed settlement" is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settlement does not require the approval of an administrative law judge.

"Aid" or **"public assistance"** means cash assistance under the temporary assistance for needy families (TANF) program, the aid for families with dependent children (AFDC) program, federally-funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

"Alternate recipient" means a child of the employee or retiree named within a support order as being entitled to coverage under an employer's group health plan.

"Applicant/custodian" means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

"Applicant/recipient," "applicant," and "recipient" means a person who receives public assistance on behalf of a child or children residing in their household.

"Arrears" means the debt amount owed for a period of time before the current month.

"Assistance" means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

"Birth costs" means medical expenses incurred by the custodial parent or the state for the birth of a child.

"Conference board" means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

"Consent order" means a support order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. A consent order requires the approval of an administrative law judge.

"Court order" means a judgment, decree or order of a Washington state superior court, another state's court of comparable jurisdiction, or a tribal court.

"Current support" or **"current and future support"** means the amount of child support which is owed for each month.

"Custodial parent" means the person, whether a parent or not, with whom a dependent child resides the majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought" means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

"Delinquency" means failure to pay current child support when due.

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

"Dependent child" means a person:

(1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;

(2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

(3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

"Disposable earnings" means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

"Earnings" means compensation paid or payable for personal service. Earnings include:

- (1) Wages or salary;
- (2) Commissions and bonuses;
- (3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;
- (4) Disability payments under Title 51 RCW;
- (5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;
- (6) Gains from capital, labor, or a combination of the two; and
- (7) The fair value of nonmonetary compensation received in exchange for personal services.

"Employee" means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

"Employer" means any person or organization having an employment relationship with any person. This includes:

- (1) Partnerships and associations;
- (2) Trusts and estates;
- (3) Joint stock companies and insurance companies;
- (4) Domestic and foreign corporations;
- (5) The receiver or trustee in bankruptcy; and
- (6) The trustee or legal representative of a deceased person.

"Employment" means personal services of whatever nature, including service in interstate commerce, performed for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

"Family" means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or a child or children in foster care placement. The family is sometimes called the assistance unit.

"Family member" means the caretaker relative, the child(ren), and any other person whose needs are considered in determining eligibility for assistance.

"Foreign order" means a court or administrative order entered by a tribunal other than one in the state of Washington.

"Foster care case" means a case referred to the Title IV-D agency by the Title IV-E agency, which is the state division of child and family services (DCFS).

"Fraud," for the purposes of vacating an agreed settlement or consent order, means:

- (1) The representation of the existence or the nonexistence of a fact;
- (2) The representation's materiality;
- (3) The representation's falsity;
- (4) The speaker's knowledge that the representation is false;
- (5) The speaker's intent that the representation should be acted on by the person to whom it is made;
- (6) Ignorance of the falsity on the part of the person to whom it is made;
- (7) The latter's:
 - (a) Reliance on the truth of the representation;
 - (b) Right to rely on it; and
 - (c) Subsequent damage.

"Full support enforcement services" means the entire range of services available in a Title IV-D case.

"Good cause" for the purposes of late hearing requests and petitions to vacate orders on default means a substantial reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

"Head of household" means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

"Health care costs":

(1) For the purpose of establishing support obligations under RCW 74.20A.055 and 74.20A.056, means medical, dental and optometrical expenses; and

(2) For the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means medical, dental and optometrical costs stated as a fixed dollar amount by a support order.

"Health insurance" means insurance coverage for all medical services related to an individual's general health and well being. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy.

"Hearing" means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

"I/Me" means the person asking the question which appears as the title of a rule.

"Income" includes:

- (1) All gains in real or personal property;
- (2) Net proceeds from the sale or exchange of real or personal property;
- (3) Earnings;
- (4) Interest and dividends;
- (5) Proceeds of insurance policies;
- (6) Other periodic entitlement to money from any source; and
- (7) Any other property subject to withholding for support under the laws of this state.

"Income withholding action" includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

- (1) Asserting liens under RCW 74.20A.060;
- (2) Serving and enforcing liens under chapter 74.20A RCW;
- (3) Issuing orders to withhold and deliver under chapter 74.20A RCW;
- (4) Issuing notices of payroll deduction under chapter 26.23 RCW; and
- (5) Obtaining wage assignment orders under RCW 26.18.080.

"Locate" can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

"Medical assistance" means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF.

"Medical support" means either or both:

- (1) Health care costs stated as a fixed dollar amount in a support order; and
- (2) Health insurance coverage for a dependent child.

"National Medical Support Notice" or **"NMSN"** is a federally-mandated form that DCS uses to enforce a health insurance support obligation; the NMSN is a notice of enrollment as described in RCW 26.18.170.

"Noncustodial parent" means the natural parent, adoptive parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity, from whom the state seeks support for a dependent child. Also called the NCP. A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

"Other ordinary expense" means an expense incurred by a parent which:

- (1) Directly benefits the dependent child; and
- (2) Relates to the parent's residential time or visitation with the child.

"Participant" means an employee or retiree who is eligible for coverage under an employer group health plan.

"Past support" means support arrearages.

"Paternity testing" means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

"Payment services only" or **"PSO"** means a case on which the division of child support's activities are limited to recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

"Permanently assigned arrearages" means those arrearages which the state may collect and retain up to the amount of unreimbursed assistance.

"Physical custodian" means custodial parent (CP).

"Plan administrator" means the person or entity which performs those duties specified under 29 USC 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

"Putative father" includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

"Reasonable efforts to locate" means any of the following actions performed by the division of child support:

- (1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;
- (2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;
- (3) Tracing activity such as:
 - (a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;

(b) Contacting state agencies, unions, financial institutions or fraternal organizations;

(c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or

(d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.

(4) Referral to the state or federal parent locator service;

(5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;

(6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or

(7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

"Required support obligation for the current month" means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

"Resident" means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

"Residential care" means foster care, either state or federally funded.

"Residential parent" means the custodial parent (CP), or the person with whom the child resides that majority of the time.

"Responsible parent" is a term sometimes used for a noncustodial parent.

"Responsible stepparent" means a stepparent who has established an in loco parentis relationship with the dependent child.

"Retained support" means a debt owed to the division of child support by anyone other than a noncustodial parent.

"Satisfaction of judgment" means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"State" means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

"Superior court order" means a judgment, decree or order of a Washington state superior court, or of another state's court of comparable jurisdiction.

"Support debt" means support which was due under a support order but has not been paid. This includes:

- (1) Delinquent support;
- (2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including health care costs, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;
- (3) A debt under RCW 74.20A.100 or 74.20A.270; or
- (4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

"Support enforcement services" means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

"Support establishment notice" means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

"Support money" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, medical support, or birth costs.

"Support obligation" means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health insurance coverage, health care costs, birth costs, and child care or special child rearing expenses.

"Temporarily assigned arrearages" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997.

"Title IV-A" means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-A agency" means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

"Title IV-D" means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-D agency" or **"IV-D agency"** means the division of child support, which is the agency responsible for carrying out the Title IV-D plan in the state of Washington. Also refers to the Washington state support registry (WSSR).

"Title IV-D case" is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

"Title IV-D plan" means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

"Title IV-E" means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-E case" means a foster care case.

"Tribunal" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

"Unreimbursed assistance" means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

"We" means the division of child support, part of the department of social and health services of the state of Washington.

"WSSR" is the Washington state support registry.

"You" means the reader of the rules, a member of the public, or a recipient of support enforcement services.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2005 **When does an application for public assistance automatically become an application for support enforcement services?** (1) When a custodial parent (CP) or physical custodian (also called the CP) applies for or receives cash assistance on behalf of a minor child, the family authorizes the division of child support (DCS) to provide full support enforcement services to the family.

(2) These services continue until the support enforcement case is closed under WAC 388-14A-2080.

(3) The CP's public assistance application is an assignment of support rights.

(4) An application for Medicaid, medical assistance or medical benefits under Title XIX of the federal Social Security Act is an assignment of the medical support rights of anyone receiving those benefits, and the CP authorizes DCS to provide support enforcement services to the family as follows:

(a) DCS provides full support enforcement services as provided under subsection (1) above for a family receiving cash assistance, or under WAC 388-14A-2000 (2)(d) to a family receiving Medicaid-only benefits;

(b) As set forth in WAC 388-14A-2000(3), DCS provides only payment processing, records maintenance, paternity establishment, medical support establishment and medical support enforcement services when a recipient of Medicaid-only benefits declines full support enforcement services in writing.

(5) WAC 388-14A-2036 describes the assignment of support rights.

~~((5))~~ (6) If the community services office grants the CP good cause not to cooperate under WAC 388-422-0020, DCS does not provide services. See WAC 388-14A-2065.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2025 **What services does the division of child support provide for a nonassistance support enforcement case?** (1) The division of child support (DCS) provides full support enforcement services for every IV-D case.

(2) DCS provides either full or limited nonassistance support enforcement services for recipients of Medicaid-only benefits as provided in WAC 388-14A-2005(4).

(3) Some cases do not receive full support enforcement services. Nonassistance cases where DCS provides payment processing services are called payment services only (PSO) cases.

~~((3))~~ (4) In a PSO case, DCS provides only records maintenance and payment processing services if the payee under a support order does not submit an application for support enforcement services and the:

(a) Order directs support payments to DCS or to the Washington state support registry (WSSR); and

(b) The clerk of the court submitted the order under RCW 26.23.050.

~~((4))~~ (5) DCS continues to provide services without an application after a:

(a) Public assistance recipient stops receiving cash assistance; or

(b) Recipient of Medicaid-only benefits becomes ineligible for Medicaid-only benefits, unless the recipient declines support enforcement services or requests additional services.

~~((5))~~ (6) If you receive services as a former recipient of assistance, as described in subsection ~~((4))~~ (5), you must cooperate with DCS in the same way as when you received a grant.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2035 Do I assign my rights to support when I receive public assistance? (1) When you receive public assistance you assign your rights to support to the state. This section applies to all applicants and recipients of cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

(2) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in subsection (3), any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance.

(3) Amounts assigned under this section may not exceed the lesser of the total amount of assistance paid to the family or the total amount of the assigned support obligation.

(4) When you receive Medicaid or medical benefits, you assign your rights to medical support to the state. This applies to all recipients of medical assistance under the state program funded under Title XIX of the federal Social Security Act.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-2036 What does assigning my rights to support mean? (1) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in WAC 388-14A-2035(3), any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance.

(2) While your family receives assistance, all support collected is retained by the state to reimburse the total amount of assistance which has been paid to your family.

(3) After your family terminates from assistance, certain accrued arrears remain assigned to the state in accordance with the following rules:

(a) For assistance applications dated prior to October 1, 1997, you permanently assign to the state all rights to support which accrued before the application date and which will accrue prior to the date your family terminates from assistance.

(b) For assistance applications dated on or after October 1, 1997, and before October 1, 2000:

(i) You permanently assign to the state all rights to support which accrue while your family receives assistance; and

(ii) You temporarily assign to the state all rights to support which accrued before the application date, until October 1, 2000, or when your family terminates from assistance,

whichever date is later. After this date, if any remaining arrears are collected by federal income tax refund offset, the state retains such amounts, up to the amount of unreimbursed assistance.

(c) For assistance applications dated on or after October 1, 2000:

(i) You permanently assign to the state all rights to support which accrue while the family receives assistance; and

(ii) You temporarily assign to the state all rights to support which accrued before the application date, until the date your family terminates from assistance. After this date, if any remaining arrears are collected by federal income tax refund offset, the state retains such amounts, up to the amount of unreimbursed assistance.

(4) When you assign your medical support rights to the state, you authorize the state on behalf of yourself and the children in your care to enforce the noncustodial parent's full duty to provide medical support.

AMENDATORY SECTION (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

WAC 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support? (1) You must cooperate with the division of child support (DCS) when you receive public assistance unless the department determines there is good cause not to cooperate under WAC 388-422-0020. For purposes of this section and WAC 388-14A-2075, cooperating with DCS includes cooperating with those acting on behalf of DCS (its "representatives"), namely the prosecuting attorney, the attorney general, or a private attorney paid per RCW 74.20.350. In cases where paternity is at issue, the custodial parent (CP) of a child who receives assistance must cooperate whether or not the parent receives assistance.

(2) Cooperation means giving information, attending interviews, attending hearings, or taking actions to help DCS establish and collect child support. This information and assistance is necessary for DCS to:

(a) Identify and locate the responsible parent;

(b) Establish the paternity of the child(ren) on assistance in the CP's care; and

(c) Establish or collect support payments or resources such as property due the CP or the child(ren).

(3) The CP must also cooperate by sending to DCS any child support received by the CP while on assistance, as required by RCW 74.20A.275 (3)(c). If the client keeps these payments, known as retained support, the CP must sign an agreement to repay under RCW 74.20A.275, and the CP must honor that agreement.

(4) The cooperation requirements of subsections (1) and (2) above, but not subsection (3), apply to a recipient of Medicaid-only assistance.

AMENDATORY SECTION (Amending WSR 05-14-099, filed 6/30/05, effective 7/31/05)

WAC 388-14A-3350 Are there any limits on how much back support the division of child support can seek to establish? (1) When no public assistance is being paid to the custodial parent (CP) and the children, the division of

child support (DCS) starts the claim for support as of the date:

(a) DCS receives the application for nonassistance services if the CP applies directly to DCS for services; or

(b) Another state or Indian tribe received the application for nonassistance services or the actual date the other state or tribe requests that child support start, whichever is later, if the other state or Indian tribe requests DCS to establish a support order.

(2) When the children are receiving Medicaid-only benefits, DCS starts the claim for support as of the date the Medicaid benefits began. See WAC 388-14A-2005(4) to determine whether DCS seeks to establish medical support only for a particular case.

(3) This section does not limit in any way the right of the court to order payment for back support as provided in RCW 26.26.130 and 26.26.134 if the case requires paternity establishment.

~~((3))~~ (4) When another state or an Indian tribe is paying public assistance to the CP and children, DCS starts the claim for support as of the date specified by the other state or tribe.

~~((4))~~ (5) For the notice and finding of parental responsibility, WAC 388-14A-3120(9) limits the back support obligation.

~~((5))~~ (6) When the state of Washington is paying public assistance to the CP and/or the children, the following rules apply:

(a) For support obligations owed for months on or after September 1, 1979, DCS must exercise reasonable efforts to locate the noncustodial parent (NCP);

(b) DCS serves a notice and finding of financial or parental responsibility within sixty days of the date the state assumes responsibility for the support of a dependent child on whose behalf support is sought;

(c) If DCS does not serve the notice within sixty days, DCS loses the right to reimbursement of public assistance payments made after the sixtieth day and before the notice is served;

(d) DCS does not lose the right to reimbursement of public assistance payments for any period of time:

(i) During which DCS exercised reasonable efforts to locate the NCP; or

(ii) For sixty days after the date on which DCS received an acknowledgment of paternity for the child for whom the state has assumed responsibility, and paternity has not been established.

~~((6))~~ (7) The limitation in subsection ~~((5))~~ (6) does not apply to:

(a) Cases in which the physical custodian is claiming good cause for not cooperating with the department; and

(b) Cases where parentage is an issue and:

(i) Has not been established by superior court order; or

(ii) Is not the subject of a presumption under RCW 26.26.320.

~~((7))~~ (8) DCS considers a prorated share of each monthly public assistance payment as paid on each day of the month.

WSR 05-22-014

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed October 24, 2005, 9:57 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Private security guards, chapter 18.170 RCW, fee increase for compliance with the Anti-Terrorism and Prevention Act.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Olympia, WA 98507, on December 6, 2005, at 11:00 a.m.

Date of Intended Adoption: December 7, 2005.

Submit Written Comments to: Mary Haglund, P.O. Box 9649, Olympia, WA 98502, e-mail Security@dol.wa.gov, fax (360) 570-7888, by December 1, 2005.

Assistance for Persons with Disabilities: Contact administrative staff by December 1, 2005, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The reason for the fee increase is to pay the fees established by Washington State Patrol and the Federal Bureau of Investigation for conducting background searches. In order to comply with the federal Anti-Terrorism and Prevention Act, the security guard licensees and applicants must submit a fingerprint card and pay for a FBI background check. The effects of the rule change will increase renewal fees for one year. After one year, the fee for renewals will be reduced to remove the cost for the FBI background search, as this work will have been completed. The original application fee will increase permanently as these applicants will still be required to complete the additional background search.

Please see below for the specific rule changes.

Statutory Authority for Adoption: Chapter 18.170 RCW.

Statute Being Implemented: Anti-Terrorism and Prevention Act of 2004 Subtitle E. Criminal History Background Checks.

Rule is necessary because of federal law, Anti-Terrorism and Prevention Act of 2004 Subtitle E. Criminal History Background Checks.

Name of Proponent: Department of Licensing, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Mary Haglund, Olympia, Washington, (360) 664-6624; and Enforcement: Pat Brown, Olympia, Washington, (360) 664-6624.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Department of Licensing is exempt from this requirement.

A cost-benefit analysis is not required under RCW 34.05.328. Department of Licensing is exempt from this requirement.

September 30, 2005

Andrea C. Archer
Assistant Director

AMENDATORY SECTION (Amending WSR 04-12-023, filed 5/26/04, effective 7/1/04)

WAC 308-18-150 Private security guard company, private security guard, and armed private security guard fees. Licenses issued to private security guard companies and private security guards expire one year from the date of issuance and must be renewed each year. The fees are as follows:

Title of Fee	Fee
Private security guard company/principal:	
Application/includes first examination	\$ ((250.00)) <u>300.00</u>
Reexamination	25.00
License renewal	((250.00)) <u>300.00</u>
Late renewal with penalty	((350.00)) <u>400.00</u>
Change of principal/includes first examination	((65.00)) <u>100.00</u>
Principal armed endorsement	((30.00)) <u>10.00</u>
Private security guard:	
Original license	((53.00)) <u>82.00</u>
Armed endorsement	((30.00)) <u>10.00</u>
Transfer fee	20.00
License renewal <u>with current WSP*</u>	((40.00)) <u>70.00</u>
<u>License renewal without current WSP*</u>	<u>100.00</u>

Note: A current WSP means that a background check was completed by the security guard licensing unit within the last 12 months. You will be billed according to this status.

Late renewal with penalty	((45.00)) <u>120.00</u>
Certified trainer endorsement examination/reexamination	25.00
Certified trainer endorsement renewal	15.00
Duplicate license	10.00

WSR 05-22-015
PROPOSED RULES
SECRETARY OF STATE
(Elections Division)
[Filed October 24, 2005, 10:49 a.m.]

Original Notice.
Preproposal statement of inquiry was filed as WSR 05-18-059.

Title of Rule and Other Identifying Information: The rules will implement additional election reforms passed by the 2005 legislature.

Hearing Location(s): Office of the Secretary of State, Elections Division, Conference Room, 520 Union Avenue S.E., Olympia, WA, on December 6, 2005, at 1:00 p.m.

Date of Intended Adoption: December 16, 2005.

Submit Written Comments to: Katie Blinn, P.O. Box 40220, Olympia, WA 98504, e-mail kblinn@sec-state.wa.gov, fax (360) 586-5629, by December 6, 2005.

Assistance for Persons with Disabilities: Contact TTY (800) 422-8683.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In addition to previous election reform rule making, these proposed rules will implement chapter 241, Laws of 2005; chapter 243, Laws of 2005; and chapter 246, Laws of 2005. The proposed rules address a number of issues including:

- The allowance of withdrawals of candidacy.
- Direct recording electronic devices may not accept provisional ballots.
- Transferring and securing ballots.
- Election administrators' applications to maintain certification.
- Voter crediting.
- Investigation of errors or discrepancies in county auditor abstracts.
- Signature verification standards.
- Staffing drop sites for ballots.
- Ensuring that a voter who votes on a direct recording electronic device cannot cast two ballots.
- County auditor's offices as a polling place.

Reasons Supporting Proposal: The legislature passed election reform legislation in 2005 which requires additional rule making.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: Chapter 241, Laws of 2005; chapter 243, Laws of 2005; and chapter 246, Laws of 2005.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Office of the Secretary of State, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Katie Blinn, Legislative Building, (306) [(360)] 902-4168.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes do not appear to have an impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

October 19, 2005
Steve Excell
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 98-08-010, filed 3/18/98, effective 3/18/98)

WAC 434-208-080 Electronic facsimile filings followed by original document. The filing officer shall require that, except for requests for absentee ballots, any acceptance of an electronic facsimile filing be followed by the original document not later than seven calendar days after the receipt of the facsimile filing. If a voted ballot is faxed, ((a)) the bal-

lot and the envelope bearing the original signature of the voter must be received ~~((not later than ten days following a primary or special election or fifteen days following a general election))~~ on or before the date on which the election is certified pursuant to RCW 29A.60.190.

NEW SECTION

WAC 434-215-065 Withdrawal of candidacy. Consistent with RCW 29A.24.131, a candidate may withdraw his or her declaration of candidacy at any time before the close of business on the Thursday following the last day for candidates to file under RCW 29A.24.050 by filing, with the officer with whom the declaration of candidacy was filed, a signed request that his or her name not be printed on the ballot. There shall be no withdrawal period for declarations of candidacy filed during special filing periods. The filing officer has discretion to permit the withdrawal of a filing for any elected office of a city, town, or special district at the request of the candidate at any time before a primary if the primary ballots have not been ordered. If no primary election is held for the office, the filing officer has discretion to permit the withdrawal at any time before the general election ballots are ordered.

NEW SECTION

WAC 434-250-095 Voting on direct recording electronic voting devices. If a voter who was issued an absentee or mail ballot requests to vote on a direct recording electronic voting device, the county auditor must first confirm that the voter has not already returned a voted ballot. Confirmation that the voter has not already returned a voted ballot may be achieved by accessing the county voter registration system by electronic, telephonic, or other means. If the county auditor is unable to confirm that the voter has not already returned a voted ballot, the voter may not vote on a direct recording electronic voting device.

Consistent with RCW 29A.46.110, in order to prevent multiple voting, the voter must be immediately credited or otherwise flagged as having voted. If a voted absentee or mail ballot is returned after a ballot is cast on the direct recording electronic voting device, the absentee or mail ballot must not be counted.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-250-100 Depositing of ballots. Ballots may be deposited in the auditor's office during normal business hours prior to the day of the election, and from 7:00 a.m. to 8:00 p.m. on the day of the election. Other places of deposit may be staffed or unstaffed.

(1) (a) Staffed sites must be staffed by at least two people. Deposit site staff may be employees of the county auditor's office or persons appointed by the auditor. ((Whenever possible)) If two or more deposit site staff are persons appointed by the county auditor, the ((persons appointed)) appointees shall be representatives of ((each)) different major political ((party)) parties whenever possible. Deposit site staff ((may not be an employee of the jurisdiction for whom the election

~~is conducted and)) shall subscribe to an oath regarding the discharge of the duties((, administered by the county auditor)).~~

(b) Staffed deposit sites must be open from 7:00 a.m. until 8:00 p.m. on the day of the election and may be open prior to the election on dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place of deposit on the ballot envelope, and such ballots must be referred to the canvassing board for consideration of whether special circumstances warrant consideration, as documented by the deposit site staff.

(c) A staffed deposit site that only receives ballots is not considered a polling place. A staffed deposit site that both receives and issues ballots is considered a polling place.

(2) Unstaffed sites may be used if the ballot drop box is either:

(a) Constructed and secured according to the same requirements as United States Postal Service postal drop boxes; or

(b) Secured and located indoors.

Ballot boxes must be locked and sealed at all times, with seal logs that document each time the box is opened, by whom, and the number of ballots removed. From eighteen days prior to election day until 8:00 p.m. on election day, two county auditor staff members must empty each ballot drop box with sufficient frequency to prevent damage or unauthorized access to the ballots. Ballots must be placed into sealed transport carriers and returned to the county auditor's office or another designated location. On election day, ballot drop boxes must be emptied at exactly 8:00 p.m. to ensure that all ballots meet the 8:00 p.m. delivery deadline.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-250-120 Verification of the signature and postmark on ballots. A ballot shall be counted only if:

(1) It is returned in the return envelope, or a similar envelope if it contains the same information and signed affidavit and is approved by the auditor;

(2) The affidavit is signed with a valid signature in the place afforded for the signature on the envelope;

(3) The signature has been verified pursuant to WAC 434-379-020, or if the voter is unable to sign his or her name, two other persons have witnessed the voter's mark;

(4) It is postmarked not later than the day of the election or deposited in the auditor's office, a polling location, or a designated deposit site not later than 8:00 p.m. on election day; and

(5) The ballot is received prior to certification of the election.

The signature on the return envelope, or on a copy of the return envelope, must be compared with the signature ~~((as it appears on))~~ in the voter's voter registration ((application, as described)) file using the standards established in WAC 434-379-020. The signature on a return envelope may not be

rejected merely because the name in the signature is a variation of the name on the voter registration record. The canvassing board may designate in writing representatives to perform this function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of his or her duties. Personnel shall be instructed in the signature verification process prior to actually canvassing any signatures. Local law enforcement officials may instruct those employees in techniques used to identify forgeries.

The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-250-330 County auditor's office as a polling place. (1) For elections conducted entirely by mail, services that would have been provided at the polling place must, at a minimum, be provided at the county auditor's office, including provisional ballots (~~and, after January 1, 2006, voting devices that are accessible to the visually impaired~~). Such services must be provided beginning the date that ballots are mailed to voters. Identification must be provided in compliance with RCW 29A.44.205 and WAC 434-253-055, except in the case of replacement ballots as authorized by RCW 29A.48.040. If the auditor does not maintain poll books at the auditor's office, the voter must sign a log sheet that includes the same information that would have appeared in a poll book.

(2) If the persons providing services at the county auditor's office are not employees of the auditor's office but are persons appointed by the county auditor, the appointees must be representatives of different major political parties and must subscribe to an oath regarding the discharge of duties.

~~((Such services must be provided beginning the date that ballots are mailed to voters.))~~

NEW SECTION

WAC 434-250-340 Manual count of selected precincts. In an election conducted entirely by mail, the manual count of precincts requested by political party observers pursuant to RCW 29A.60.170 must be conducted as follows:

(1) Upon mutual agreement, the official political party observers may request that a manual count be conducted of one race or issue in up to three precincts.

(2) The official political party observers may mutually agree on which race or issue and which precincts are to be counted, or may agree that the selection be made at random. The selection must occur before election day to allow the county auditor to assemble the proper ballots.

(3) The count may begin no earlier than 8:00 p.m. on election day and must be completed by 8:00 p.m. on the second day after election day. The official political party observers must receive timely notice of the time and location of the count established by the county auditor. However, the process must proceed as scheduled if the observers are unable to attend.

(4) The ballots that are ready for tabulation at the time the count begins must be included in the manual count of the selected precincts.

(5) The results of the manual count must be compared to the results on the voting system.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-253-020 Polling place—Election supplies. Polling places shall be provided, at a minimum, with the following supplies at every election:

(1) Precinct list of registered voters or a poll book, which shall include suitable means to record the signature and address of the voter (~~(—Voters issued absentee ballots must either be noted as absentee or not listed in the poll book);~~

- (2) Inspector's poll book;
- (3) Required oaths/certificates for inspectors and judges;
- (4) Sufficient number of ballots as determined by election officer;
- (5) Ballot containers;
- (6) United States flag;
- (7) Voting instruction signs;
- (8) Challenge and provisional ballots and envelopes;
- (9) Cancellation cards due to death;
- (10) Voting equipment instructions;
- (11) Procedure guidelines for inspectors and judges and/or precinct election officer guidebooks;
- (12) Keys and/or extra seals;
- (13) Pay voucher;
- (14) Ballots stub envelope;
- (15) Emergency plan of action;
- (16) Either sample ballots or voters' pamphlets;
- (17) HAVA voter information poster; and
- (18) Voter registration forms.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-253-045 Provisional ballots—Required information. A provisional ballot may not be voted on a direct recording electronic voting device. At a minimum, the following information is required to be printed on the outer provisional ballot envelope:

- (1) Name of voter.
- (2) Voter's registered address both present and former if applicable.
- (3) Voter's date of birth.
- (4) Reason for the provisional ballot.
- (5) Polling place and precinct number, if applicable, at which voter voted.
- (6) Sufficient space to list disposition of the ballot after review by the county auditor.
- (7) The following oath with a place for the voter to sign and date:

I do solemnly swear or affirm under penalty of perjury that:

I am a legal resident of the state of Washington;
I am entitled to vote in this election;
I have not already voted in this election;

It is illegal to vote if I am not a United States citizen;

It is illegal to vote if I have been convicted of a felony and have not had my voting rights restored;

It is illegal to cast a ballot or sign an absentee envelope on behalf of another voter, except as otherwise provided by law; and

Attempting to vote when not entitled, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both.

Signature _____ Date _____

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

WAC 434-253-220 Transfer of ballots prior to closing of the polls. The county auditor may authorize an early pick up of ballots from designated polling places prior to the closing of the polls. Where so authorized, the precinct election officers at the designated polling places shall remove the voted ballots from the voted ballot container at a time specified by the auditor and count the number of ballots. The count shall be entered on the ballot accountability sheet, a transmittal sheet completed and signed, and the ballots sealed in a transfer container in the same manner used for the closing of the polls. The transmittal sheet may be placed with the ballots or it may be attached to the outside of the transfer container. The election officials shall not leave the polling place. Ballot pickup teams, consisting of two employees of the county auditor's office or two representatives of ((each)) different major political ((party and appointed by the county auditor for that purpose)) parties, shall be assigned to pick up the transfer containers for return to the counting center.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-253-240 Return of election supplies and materials. Supplies and voting materials, including voted, provisional, challenged, spoiled, unused, and absentee ballots and ballot stubs must be secured and returned to the counting center, the county auditor's office, or any other location designated by the auditor. At least two employees of the county auditor's office or two officials representing different major political parties shall transfer the sealed ballot containers to the counting center, county auditor's office, or other location designated by the auditor. Pursuant to RCW 29A.60.110, ballots tabulated by poll site tabulators may be transported by one employee of the county auditor's office if the container is sealed at the poll site and then verified when returned to the counting center, county auditor's office, or other location designated by the county auditor.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-260-310 Application for initial certification and maintenance of certification. The secretary of state shall make available certification application and main-

tenance forms to the county auditors. ~~((The county auditor in each county shall, not later than January 1 of each year, submit an application for certification for each employee for whom certification and maintenance is requested.))~~ Applications to maintain certification must be submitted to the secretary of state by the county auditor by January 1 each year.

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

WAC 434-261-030 ((Transfer of ballots to counting center or)) Receipt of ballots at intermediate collection station. ~~((After all the business at the polling place is completed, two of the election officials, one representing each major political party, shall transfer the sealed ballot containers to the counting center, or to a designated collection station. At the discretion of the county auditor, a ballot pickup team composed of a representative of each major political party may be directed to stop at the polling place and pick up the sealed containers of voted ballots for return to the counting center as an alternative. Until the voted ballots are received at the counting center or intermediate collection station, they must always be accompanied by a representative of each of the two major political parties. These representatives may be either precinct election officers or the ballot pickup team.))~~

If an intermediate collection station is used, the ~~((station will be staffed by a representative or representatives of the county auditor who shall be responsible for receiving the voted ballot transfer containers from the precinct election officers or ballot pickup team. The))~~ collection station staff shall maintain a ballot transfer container receipt log on which shall be recorded the ~~((precinct))~~ poll site name or number, the date and time of receipt, the seal number of each container, and any other information the auditor deems appropriate. When the last transfer container has been received and logged, or when so directed by the county auditor, the containers shall be transferred to the counting center in an enclosed vehicle accompanied by at least two employees of the county auditor's office or two representatives of ((each)) different major political ((party, appointed for that purpose by the auditor, or as provided in this rule)) parties. The transfer container log sheets shall accompany the containers.

~~((The appointed officials accompanying the ballot transfer containers from the collection station to the counting center shall not be of the same political party.))~~ Officials used for this purpose ~~((, if))~~ who are not employees of the county auditor's office, political party representatives, or affiliated with a political party((;)) may meet the requirements of this rule by declaring in writing nonpolitical party affiliation. These declarations shall be retained by the auditor along with the transfer container log sheets for sixty days after the election.

NEW SECTION

WAC 434-261-045 Secure storage. Received ballots must be maintained in secure storage except during processing, duplication, inspection by the canvassing board, or tabulation. Secure storage must employ the use of numbered seals and logs, or other security measures that will detect any inappropriate access to the secured materials.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-262-013 Crediting voters. Voters shall be credited for voting after each special, primary and general election.

(1) A voter may not be credited for voting if the ballot was voted after election day, was received after certification of the election, or will otherwise not be counted.

(2) ~~((If an election was conducted entirely by mail,))~~ The crediting of absentee or mail ballot voters must be completed prior to the certification of the election. ~~((If an election was conducted using polling places,))~~ The crediting of poll voters must be completed ~~((as soon after the election as possible))~~ within thirty days of the election, and prior to the certification of the election when possible.

(3) The reconciliation of voters credited with ballots counted shall be completed within thirty days following certification of a primary or election. The certification must include, but is not limited to, information indicating that the number of ballots counted equals the number of voters credited. If these numbers do not match, the county auditor must take steps to reconcile the numbers and any discrepancies. If the county auditor cannot reconcile the numbers, documentation of steps taken to reconcile and any other applicable information must be included with the official reconciliation.

(4) Changes to the list of registered voters, such as new registrations, transfers, or cancellations, may not be made following a general election until the crediting reconciliation is complete. Correction of errors is allowed.

(5) The county auditor shall make an electronic or paper copy of the list of registered voters immediately following this reconciliation. Using this data, the county auditor shall also produce validation statistics for each minor taxing district in the county. Once the list is copied and the validation statistics are complete, changes to the data base may be made.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-262-050 Errors or discrepancies discovered during the verification of the auditor's abstract of votes. ~~((In the event that))~~ (1) If the county canvassing board, during the verification ~~((s))~~ process, discovers that errors or discrepancies exist in the auditor's abstract of votes ~~((or that discrepancies exist between that abstract and the manual or adding machine totals for registered voters and votes cast produced pursuant to WAC 434-262-040))~~, the board shall investigate those errors ~~((and))~~ or discrepancies. They shall be empowered to take whatever corrective steps a majority of the board deems necessary, including changing or modifying the auditor's abstract of votes if the error or discrepancy is discovered in that document. The canvassing board may ~~((then))~~ proceed to verify votes cast on other measures or ~~((for candidates))~~ races if a majority of the board believes that the nature of the errors or discrepancies discovered warrant ~~((such))~~ further action on their part.

(2) Changes in the results of an election following a recount are not considered errors or discrepancies.

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

WAC 434-262-060 Documentation of corrective action taken. If the canvassing board decides to take corrective action with respect to ~~((any part of the auditor's abstract of votes, they))~~ errors or discrepancies described in WAC 434-262-050, the canvassing board shall prepare a written narrative of the errors or discrepancies discovered, the cause of those errors, if known, and the corrective action taken. ~~((# the event the auditor's abstract of votes))~~ Each member of the canvassing board must sign the written narrative and must initial the auditor's abstract of votes if it is altered or modified by the canvassing board ~~((, those alterations and modifications shall be initialed by each member of the canvassing board, additionally, the written narrative shall be signed by each member of the board)).~~

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-262-080 Transmittal of certified copy of county canvass report to the secretary of state. Immediately following the certification of the returns of any primary, special, or general election in which state measures, federal or state offices, or legislative or judicial offices whose jurisdiction encompasses more than one county appeared on the ballot, the county auditor must transmit those returns to the secretary of state by fax, e-mail, or other electronic means. No later than the next business day, the county auditor must send to the secretary of state a certified copy of that part of the county canvass report and, if applicable, the written narrative, covering those issues and offices ~~((to the secretary of state)).~~ ~~((A copy of the written narrative documenting errors and discrepancies discovered and corrective action taken shall accompany the abstract if applicable. Copies of the adding machine tapes used during the verification process need not be sent to the secretary of state.))~~

AMENDATORY SECTION (Amending WSR 05-12-116, filed 5/31/05, effective 7/1/05)

WAC 434-379-020 Signature verification standard. A signature on a petition sheet ~~((will))~~ must be matched to the signature on file in the voter registration records. ~~((A signature is considered a match if at least three of the following criteria are met:~~

- ~~(1) The capital letters match;~~
- ~~(2) Letters tail off alike;~~
- ~~(3) Letter spacing is the same;~~
- ~~(4) The space between the signature and the line is the same;~~
- ~~(5) The beginning and ending of the signature and the slant are consistent;~~
- ~~(6) Unique letters in the signature match;~~
- ~~(7) The overall appearances match.~~

~~In determining whether a signature matches the signature in the registration file, the age of the voter and the date of the signature on the registration file may also be considered.))~~ The following characteristics must be utilized to evaluate signatures to determine whether they are by the same writer:

(1) Agreement in style and general appearance, including basic construction, skill, alignment, fluency, and a general uniformity and consistency between signatures;

(2) Agreement in the proportions of individual letters, height to width, and heights of the upper to lower case letters;

(3) Irregular spacing, slants, or sizes of letters that are duplicated in both signatures;

(4) After considering the general traits, agreement of the most distinctive, unusual traits of the signatures.

A single distinctive trait is insufficient to conclude that the signatures are by the same writer. There must be a combination or cluster of shared characteristics. Likewise, there must be a cluster of differences to conclude that the signatures are by different writers.

WSR 05-22-028
PROPOSED RULES
GAMBLING COMMISSION

[Filed October 26, 2005, 2:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-205 [05-17-204].

Title of Rule and Other Identifying Information: New section WAC 230-02-101 Cash defined.

Hearing Location(s): DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188, (509) 248-8220, on January 13, 2006, at 9:30 a.m.

Date of Intended Adoption: January 13, 2006.

Submit Written Comments to: Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail Susana@wsgc.wa.gov, fax (360) 486-3625, by January 1, 2006.

Assistance for Persons with Disabilities: Contact Shirley Corbett by January 1, 2006, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A petition for rule change submitted by Monty Harmon, Harmon Consulting Inc., was filed at the October 14, 2005, meeting. Mr. Harmon is requesting that cash be defined in our rules. This new definition of cash would expand the methods players could use to participate in gambling activities and/or receive their winnings.

The petitioner has indicated to staff that the intent of the change is to allow patrons to use "guest cards" to purchase pull-tabs and allow pull-tab winnings to be added to "guest cards." However, if this proposal is approved it would apply to all gambling activities. The petitioner states in his petition the change would modernize the industry and take advantage of current security benefits of prepaid cashless systems.

Cash is not specifically defined in our rules; however, cash equivalent is defined in WAC 230-40-552 as follows: "as treasury check, personal check, traveler's check, wire transfer of funds, money order, certified check, cashier's check, a check drawn on the licensee's account payable to the patron or to the licensee, or a voucher recording cash drawn against a credit card or debit card." This rule became effective May 2000 and provided for additional methods of pay-

ment to participate in card games, other than cash or personal check. Although the cash equivalent definition only applies to card games, it has been informally used by staff to clarify the definition of cash as it relates to other gambling activities. The petitioner's intent is for the "guest card" to be purchased and used by patrons at a licensed business. The "guest card" could be used to purchase food, beverages, pull-tabs, and/or participate in other gambling activities. A patron may add additional funds to the "guest card." Most importantly, licensees may add a player's winnings to the "guest card" rather than paying with cash or a check. The "guest card" would be redeemable for cash at anytime. There would be an accounting system associated with this activity to ensure the accuracy of customer "guest card" balance. At a patron's request, the system would also provide a "guest card" fund balance.

Statutory Authority for Adoption: RCW 9.46.070.

Statute Being Implemented: Not applicable.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Staff recommends the petition be denied for the following reasons: Standards must be developed for an accounting system; rules must be reviewed to determine other necessary changes and the impact on other gambling activities; and staff will need to monitor the systems to ensure balances are accurate.

Name of Proponent: Monty Harmon, Harmon Consulting, Inc., private.

Name of Agency Personnel Responsible for Drafting: Susan Arland, Rules Coordinator, Lacey, (360) 486-3466; Implementation: Rick Day, Director, Lacey, (360) 486-3446; and Enforcement: Neal Nunamaker, Deputy Director, Lacey, (360) 486-3452.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement has not been prepared pursuant to RCW 19.85.025, and/or the proposed rule does not impose more than minor, if any, costs to businesses and no disproportionate impact to small businesses has been identified.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington State Gambling Commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

October 25, 2005

Susan Arland
Rules Coordinator

NEW SECTION

WAC 230-02-101 Cash defined. "Cash" is any currency, check, or debit card transaction valued in terms of the U.S. dollar. For purposes of these rules, Canadian currency shall be converted in accordance with the published exchange rates for financial reporting purposes but may be recorded in terms of Canadian or U.S. dollars as long as the records clearly identify the currency used.

In addition, licensees with accounting systems approved by the gambling commission may use transactions on "guest cards" and other "cashless" systems as cash transactions for

purposes of conducting their business and gambling operations. The systems cannot be used for credit transactions and would operate in the same manner as a debit card. Customer purchases would reduce their account balance and their winnings could be added to their balance. Licensees using a "guest card" or "cashless" system must maintain the system so that customer balances could never go below a zero balance even for nongambling purchases or transactions.

WSR 05-22-034
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed October 27, 2005, 1:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-19-089.

Title of Rule and Other Identifying Information: Chapter 308-96A WAC, Vehicle licenses and chapter 308-93 WAC, Vessel registration and certificates of title.

Hearing Location(s): Department of Licensing, Conference Room 108, 1125 Washington Street S.E., Olympia, WA 98507, on December 6, 2005, at 10:00 a.m.

Date of Intended Adoption: January 3, 2006.

Submit Written Comments to: Dale R. Brown, P.O. Box 2957, 1125 Washington Street S.E., Olympia, WA 98507-2957, e-mail dbrown@dol.wa.gov, fax (360) 902-0140, by December 5, 2005.

Assistance for Persons with Disabilities: Contact Dale R. Brown by December 6, 2005, TTY (360) 664-8885.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this change is to clarify language for undercover and confidential vehicle and vessel license application procedures. The change to the existing rules is to clarify language and add to the vehicle rule the inclusion of trailers, snowmobiles and other off road vehicles.

Reasons Supporting Proposal: To clarify language and to define the types of vehicles that are included in undercover and confidential license plate program. The proposed rules will make the rule easier for persons to use.

Statutory Authority for Adoption: RCW 46.08.066 and 88.02.035.

Statute Being Implemented: Same.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: None.

Name of Agency Personnel Responsible for Drafting and Implementation: Angela Johnson, 1125 Washington Street S.E., Olympia, WA, (360) 902-3756; and Enforcement: Deborah McCurley, 1125 Washington Street S.E., Olympia, WA, (360) 902-3754.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.030 (1)(a). The proposed rule making does not impose more than a minor cost on businesses in the industry.

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

October 25, 2005

D. McCurley, Administrator
Title and Registration Services

AMENDATORY SECTION (Amending WSR 02-21-118, filed 10/23/02, effective 11/23/02)

WAC 308-96A-080 Undercover and confidential license plates—Application procedures. (1) What are undercover and confidential license plates?

~~((a) An undercover license plate is issued to local, state, and federal government agencies for law enforcement purposes only to be used in confidential, investigative, or undercover work, confidential public health work, and confidential public assistance fraud or support investigations.~~

~~(b) A confidential license plate is issued to any elected state official for use on official business. Confidential plates are also issued when necessary for the personal security of any other public officer or public employee for the conduct of official business for the period of time that the personal security of such state official, public officer, or other public employee may require.~~

~~Undercover and confidential license plates are standard issue license plates assigned only to vehicles owned or operated by government agencies as identified in RCW 46.08.066.) They are standard issue license plates assigned only to vehicles owned or operated by government agencies as identified in RCW 46.08.066. These vehicles include, but are not limited to, off road vehicles, trailers, and snowmobiles.~~

~~(2) ((How are undercover and confidential vehicles registered? Government owned or operated vehicles may be registered in one of the following ways:~~

~~(a) If registered with an undercover license plate, the record will show fictitious names and addresses on all department records subject to public disclosure; or~~

~~(b) If registered with a confidential license plate, the record will show the government agency name and address on all department records subject to public disclosure.))~~

When is an undercover or confidential license plate issued? An undercover or confidential license plate is issued to government agencies when being used in confidential, investigative, or undercover work.

~~(3) ((Is a government agency responsible for ensuring that safeguards are used to select a fictitious name and address for undercover vehicle registrations? Yes, government agencies shall certify on the application that precautions have been taken to ensure that names and legitimate licensed Washington businesses have not been used.)) **When are undercover and confidential license plates used?**~~

~~(a) These plates are used for official business by government agencies or any state elected official.~~

~~(b) For the personal security of any other public officer, or public employee, for use on an unmarked publicly owned or controlled vehicle for the conduct of business for the period of time required.~~

(4) ~~((How does a government agency apply for undercover or confidential license plates? A government agency requesting undercover or confidential license plates shall provide:~~

~~(a) A completed application form approved by the department and signed by the government agency head or designated contact person. The agency shall indicate on the application form which type of registration is requested (undercover or confidential).~~

~~(b) A copy of the current certificate of ownership, registration certificate or other documents approved by the department showing the vehicle is owned or operated by the government agency.)~~ **How are undercover and confidential vehicles registered?**

(a) An undercover license plate record will show fictitious names and addresses on all department records subject to public disclosure.

(b) A confidential license plate record will show the government agency name and address on all department records subject to public disclosure.

(5) Who is responsible for verifying that only fictitious names and addresses are used for undercover vehicle registrations? The individual signing the application.

(6) How does a government agency apply for undercover or confidential license plates?

(a) A completed application form approved by the department needs to be signed by the government agency head or designated contact person.

(b) A copy of the current title, registration or other documents approved by the department of licensing that proves the vehicle is owned or operated by the government agency.

AMENDATORY SECTION (Amending WSR 02-22-004, filed 10/24/02, effective 11/24/02)

WAC 308-93-241 Undercover and confidential vessel registration—Application procedures. (1) **What are undercover and confidential vessel registrations?** ~~((Undercover and confidential registrations are nonexempt))~~ They are vessel registrations and decals assigned only to vessels owned or operated by government agencies as identified in RCW 88.02.035.

(2) **When is an undercover or confidential vessel registration issued?** An undercover or confidential vessel registration is issued to government agencies when the vessel is being used in confidential, investigative, or undercover work.

(3) **How are undercover and confidential vessels registered?** ~~((Government owned or operated vessels may be registered in one of the following ways:~~

~~(a) If registered with an undercover vessel registration number, the record will show fictitious names and addresses on all department records subject to public disclosure; or~~

~~(b) If registered with a confidential vessel registration number, the record will show the government agency name and address on all department records subject to public disclosure.~~

~~(3) Is a government agency responsible for ensuring safeguards to select a fictitious name and address for undercover vessel registrations? Yes, government agency's must certify on the application that precautions have been taken to~~

~~ensure that the use of citizens' names and legitimate licensed Washington businesses has not been used.~~

~~(4)) (a) An undercover vessel registration record will show fictitious names and addresses on all department records subject to public disclosure.~~

~~(b) A confidential vessel registration record will show the government agency name and address on all department records subject to public disclosure.~~

~~(4) **Who is responsible for verifying that only fictitious names and addresses are used for undercover vessel registrations?** The individual signing the application.~~

~~(5) **How does a government agency apply for an undercover or confidential vessel registration?** ((A government agency requesting an undercover/confidential vessel registration must provide:))~~

~~(a) A completed application form approved by the department ((and)) needs to be signed by the government agency head or designated contact person. ((The agency must indicate on the application form which type of registration is needed (undercover or confidential):))~~

~~(b) A copy of the current ((certificate of ownership)) title, registration ((certificate)) or other documents approved by the department ((showing)) of licensing that proves the vessel is owned or operated by the government agency.~~

WSR 05-22-036

PROPOSED RULES

DEPARTMENT OF FISH AND WILDLIFE

[Filed October 27, 2005, 2:24 p.m.]

Continuance of WSR 05-20-113.

Preproposal statement of inquiry was filed as WSR 05-11-057.

Title of Rule and Other Identifying Information: Commercial crawfish rules. This continuance is solely for purposes of rescheduling the public hearing on this rule proposal.

Hearing Location(s): Natural Resources Building, 1111 Washington Street, Olympia, WA, on February 10-11, 2006, begins 8:00 a.m., February 10, 2006.

Date of Intended Adoption: February 10, 2006.

Submit Written Comments to: Evan Jacoby, Rules Coordinator, 600 Capitol Way, Olympia, WA 98501-1091, e-mail jacobesj@dfw.wa.gov, fax (360) 902-2155, by February 3, 2006.

Assistance for Persons with Disabilities: Contact Susan Yeager by January 27, 2006, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Require escape mechanism in commercial crawfish pots.

Reasons Supporting Proposal: Allows escape of entrapped crawfish if gear is lost.

Statutory Authority for Adoption: RCW 77.12.047.

Statute Being Implemented: RCW 77.12.047.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of Fish and Wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Evan Jacoby, 1111 Washington Street, Olympia, (360) 902-2930; Implementation: Lew Atkins, 1111 Washington Street, Olympia, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street, Olympia, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW. See WSR 05-20-113.

A cost-benefit analysis is not required under RCW 34.05.328. These rule proposals do not affect hydraulics.

October 27, 2005

Evan Jacoby
Rules Coordinator

WSR 05-22-057

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 05-15—Filed October 31, 2005, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-18-044.

Title of Rule and Other Identifying Information: Amendment to chapter 173-503 WAC, Lower and Upper Skagit water resources inventory area (WRIA 3 and 4).

Hearing Location(s): At Bellingham, on January 11, 2006, at 1:00 p.m., at the Bellingham Public Library, Fairhaven Branch, Northwest Room, 1117 12th Street; at Mt. Vernon, on January 11, 2006, at 7:00 p.m., at Skagit Station Community Room, 105 East Kincaid Street, Suite 101; and at Darrington, on January 12, 2006, at 7:00 p.m., at the Darrington Community Center 570 Sauk Avenue.

Date of Intended Adoption: March 30, 2006.

Submit Written Comments to: Jacque Klug, Department of Ecology, Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008, e-mail jklu461@ecy.wa.gov, fax (425) 649-7098, by January 20, 2006.

Assistance for Persons with Disabilities: Contact Judy Beitel by January 3, 2006, TTY (800) 833-6388 or (360) 407-6878.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments would reserve a limited amount of water for future domestic, municipal, commercial/industrial, agricultural irrigation, and stock watering supply. The amendments also establish closures for certain tributary basins when the reservations are fully allocated, and set forth future water right permitting conditions. The stream flows set in the current rule would not be altered, nor would the current maximum water allocation limits for the Skagit River basin. New water users in the Skagit basin would be required to meter water use.

Reasons Supporting Proposal: Minimum instream flows established in the current chapter 173-503 WAC create a water right with a priority date as of the date the rule was established (April 14, 2001). All water rights, including per-

mit-exempt groundwater withdrawals under RCW 90.54.050, are junior in priority date to the instream flow and may be subject to interruption when instream flows are not met. A rule amendment is necessary to create a new administrative framework to allow new domestic, municipal, commercial and industrial water uses, and stock watering supplies. This is done in support of the goal of RCW 90.54.020 (5) which requires that adequate and safe supplies of water be preserved and protected in potable conditions to satisfy human needs.

Statutory Authority for Adoption: Chapter 90.54 RCW, Water Resources Act of 1971; chapter 90.22 RCW, Minimum water flows and levels; chapter 173-500 WAC, Water resources management program; chapter 173-503 WAC, Instream resources protection program—Lower and Upper Skagit water resources inventory area (WRIA 3 and 4).

Statute Being Implemented: Chapters 90.22, 90.44, and 90.54 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of Ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Jacque Klug, Northwest Regional Office, Department of Ecology, (425) 649-7124; Implementation and Enforcement: Dan Swenson, Northwest Regional Office, Department of Ecology, (425) 649-7270.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

The Washington State Department of Ecology (ecology) is proposing an amendment to chapter 173-503 WAC. The main features of this proposed rule amendment are creating reservations of a limited amount of water for specific future uses that are not subject to the established in-stream flows, establishing closures for tributaries, and setting forth conditions for future water right permitting. The proposed rule amendment also changes previously interruptible water supplies into uninterruptible water supplies, and potentially reduces in-stream flow levels. It provides additional benefits to various out-of-stream water users, and also potentially reduces various environmental values.

This small business economic impact statement (SBEIS) finds that the dominant impact of this proposed rule amendment is that it will provide disproportionate benefits to small business. Some small businesses will also experience net costs and these will also be disproportionate. Overall, this amendment would constitute a cost-reducing change to the existing rule under RCW 19.85.030 (2)(e), which reduces the disproportionate impact of the existing rule.

1. Background: Water availability is a critical issue in Washington and will become even more so as time passes. Decisions related to out-of-stream water use have been controversial; caught between the need to consider environmental impacts, especially the impacts on salmon populations listed under the federal Endangered Species Act, and human demands for water.

Ecology adopted chapter 173-503 WAC, In-stream resources protection program—Lower and Upper Skagit

water resources inventory area (WRIA 3 and 4), on April 14, 2001. The 2001 Skagit rule established the in-stream flow levels in WRIA 3 and 4, and made all future consumptive uses subject to this in-stream flow. The in-stream flow levels were established through scientific investigations that were conducted under a cooperative agreement between state, local and tribal governments in the Skagit River basin. A memorandum of agreement was signed by the City of Anacortes, Public Utility District Number 1 of Skagit County, Skagit County, Washington State (both the Department of Ecology and Department of Fish and Wildlife) and the Upper Skagit, Swinomish and the Sauk-Suiattle Indian Tribes that outlined actions that would provide for more coordinated management of water resources in the Skagit basin. An important element of the agreement was to establish in-stream flows for the Skagit River. Ecology conducted rule making that established the 2001 in-stream flow rule. After the rule was adopted, it was challenged in *Skagit County v. Washington State Department of Ecology*. The legal challenge is based in part on the fact that an SBEIS was not conducted during the original rule making. Ecology recognizes that conducting an SBEIS is a faster and more cost-effective approach as part of this rule-making amendment than litigation over whether an SBEIS was or is necessary.

Ecology has determined that the existing Skagit in-stream flow rule has an impact on small business. The proposed rule amendment reduces business costs due to limitations on access to water. Therefore, it would constitute a cost-reducing change to the existing rule under RCW 19.85.030 (2)(e), which reduces the disproportionate impact of the existing rule.

1.1 The Requirements of Small Business Impact Analysis: Ecology is issuing this SBEIS under chapter 19.85 RCW as part of this rule adoption process.

The objective of this SBEIS is to identify and evaluate the various requirements and costs that the proposal might impose on businesses. In particular, the SBEIS examines whether the proposed rule amendment imposes a disproportionate impact on small businesses as compared to large businesses. The purpose and contents of an SBEIS are contained in RCW 19.85.040.

1.2 Baseline: An SBEIS is limited to analyzing the changes the proposed rule amendment creates, given the existing legal setting. Therefore, this analysis focuses on proposed changes to current water management policy for the Skagit River basin.

The current legal structure is defined by the 2001 Skagit watershed management rule and other applicable administrative rules and laws. Costs and benefits associated with implementing other rules should have been considered when those rules (WACs) were developed and adopted. Laws (RCWs) are not subject to our review.

Accordingly, this analysis evaluates the economic impact on businesses of changes to how water would be managed resulting from the proposed rule amendment.

2. Brief Description of the Proposed Rule Amendment and How the Changes Affect Business: The proposal creates reservations of limited amounts of water for specific uses while leaving in place the in-stream flows set in the 2001 rule. It also establishes closures for tributaries, and sets forth

conditions for future water right permitting. There are several impacts to small businesses in WRIA 3 and 4, however, the negative impacts are small compared to the positive impacts the rule will have on small businesses:

A. Water Reservations: The water reservations are not subject to the in-stream flows. The existing in-stream flow rule limits new water uses to 200 cfs. Under present conditions, this 200 cfs is available for only interruptible water rights as the in-stream flows are not met during several days in the year. This rule amendment proposes establishing reservations that authorize withdrawals of up to 25 cfs as uninterruptible water rights.

- 10 cfs would be available for agricultural irrigation, and
- 15 cfs would be available for domestic, municipal, commercial and industrial water supply, and stock watering uses.
- The remaining 175 cfs of the 200 cfs would remain available for other users as an interruptible supply. This part of the water is unchanged in its status.

The major change made by the proposed rule amendment is to convert 25 cfs of the interruptible water supply to an uninterruptible water source.

This alters the usability of the water and, therefore, changes its economic value; this change is a benefit to water users including businesses. Currently, any post 2001 ground-water withdrawal, including those via permit-exempt wells in continuity with the Skagit River or its tributaries, is legally required to curtail use during low flow periods. Under the proposed reservations, the future water needs of most businesses could be met without curtailment. Moreover, the ability to use water during low flows should be a net benefit to small businesses from this rule making because most businesses require a reliable year-round water supply. The existing regulatory framework only allows for interruptible new rights. Currently, businesses that require a reliable water supply must either connect to an uninterruptible public water supply, have a well and on-site storage, or obtain water from other uninterruptible sources.

B. Subbasin Closures: Certain tributary subbasins of the Skagit River in WRIs 3 and 4 will be closed to further appropriation when the reservation for that particular subbasin is fully allocated. For most areas in the Skagit basin, the reservations should be adequate to fulfill the expected future water needs for at least twenty years. The subbasins subject to earlier closure are tributary basins to the Skagit basin where the demand is mostly for domestic water for residences. However, in some subbasins such as the Nookachamps, Fisher, Carpenter and Hansen creeks, the projected demand for water exceeds the reservation quantities. If population can be used as an indicator of business potential, this could affect 10% to 13% of the new business applications. Public water supplies from outside of the basin will likely be required to meet the maximum anticipated demand. If public water supplies are not made available, a water supply may be available through a purchase or transfer of existing water rights or approval of a mitigation plan. Presently, large public water systems such as the Public Utility District of Skagit County (Skagit PUD) provide water service in some parts of these subbasins. Over time, the Skagit PUD or other large

public water systems should be able to provide service to most areas of the Nookachamps, Fisher, Hansen and Carpenter subbasins. Once the reservation water is allocated in a particular subbasin, a basin closure will be in effect. Tributary closures will not reduce the remaining 175 cfs of interruptible water and that water from other areas of the Skagit River basin that remain open could still be used. Tributary closures may, however, move the economic gain from the reservation from one tributary to another area.

For those businesses that may eventually require future water from a specific closed subbasin after the closure, any withdrawal would require continual mitigation, not just during low flow periods as was the case under the previous rule. This could necessitate water leasing or transfers of existing water rights or could lead to a change in the proposed location of a business. Furthermore, businesses requiring water in a closed basin would also have the option of obtaining water supply from outside of the closed basin.

Those with existing water rights will not be affected by these closures.

C. Water Right Permitting: The proposal sets forth a framework for future water right permitting. The applicants seeking water rights for a new public water supply must first demonstrate there is no service from an existing public water supply. If they can be served by the existing public water supply, ecology cannot approve such a water right request.

Connecting to a public water supply could be a cost to some businesses. This will only impose a substantive cost for companies for which the cost of hooking up is greater than the cost of developing a new water source such as drilling a well. Connection costs are likely to be lower than the cost of a well and other development costs (see the gain in section 3 below). Most businesses that require reliable water supply for domestic uses are likely to have either already connected, already have a well and on-site storage, or already have obtained water in other ways.

The Skagit County critical areas ordinance also requires connections to public water systems under specific conditions. Consequently, for some areas this is not a new legal requirement.

D. Reduced Flows: The Skagit River and its tributaries will have reduced in-stream flows as a consequence of the reservations. This will slightly reduce the amount of water in the river during low flow periods and could potentially indirectly impact in-stream benefits such as ecosystem services, recreation, etc. For businesses that provide guide services such as rafting, fishing and bird watching, or those dependent on dilution for waste removal, there could be a very minor impact. However, given the limited size of the reservation and the expected impact on streams, ecology anticipates that the proposed rule would have a negligible impact on businesses which depend on the in-stream flow.

E. Metering: The requirement to meter water use was set in chapter 173-173 WAC, a rule that already exists and costs were considered there. Water source metering under chapter 173-173 WAC has only been required on water users withdrawing water authorized under water right permits, certificates and claims, and not for users using permit exempt ground water wells, except in certain locations with depressed or critical salmon stocks. WRIA 3 and 4 has sev-

eral depressed or critical salmon stocks. Despite the presence of depressed or critical salmon stocks in some areas of the basin, ecology acknowledges that requiring water source meters changes current practices, regardless of the existing requirements. The change may result in costs to individuals and businesses using permit exempt wells that were not previously required to meter. Business users of permit exempt well water will likely experience the "in pipeline" costs outlined in the SBEIS for chapter 173-173 WAC in 2001.

However, the metering will help other businesses obtain water. Actual use is likely to be less than the maximum allowed use outlined in the rule amendment proposal. When calculating what water is available for a new applicant, the actual use rather than the standard accounting value can be subtracted from the total available water to determine whether there is enough water for a new water user. Thus, the metering allows more accurate accounting of water use, which can result in more users having access to water from within the reservation. Thus, in the long term, the metering significantly reduces costs to those who would otherwise be without water.

3. Costs to Businesses by Listed Type of Cost: Most costs for this proposal do not fit neatly into the cost categories listed in chapter 19.85 RCW. The costs are easier to understand as they affect water projects. The water projects themselves can include many of the listed items such as reports, records, professional services, equipment, supplies, labor, administration, and sometimes foregone revenue. However, they also include land use and water rights transfers, which are not listed in the RCWs. Professionals in these fields are comfortable talking about "installed costs" which may include everything above. Thus, the costs in this document are not parsed out to the listed costs. Rather, they are estimated under the part of the rule that generates the cost or gain. Further, businesses will experience very different impacts, either gains or losses, from the proposed rule amendment, depending on the place, the time, and what they wish to do with the water.

Reporting and Recordkeeping: Metering is required under chapter 173-173 WAC. The requirement is not new but it represents a change for permit exempt wells from current practices. The department anticipates implementing the rule to minimize reporting and record-keeping costs associated with metering, such as having a local entity read and record the meter readings. The department cannot significantly change the reporting standards since they are outlined in a different WAC. Additionally, metering can potentially allow more users to access the reservation, if most water users consume less water than the default water use figures.

Additional Professional Services: Most affected projects will require some form of professional service. There is the potential for both increased and decreased costs.

Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: These costs may be reduced or increased, depending on the impact of the rule for a specific business. Once the closures are in effect, some businesses may have costs associated with either public water hookups, developing tanks and pipelines for storage, or construction of mitigation options. These costs are not called out separately but are included in the descriptions below. However, more

companies should save these same costs if they can make use of the uninterrupted reservations.

Revenue Impacts: Revenue impacts could be experienced if a company has to wait to "open for business" because of an indirect effect of the proposed rule amendment.

(a) Example of a gain: Under the existing rule, if a company finds that its potential gain for an option is less than the cost of mitigation or a water right transfer, then the revenue associated with that option would be foregone. However, this option value is, by definition, less than the value of the mitigation. In most cases, and in most places, the proposed amendments should reduce this kind of "income potential" loss.

(b) Example of a loss: Closures may cause business to forgo the potential net income from an option they might have exercised.

(c) Example of a loss: Those required to connect to water systems to obtain new or additional water could also experience an increased cost through waiting for water and foregoing the potential for revenue for a time. However, this is likely to be a limited number of entities since connection may already be the preferred alternative.

(d) To the extent that increased costs yield increased prices for businesses, gross revenues could be reduced. This scenario assumes that the business in question has sufficient market power to affect market clearing prices. Offsetting this is the net benefit to businesses that will now be able to get water during periods of low flows via the reservation and avoid expensive on-site storage or other mitigation alternatives. This will likely lower costs to some potential water users and, to that extent, may increase revenues.

Other Compliance Requirements: The scenarios that may create costs not explicitly listed in chapter 19.85 RCW are the same as those listed under *Revenue Impacts* above. Potential costs also include effects of land use on the value of land. For businesses that require water for location specific activities, this might change the highest-valued use of the land. Water users in these locations are already required to curtail use during low flow periods. This makes irrigation, or other business uses, difficult without transfers of uninterrupted rights or the expense of supplemental storage. However, evaluation of past permitted uses by businesses indicates that the predominant uses are for multiple domestic systems and irrigation. Since 1985, ecology has issued an average of approximately two permits to business entities per year. The majority were issued prior to 1992. Only one permit has been issued since 2001, under the existing rule. In these areas, domestic uses under the proposed rule amendments would still be served by individual wells through the reservation. Thus, the possibility of a land value shift only remains likely for agriculture. Forecast agricultural demand is greater than the reservation. Some agriculture will not be able to obtain water from the 10 cfs that is reserved for agriculture. For those entities, future irrigation uses should be similar under both the existing and the proposed rule amendments since permits under the existing rule would already be interruptible. The interruption periods already generally fall during the most important irrigation periods.

4. List of Affected Industries: No industries are required to comply with the proposed rule amendment unless

they seek to obtain new water rights in the covered area. However, requirements affecting water use are likely to translate into changes in costs, benefits, and property values based on impacts to the highest valued uses in the watershed. As such, existing business owners of undeveloped property are likely to be the industries that will be "required to comply" either directly, in terms of attempting to acquire water, or indirectly in terms of changes in asset values. Therefore, the following list is provided indicating standard industrial classification (SIC) codes for existing developable properties in the Skagit watershed.¹

Table 4.1. Industries

SIC Code	Description	SIC Code	Description
0181	Ornamental Nursery Products	5143	Dairy Products, Nec. Dried or Canned
0191	General Farms, Primarily Crop	5148	Fresh Fruits and Vegetables
0241	Dairy Farms	5154	Livestock
0652	Unassigned	5172	Petroleum Products, Nec.
0783	Ornamental Shrub and Tree Services	5191	Farm Supplies
1521	Single-family Housing Construction	5193	Flowers and Florists' Supplies
1611	Highway and Street Construction	5221	Unassigned
1794	Excavation Work	5261	Retail Nurseries and Garden Stores
2011	Meat Packing Plants	5271	Mobile Home Dealers
2015	Poultry Slaughtering and Processing	5399	Miscellaneous General Merchandise Stores
2411	Logging	5431	Fruit and Vegetable Markets
2421	Sawmills and Planing Mills, General	5499	Miscellaneous Food Stores
2441	Nailed Wood Boxes and Shook	5541	Gasoline Service Stations
2653	Corrugated and Solid Fiber Boxes	5941	Sporting Goods and Bicycle Shops
2951	Asphalt Paving Mixtures and Blocks	6021	National Commercial Banks
4011	Railroads, Line-haul Operating	6162	Mortgage Banks and Correspondents
4213	Trucking, Exceptional	6515	Mobile Home Site Operators
4222	Refrigerated Warehousing and Storage	6531	Real Estate Agents and Managers
4225	General Warehousing and Storage	6552	Subdividers and Developers, Nec.
4492	Towing and Tugboat Service	6792	Oil Royalty Traders
4812	Radiotelephone Communications	7032	Sporting and Recreational Camps
4899	Communication Services, Nec.	7033	Trailer Parks and Campsites
4924	Natural Gas Distribution	7992	Public Golf Courses
4925	Mixed, Manufactured or Liquefied Petroleum Gas Production	7999	Amusement and Recreation, Nec.

Table 4.1. Industries

SIC Code	Description	SIC Code	Description
4941	Water Supply	8322	Individual and Family Services
5031	Lumber, Plywood, and Millwork	8641	Civic and Social Organizations
5032	Brick, Stone and Related Materials	8661	Religious Organizations
5099	Durable Goods, Nec.		

5. Calculation of Business Benefits and Compliance Costs: The dominant expected business impact is the benefit provided by access to water through the reservation. This would constitute a cost-reducing feature under RCW 19.85.030.

Disproportional Costs/Benefits to Small Business: The distribution of compliance costs can be analyzed by evaluating previous water right permits and existing business-owned developable parcels. In the past, permitted business water uses have been predominately small businesses as defined by

Table 5.1. Distribution of Benefits (Avoided Costs) for Business-Owned Exempt Well Development²

	Number of Businesses ³	Average Employment (No. of Employees)	Average Benefit per Employee ⁴ (\$1000)	Median Benefit Per Employee (\$1000)
Small Businesses	45	6-15	497.0	55.5
Large Businesses	12	273-699	16.4	16.4

The numbers in Table 5.1 represent the average avoided storage costs (net benefits) for small and large businesses. As can be seen in Table 5.1, it appears likely that most businesses will benefit from the proposed rule amendment and that small businesses will benefit disproportionately. These values represent the median avoided cost. For small businesses it exceeds that for large businesses by a factor of 3.4. It is important to note that the large avoided costs are based on the assumption of full development of all parcels. If a business (small or large) developed only a portion of their parcels, then the avoided costs would be smaller. Regardless, the data suggests that the impacts of the proposed rule amendment will be disproportionately beneficial to small businesses.

If a business with land near a tributary decides to develop after the tributary is closed this ratio may reflect the relative costs rather than a gain.

Access to Water: If an agricultural business is unable to access water from the reservation, the approximate value of an uninterruptible acre foot of water is \$65 per year. Based on this, on a per acre foot basis, the cost of lack of access to water is disproportionate. Thus, the impact on agriculture will depend on whether the farm obtains water. For a farm obtaining an acre foot from the reservation, the impact is disproportionate and positive. For a farm, unable to obtain an acre foot due to a closure, the impact is disproportionate and a loss. For farms obtaining water from the reservation, the gain is disproportionate at the same rates.

chapter 19.85 RCW. Since 1985, approximately thirty-seven permits have been issued to businesses or private owners for irrigation. Of those permits only two have been for large businesses. However, all permits issued previously except one were issued prior to 1992 and the existing in-stream flow rule. Permitted users authorized since the current rule was adopted must restrict use or mitigate during low flow periods making the interruptible water relatively less desirable than the uninterruptible water obtained before the existing rule was put in place. Therefore, the historical rate of permits may overstate the expected number of future permits. However, it is still reasonable to anticipate that a majority of future applications will also be from small businesses.

The reservation will yield a net benefit to most business-owned parcels in the basin since on-site storage will no longer have to be provided in order to convert an interruptible right into water that can be used year-round. The exact amount will depend on the size of parcels, ownership, business size and zoning; the distribution of benefits (avoided costs) is shown in Table 5.1.

Table 5.2. Distribution of Impact for 1 AF of Water

Farms by value of sales:	Number of farms	Value of an AF
Less than \$2,500	345	\$ 1.3000
\$2,500 to \$4,999	69	\$ 0.4334
\$5,000 to \$9,999	79	\$ 0.5418
\$10,000 to \$24,999	98	\$ 0.0929
\$25,000 to \$49,999	42	\$ 0.0433
\$50,000 to \$99,999	55	\$ 0.0217
\$100,000 or more	184	\$ 0.0325

Income distribution based on 2002 Census of Agriculture for Skagit County

Hookups: The costs of connecting to an existing system can range from \$8,000 to \$35,000 depending on the complexity. However, some of that cost (all, in some cases) will likely be returned via latecomer agreements. A well with storage can easily cost \$40,000 to \$50,000 depending on the depth of the well, geology and tank type. On-site storage for a low flow period can cost approximately \$25,000-\$30,000 by itself⁵. For most businesses, this makes connecting to the system the less expensive alternative. This will create an extra step for those wishing to obtain a water right. Even if a business happens to be in an area with a high water table, and happens to be located exactly the maximum distance from the water supply line and happens to need the smallest possible storage, then the hook up may cost more. The cost differential would, in this instance, be small. This cost is unlikely to

vary based on employment. It will therefore, by definition, impose a disproportionate cost if two companies large and small have similar circumstances.

Metering: Metering is required by chapter 173-173 WAC. The metering WAC was evaluated in 2001 at the time of adoption. The numbers below are a quote from that SBEIS as published by the code reviser. Most of the meters referenced in the proposed rule amendment will be on pipe. The costs are disproportionate, however, the gain to the additional small businesses which will then be able to obtain water will also be disproportionate. The costs outlined in the SBEIS for the 2001 metering rule found a disproportionate impact and are as follows:

The impacts of the amortized costs of the metering and measuring devices and systems were calculated per \$100 of revenue as shown in the table below. The estimated impacts are generally disproportionate with respect to small businesses, but are not large relative to revenues in either case.

COSTS PER \$100 OF REVENUE (2001 DOLLARS)		
PIPEFLOW		
SIC Group	Small Businesses	Large Businesses
01 - 02	\$ 0.06	\$ 0.003
15	0.05	0.0001
20	0.01	0.0002
24	0.08	0.002
26	0.08	0.0002
28	0.06	0.0001
32	0.02	0.0009

As was explained above, insofar as these metering costs provide additional permits under the reservation, there will be a gain to business.

6. Cost Reducing Features:

Reducing, Modifying, or Eliminating Substantive Regulatory Requirements: This proposed rule amendment reduces the substantive requirement that exists now for some water right holders, who must cease use during low flow.

Simplifying, Reducing, or Eliminating Record-keeping and Reporting Requirements: More record keeping is required under this proposed rule amendment due to metering. However, it will likely create further water availability which is a larger gain.

Reducing the Frequency of Inspections: This proposed rule amendment creates more inspections by individuals of their water meters. However, this is part of what will likely create further water availability which is a larger gain.

Delaying Compliance Timetables: Some companies will no longer have to stop using water during low flows, thus eliminating a compliance timetable.

Reducing or Modifying Fine Schedules for Noncompliance: It is not legal to do this.

Any Other Mitigation Techniques: See above.

7. Conclusions: All impacts, positive and negative, are disproportionate. This proposed rule amendment constitutes a cost-reducing addition to the existing rule. This proposed rule amendment maximizes the net benefits to out-of-stream

users from the available water. These users include businesses. The small businesses reap a disproportionate share of the net gain from this rule. Some businesses may experience costs associated with closures, monitoring, or hook ups. There is a remote possibility that some businesses dependent on river flows will experience costs. However, the dominant impact should be to reduce costs for businesses, especially the small ones.

8. How Was Small Business Involved in the Development of this Rule? The proposed rule amendment has been developed relatively quickly under a court order and is based on conversations during the past two years with local governmental and tribal stakeholders. After the filing of the CR-102, official public hearings will be held to consider the proposal and allow small businesses to provide additional input.

¹ The table was constructed based on data provided by the Skagit County assessor and by the Washington State Employment Security Department.

² Costs assume full development of all business-owned developable parcels at a cost of \$30,000 per well/storage unit. Based on businesses in Skagit and Snohomish counties for which employment, acreage and number of potential wells could be estimated.

³ The total number of businesses represents all businesses located in the county listed as owner of the parcel and where Employment Security data could be located.

⁴ Cost comparisons use the largest 10% of businesses required to comply.

⁵ Cost assumes two-15,000 gallon underground potable-water rated tanks.

A copy of the statement may be obtained by contacting Jacquie Klug, Department of Ecology, Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008, phone (425) 649-7124, fax (425) 649-7098, e-mail jklu461@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Jacquie Klug, Department of Ecology, Northwest Regional Office, 3190 160th Avenue S.E., Bellevue, WA 98008, phone (425) 649-7124, fax (425) 649-7098, e-mail jklu461@ecy.wa.gov.

October 28, 2005
 Polly Zehm
 Deputy Director

AMENDATORY SECTION (Amending [Order 99-05, filed 3/14/01,] effective 4/14/01)

WAC 173-503-010 General provision. These rules apply to waters within the Lower and Upper Skagit water resources inventory area (WRIA 3 and 4), as defined in WAC 173-500-040, excluding the Samish River subbasin, and any islands surrounded by saltwater including Fidalgo, Guemes, Cypress, Hope and Goat islands. This chapter is promulgated pursuant to chapter 90.54 RCW (Water Resources Act of 1971), chapter 90.22 RCW (Minimum water flows and levels), and chapter 173-500 WAC (Water resources management program).

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending Order 99-05, filed 3/14/01, effective 4/14/01)

WAC 173-503-020 Purpose. The purpose of this chapter is to retain perennial rivers, streams, and lakes in the Lower and Upper Skagit water resources inventory area ~~((and))~~, including the Cultus Mt. Tributaries, with instream flows and levels necessary to provide for the protection and preservation of wildlife, fish, scenic, aesthetic, and other environmental values, and navigational values, as well as recreation and water quality. In addition, these flows are necessary to satisfy stock watering requirements, as consistent with RCW 90.22.040.

Chapter 90.54 RCW (Water Resources Act of 1971) requires that utilization and management of waters of the state be guided by a number of fundamentals, including:

Uses of water for domestic, stock watering, industrial, commercial, agricultural, irrigation, hydroelectric power production, mining, fish and wildlife maintenance and enhancement, recreational, and thermal power production purposes, and preservation of environmental and aesthetic values, and all other uses compatible with the enjoyment of the public waters of the state, are declared to be beneficial. (RCW 90.54.020(1))

The quality of the natural environment shall be protected and, where possible, enhanced, as follows:

Perennial rivers and streams of the state shall be retained with base flows necessary to provide for the protection and preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values. Lakes and ponds shall be retained substantially in their natural condition. Withdrawals of water which would conflict therewith shall be authorized only in those situations where it is clear that overriding considerations of the public interest will be served. (RCW 90.54.020 (3)(a))

Waters of the state shall be of high quality. Regardless of the quality of the waters of the state, all wastes and other materials and substances proposed for entry into said waters shall be provided with all known, available, and reasonable methods of treatment prior to entry. Notwithstanding that standards of quality established for the waters of the state would not be violated, wastes and other materials and substances shall not be allowed to enter such waters which will reduce the existing quality thereof, except in those situations where it is clear that overriding considerations of the public interest will be served. (RCW 90.54.020 (3)(b))

~~((In administering and enforcing this regulation, the department's actions shall be consistent with the provisions of chapter 90.54 RCW.))~~ In furtherance of these statutory objectives, this chapter creates a reservation of a limited amount of water for specific future uses. It establishes closures for tributaries, and sets forth conditions for future water right permitting.

NEW SECTION

WAC 173-503-025 Definitions. For the purposes of this chapter, the following definitions shall be used:

"Agricultural irrigation" means the application of water to crops grown for commercial agricultural purposes.

"Allocation" means the designation of specific amounts of water for specific beneficial uses.

"Appropriation" means the process of legally acquiring the right to use specific amounts of water for beneficial uses, as consistent with the ground and surface water codes and other applicable water resource statutes. This term refers to both surface and ground water right permits and to ground water withdrawals otherwise exempted from permit requirements under RCW 90.44.050.

"Commercial/industrial use" means use of water for the purpose of business activities, including human domestic needs, manufacturing or production activities and maintenance of vegetated areas on the business property.

"Consumptive use" means a use of water whereby there is a diminishment of the water source.

"Department" means the Washington state department of ecology.

"Domestic water use" means, for the purposes of administering WAC 173-503-073 and 173-503-074, potable water to satisfy the human domestic needs of a household or business, including water used for drinking, bathing, sanitary purposes, cooking, laundering, care of household pets, and other incidental uses. For permit-exempt domestic water use of ground water sources, total outdoor watering for multiple residences shall be consistent with the ground water permit exemption provisions in RCW 90.44.050.

"Instream flow" means a stream flow level set in rule that is needed to protect and preserve fish, wildlife, scenic, aesthetic, recreation, water quality, and other environmental values, and navigational values. The term "instream flow" means a base flow under chapter 90.54 RCW, a minimum flow under chapter 90.03 or 90.22 RCW, or a minimum instream flow under chapter 90.82 RCW.

"Maximum average consumptive daily use" means the use of water measured over the highest period of use divided by the number of days in that period, less the return flow recharge credit.

"Mitigation plan" means a scientifically sound plan voluntarily submitted by a project proponent to offset the impacts of a proposed water use and approved by the department. A mitigation plan can be submitted to the department for a stream, basin, reach, or other area. To gain departmental approval, a mitigation plan must show that the proposed withdrawal with mitigation in place provides water-for-water mitigation and will not impair senior water rights, including instream flow rights, diminish water quality or withdraw water from a legally closed source. The plan must include monitoring and reporting and provide mitigation for the duration of the water use.

"Municipal water supplier" means an entity that supplies water for municipal water supply purposes. (RCW 90.03.015)

"Municipal water supply purposes" means a beneficial use of water as defined in RCW 90.03.015, including:

(a) For residential purposes through fifteen or more residential service connections or for providing residential use of water for a nonresidential population that is, on average, at least twenty-five people for at least sixty days a year;

(b) For governmental or governmental proprietary purposes by a city, town, public utility district, county, sewer district, or water district; or

(c) Indirectly for the purposes in (a) or (b) of this subsection through the delivery of treated or raw water to a public water system for such use.

"Nonconsumptive use" means a type of water use where either there is no diversion from a source body, or where there is no diminishment of the source.

"Permit-exempt withdrawals" or **"permit exemption"** means a ground water withdrawal exempted from permit requirements under RCW 90.44.050, but which is otherwise subject to the ground water code.

"Public water system" means any system established under RCW 43.20.260 which provides water for human consumption through pipes or other constructed conveyances, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm. This term includes group domestic systems.

"Reservation" means an allocation of water for future beneficial uses. The priority date of a given allocation from the reservation is the same as the effective date of rulemaking that established the reservation.

"Scientifically sound" means adhering to the requirements of best available science as defined in WAC 365-195-905 (5)(a) and (b).

"Stream management unit" means a stream segment, reach, or tributary used to describe the part of the relevant stream to which a particular instream flow level applies. Most of these units contain a control station.

"Subbasin management unit" means a stream segment, reach, or tributary basin, used to describe where a particular instream flow level, water reservation budget, or water diversion or withdrawal limit applies.

"Timely and reasonable manner" means the way in which potable water service can be provided by a public water system to a property as defined in local coordinated water system plans, or by public water systems or local legislative authorities.

"Withdrawal" means the appropriation or use of ground water, or the diversion or use of surface water.

NEW SECTION

WAC 173-503-051 Stream closures. (1) The department determines that, based on historical and current low flows and uses, water other than the water reserved under WAC 173-503-073, is not available for year-round appropriation from the tributary subbasin management units of the Skagit River identified as subject to closure in WAC 173-503-074. Therefore, the department has set aside a limited amount of water for future out-of-stream uses in these basins that can be used under certain criteria described in WAC 173-503-073. When and if the full amount of the reserved quantities are allocated, those tributary subbasins identified as subject to closure shall thereby be closed without further action of the department, except for the Upper Skagit, Middle Skagit, and Lower Skagit subbasin management units.

(2) The department will notify the public of effective stream closures through publication of a notice in a newspaper of general circulation for the region.

(3) Exceptions to the closures and instream flow requirements are provided in WAC 173-503-060, 173-503-073, 173-503-074 and 173-503-075.

NEW SECTION

WAC 173-503-052 Upper Skagit River subbasin management units. (1) The department determines that, based on historic and current low flows and current uses, there remains limited water available for year-round appropriation from certain tributary subbasins within the Water Resource Inventory Area 4, Upper Skagit Basin. Therefore, the department has set aside a limited amount of water for future out-of-stream uses in these basins that can be used under certain criteria described in WAC 173-503-073. The subbasin management units within the Upper Skagit River have been delineated in Figure 5 of WAC 173-503-120.

(2) All appropriations in each Upper Skagit tributary subbasin identified in Figure 5 of WAC 173-503-120 are to be from ground water sources only and limited to a maximum average consumptive daily use of 0.04 cfs or 25,851 gallons per day. These uses will be debited against the Upper Skagit subbasin reservation quantity.

AMENDATORY SECTION (Amending Order 99-05, filed 3/14/01, effective 4/14/01)

WAC 173-503-060 ((Ground water-)) Future permitting actions. ~~((If the department determines that there is hydraulic continuity between surface water and the proposed ground water source, a water right permit or certificate shall not be issued unless the department determines that withdrawal of ground water from the source aquifer would not interfere with stream flows during the period of stream closure or with maintenance of minimum instream flows. If such findings are made, then applications to appropriate public ground waters may be approved subject to the flows established in WAC 173-503-040(2)-))~~ (1) Surface and ground water permits may be issued that are not subject to the instream flows established in WAC 173-503-040 and closures established in WAC 173-503-051 if all statutory requirements are met and if any of the following situations apply:

(a) The proposed use is nonconsumptive, and compatible with the intent of this chapter.

(b) The water use qualifies for the reservations established in this chapter. The proposed use from the reservation must be consistent with all the conditions outlined in WAC 173-503-073 and 173-503-074. If an application for water use from a reservation is approved, the department shall deduct the permitted amount from its record of water available from the reservation.

(c) The applicant or governmental agency elects to submit a scientifically sound mitigation plan and it is approved by the department. A mitigation plan can be submitted to mitigate for an individual withdrawal or to mitigate for multiple withdrawals in a subbasin. A mitigation plan may be approved if the applicant can demonstrate that when the mit-

igation is implemented the proposed withdrawal(s) will not impair senior water rights, including instream flow rights, or diminish water quality. The source of water for a mitigation plan shall not be from a legally closed source. An approved mitigation plan shall include a monitoring and reporting plan, including a quality assurance/quality control plan. It shall also include conditions that the plan be implemented as long as the associated water right is used and that any water provided for mitigation purposes be prohibited from being appropriated for any other purpose. Except for closed basins, if monitoring of a mitigation plan shows the mitigation is not effective, departmental approval of the mitigation plan shall be suspended and the use of water under the permit shall then be subject to the instream flows until the department finds the mitigation plan is effective. In the case of a closed basin, if monitoring of a mitigation plan shows the mitigation is not effective, departmental approval of the mitigation plan shall be suspended and the water use shall cease until the department approves a new or revised mitigation plan.

(d) A proposed ground water use will not impair senior water rights. Based on the hydrogeology of the basin, and the location and depth where ground water withdrawals generally occur, future ground water withdrawals may capture water that would result in impacts to surface water flows and levels in the Skagit River basin. A ground water permit that is not subject to the instream flows or closures may only be approved if an applicant can demonstrate, through scientifically sound studies and technical analysis, and to the satisfaction of the department, that the proposed use will not cause impairment to existing water rights, including the instream flows set in this chapter or withdraw water from a legally closed source. The department acknowledges that additional scientific investigations may identify areas where water may be used without impairing the instream flows set in this chapter. If future scientifically sound investigations identify such areas, the department will notify the public of these findings through publication of a *Skagit River Water Supply Bulletin*.

(2) Before the department can approve a water right application for a new public water supply under subsection (1)(b), (c), or (d) of this section, the applicant must also demonstrate that there are no other municipal or public water systems in the same proposed retail service area. If domestic potable water can be provided by another municipal or public water system, the department shall reject the water right application.

(3) Surface and ground water permits may be issued in subbasins identified in WAC 173-503-074 that are subject to the instream flows and subject to the maximum water availability determination of two hundred cubic feet per second pursuant to WAC 173-503-050. The applicant must adequately demonstrate to the satisfaction of the department that the proposed withdrawal can be managed to avoid impairment of the instream flows established in WAC 173-503-040. The project proponent must also describe how its water needs will be met when water use is curtailed.

(4) No right to withdraw, divert or store the public surface or ground waters of the Skagit River basin that conflicts with the provisions of this chapter will hereafter be granted, except in cases where such rights will clearly serve overrid-

ing considerations of the public interest, as stated in RCW 90.54.020 (3)(a).

(5) All future surface and ground water permit holders shall be required to install and maintain measuring devices (water source meters), in accordance with specifications provided by the department, and report the data to the department in accordance with the permit requirements. In addition, the department may require the permit holder to monitor stream flows and ground water levels.

(6) Any authorization for new beneficial uses must require development on a timeline that shows reasonable progress and due diligence.

NEW SECTION

WAC 173-503-061 Baker River project settlement agreement flows. The department acknowledges that the project releases submitted to the Federal Energy Regulatory Commission for relicense of Puget Sound Energy's Baker River project will provide a significant benefit to salmonids and instream resources. Therefore, the department will as part of its public interest review of new water right applications ensure that no reduction in the mitigation benefits associated with the flow release provisions of the hydropower license for the Baker project will result from approval of such applications; however, this provision shall not apply to new water right applications or permit exempt water rights under RCW 90.44.050 that are processed and approved under a reservation provided for in WAC 173-503-073.

NEW SECTION

WAC 173-503-071 Lakes and ponds. RCW 90.54.020 (3)(a) requires, in part, that the quality of the natural environment shall be protected, and where possible, enhanced, and lakes and ponds shall be retained substantially in their natural condition. Future withdrawals that would not be consistent with this requirement shall be denied.

NEW SECTION

WAC 173-503-072 Administrative requirements. In administering and enforcing this regulation, the department's actions shall be consistent with the provisions of chapter 90.54 RCW. Additionally, all agencies of state and local government, including counties and municipal and public corporations, shall, whenever possible, carry out powers vested in them in manners which are consistent with the provisions of this chapter (RCW 90.54.090).

NEW SECTION

WAC 173-503-073 Water reservations. (1) The department has weighed the public interest supported by providing a limited amount of water for domestic supply, commercial/industrial supply, municipal supply, stock watering and agricultural irrigation with the potential for negative impact to instream resources. The department finds that the public interest advanced by these limited reservations clearly overrides the potential for negative impacts on instream resources. (RCW 90.54.020 (3)(a).) Critical to the depart-

ment's finding that the public interest overrides the negative impacts is the limited nature of the reservations. The department does not anticipate the ability to make additional future reservations given the volume of water previously allocated in the basin for out-of-stream uses and the distressed condition of the fishery resource. Further reservations would be expected to exceed "potential" negative impacts and create actual negative impacts.

Based on this finding, the department hereby reserves specific quantities of an amount of surface and ground water, which can be allocated for specific future beneficial uses. These reservations of water are not subject to the instream flows established in WAC 173-503-040 or closures established in WAC 173-503-051. Uses of the water under the reservation are available only if all the conditions set forth in this section are fully complied with:

(a) Agricultural irrigation reservation. A reservation of ten cubic feet per second (10 cfs) or 3,564 acre-feet annually, is available for agricultural irrigation purposes not subject to the instream flows.

(b) Domestic, municipal, commercial/industrial and stockwatering water supply reservation. A reservation of fifteen cubic feet per second (15 cfs) or 10,840 acre-feet annually, is available for domestic, municipal, stock watering or commercial/industrial water supply not subject to the instream flows.

(2) Conditions for use of the reserved agricultural irrigation water are as follows:

(a) The reservation is available for both ground and surface water and is only available from a source in the Lower, Middle or Upper Skagit River subbasin management units.

(b) The reservation shall be only for the purpose of agricultural irrigation, as defined in WAC 173-503-025.

(c) A water right for use from the reservation must be obtained from the department.

(d) Water use will be authorized for only the irrigation season, unless the applicant can demonstrate to the department's satisfaction a need for a continuous, year-round, irrigation demand.

(e) A measuring device (water source meters) must be installed and maintained on the water source in accordance with specifications provided by the department and report the data to the department in accordance with the permit requirements.

(f) The department will maintain an estimate of the amount of water used from the reservation based on water rights issued by the department and actual measured water use.

(g) Agricultural irrigation water rights obtained under this reservation are limited to irrigation purposes only. The purpose of use of a water right obtained under the agricultural irrigation reservation cannot be changed. In the event that the water use authorized under a water right from the reservation is no longer desired or has been abandoned, the department will credit the quantity of water previously used back to the reservation for that purpose, upon notification of abandonment to the department.

(3) Conditions for use of the reserved domestic, municipal, commercial/industrial, and stock watering water reservation are as follows:

(a) The reservation shall be only for the purpose of domestic water use, municipal, commercial/industrial, or stockwatering water use as defined in WAC 173-503-025. It is available to users exempt from the permitting process and to users requiring a water right, as outlined in WAC 173-503-060.

(b) This reserve of water shall be allocated based on the subbasin management units established in WAC 173-503-074. The water source must be a ground water well if the source is located in a subbasin management unit tributary to the Skagit River and is subject to availability of water in the reservation and the conditions of use of the reservation. A surface water source can be used only if: The source is located in the Upper, Middle or Lower Skagit subbasin management units; the source meets the conditions of the reservation, and use of the source is approved by the department through a water right permit. For sources located in identified tributaries in the Upper Skagit subbasin management unit in Figure 5 of WAC 173-503-120, water use is limited to only ground water sources, and is limited to a maximum daily use of 0.4 cfs or 25,851 gallons per day, debited from the total Upper Skagit subbasin management unit reservation.

(c) Domestic water use shall meet the water use efficiency standards of the uniform plumbing code as well as any applicable local or state requirements for conservation standards.

(d) All users, including permit exempt users, under the reservation shall install and maintain a measuring device (water source meter), in accordance with specifications provided by the department. The water user must provide a reasonable right of inspection, allow the meter to be read, and report the data to the department or a designated local entity.

(e) This reservation shall be administered and accounted for by the department in consultation with local governmental authorities.

(f) A new withdrawal under this reservation is not allowed in areas where a municipal water system has been established and a connection can be provided in a timely and reasonable manner. If an applicant for a building permit or subdivision approval cannot obtain water through a municipal system, the applicant must obtain a letter from a public water supplier prior to drilling a well which states that service was denied. Such a denial shall be consistent with the criteria listed in RCW 43.20.260.

(g) For users utilizing a permit-exempt ground water source, water use shall be consistent with the provisions in RCW 90.44.050.

(4) It shall be the responsibility of an applicant for a building permit or subdivision approval seeking water under the reservation to comply with the conditions in WAC 173-503-073(3) and all other conditions of this chapter.

(5) The reservations are a one-time, finite resource. Once the reservations are fully allocated, they are no longer available and the subbasin management units are closed, except for the Upper, Middle and Lower Skagit subbasin management units. New water sources, including permit exempt wells, may be available only under the provisions in WAC 173-503-060, 173-503-081, 173-503-100 and 173-503-110.

The department shall notify the appropriate county, in writing, when it determines that fifty percent, seventy-five percent, and one hundred percent of the reservation for each subbasin management unit has been allocated. The department shall also issue a public notice annually in a newspaper of general circulation for the region that shows the amount of reserved water for each subbasin management unit that has been allocated, remains unallocated, and any subbasin management units that have been fully allocated and from which water is no longer available under these reservations.

(6) If a water use authorized from the reservations is not in compliance with any condition of these reservations, the department may take action consistent with WAC 173-503-090.

(7)(a) A record of all withdrawals from the domestic, municipal, stock watering, and commercial/industrial reservation shall be maintained by the department. The record will readily show both the allocated and unallocated quantities of water that are in reserved status.

(b) All uses of this reservation shall be debited against the reservation, regardless of whether the source is an interruptible or uninterruptible water use. The department will account for water use under the reservation based on actual measured water use. If actual measuring data are not available, the department will account for water use using 800 gallons per day for each domestic or municipal connection or 5,000 gallons per day for a commercial/industrial use, until actual measured use is available. Additionally, the depart-

ment reserves the right to account for water use based on the best available information contained in well logs, water availability certificates issued by the counties, water rights issued by the department, public water system approvals or other documents.

(c) For water users using on-site septic systems, fifty percent of the water used will be credited to the reservations for recharge from on-site septic systems. The on-site septic system credit will be removed for water users that are subsequently converted to sewer systems.

(d) If a water user under the reservation subsequently abandons the withdrawal, the department will credit back to the reservation the actual amount of water used and debited from the reservation, upon demonstration to the department that the well or surface water source has been decommissioned through written notification of the abandonment.

NEW SECTION

WAC 173-503-074 Establishment of subbasin management units and reservation quantities by subbasin management unit. The department hereby establishes the following subbasin management units. The boundaries of the management units are shown on the maps in WAC 173-503-120. Table 1 shows the approximate location and maximum average consumptive daily use of reserved water that can be withdrawn for each management unit.

Table 1

Subbasin Management Unit	Location	Reservation Quantity	
		Maximum average consumptive daily use in cubic feet per second	Maximum average consumptive daily use in gallons per day
*Denotes basins subject to future closure under WAC 173-503-051	Approximate point where the stream meets a connecting water body		
Alder Creek*	NE 1/4, SW 1/4, Sec. 18, T35N, R7E (RM 41.7)	0.126	81,430
Anderson/Parker/Sorenson creeks*	Sec. 26, T35N, R5E (flows into slough on south side of Skagit River)	0.031	20,034
Careys Creek*	NE 1/4, SW 1/4, Sec. 14, T35N, R6E	0.018	11,633
Carpenter Creek*	NE 1/4, Sec. 30, T33N, R4E	0.01	6,463
Childs/Tank creeks*	Sec. 13, T35N, R5E (flows into Minkler Lake)	0.028	18,096
Coal Creek*	NW 1/4, SE 1/4, Sec. 21, T35N, R5E (flows into Skiyou Slough)	0.029	18,742
Cumberland Creek*	SW 1/4, SE 1/4, Sec. 14, T35N, R6E (RM 39.9)	0.04	25,851
Day Creek*	NE 1/4, Sec. 20, T35N, R6E	0.204	131,839
Fisher Creek*	NE 1/4, Sec. 30, T33N, R4E	0.008	5,170
Gilligan Creek*	SE 1/4, SE 1/4, Sec. 27, T35N, R5E (RM 28.4)	0.04	25,851
Grandy Creek*	NE 1/4, SE 1/4, Sec. 15, T35N, R7E (RM 45.6)	0.228	147,350

Subbasin Management Unit	Location	Reservation Quantity	
*Denotes basins subject to future closure under WAC 173-503-051	Approximate point where the stream meets a connecting water body	Maximum average consumptive daily use in cubic feet per second	Maximum average consumptive daily use in gallons per day
Hansen Creek*	SE 1/4, Sec. 30, T35N, R5E (RM 24.2)	0.059	38,130
Jones Creek*	SE 1/4, NE 1/4, Sec. 17, T35N, R6E (RM 35.1)	0.104	67,212
Loretta Creek*	SW 1/4, Sec. 22, T35N, R6E	0.018	11,633
Mannser Creek*	SE 1/4, NE 1/4, Sec. 17, T35N, R6E	0.024	15,511
Morgan Creek*	NE 1/4, NE 1/4, Sec. 25, T35N, R5E (flows into slough on south side of Skagit River)	0.021	13,572
Muddy Creek*	SW 1/4, NW 1/4, Sec. 14, T35N, R6E (flows into Davis Slough)	0.044	28,436
Nookachamps Creek - East Fork*	Sec. 10, T34N, R4E	0.022	14,218
Nookachamps Creek - Upper*	Sec. 10, T34N, R4E	0.019	12,279
O'Toole Creek*	NW 1/4, NW 1/4, Sec. 21, T35N, R7E (RM 43.6)	0.036	23,266
Red Cabin Creek*	NW 1/4, NW 1/4, Sec. 15, T35N, R6E (flows into Jims Slough)	0.066	42,653
Salmon/Stevens creeks*	SE 1/4, SE 1/4, Sec. 28, T35N, R5E	0.008	5,170
Skagit - Lower	From the Skagit River at the east edge of Sec. 30, T35N, R5E downstream to the mouth	8.631	5,578,103
Skagit - Middle	From the Skagit River at the west edge of Sec. 29, T35N, R5E to the Skagit River at the east edge of Sec. 21, T35N, R7E	2.158	1,394,655
Skagit - Upper◆	Water Resource Inventory Area 4 (Upper Skagit) excluding Grandy Creek subbasin management unit	3.0	1,938,816
Wiseman Creek*	NW 1/4, SW 1/4, Sec. 23, T35N, R5E	0.028	18,095
Total Reservation		15	9,694,208

◆ All uses in each Upper Skagit tributary subbasin identified in Figure 5 of WAC 173-503-120 are limited to a maximum average consumptive daily use of 0.04 cfs or 25,851 gallons per day. These uses will be debited against the Upper Skagit tributary subbasin reservation quantity.

NEW SECTION

WAC 173-503-075 Future stock watering. Chapter 173-503 WAC shall be implemented consistent with RCW 90.22.040 and the department's policy that encourages direct stock water uses from streams to remove livestock from streams for the purpose of protecting water quality and

stream habitat. This applies to both existing and new stock water rights.

NEW SECTION

WAC 173-503-081 Future changes and transfers. No changes or transfers to existing surface or ground water rights in the Skagit River basin shall hereafter be granted that conflict with the purposes or provisions of this chapter. Any change or transfer proposals can be approved only if there is a finding that existing rights, including instream flows hereby established, will not be injured or impaired under the provisions of RCW 90.03.380 or 90.44.100.

AMENDATORY SECTION (Amending Order 99-05, filed 3/14/01, effective 4/14/01)

WAC 173-503-090 (~~(Enforcement.)~~) Compliance and enforcement. ~~((In enforcement of this chapter, the department of ecology may impose such sanctions as appropriate under authorities vested in it, including, but not limited to, the issuance of regulatory orders under RCW 43.27A.190 and civil penalties under RCW 43.83B.335, 90.03.400, 90.03.410, 90.03.600, 90.44.120 and 90.44.130.))~~ (1) In accordance with RCW 90.03.605, in order to obtain compliance with this chapter, the department shall prepare and make available to the public, technical and educational information regarding the scope and requirements of this chapter. This is intended to assist the public in complying with the requirements of their water rights and applicable water laws.

(2) When the department determines that a violation has occurred, it shall:

(a) First attempt to achieve voluntary compliance, except in egregious cases involving potential harm to other water rights or the environment. An approach to achieving this is to offer information and technical assistance to the person, in writing, identifying one or more means to accomplish the person's purposes within the framework of the law.

(b) If education and technical assistance do not achieve compliance, the department shall issue a notice of violation, a formal administrative order under RCW 43.27A.190, or assess penalties under RCW 43.83B.336, 90.03.400, 90.03.410, 90.03.600, 90.44.120 and 90.44.130.

AMENDATORY SECTION (Amending Order 99-05, filed 3/14/01, effective 4/14/01)

WAC 173-503-100 (~~(Regulation review.)~~) Alternative sources of water. ~~((Review of the rules in this chapter may be initiated by the department of ecology whenever new information is available, a change in conditions occurs, or statutory modifications are enacted that are determined by the department of ecology to require review.))~~ (1) The legislature has long acknowledged that water supply and availability around the state are becoming increasingly limited, particularly during summer and fall months and dry years when demand is greatest. Growth and prosperity have significantly increased the competition for this limited resource (RCW 90.54.090 (1)(a)). This chapter provides limited exceptions for new uses in the Skagit River basin.

(2) However, there is a continuing need for ongoing and reliable sources for new water uses. The need dictates the continued development and use of alternative sources of water. Alternative sources of water of equal or better quality than the proposed source have the potential to be used, where appropriate to improve stream flows for fish, to offset impacts of withdrawals on stream flows and provide sources of water for future out-of-stream uses. Alternative sources include, but are not limited to:

- Reuse of reclaimed water;
- Artificial recharge and recovery;
- Multipurpose water storage facilities;
- Conservation and efficiency measures applied to existing uses and the transfer of saved water;
- Acquisition of existing water rights; and

- Establishment of a trust water rights program.

NEW SECTION

WAC 173-503-110 Establishment of trust water rights program. (1) The department may establish a trust water rights program to facilitate the acquisition of existing water rights through purchases, long-term leases, donations and conserved water saved through state and federally funded conservation projects.

(2) The determination of how much water should be allocated between future out-of-stream uses and the restoration and enhancement of instream flows will be made at the time the water is acquired and deposited into the trust water rights program.

NEW SECTION

WAC 173-503-116 Incorporating new hydrologic investigations and information in rule. The Skagit River basin and estuary is a complex river system. Consequently, the department acknowledges that additional hydrologic investigations, ground and surface water modeling, and fisheries studies may enhance scientific understanding of the hydrology and ecology of the Skagit River system. If further scientific investigations produce results that indicate the findings and conditions of this chapter should be updated, the department will publish, after consultation with local and tribal governments, the findings in a *Skagit River Water Resources Supply Bulletin* and outline a process for updating this rule in the bulletin.

NEW SECTION

WAC 173-503-120 Maps. For the purposes of administering this chapter, the boundaries of the Skagit River basin and subbasin management units contained in Figures 4 and 5 are presumed to accurately reflect the basin hydrology.

Figure 4

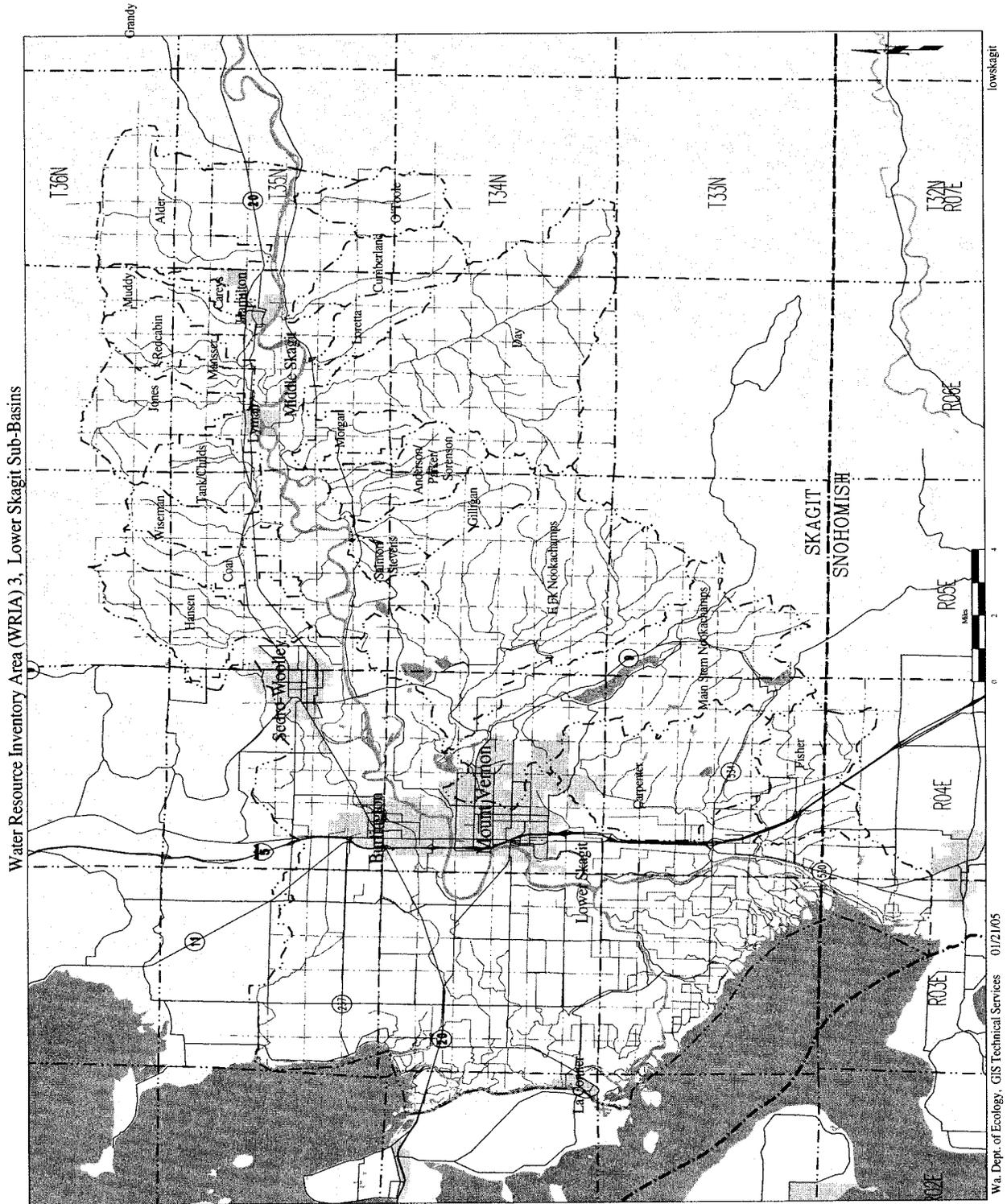
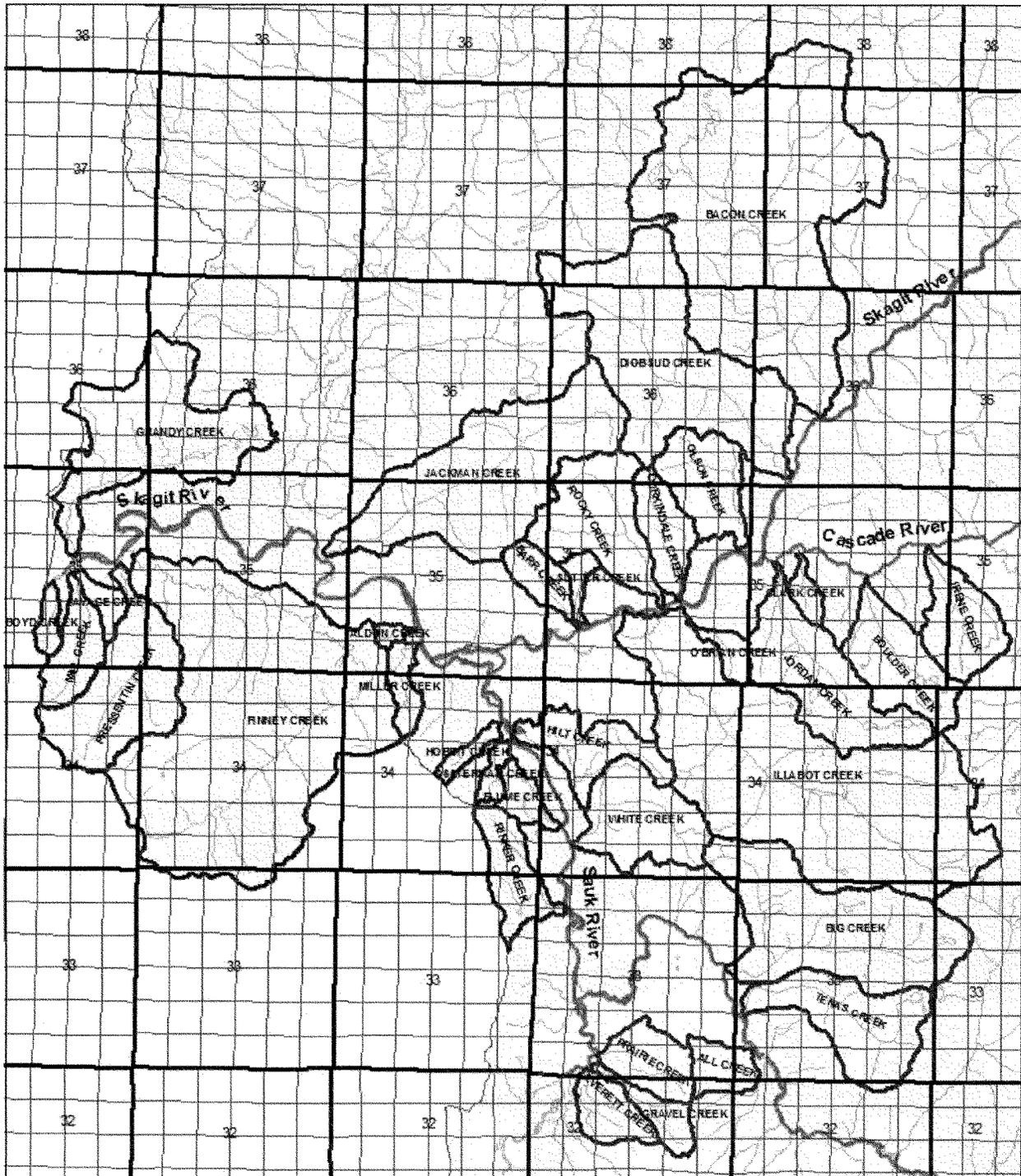


Figure 5

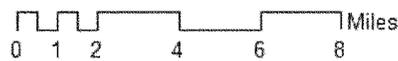
FIGURE 5

Sub Basins of WRIA 4 (Upper Skagit River)



Legend

- Rivers
- WRIA 4
- Townships



Department of Ecology
 Northwest Regional Office
 October 2005

NEW SECTION

WAC 173-503-130 Appeals. All final written decisions of the department pertaining to water right permits, regulatory orders, and related water right decisions made pursuant to this chapter can be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

NEW SECTION

WAC 173-503-140 Regulation review. Review of the rules in this chapter may be initiated by the department whenever new information is available, a change in conditions occurs, or statutory modifications are enacted that are determined by the department to require review.

NEW SECTION

WAC 173-503-150 Water rights subject to instream flows predating the reservations. All water rights established after this amendment shall be subject to the provisions of this chapter as now amended. Water rights that were established after April 14, 2001, the original effective date of this chapter, but that were established prior to the effective date of the reservations contained in WAC 173-503-073, and 173-503-074, may participate in the appropriate reservation provided they agree to change their priority date to that of the reservations. The department assumes that these water rights established during this period will participate under the reservation, unless the water user notifies the department otherwise in writing. For accounting purposes, these water rights will be debited against the subbasin reservations at an amount equal to the maximum average consumptive daily household water use for the Skagit River basin for domestic water uses, and an amount of 5,000 gpd for commercial/industrial uses, unless actual water use records are available.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 173-503-080 Policy statement for future permitting actions.

**WSR 05-22-063
PROPOSED RULES
DEPARTMENT OF REVENUE**
[Filed October 31, 2005, 3:50 p.m.]

Original Notice.
Exempt from preproposal statement of inquiry under RCW 34.05.310(4).
Title of Rule and Other Identifying Information: WAC 458-40-540 Forest land values—2006.
Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on December 7, 2005, at 10:00 a.m.
Date of Intended Adoption: December 10, 2005.

Submit Written Comments to: Gilbert Brewer, P.O. Box 47453, Olympia, WA 98504-7453, e-mail gilb@dor.wa.gov, fax (360) 586-5543, by December 7, 2005.

Assistance for Persons with Disabilities: Contact Sandy Davis no later than ten days before the hearing date, TTY 1-800-451-7985 or (360) 725-7499.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 84.33.140 requires that forest land values be adjusted annually by a statutory formula contained in RCW 84.33.140(3). The proposed rule adjusts the table of forest land values in Washington as required by statute. County assessors will use these published land values for property tax purposes in 2006.

Reasons Supporting Proposal: RCW 84.33.140 requires that the values provided in this rule be adjusted each year.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.140.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington State Department of Revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gilbert Brewer, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #300, Olympia, WA, (360) 570-3230.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the rule and the proposed amendments do not impose any requirements or burdens that are not already specifically required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The content/values set in this rule are explicitly and specifically dictated by statute. Such rules are not subject to RCW 34.05.328.

October 31, 2005
Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-02-037, filed 12/30/04, effective 1/1/05)

WAC 458-40-540 Forest land values—((2005)) 2006. The forest land values, per acre, for each grade of forest land for the ((2005)) 2006 assessment year are determined to be as follows:

LAND GRADE	OPERABILITY CLASS	VALUES ROUNDED
1	1	\$ 203
	2	((204)) 200
	3	190
	4	((138)) 137

LAND GRADE	OPERABILITY CLASS	VALUES ROUNDED
		((2005)) <u>2006</u>
		VALUES ROUNDED
	1	172
2	2	((167)) <u>166</u>
	3	((160)) <u>159</u>
	4	115
	1	135
3	2	131
	3	130
	4	((99)) <u>98</u>
	1	((103)) <u>102</u>
4	2	((100)) <u>99</u>
	3	((99)) <u>98</u>
	4	76
	1	75
5	2	68
	3	67
	4	((46)) <u>45</u>
	1	((38)) <u>37</u>
6	2	((35)) <u>34</u>
	3	((35)) <u>34</u>
	4	((33)) <u>32</u>
	1	((17)) <u>18</u>
7	2	((17)) <u>18</u>
	3	((16)) <u>17</u>
	4	((16)) <u>17</u>
	1	1

WSR 05-22-064
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed October 31, 2005, 3:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-18-084.

Title of Rule and Other Identifying Information: WAC 458-40-660 Timber excise tax—Stumpage value tables.

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on December 7, 2005, at 10:00 a.m.

Date of Intended Adoption: December 10, 2005.

Submit Written Comments to: Gilbert Brewer, P.O. Box 47453, Olympia, WA 98504-7453, e-mail gilb@dor.wa.gov, fax (360) 586-5543, by December 7, 2005.

Assistance for Persons with Disabilities: Contact Sandy Davis no later than ten days before the hearing date, TTY 1-800-451-7985 or (360) 725-7499.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule contains eight tables of stumpage values used to determine timber excise taxes. These eight tables represent the areas in the state in which timber is harvested. Each table breaks out the

values by timber species, quality, and a downward adjustment for hauling. The rule also contains two harvest adjustment tables for the volume per acre that is harvested, logging conditions, remote island harvesting, damaged timber, and thinning. In addition, the rule also contains a domestic market adjustment table for export restricted public timber not sold through a competitive bidding process. The proposed rule adjusts the stumpage value tables as required by RCW 84.33.091.

Reasons Supporting Proposal: RCW 84.33.091 requires the values to be updated twice a year. This is the semi-annual update to be used for the first half of the calendar year 2006. The proposed rule also combines the separate species codes for cedar shake and cedar shingles into a single code, and replaces reporting for these products in MBF with reporting in cords. These changes should simplify forest excise tax administration, minimize reporting errors, and allow better verification.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington State Department of Revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gilbert Brewer, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #300, Olympia, WA, (360) 570-3230.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required when a legislative rule is being adopted under RCW 34.05.328.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Roseanna Hodson, 1025 Union Avenue S.E., Suite #544, Olympia, WA 98504-7453, phone (360) 570-6119, fax (360) 586-5543, e-mail roseannah@dor.wa.gov.

October 31, 2005

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-14-087, filed 6/30/05, effective 7/1/05)

WAC 458-40-660 Timber excise tax—Stumpage value tables—Stumpage value adjustments. (1) **Introduction.** This rule provides stumpage value tables and stumpage value adjustments used to calculate the amount of a harvester's timber excise tax.

(2) **Stumpage value tables.** The following stumpage value tables are used to calculate the taxable value of stumpage harvested from ((July)) January 1 through ((December 31, 2005)) June 30, 2006:

((TABLE 1—Stumpage Value Table
Stumpage Value Area 1
July 1 through December 31, 2005

TABLE 2—Stumpage Value Table
Stumpage Value Area 2
July 1 through December 31, 2005

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$461	\$454	\$447	\$440	\$433
		2	459	452	445	438	431
		3	411	404	397	390	383
		4	377	370	363	356	349
Western Redcedar(2)	RC	1	703	696	689	682	675
Western Hemlock and Other Conifer(3)	WH	1	351	344	337	330	323
		2	287	280	273	266	259
		3	280	273	266	259	252
		4	280	273	266	259	252
Red Alder	RA	1	374	367	360	353	346
		2	291	284	277	270	263
Black Cottonwood	BC	1	31	24	17	10	3
Other Hardwood	OH	1	197	190	183	176	169
Douglas-Fir Poles	DFL	1	679	672	665	658	651
Western Redcedar Poles	RCL	1	1250	1243	1236	1229	1222
Chipwood(4)	CHW	1	1	1	1	1	1
RC Shake Blocks	RCS	1	347	340	333	326	319
RC Shingle Blocks	RCF	1	231	224	217	210	203
RC & Other Posts(5)	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees(6)	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(6)	TFX	1	0.50	0.50	0.50	0.50	0.50

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$489	\$482	\$475	\$468	\$461
		2	489	482	475	468	461
		3	468	461	454	447	440
		4	415	408	401	394	387
Western Redcedar(2)	RC	1	703	696	689	682	675
Western Hemlock and Other Conifer(3)	WH	1	392	385	378	371	364
		2	334	327	320	313	306
		3	323	316	309	302	295
		4	317	310	303	296	289
Red Alder	RA	1	374	367	360	353	346
		2	291	284	277	270	263
Black Cottonwood	BC	1	31	24	17	10	3
Other Hardwood	OH	1	197	190	183	176	169
Douglas-Fir Poles	DFL	1	679	672	665	658	651
Western Redcedar Poles	RCL	1	1250	1243	1236	1229	1222
Chipwood(4)	CHW	1	1	1	1	1	1
RC Shake Blocks	RCS	1	347	340	333	326	319
RC Shingle Blocks	RCF	1	231	224	217	210	203
RC & Other Posts(5)	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees(6)	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(6)	TFX	1	0.50	0.50	0.50	0.50	0.50

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
 (2) Includes Alaska Cedar.
 (3) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
 (4) Stumpage value per ton.
 (5) Stumpage value per 8 lineal feet or portion thereof.
 (6) Stumpage value per lineal foot.

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
 (2) Includes Alaska Cedar.
 (3) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
 (4) Stumpage value per ton.
 (5) Stumpage value per 8 lineal feet or portion thereof.
 (6) Stumpage value per lineal foot.

TABLE 3—Stumpage Value Table
Stumpage Value Area 3
July 1 through December 31, 2005

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir(2)	DF	1	\$407	\$400	\$393	\$386	\$379
		2	385	378	371	364	357
		3	385	378	371	364	357
		4	310	303	296	289	282
Western-Redcedar(3)	RC	1	703	696	689	682	675
Western-Hemlock and Other Conifer(4)	WH	1	392	385	378	371	364
		2	287	280	273	266	259
		3	236	229	222	215	208
		4	236	229	222	215	208
Red-Alder	RA	1	374	367	360	353	346
		2	291	284	277	270	263
Black-Cottonwood	BC	1	31	24	17	10	3
Other-Hardwood	OH	1	197	190	183	176	169
Douglas-Fir Poles	DFL	1	679	672	665	658	651
Western-Redcedar Poles	RCL	1	1250	1243	1236	1229	1222
Chipwood(5)	CHW	1	1	1	1	1	1
RC-Shake Blocks	RCS	1	347	340	333	326	319
RC-Shingle Blocks	RCF	1	231	224	217	210	203
RC & Other Posts(6)	RCP	1	0.45	0.45	0.45	0.45	0.45
DF-Christmas Trees(7)	DFX	1	0.25	0.25	0.25	0.25	0.25
Other-Christmas Trees(7)	TFX	1	0.50	0.50	0.50	0.50	0.50

- (1) Log-scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes Alaska Cedar.
- (4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
- (5) Stumpage value per ton.
- (6) Stumpage value per 8 lineal feet or portion thereof.
- (7) Stumpage value per lineal foot.

TABLE 4—Stumpage Value Table
Stumpage Value Area 4
July 1 through December 31, 2005

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir(2)	DF	1	\$468	\$461	\$454	\$447	\$440
		2	461	454	447	440	433
		3	461	454	447	440	433
		4	461	454	447	440	433
Lodgepole Pine	LP	1	227	220	213	206	199
Ponderosa Pine	PP	1	261	254	247	240	233
		2	195	188	181	174	167
Western-Redcedar(3)	RC	1	703	696	689	682	675
Western-Hemlock and Other Conifer(4)	WH	1	392	385	378	371	364
		2	311	304	297	290	283
		3	290	283	276	269	262
		4	290	283	276	269	262
Red-Alder	RA	1	374	367	360	353	346
		2	291	284	277	270	263
Black-Cottonwood	BC	1	31	24	17	10	3
Other-Hardwood	OH	1	197	190	183	176	169
Douglas-Fir Poles	DFL	1	679	672	665	658	651
Western-Redcedar Poles	RCL	1	1250	1243	1236	1229	1222
Chipwood(5)	CHW	1	1	1	1	1	1
RC-Shake Blocks	RCS	1	347	340	333	326	319
RC-Shingle Blocks	RCF	1	231	224	217	210	203
RC & Other Posts(6)	RCP	1	0.45	0.45	0.45	0.45	0.45
DF-Christmas Trees(7)	DFX	1	0.25	0.25	0.25	0.25	0.25
Other-Christmas Trees(7)	TFX	1	0.50	0.50	0.50	0.50	0.50

- (1) Log-scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes Alaska Cedar.
- (4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
- (5) Stumpage value per ton.
- (6) Stumpage value per 8 lineal feet or portion thereof.
- (7) Stumpage value per lineal foot.

TABLE 5—Stumpage Value Table
Stumpage Value Area 5
July 1 through December 31, 2005

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir(2)	DF	1	\$520	\$513	\$506	\$499	\$492
		2	474	467	460	453	446
		3	458	451	444	437	430
		4	424	417	410	403	396
Lodgepole Pine	LP	1	227	220	213	206	199
Ponderosa Pine	PP	1	261	254	247	240	233
		2	195	188	181	174	167
Western Redcedar(3)	RC	1	703	696	689	682	675
Western Hemlock and Other Conifer(4)	WH	1	405	398	391	384	377
		2	317	310	303	296	289
		3	317	310	303	296	289
		4	317	310	303	296	289
Red Alder	RA	1	374	367	360	353	346
		2	291	284	277	270	263
Black Cottonwood	BC	1	31	24	17	10	3
Other Hardwood	OH	1	197	190	183	176	169
Douglas-Fir Poles	DFL	1	679	672	665	658	651
Western Redcedar Poles	RCL	1	1250	1243	1236	1229	1222
Chipwood(5)	CHW	1	1	1	1	1	1
RC Shake Blocks	RCS	1	347	340	333	326	319
RC Shingle Blocks	RCF	1	231	224	217	210	203
RC & Other Posts(6)	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees(7)	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(7)	TFX	1	0.50	0.50	0.50	0.50	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes Alaska Cedar.
- (4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
- (5) Stumpage value per ton.
- (6) Stumpage value per 8 lineal feet or portion thereof.
- (7) Stumpage value per lineal foot.

TABLE 6—Stumpage Value Table
Stumpage Value Area 6
July 1 through December 31, 2005

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir(2)	DF	1	\$302	\$295	\$288	\$281	\$274
Lodgepole Pine	LP	1	227	220	213	206	199
Ponderosa Pine	PP	1	261	254	247	240	233
		2	195	188	181	174	167
Western Redcedar(3)	RC	1	520	513	506	499	492
True Firs and Spruce(4)	WH	1	211	204	197	190	183
Western White Pine	WP	1	327	320	313	306	299
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	520	513	506	499	492
Small Logs(5)	SML	1	30	29	28	27	26
Chipwood(5)	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks	RCF	1	92	85	78	71	64
LP & Other Posts(6)	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees(7)	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(8)	DFX	1	0.25	0.25	0.25	0.25	0.25

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes Alaska Cedar.
- (4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
- (5) Stumpage value per ton.
- (6) Stumpage value per 8 lineal feet or portion thereof.
- (7) Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
- (8) Stumpage value per lineal foot.

TABLE 7—Stumpage Value Table
Stumpage Value Area 7
July 1 through December 31, 2005

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir(2)	DF	1	\$356	\$349	\$342	\$335	\$328
Lodgepole Pine	LP	1	245	238	231	224	217
Ponderosa Pine	PP	1	259	252	245	238	231
		2	197	190	183	176	169
Western Redcedar(3)	RC	1	520	513	506	499	492
True Firs and Spruce(4)	WH	1	263	256	249	242	235
Western White Pine	WP	1	327	320	313	306	299
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	520	513	506	499	492
Small Logs(5)	SML	1	26	25	24	23	22
Chipwood(5)	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks	RCE	1	92	85	78	71	64
LP & Other Posts(6)	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees(7)	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(8)	DFX	1	0.25	0.25	0.25	0.25	0.25

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes Alaska Cedar.
- (4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
- (5) Stumpage value per ton.
- (6) Stumpage value per 8 lineal feet or portion thereof.
- (7) Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
- (8) Stumpage value per lineal foot.

TABLE 8—Stumpage Value Table
Stumpage Value Area 10
July 1 through December 31, 2005

Stumpage Values per Thousand Board Feet Net Scribner Log Scale(1)

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir(2)	DF	1	\$454	\$447	\$440	\$433	\$426
		2	447	440	433	426	419
		3	447	440	433	426	419
		4	447	440	433	426	419
Lodgepole Pine	LP	1	227	220	213	206	199
Ponderosa Pine	PP	1	261	254	247	240	233
		2	195	188	181	174	167
Western Redcedar(3)	RC	1	689	682	675	668	661
Western Hemlock and Other Conifer(4)	WH	1	378	371	364	357	350
		2	297	290	283	276	269
		3	276	269	262	255	248
		4	276	269	262	255	248
Red Alder	RA	1	360	353	346	339	332
		2	277	270	263	256	249
Black Cottonwood	BC	1	17	10	3	1	1
Other Hardwood	OH	1	183	176	169	162	155
Douglas-Fir Poles	DFL	1	665	658	651	644	637
Western Redcedar Poles	RCL	1	1236	1229	1222	1215	1208
Chipwood(5)	CHW	1	1	1	1	1	1
RC Shake Blocks	RCS	1	347	340	333	326	319
RC Shingle Blocks	RCE	1	231	224	217	210	203
RC & Other Posts(6)	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees(7)	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees(7)	TFX	1	0.50	0.50	0.50	0.50	0.50

- (1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
- (2) Includes Western Larch.
- (3) Includes Alaska Cedar.
- (4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
- (5) Stumpage value per ton.
- (6) Stumpage value per 8 lineal feet or portion thereof.
- (7) Stumpage value per lineal foot.

TABLE 1—Stumpage Value Table
Stumpage Value Area 1
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$480	\$473	\$466	\$459	\$452
		2	462	455	448	441	434
		3	424	417	410	403	396
		4	371	364	357	350	343
Western Redcedar ⁽²⁾	RC	1	597	590	583	576	569
Western Hemlock ⁽³⁾	WH	1	342	335	328	321	314
		2	278	271	264	257	250
		3	278	271	264	257	250
		4	278	271	264	257	250
Red Alder	RA	1	390	383	376	369	362
		2	325	318	311	304	297
Black Cottonwood	BC	1	40	33	26	19	12
Other Hardwood	OH	1	178	171	164	157	150
Douglas-Fir Poles	DFL	1	653	646	639	632	625
Western Redcedar Poles	RCL	1	1193	1186	1179	1172	1165
Chipwood ⁽⁴⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	174	167	160	153	146
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Alaska-Cedar.
⁽³⁾ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
⁽⁴⁾ Stumpage value per ton.
⁽⁵⁾ Stumpage value per cord.
⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁷⁾ Stumpage value per lineal foot.

TABLE 2—Stumpage Value Table
Stumpage Value Area 2
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir	DF	1	\$543	\$536	\$529	\$522	\$515
		2	514	507	500	493	486
		3	474	467	460	453	446
		4	440	433	426	419	412
Western Redcedar ⁽²⁾	RC	1	597	590	583	576	569
Western Hemlock ⁽³⁾	WH	1	384	377	370	363	356
		2	362	355	348	341	334
		3	333	326	319	312	305
		4	326	319	312	305	298
Red Alder	RA	1	390	383	376	369	362
		2	325	318	311	304	297
Black Cottonwood	BC	1	40	33	26	19	12
Other Hardwood	OH	1	178	171	164	157	150
Douglas-Fir Poles	DFL	1	653	646	639	632	625
Western Redcedar Poles	RCL	1	1193	1186	1179	1172	1165
Chipwood ⁽⁴⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁵⁾	RCS	1	174	167	160	153	146
RC & Other Posts ⁽⁶⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁷⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁷⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Alaska-Cedar.
⁽³⁾ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
⁽⁴⁾ Stumpage value per ton.
⁽⁵⁾ Stumpage value per cord.
⁽⁶⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁷⁾ Stumpage value per lineal foot.

TABLE 3—Stumpage Value Table
Stumpage Value Area 3
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$486	\$479	\$472	\$465	\$458
		2	428	421	414	407	400
		3	428	421	414	407	400
		4	340	333	326	319	312
Western Redcedar ⁽³⁾	RC	1	597	590	583	576	569
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	384	377	370	363	356
		2	259	252	245	238	231
		3	259	252	245	238	231
		4	259	252	245	238	231
Red Alder	RA	1	390	383	376	369	362
		2	325	318	311	304	297
Black Cottonwood	BC	1	40	33	26	19	12
Other Hardwood	OH	1	178	171	164	157	150
Douglas-Fir Poles	DFL	1	653	646	639	632	625
Western Redcedar Poles	RCL	1	1193	1186	1179	1172	1165
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	174	167	160	153	146
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.

TABLE 4—Stumpage Value Table
Stumpage Value Area 4
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$543	\$536	\$529	\$522	\$515
		2	485	478	471	464	457
		3	482	475	468	461	454
		4	426	419	412	405	398
Lodgepole Pine	LP	1	250	243	236	229	222
Ponderosa Pine	PP	1	387	380	373	366	359
		2	212	205	198	191	184
Western Redcedar ⁽³⁾	RC	1	597	590	583	576	569
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	384	377	370	363	356
		2	319	312	305	298	291
		3	313	306	299	292	285
		4	313	306	299	292	285
Red Alder	RA	1	390	383	376	369	362
		2	325	318	311	304	297
Black Cottonwood	BC	1	40	33	26	19	12
Other Hardwood	OH	1	178	171	164	157	150
Douglas-Fir Poles	DFL	1	653	646	639	632	625
Western Redcedar Poles	RCL	1	1193	1186	1179	1172	1165
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	174	167	160	153	146
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
⁽²⁾ Includes Western Larch.
⁽³⁾ Includes Alaska-Cedar.
⁽⁴⁾ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
⁽⁵⁾ Stumpage value per ton.
⁽⁶⁾ Stumpage value per cord.
⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.
⁽⁸⁾ Stumpage value per lineal foot.

TABLE 5—Stumpage Value Table
Stumpage Value Area 5
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$602	\$595	\$588	\$581	\$574
		2	511	504	497	490	483
		3	489	482	475	468	461
		4	426	419	412	405	398
Lodgepole Pine	LP	1	250	243	236	229	222
Ponderosa Pine	PP	1	387	380	373	366	359
		2	212	205	198	191	184
Western Redcedar ⁽³⁾	RC	1	597	590	583	576	569
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	394	387	380	373	366
		2	330	323	316	309	302
		3	330	323	316	309	302
		4	330	323	316	309	302
Red Alder	RA	1	390	383	376	369	362
		2	325	318	311	304	297
Black Cottonwood	BC	1	40	33	26	19	12
Other Hardwood	OH	1	178	171	164	157	150
Douglas-Fir Poles	DFL	1	653	646	639	632	625
Western Redcedar Poles	RCL	1	1193	1186	1179	1172	1165
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	174	167	160	153	146
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

TABLE 6—Stumpage Value Table
Stumpage Value Area 6
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$358	\$351	\$344	\$337	\$330
Lodgepole Pine	LP	1	250	243	236	229	222
Ponderosa Pine	PP	1	387	380	373	366	359
		2	212	205	198	191	184
Western Redcedar ⁽³⁾	RC	1	496	489	482	475	468
True Firs and Spruce ⁽⁴⁾	WH	1	262	255	248	241	234
Western White Pine	WP	1	336	329	322	315	308
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	496	489	482	475	468
Small Logs ⁽⁵⁾	SML	1	34	33	32	31	30
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCF	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
 (2) Includes Western Larch.
 (3) Includes Alaska-Cedar.
 (4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
 (5) Stumpage value per ton.
 (6) Stumpage value per cord.
 (7) Stumpage value per 8 lineal feet or portion thereof.
 (8) Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
 (9) Stumpage value per lineal foot.

(1) Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.
 (2) Includes Western Larch.
 (3) Includes Alaska-Cedar.
 (4) Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
 (5) Stumpage value per ton.
 (6) Stumpage value per cord.
 (7) Stumpage value per 8 lineal feet or portion thereof.
 (8) Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.
 (9) Stumpage value per lineal foot.

TABLE 7—Stumpage Value Table
Stumpage Value Area 7
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$358	\$351	\$344	\$337	\$330
Lodgepole Pine	LP	1	250	243	236	229	222
Ponderosa Pine	PP	1	387	380	373	366	359
		2	212	205	198	191	184
Western Redcedar ⁽³⁾	RC	1	496	489	482	475	468
True Firs and Spruce ⁽⁴⁾	WH	1	262	255	248	241	234
Western White Pine	WP	1	336	329	322	315	308
Hardwoods	OH	1	50	43	36	29	22
Western Redcedar Poles	RCL	1	496	489	482	475	468
Small Logs ⁽⁵⁾	SML	1	26	25	24	23	22
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	76	69	62	55	48
LP & Other Posts ⁽⁷⁾	LPP	1	0.35	0.35	0.35	0.35	0.35
Pine Christmas Trees ⁽⁸⁾	PX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁹⁾	DFX	1	0.25	0.25	0.25	0.25	0.25

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska-Cedar.

⁽⁴⁾ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot. Includes Ponderosa Pine, Western White Pine, and Lodgepole Pine.

⁽⁹⁾ Stumpage value per lineal foot.

TABLE 8—Stumpage Value Table
Stumpage Value Area 10
 January 1 through June 30, 2006

Stumpage Values per Thousand Board Feet Net Scribner Log Scale⁽¹⁾

Species Name	Species Code	Timber Quality Code Number	Hauling Distance Zone Number				
			1	2	3	4	5
Douglas-Fir ⁽²⁾	DF	1	\$529	\$522	\$515	\$508	\$501
		2	471	464	457	450	443
		3	468	461	454	447	440
		4	412	405	398	391	384
Lodgepole Pine	LP	1	250	243	236	229	222
Ponderosa Pine	PP	1	387	380	373	366	359
		2	212	205	198	191	184
Western Redcedar ⁽³⁾	RC	1	583	576	569	562	555
Western Hemlock and Other Conifer ⁽⁴⁾	WH	1	370	363	356	349	342
		2	305	298	291	284	277
		3	299	292	285	278	271
		4	299	292	285	278	271
Red Alder	RA	1	376	369	362	355	348
		2	311	304	297	290	283
Black Cottonwood	BC	1	26	19	12	5	1
Other Hardwood	OH	1	164	157	150	143	136
Douglas-Fir Poles	DFL	1	639	632	625	618	611
Western Redcedar Poles	RCL	1	1179	1172	1165	1158	1151
Chipwood ⁽⁵⁾	CHW	1	1	1	1	1	1
RC Shake & Shingle Blocks ⁽⁶⁾	RCS	1	174	167	160	153	146
RC & Other Posts ⁽⁷⁾	RCP	1	0.45	0.45	0.45	0.45	0.45
DF Christmas Trees ⁽⁸⁾	DFX	1	0.25	0.25	0.25	0.25	0.25
Other Christmas Trees ⁽⁸⁾	TFX	1	0.50	0.50	0.50	0.50	0.50

⁽¹⁾ Log scale conversions Western and Eastern Washington. See conversion methods WAC 458-40-680.

⁽²⁾ Includes Western Larch.

⁽³⁾ Includes Alaska-Cedar.

⁽⁴⁾ Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and all Spruce. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."

⁽⁵⁾ Stumpage value per ton.

⁽⁶⁾ Stumpage value per cord.

⁽⁷⁾ Stumpage value per 8 lineal feet or portion thereof.

⁽⁸⁾ Stumpage value per lineal foot.

(3) **Harvest value adjustments.** The stumpage values in subsection (2) of this rule for the designated stumpage value areas are adjusted for various logging and harvest conditions, subject to the following:

(a) No harvest adjustment is allowed for special forest products, chipwood, or small logs.

(b) Conifer and hardwood stumpage value rates cannot be adjusted below one dollar per MBF.

(c) Except for the timber yarded by helicopter, a single logging condition adjustment applies to the entire harvest unit. The taxpayer must use the logging condition adjustment class that applies to a majority (more than 50%) of the acreage in that harvest unit. If the harvest unit is reported over more than one quarter, all quarterly returns for that harvest unit must report the same logging condition adjustment. The helicopter adjustment applies only to the timber volume from the harvest unit that is yarded from stump to landing by helicopter.

(d) The volume per acre adjustment is a single adjustment class for all quarterly returns reporting a harvest unit. A harvest unit is established by the harvester prior to harvesting. The volume per acre is determined by taking the volume logged from the unit excluding the volume reported as chipwood or small logs and dividing by the total acres logged. Total acres logged does not include leave tree areas (RMZ, UMZ, forested wetlands, etc.) over 2 acres in size.

(e) A domestic market adjustment applies to timber which meet the following criteria:

(i) **Public timber**—Harvest of timber not sold by a competitive bidding process that is prohibited under the authority of state or federal law from foreign export may be eligible for the domestic market adjustment. The adjustment may be applied only to those species of timber that must be processed domestically. According to type of sale, the adjustment may be applied to the following species:

Federal Timber Sales: All species except Alaska-cedar. (Stat. Ref. - 36 C.F.R. 223.10)

State, and Other Nonfederal, Public Timber Sales: Western Redcedar only. (Stat. Ref. - 50 U.S.C. appendix 2406.1)

(ii) **Private timber**—Harvest of private timber that is legally restricted from foreign export, under the authority of The Forest Resources Conservation and Shortage Relief Act (Public Law 101-382), (16 U.S.C. Sec. 620 et seq.); the Export Administration Act of 1979 (50 U.S.C. App. 2406(i)); a Cooperative Sustained Yield Unit Agreement made pursuant to the act of March 29, 1944 (16 U.S.C. Sec. 583-583i); or Washington Administrative Code (WAC 240-15-015(2)) is also eligible for the Domestic Market Adjustment.

The following harvest adjustment tables apply from ~~(July) January 1 through (December 31, 2005)~~ June 30, 2006:

**TABLE 9—Harvest Adjustment Table
Stumpage Value Areas 1, 2, 3, 4, 5, and 10
~~(July) January 1 through (December 31, 2005)~~ June 30, 2006**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of 30 thousand board feet or more per acre.	\$0.00
Class 2	Harvest of 10 thousand board feet to but not including 30 thousand board feet per acre.	- \$15.00
Class 3	Harvest of less than 10 thousand board feet per acre.	- \$35.00
II. Logging conditions		
Class 1	Ground based logging a majority of the unit using tracked or wheeled vehicles or draft animals.	\$0.00
Class 2	Cable logging a majority of the unit using an overhead system of winch driven cables.	- \$30.00
Class 3	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- \$145.00
III. Remote island adjustment:		
	For timber harvested from a remote island	- \$50.00
IV. Thinning		
Class 1	A limited removal of timber described in WAC 458-40-610 (28)	-\$100.00

**TABLE 10—Harvest Adjustment Table
Stumpage Value Areas 6 and 7
~~(July) January 1 through (December 31, 2005)~~ June 30, 2006**

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
I. Volume per acre		
Class 1	Harvest of more than 8 thousand board feet per acre.	\$0.00
Class 2	Harvest of 3 thousand board feet to 8 thousand board feet per acre.	- \$7.00
Class 3	Harvest of less than 3 thousand board feet per acre.	- \$10.00
II. Logging conditions		
Class 1	The majority of the harvest unit has less than 40% slope. No significant rock outcrops or swamp barriers.	\$0.00
Class 2	The majority of the harvest unit has slopes between 40% and 60%. Some rock outcrops or swamp barriers.	-\$20.00
Class 3	The majority of the harvest unit has rough, broken ground with slopes over 60%. Numerous rock outcrops and bluffs.	-\$30.00
Class 4	Applies to logs yarded from stump to landing by helicopter. This does not apply to special forest products.	- \$145.00

Type of Adjustment	Definition	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
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Note: A Class 2 adjustment may be used for slopes less than 40% when cable logging is required by a duly promulgated forest practice regulation. Written documentation of this requirement must be provided by the taxpayer to the department of revenue.

III. Remote island adjustment:

For timber harvested from a remote island	- \$50.00
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TABLE 11—Domestic Market Adjustment

Class	Area Adjustment Applies	Dollar Adjustment Per Thousand Board Feet Net Scribner Scale
Class 1:	SVA's 1 through 6, and 10	\$0.00
Class 2:	SVA 7	\$0.00

Note: The adjustment will not be allowed on special forest products.

(4) **Damaged timber.** Timber harvesters planning to remove timber from areas having damaged timber may apply to the department of revenue for an adjustment in stumpage values. The application must contain a map with the legal descriptions of the area, an accurate estimate of the volume of damaged timber to be removed, a description of the damage sustained by the timber with an evaluation of the extent to which the stumpage values have been materially reduced from the values shown in the applicable tables, and a list of estimated additional costs to be incurred resulting from the removal of the damaged timber. The application must be received and approved by the department of revenue before the harvest commences. Upon receipt of an application, the department of revenue will determine the amount of adjustment to be applied against the stumpage values. Timber that has been damaged due to sudden and unforeseen causes may qualify.

(a) Sudden and unforeseen causes of damage that qualify for consideration of an adjustment include:

(i) Causes listed in RCW 84.33.091; fire, blow down, ice storm, flood.

(ii) Others not listed; volcanic activity, earthquake.

(b) Causes that do not qualify for adjustment include:

(i) Animal damage, root rot, mistletoe, prior logging, insect damage, normal decay from fungi, and pathogen caused diseases; and

(ii) Any damage that can be accounted for in the accepted normal scaling rules through volume or grade reductions.

(c) The department of revenue will not grant adjustments for applications involving timber that has already been harvested but will consider any remaining undisturbed damaged timber scheduled for removal if it is properly identified.

(d) The department of revenue will notify the harvester in writing of approval or denial. Instructions will be included for taking any adjustment amounts approved.

WSR 05-22-065
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed October 31, 2005, 3:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-18-085.

Title of Rule and Other Identifying Information: WAC 458-40-610 Timber excise tax—Definitions and 458-40-680 Timber excise tax—Volume harvested—Approved scaling and grading methods—Sample scaling—Conversions.

Hearing Location(s): Capital Plaza Building, 4th Floor, L&P Large Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on December 7, 2005, at 10:00 a.m.

Date of Intended Adoption: December 10, 2005.

Submit Written Comments to: Gilbert Brewer, P.O. Box 47453, Olympia, WA 98504-7453, e-mail gilb@dor.wa.gov, fax (360) 586-5543, by December 7, 2005.

Assistance for Persons with Disabilities: Contact Sandy Davis at (360) 725-7499 no later than ten days before the hearing date. Deaf and hard of hearing individuals may call 1-800-451-7985 (TTY users).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The taxation of timber harvested for firewood is currently not defined for reporting based on the standard stumpage value tables. Firewood consists mostly of utility grade timber and the reporting on sawlog values does not appear to be fair. The proposed rule would define firewood as scaled utility log grade, converted at a rate of three tons per cord.

Reasons Supporting Proposal: The proposed rule would provide a more accurate value for timber harvested for firewood.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.33.096.

Statute Being Implemented: RCW 84.33.091.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington State Department of Revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gilbert W. Brewer, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6133; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #300, Olympia, WA, (360) 570-3230.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required because the rule and the proposed amendments do not impose any requirements or burdens that are not already specifically required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

October 31, 2005

Alan R. Lynn

Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-08-070, filed 3/31/05, effective 5/1/05)

WAC 458-40-610 Timber excise tax—Definitions. (1)

Introduction. The purpose of WAC 458-40-610 through 458-40-690 is to prescribe the policies and procedures for the taxation of timber harvested from public and private forest lands as required by RCW 84.33.010 through 84.33.096.

Unless the context clearly requires otherwise, the definitions in this rule apply to WAC 458-40-610 through 458-40-690. In addition to the definitions found in this rule, definitions of technical forestry terms may be found in *The Dictionary of Forestry*, 1998, edited by John A. Helms, and published by the Society of American Foresters.

(2) **Codominant trees.** Trees whose crowns form the general level of the main canopy and receive full light from above, but comparatively little light from the sides.

(3) **Competitive sales.** The offering for sale of timber which is advertised to the general public for sale at public auction under terms wherein all qualified potential buyers have an equal opportunity to bid on the sale, and the sale is awarded to the highest qualified bidder. The term "competitive sales" includes making available to the general public permits for the removal of forest products.

(4) **Cord measurement.** A measure of wood with dimensions of 4 feet by 4 feet by 8 feet (128 cubic feet).

(5) **Damaged timber.** Timber where the stumpage values have been materially reduced from the values shown in the applicable stumpage value tables due to damage resulting from fire, blow down, ice storm, flood, or other sudden unforeseen causes.

(6) **Dominant trees.** Trees whose crowns are higher than the general level of the main canopy and which receive full light from the sides as well as from above.

(7) **Firewood.** Commercially traded firewood is considered scaled utility log grade as defined in subsection (13) of this section.

(8) **Harvest unit.** An area of timber harvest, defined and mapped by the harvester before harvest, having the same stumpage value area, hauling distance zone, harvest adjustments, harvester, and harvest identification. The harvest identification may be a department of natural resources forest practice application number, public agency harvesting permit number, public sale contract number, or other unique identifier assigned to the timber harvest area prior to harvest operations. A harvest unit may include more than one section, but harvest unit may not overlap a county boundary.

~~((8))~~ (9) **Harvester.** Every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, fells, cuts, or takes timber for sale or for commercial or industrial use. The term "harvester" does not include persons performing under contract the necessary labor or mechanical services for a harvester. In cases where the identity of the harvester is in doubt, the department of revenue will consider the owner of the land from which the timber was harvested to be the harvester and the one liable for paying the tax.

The definition above applies except when the United States or any instrumentality thereof, the state, including its departments and institutions and political subdivisions, or

any municipal corporation therein so fells, cuts, or takes timber for sale or for commercial or industrial use. When a governmental entity described above fells, cuts, or takes timber, the harvester is the first person, other than another governmental entity as described above, acquiring title to or a possessory interest in such timber.

~~((9))~~ (10) **Harvesting and marketing costs.** Only those costs directly and exclusively associated with harvesting the timber from the land and delivering it to the buyer. The term includes the costs of slash disposal required to abate extreme fire hazard. Harvesting and marketing costs do not include the costs of reforestation, permanent road construction, or any other costs not directly and exclusively associated with the harvesting and marketing of the timber. The actual harvesting and marketing costs must be used in all instances where documented records are available. When the taxpayer is unable to provide documented proof of such costs, the deduction for harvesting and marketing costs is thirty-five percent of the gross receipts from the sale of the logs.

~~((10))~~ (11) **Hauling distance zone.** An area with specified boundaries as shown on the statewide stumpage value area and hauling distance zone maps contained in WAC 458-40-640, having similar accessibility to timber markets.

~~((11))~~ (12) **Legal description.** A description of an area of land using government lots and standard general land office subdivision procedures. If the boundary of the area is irregular, the physical boundary must be described by metes and bounds or by other means that will clearly identify the property.

~~((12))~~ (13) **Log grade.** Those grades listed in the "*Official Log Scaling and Grading Rules*" developed and authored by the Northwest Log Rules Advisory Group (Advisory Group). "Utility grade" means logs that do not meet the minimum requirements of peeler or sawmill grades as defined in the "*Official Log Scaling and Grading Rules*" published by the Advisory Group but are suitable for the production of firm useable chips to an amount of not less than fifty percent of the gross scale; and meeting the following minimum requirements:

- (a) Minimum gross diameter—two inches.
- (b) Minimum gross length—twelve feet.
- (c) Minimum volume—ten board feet net scale.
- (d) Minimum recovery requirements—one hundred percent of adjusted gross scale in firm useable chips.

~~((13))~~ (14) **Lump sum sale.** Also known as a cash sale or an installment sale, it is a sale of timber where all the volume offered is sold to the highest bidder.

~~((14))~~ (15) **MBF.** One thousand board feet measured in Scribner Decimal C Log Scale Rule.

~~((15))~~ (16) **Noncompetitive sales.** Sales of timber in which the purchaser has a preferential right to purchase the timber or a right of first refusal.

~~((16))~~ (17) **Other consideration.** Value given in lieu of cash as payment for stumpage, such as improvements to the land that are of a permanent nature. Some examples of permanent improvements are as follows: Construction of permanent roads; installation of permanent bridges; stockpiling of rock intended to be used for construction or reconstruc-

tion of permanent roads; installation of gates, cattle guards, or fencing; and clearing and reforestation of property.

~~((17))~~ **(18) Permanent road.** A road built as part of the harvesting operation which is to have a useful life subsequent to the completion of the harvest.

~~((18))~~ **(19) Private timber.** All timber harvested from privately owned lands.

~~((19))~~ **(20) Public timber.** Timber harvested from federal, state, county, municipal, or other government owned lands.

~~((20))~~ **(21) Remote island.** An area of land which is totally surrounded by water at normal high tide and which has no bridge or causeway connecting it to the mainland.

~~((21))~~ **(22) Scale sale.** A sale of timber in which the amount paid for timber in cash and/or other consideration is the arithmetic product of the actual volume harvested and the unit price at the time of harvest.

~~((22))~~ **(23) Small harvester.** A harvester who harvests timber from privately or publicly owned forest land in an amount not exceeding two million board feet in a calendar year.

~~((23))~~ **(24) Species.** A grouping of timber based on biological or physical characteristics. In addition to the designations of species or subclassifications defined in Agriculture Handbook No. 451 Checklist of United States Trees (native and naturalized) found in the state of Washington, the following are considered separate species for the purpose of harvest classification used in the stumpage value tables:

(a) **Other conifer.** All conifers not separately designated in the stumpage value tables. See WAC 458-40-660.

(b) **Other hardwood.** All hardwoods not separately designated in the stumpage value tables. See WAC 458-40-660.

(c) **Special forest products.** The following are considered to be separate species of special forest products: Christmas trees (various species), posts (various species), western redcedar flatsawn and shingle blocks, western redcedar shake blocks and boards.

(d) **Chipwood.** All timber processed to produce chips or chip products delivered to an approved chipwood destination that has been approved in accordance with the provisions of WAC 458-40-670 or otherwise reportable in accordance with the provisions of WAC 458-40-670.

(e) **Small logs.** All conifer logs harvested in stumpage value areas 6 or 7 generally measuring seven inches or less in scaling diameter, purchased by weight measure at designated small log destinations that have been approved in accordance with the provisions of WAC 458-40-670. Log diameter and length is measured in accordance with the Eastside Log Scaling Rules developed and authored by the Northwest Log Rules Advisory Group, with length not to exceed twenty feet.

(f) **Sawlog.** For purposes of timber harvest in stumpage value areas 6 and 7, a sawlog is a log having a net scale of not less than 33 1/3% of gross scale, nor less than ten board feet and meeting the following minimum characteristics: Gross scaling diameter of five inches and a gross scaling length of eight feet.

(g) **Piles.** All logs sold for use or processing as piles that meet the specifications described in the most recently published edition of the *Standard Specification for Round Tim-*

ber Piles (Designation: D 25) of the American Society for Testing and Materials.

(h) **Poles.** All logs sold for use or processing as poles that meet the specifications described in the most recently published edition of the *National Standard for Wood Poles—Specifications and Dimensions (ANSI 05.1)* of the American National Standards Institute.

~~((24))~~ **(25) Stumpage.** Timber, having commercial value, as it exists before logging.

~~((25))~~ **(26) Stumpage value.** The true and fair market value of stumpage for purposes of immediate harvest.

~~((26))~~ **(27) Stumpage value area (SVA).** An area with specified boundaries which contains timber having similar growing, harvesting and marketing conditions.

~~((27))~~ **(28) Taxable stumpage value.** The value of timber as defined in RCW 84.33.035(7), and this chapter. Except as provided below for small harvesters and public timber, the taxable stumpage value is the appropriate value for the species of timber harvested as set forth in the stumpage value tables adopted under this chapter.

(a) **Small harvester option.** Small harvesters may elect to calculate the excise tax in the manner provided by RCW 84.33.073 and 84.33.074. The taxable stumpage value must be determined by one of the following methods as appropriate:

(i) **Sale of logs.** Timber which has been severed from the stump, bucked into various lengths and sold in the form of logs has a taxable stumpage value equal to the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber.

(ii) **Sale of stumpage.** When standing timber is sold and harvested within twenty-four months of the date of sale, its taxable stumpage value is the actual purchase price in cash and/or other consideration for the stumpage for the most recent sale prior to harvest. If a person purchases stumpage, harvests the timber more than twenty-four months after purchase of the stumpage, and chooses to report under the small harvester option, the taxable stumpage value is the actual gross receipts for the logs, less any costs associated with harvesting and marketing the timber. See WAC 458-40-626 for timing of tax liability.

(b) **Public timber.** The taxable stumpage value for public timber sales is determined as follows:

(i) **Competitive sales.** The taxable stumpage value is the actual purchase price in cash and/or other consideration. The value of other consideration is the fair market value of the other consideration; provided that if the other consideration is permanent roads, the value is the appraised value as appraised by the seller. If the seller does not provide an appraised value for roads, the value is the actual costs incurred by the purchaser for constructing or improving the roads. Other consideration includes additional services required from the stumpage purchaser for the benefit of the seller when these services are not necessary for the harvesting or marketing of the timber. For example, under a single stumpage sale's contract, when the seller requires road abandonment (as defined in WAC 222-24-052(3)) of constructed or reconstructed roads which are necessary for harvesting and marketing the timber, the construction and abandonment costs are not taxable. Abandonment activity on roads that

exist prior to a stumpage sale is not necessary for harvesting and marketing the purchased timber and those costs are taxable.

(ii) **Noncompetitive sales.** The taxable stumpage value is determined using the department of revenue's stumpage value tables as set forth in this chapter. Qualified harvesters may use the small harvester option.

(iii) **Sale of logs.** The taxable stumpage value for public timber sold in the form of logs is the actual purchase price for the logs in cash and/or other consideration less appropriate deductions for harvesting and marketing costs. Refer above for a definition of "harvesting and marketing costs."

(iv) **Defaulted sales and uncompleted contracts.** In the event of default on a public timber sale contract, wherein the taxpayer has made partial payment for the timber but has not removed any timber, no tax is due. If part of the sale is logged and the purchaser fails to complete the harvesting, taxes are due on the amount the purchaser has been billed by the seller for the volume removed to date. See WAC 458-40-628 for timing of tax liability.

~~((28))~~ **(29) Thinning.** Timber removed from a harvest unit located in stumpage value area 1, 2, 3, 4, 5, or 10:

(a) When the total volume removed is less than forty percent of the total merchantable volume of the harvest unit prior to harvest; and

(b) The harvester leaves a minimum of one hundred undamaged, evenly spaced, dominant or codominant trees per acre of a commercial species or combination thereof.

AMENDATORY SECTION (Amending WSR 05-08-070, filed 3/31/05, effective 5/1/05)

WAC 458-40-680 Timber excise tax—Volume harvested—Approved scaling and grading methods—Sample scaling—Conversions. (1) **Introduction.** The acceptable log scaling and grading standard for stumpage value areas 1, 2, 3, 4, 5, and 10 is the Scribner Decimal C log rule as described in the most current edition of the "Official Log Scaling and Grading Rules" developed and authored by the Northwest Log Rules Advisory Group. The acceptable log scaling standard for stumpage value areas 6 and 7 is the Scribner Decimal C log rule described in the most current edition of the "Eastside Log Scaling Handbook" as published by the Northwest Log Rules Advisory Group, except that timber harvested in stumpage value areas 6 and 7 must be scaled using the current regional taper rules at the point of origin.

(2) **Special services scaling.** Special services scaling as described in the "Official Log Scaling and Grading Rules" developed and authored by the Northwest Log Rules Advisory Group may not be used for tax reporting purposes without prior written approval of the department of revenue.

(3) **Sample scaling.** Sample scaling may not be used for tax reporting purposes without prior written approval of the department of revenue. To be approved, sample scaling must be in accordance with the following guidelines:

(a) Sample selection, scaling, and grading must be conducted on a continuous basis as the unit is harvested.

(b) The sample must be taken in such a manner to assure random, unbiased sample selection in accordance with accepted statistical tests of sampling.

(c) The sample used to determine total volume, species, and quality of timber harvested for a given reporting period must have been taken during that period.

(d) Sample frequency must be large enough to meet board foot variation accuracy limits of plus or minus two and five-tenths percent standard error at the ninety-five percent confidence level.

(e) Harvesters, or a purchaser with an approved sample scaling method, must maintain sufficient supporting documentation to allow the department of revenue to verify source data, and test statistical reliability of sample scale systems.

(f) Exceptions: Sampling designs and accuracy standards other than those described herein may only be used with the prior written approval of the department of revenue.

(4) **Conversions to Scribner Decimal C Scale.** The following definitions, tables, and conversion factors must be used in determining taxable volume for timber harvested that was not originally scaled by the Scribner Decimal C Log Rule. Conversion methods other than those listed are not to be used for tax reporting purposes without prior written approval of the department of revenue. Harvesters who wish to use a method of conversion other than those listed below must obtain written approval from the department of revenue before harvesting. Purchasers may obtain written approval of a sample scaling method from the department of revenue. The department will maintain a list of purchasers with an approved sample scaling method. A harvester may obtain this list and a summary of the approved method for specific purchasers from the department of revenue. If a harvester has not obtained approval of a sample scaling method before harvesting, the harvester may use a purchaser's approved sample scaling method. If the harvester, or purchaser, fails to use an approved sample scaling method or other method of conversion approved by these rules to set the purchase price, the department will establish its own method, as the circumstances require, to determine a reasonable estimate of the volume of timber sold.

(a) **Weight measurement.** If the sole unit of measure used to set the purchase price for logs from harvest units that meet the definition of the lowest quality code for each species was weight, and the harvester does not use an approved method of sample scaling to determine volume for the stumpage value tables, the following tables must be used for converting to Scribner Decimal C. If weight is the sole measure used for a harvest unit with quality codes other than the lowest, the department will establish its own method, as the circumstances require, to determine a reasonable estimate of the volume of timber sold. Harvesters must keep records to substantiate the species and quality codes reported. For tax reporting purposes, a ton equals 2,000 pounds.

(Stumpage Value Areas 1, 2, 3, 4, 5, & 10) BOARD FOOT WEIGHT SCALE FACTORS (TONS/MBF)				
Species	Quality code			
	1	2	3	4
Douglas-fir ¹	NA	NA	NA	7.50
Western Hemlock ²	NA	NA	NA	8.25
Western Redcedar ³	7.0			
Red Alder ⁴	NA	7.8		
Chipwood	9.0			

- ¹ Includes Douglas-fir, Western Larch, and Sitka Spruce.
- ² Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and other conifers not separately designated. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
- ³ Includes Alaska-cedar.
- ⁴ Maple, Black Cottonwood and other hardwoods.

(Stumpage Value Areas 6 & 7) BOARD FOOT WEIGHT SCALE FACTORS (TONS/MBF)		
Species	Quality code	
	1	2
Ponderosa Pine	NA	6.50
Douglas-fir ¹	5.50	
Lodgepole Pine	6.0	
Western Hemlock ²	5.50	
Englemann Spruce	4.50	
Western Redcedar ³	4.50	
Chipwood	9.0	
Small Logs	6.50	

- ¹ Includes Western Larch.
- ² Includes Western Hemlock, Mountain Hemlock, Pacific Silver Fir, Noble Fir, Grand Fir, Subalpine Fir, and other conifers not separately designated. Pacific Silver Fir, Noble Fir, Grand Fir, and Subalpine Fir are all commonly referred to as "White Fir."
- ³ Includes Alaska-cedar.

(b) **Cord measurement.** For the purposes of converting cords into Scribner volume:

(i) In stumpage value areas 1, 2, 3, 4, 5, and 10 logs with an average scaling diameter of 8 inches and larger must be converted to Scribner volume using 400 board feet per cord. Logs having an average scaling diameter of less than 8 inches must be converted to Scribner volume using 330 board feet per cord.

(ii) In stumpage value areas 6 and 7 logs with an average scaling diameter of 8 inches and larger must be converted to Scribner volume using 470 board feet per cord. Logs having an average scaling diameter of less than 8 inches must be converted to Scribner volume using 390 board feet per cord.

(iii) A cord of Western Redcedar shake or shingle blocks must be converted to Scribner volume using 600 board feet per cord.

(iv) Firewood must be converted at a rate of 3 tons per cord.

(c) **Cants or lumber from portable mills.** To convert from lumber tally to Scribner volume:

(i) In stumpage value areas 1, 2, 3, 4, 5, and 10 multiply the lumber tally for the individual species by 75%, and round to the nearest one thousand board feet (MBF); or

(ii) In stumpage value areas 6 and 7 multiply the lumber tally for the individual species by 88%, and round to the nearest one thousand board feet (MBF).

(d) **Log scale conversion.** Timber harvested in stumpage value areas 1, 2, 3, 4, 5, and 10 and which has been scaled by methods and procedures published in the "Eastside Log Scaling Handbook" must have the volumes reported reduced by eighteen percent. Timber harvested in stumpage value areas 6 and 7 and which has been scaled by methods and procedures published in the "Official Log Scaling and Grading Rules" developed and authored by the Northwest log rules advisory group, must have the volumes reported increased by eighteen percent.

(e) **Timber pole and piling volume tables.** Harvesters of poles must use the following tables to determine the Scribner board foot volume for each pole length and class:

Total Scribner Board Foot Volume Stumpage Value Areas 1, 2, 3, 4, 5, and 10																	
Length	Pole Class ¹															Piling Class ²	
	H6	H5	H4	H3	H2	H1	1	2	3	4	5	6	7	9	10	A	B
20							50	50	40	40	30	30	20	20	20	80	70
25							60	60	50	50	40	40	30	30	30	100	90
30							110	70	60	60	50	50	40	40		130	110
35					160	160	130	100	80	80	60	60	50			130	110
40			240	200	180	180	150	120	120	90	70	60				150	120
45	380	340	340	280	230	230	190	150	120	120	90	90				150	120
50	430	370	370	300	260	260	210	160	140	140	100					160	140
55	470	410	410	330	280	280	230	180	150	150						180	150
60	540	470	470	410	340	340	290	220	190	190						190	160
65	610	520	520	420	380	380	320	260	210	210						210	180
70	650	560	560	480	400	400	350	270	230	230						230	190
75	700	600	600	520	520	520	440	290	250							230	200
80	820	700	700	600	600	540	440	360	290							250	210
85	910	800	800	660	660	660	570	490	360							260	210

Total Scribner Board Foot Volume Stumpage Value Areas 1, 2, 3, 4, 5, and 10																	
Length	Pole Class ¹															Piling Class ²	
	H6	H5	H4	H3	H2	H1	1	2	3	4	5	6	7	9	10	A	B
90	1080	930	930	820	820	690	590	490	400							260	220
95	1170	1000	1000	870	870	750	640	540								290	240
100	1190	1030	1030	900	900	760	660	550								310	250
105	1310	1160	1160	1000	1000	860	740	610								330	270
110	1370	1220	1220	1050	1050	910	780	650								380	300
115	1440	1280	1280	1100	1100	960	860	680								400	310
120	1660	1460	1460	1300	1300	1140	970	820								500	400
125	1840	1600	1600	1410	1410	1250	1080	930									
130	1920	1680	1680	1490	1490	1310	1120	970									

¹ Pole class definitions taken from American National Standard specifications and dimensions for wood poles as approved August 7, 1976, under American National Standard Institute, Inc. codified ANSI 05.1-1972.

² Piling class definitions as per American Society for Testing and Materials for "round timber piles." As the designation: D 25-58 (reapproved 1964).

Total Scribner Board Foot Volume Stumpage Value Areas 6 and 7																	
Length	Pole Class ¹															Piling Class ²	
	H6	H5	H4	H3	H2	H1	1	2	3	4	5	6	7	9	10	A	B
20							70	60	50	50	30	30	20	20	20	90	70
25							80	70	50	50	40	40	30	30	20	100	80
30							110	90	60	60	50	50	50	40		130	110
35					190	160	140	100	100	70	60	60	50			140	100
40				240	240	200	170	120	110	100	70	70				140	100
45	390	330	330	270	270	220	180	150	110	110	80	70				150	110
50	460	390	390	340	340	280	240	190	150	150	120					190	150
55	510	430	430	370	360	300	250	190	150	150						190	150
60	610	530	530	440	440	380	310	240	200	200						240	200
65	650	570	570	490	480	410	350	280	220	220						240	200
70	750	650	650	550	470	470	410	320	260	260						260	210
75	810	700	700	600	600	500	440	340	270							270	220
80	960	830	830	710	710	610	510	420	340							220	220
85	1020	870	870	760	760	640	550	450	360							300	240
90	1110	970	970	840	840	720	620	500	420							280	280
95	1160	1010	1010	870	870	740	640	510								360	280
100	1380	1210	1210	1060	1060	910	780	650								360	280
105	1430	1250	1250	1100	1100	940	820	690								400	300
110	1580	1390	1390	1220	1220	1070	920	770								460	340
115	1660	1470	1470	1280	1280	970	810	680								470	360
120	1880	1680	1680	1480	1480	1290	1130	950								560	450
125	1910	1690	1690	1490	1490	1140	970	810									
130	2170	1920	1920	1710	1710	1510	1320	1140									

¹ Pole class definitions taken from American National Standard specifications and dimensions for wood poles as approved August 7, 1976, under American National Standard Institute, Inc. codified ANSI 05.1-1972.

² Piling class definitions as per American Society for Testing and Materials for "round timber piles." As the designation: D 25-58 (reapproved 1964).

WSR 05-22-067
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Health and Recovery Services Administration)
 [Filed October 31, 2005, 4:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-18-062.

Title of Rule and Other Identifying Information: WAC 388-438-0110 Alien emergency medical (AEM).

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are avail-

able at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097, on December 6, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 7, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA 98503, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., December 6, 2005.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by December 2, 2005, TTY (360) 664-6178 or (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To comply with federal regulations as clarified by the federal Centers for Medicare and Medicaid (CMS), the department is amending the eligibility criteria for the alien emergency medical (AEM) program. Clients who meet COPES/nursing facility level of care will no longer automatically qualify for the AEM program; and personal care services, waiver services, and nursing facility services will no longer be covered under AEM.

Reasons Supporting Proposal: The department is amending these rules to preserve federal financial participation in the state of Washington's AEM program.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Statute Being Implemented: 42 C.F.R. § 440.255.

Rule is necessary because of federal law, 42 C.F.R. § 440.255.

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Joanie Scotson, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1330.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule amendment does not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Client eligibility rules or medical assistance programs are exempt under RCW 34.05.328 (5)(b)(vii).

October 26, 2005

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-15-057, filed 7/13/04, effective 8/13/04)

WAC 388-438-0110 The alien emergency medical (AEM) program. (1) The alien emergency medical (AEM) program is a required federally funded program. It is for aliens who are ineligible for other Medicaid programs, due to the citizenship or alien status requirements described in WAC 388-424-0010.

(2) Except for the social security number, citizenship, or alien status requirements, an alien must meet categorical Medicaid eligibility requirements as described in:

- (a) WAC 388-505-0110, for an SSI-related person;
- (b) WAC 388-505-0220, for family medical programs;

(c) WAC 388-505-0210, for a child under the age of nineteen; or

(d) WAC 388-523-0100, for medical extensions.

(3) When an alien has monthly income that exceeds the CN medical standards, the department will consider AEM medically needy coverage for children or for adults who are age sixty-five or over or who meet SSI disability criteria. See WAC 388-519-0100.

(4) To qualify for the AEM program, the alien must meet one of the criteria described in subsection (2) of this section and have:

~~(a) A) a~~ a qualifying emergency medical condition as described in WAC 388-500-0005~~((; or~~

~~(b) Been approved by the department for, and receiving, nursing facility or COPES level of care)).~~

(5) The alien's date of arrival in the United States is not used when determining eligibility for the AEM program.

(6) The department does not deem a sponsor's income and resources as available to the client when determining eligibility for the AEM program. The department counts only the income and resources a sponsor makes available to the client.

(7) Under the AEM program, a person receives CN scope of care, as described in WAC 388-529-0100. Covered services are limited to those medical services necessary for treatment of the person's emergency medical condition. The following services are not covered:

(a) Organ transplants and related services;

(b) Prenatal care, except labor and delivery; ~~((and))~~

(c) School-based services;

(d) Personal care services;

(e) Waiver services; and

(f) Nursing facility services, unless they are approved by the department's medical consultant.

(8) When a person's income exceeds the CN income standard as described in subsection (3) of this section, the person has spend down liability and MN scope of care. MN scope of care is described in WAC 388-529-0100. The medical service limitations and exclusions described in subsection (7) ~~((are))~~ also ~~((excluded))~~ apply under the MN program.

(9) A person determined eligible for the AEM program is certified for three months. The number of three-month certification periods is not limited, but, the person must continue to meet eligibility criteria in subsection (2) and (4) of this section.

(10) A person is not eligible for the AEM program if they entered the state specifically to obtain medical care.

WSR 05-20-079

PROPOSED RULES

STATE BOARD OF EDUCATION

[Filed November 1, 2005, 8:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-12-147.

Title of Rule and Other Identifying Information: WAC 180-20-103 Disqualifying conditions for authorized school bus drivers.

Hearing Location(s): K-20 Video Conference, Billings Conference Room, Office of the Superintendent of Public Instruction, 600 Washington Street S.E., Olympia, WA 98504-7200, on December 12, 2005, at 1:00 p.m.

Date of Intended Adoption: December 12, 2005.

Submit Written Comments to: Larry Davis, Executive Director, P.O. Box 47206, Olympia, WA 98504-7206, e-mail ldavis@ospi.wednet.edu, fax (360) 586-2357, by November 28, 2005.

Assistance for Persons with Disabilities: Contact Laura Moore, Executive Assistant, by November 28, 2005, TTY (360) 664-3631 or (360) 725-6025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendment eliminates a possible loophole that might allow a school bus driver to retain his/her authorization even if convicted of certain conduct or alleged to have in certain conduct relating to the job of a bus driver.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 28A.160.210.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: State Board of Education, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Larry Davis, State Board of Education, Olympia, Washington, (360) 725-6025.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable.

November 1, 2005

Larry Davis

Executive Director

AMENDATORY SECTION (Amending WSR 05-19-107, filed 9/20/05, effective 10/21/05)

WAC 180-20-103 Disqualifying conditions for authorized school bus drivers. A school bus driver's authorization will be denied or revoked as a result of the following conditions:

(1) Misrepresenting or concealing a material fact in obtaining a school bus driver's authorization or in reinstatement thereof in the previous five years.

(2) Having a driving license privilege suspended or revoked as a result of a moving violation as defined in WAC 308-104-160 within the preceding five years or have had their commercial driver's license disqualified, suspended, or revoked within the preceding five years; a certified copy of the disqualification, suspension, or revocation order issued by the department of licensing being conclusive evidence of the disqualification, suspension, or revocation.

(3) Incurring three or more speeding tickets of ten miles per hour or more over the speed limit within the last five years.

(4) Having intentionally and knowingly transported public school students within the state of Washington within the previous five years with a lapsed, suspended, surrendered, or

revoked school bus driver's authorization in a position for which authorization is required under this chapter.

(5) Having intentionally and knowingly transported public school students within the state of Washington within the previous five years with a suspended or revoked driver's license or a suspended, disqualified or revoked commercial driver's license.

(6) Having refused to take a drug or alcohol test as required by the provisions of 49 CFR 382 within the preceding five years. Provided, That this requirement shall not apply to any refusal to take a drug or alcohol test prior to January 31, 2005.

(7) Having a serious behavioral problem which endangers the educational welfare or personal safety of students, teachers, school bus drivers, or other coworkers.

(8) Having been convicted of any misdemeanor, gross misdemeanor, or felony (including instances in which a plea of guilty or *nolo contendere* is the basis for the conviction) or being under a deferred prosecution under chapter 10.05 RCW (~~where the conduct or alleged conduct is related to the occupation of a school bus driver~~), including, but not limited to, the following:

(a) The physical neglect of a child under chapter 9A.42 RCW;

(b) The physical injury or death of a child under chapter 9A.32 or 9A.36 RCW, excepting motor vehicle violations under chapter 46.61 RCW;

(c) The sexual exploitation of a child under chapter 9.68A RCW;

(d) Sexual offenses where a child is the victim under chapter 9A.44 RCW;

(e) The promotion of prostitution of a child under chapter 9A.88 RCW;

(f) The sale or purchase of a child under RCW 9A.64.030;

(g) Any crime involving the use, sale, possession, or transportation of any controlled substance or prescription drug within the last ten years;

(h) Any crime involving driving when a driver's license is suspended or revoked, hit and run driving, driving while intoxicated, being in physical control of motor vehicle while intoxicated, reckless driving, negligent driving of a serious nature, vehicular assault or vehicular homicide, within the last five years;

(i) Provided, That the general classes of felony crimes referenced within this subsection shall include equivalent federal crimes and crimes committed in other states;

(j) Provided further, That for the purpose of this subsection "child" means a minor as defined by the applicable state or federal law;

(k) Provided further, That for the purpose of this subsection "conviction" shall include a guilty plea.

(9) Having been convicted of any crime within the last ten years, including motor vehicle violations, which would materially and substantially impair the individual's worthiness and ability to serve as an authorized school bus driver. In determining whether a particular conviction would materially and substantially impair the individual's worthiness and ability to serve as an authorized school bus driver, the following and any other relevant considerations shall be weighed:

(a) Age and maturity at the time the criminal act was committed;

(b) The degree of culpability required for conviction of the crime and any mitigating factors, including motive for commission of the crime;

(c) The classification of the criminal act and the seriousness of the actual and potential harm to persons or property;

(d) Criminal history and the likelihood that criminal conduct will be repeated;

(e) The permissibility of service as an authorized school bus driver within the terms of any parole or probation;

(f) Proximity or remoteness in time of the criminal conviction;

(g) Any evidence offered which would support good moral character and personal fitness;

(h) If this subsection is applied to a person currently authorized as a school bus driver in a suspension or revocation action, the effect on the school bus driving profession, including any chilling effect, shall be weighed; and

(i) In order to establish good moral character and personal fitness despite the criminal conviction, the applicant or authorized school bus driver has the duty to provide available evidence relative to the above considerations. The superintendent of public instruction has the right to gather and present additional evidence which may corroborate or negate that provided by the applicant or authorized school bus driver.

WSR 05-22-082

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF FISH AND WILDLIFE

(By the Code Reviser's Office)

[Filed November 1, 2005, 8:55 a.m.]

WAC 220-76-015, proposed by the Department of Fish and Wildlife in WSR 05-09-042 appearing in issue 05-09 of the State Register, which was distributed on May 4, 2005, is withdrawn by the code reviser's office under RCW 34.05.335 (3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 05-22-084

PROPOSED RULES DEPARTMENT OF LABOR AND INDUSTRIES

[Filed November 1, 2005, 9:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-12-113.

Title of Rule and Other Identifying Information: Industrial insurance, chapter 296-14 WAC, Residence modification.

Other Identifying information: New sections WAC 296-14-6200 What is a residence modification?, 296-14-6202 What is the residence modification benefit?, 296-14-6204 Which workers may be eligible to receive benefits for residence modifications?, 296-14-6206 Which residences may be eligible to be modified?, 296-14-6208 When may the worker request residence modification benefits?, 296-14-6210 What is the maximum amount of the residence modification benefit?, 296-14-6212 Can the worker receive additional modification benefits for the same residence?, 296-14-6214 Can a worker receive residence modification benefits for more than one house?, 296-14-6216 How can a worker begin the process of requesting residence modification benefits?, 296-14-6218 How does the department or self-insured employer determine the worker's residence for purposes of residence modification?, 296-14-6220 What type of residence may the department or self-insured employer modify?, 296-14-6222 What is a residence modification consultant, and how are they involved in the process of residence modification?, 296-14-6223 Will the department pay for professional services needed to design a residence modification?, 296-14-6224 What must the worker submit to the department in a completed request for a residence modification?, 296-14-6226 What other information must be submitted to the department in a completed application for a residence modification?, 296-14-6228 Who will approve or deny a request for residence modification?, 296-14-6230 What will the supervisor consider when approving or denying a residence modification request?, 296-14-6232 What happens if the residence modification costs exceed the maximum benefit?, 296-14-6234 Can a worker apply the residence modification benefit to the cost of building a new residence?, 296-14-6236 How is a worker advised that the supervisor has approved or denied the request for residence modification benefits?, and 296-14-6238 Who receives payment from the department?

Hearing Location(s): Red Lion Hotel Yakima Center, Veranda Room, 607 East Yakima Avenue, Yakima, WA 98901-2548,

(509) 452-6511, on December 6, 2005, at 11:00 a.m.; and at the Department of Labor and Industries, Tukwila Office Training Room, 12806 Gateway Drive, Tukwila, WA 98168-3311, (206) 835-1000, on December 9, 2005, at 11:00 a.m.

Date of Intended Adoption: February 28, 2006.

Submit Written Comments to: Keith Klinger, Department of Labor and Industries, P.O. Box 44329, Olympia, WA 98504-4329, (360) 902-6362, e-mail KLIN235@LNI.WA.GOV, fax (360) 902-6706, by December 15, 2005.

Assistance for Persons with Disabilities: Contact Keith Klinger by November 30, 2005.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Pursuant to chapter 411, Laws of 2005 (EHB 2185), L&I was directed to implement rules that will establish guidelines and processes for providing residence modification assistance to workers who have sustained catastrophic injury.

Reasons Supporting Proposal: The proposed rules will reduce inconsistent interpretation and application of the law and potentially unnecessary litigation.

Statutory Authority for Adoption: RCW 51.04.010, 51.04.020, 51.32.240, and chapter 411, Laws of 2005 (EHB 2185).

Statute Being Implemented: RCW 51.36.022.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rules will provide a consistent means for implementing the statutory change, thus reducing inconsistent interpretation and application of the law and potentially unnecessary litigation.

Name of Proponent: Department of Labor and Industries, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Rich Wilson, P.O. Box 44324, Olympia, WA 98504-4324, (360) 902-6361; Enforcement: Sandy Dziedzic, (360) 902-4300, and Jean Vanek, (360) 902-6907, P.O. Box 44890, Olympia, WA 98504-4890.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement was prepared because the content of these rules are specifically dictated by RCW 34.05.310 (4)(e).

A cost-benefit analysis is not required under RCW 34.05.328. No cost-benefit analysis was prepared because the content of these rules are specifically dictated by RCW 34.05.328 (5)(b)(v).

November 1, 2005

Gary Weeks

Director

NEW SECTION

WAC 296-14-6200 What is a residence modification?

A residence modification is a permanent change to an existing residence or a repair of a modification previously approved and paid for by the department or self-insured employer, or a modification made when constructing a new residence.

Household appliances such as refrigerators, washers, and dryers, are generally not residence modifications and the department or self-insured employer will approve them only under unique circumstances as approved by the supervisor.

NEW SECTION

WAC 296-14-6202 What is the residence modification benefit? The residence modification benefit is a sum of money used to modify a worker's residence for purposes of safety, mobility and activities of daily living, when those modifications are made necessary by the nature of the worker's condition subsequent to a catastrophic injury. Activities of daily living are tasks required for self-care, communication and mobility and include, but are not limited to, bathing, bed mobility, dressing, eating, grooming, toileting and transfers.

NEW SECTION

WAC 296-14-6204 Which workers may be eligible to receive benefits for residence modifications? Residence modification benefits are only available to workers with an allowed catastrophic injury claim. Catastrophic injuries are the most serious of conditions and include, but are not limited to, head trauma, paralysis and amputation.

NEW SECTION

WAC 296-14-6206 Which residences may be eligible to be modified? Before the department or self-insured employer will consider an application for modification, the residence must meet the following criteria:

(1) The residence must be structurally sound and free of obvious structural defects. The department may request a safety inspection. The department or self-insured employer will not pay for a residence to be brought up to state and local code.

(2) The residence can be adapted to be suitable for the worker's needs for purposes of daily living.

(3) In the opinion of the worker's health care providers, the worker can live in the residence after modification.

NEW SECTION

WAC 296-14-6208 When may the worker request residence modification benefits? The worker may request residence modification at any time when his or her allowed claim is either open or the worker has been determined to be permanently and totally disabled.

NEW SECTION

WAC 296-14-6210 What is the maximum amount of the residence modification benefit? The maximum amount of the benefit is the state's average annual wage at the time the modification is approved less any amount previously paid for an approved modification. The department or self-insured employer will not pay for modifications that exceed the maximum amount. The department or self-insured employer may make several payments, so long as the total paid does not exceed the maximum benefit.

NEW SECTION

WAC 296-14-6212 Can the worker receive additional modification benefits for the same residence? The department can pay for additional or subsequent residence modifications so long as the cost does not exceed the maximum benefit in effect at the time the modification is approved less the amount of any previously paid modification benefits.

NEW SECTION

WAC 296-14-6214 Can a worker receive residence modification benefits for more than one house? No. The department or self-insured employer will pay for residence modifications on only one residence for each catastrophically injured worker.

NEW SECTION

WAC 296-14-6216 How can a worker begin the process of requesting residence modification benefits? The worker may inquire about residence modification benefits by contacting his or her adjudicator. The department or self-insured employer will then refer the worker to a residence modification consultant for evaluation.

NEW SECTION

WAC 296-14-6218 How does the department or self-insured employer determine the worker's residence for purposes of residence modification? The department or self-insured employer will consider modifying a residence when the worker lives in and considers the residence to be his or her permanent residence. It is not required that the worker own or rent the residence.

NEW SECTION

WAC 296-14-6220 What type of residence may the department or self-insured employer modify? The department or self-insured employer may modify a standard house, a residential unit in a multiunit dwelling, or a manufactured/mobile residence.

The department or self-insured employer will only authorize modification of manufactured/mobile residences when the factory assembled structures division of the department reviews and approves the plans in advance.

The department or self-insured employer will not approve modification of commercial coaches.

The department or self-insured employer will not approve modification of recreational vehicles or recreational park trailers used as permanent residences, unless the local jurisdiction allows recreational vehicles or recreational park trailers to be used as a dwelling, and the factory assembled structures division of the department reviews and approves the plans in advance.

NEW SECTION

WAC 296-14-6222 What is a residence modification consultant, and how are they involved in the process of residence modification? When the worker has notified the department or self-insured employer of his or her intention to request a residence modification, the department or self-insured employer will require an on-site evaluation by a residence modification consultant.

A residence modification consultant must be either a licensed physical or occupational therapist, or licensed nurse, and must be trained or experienced in both rehabilitation of catastrophic injuries and in modifying residences. The residence modification consultant must have a provider number with the department. The department or self-insured employer will pay for the services of the residence modification consultant pursuant to department provider rules.

The residence modification consultant will assist the worker, the contractor and the worker's health providers to determine what modifications will be requested and submit a written report to the department or self-insured employer and

the worker. If modifications are approved, the residence modification consultant may assist the worker and the contractor if requested by the department or self-insured employer.

NEW SECTION

WAC 296-14-6223 Will the department pay for professional services needed to design a residence modification? Yes. However, the department or self-insured employer will not pay for professional services prior to approval of the residence modification.

If approved, the cost of architectural, engineering, pre-design and planning services will be included in the residential modification benefit. The cost for services should be included in the residence modification request.

NEW SECTION

WAC 296-14-6224 What must the worker submit to the department in a completed request for a residence modification? For the department to process a residence modification request, the worker must provide the adjudicator with at least the following information:

(1) Documentation of residence ownership. If the worker does not own the residence, he or she must submit the actual owner's proof of ownership and written legal permission signed by the actual owner to modify the residence as indicated in the proposed plan; and

(2) A report signed by the residence modification consultant for all necessary modifications; and

(3) Competing and detailed bids from two licensed, registered and bonded contractors.

Exceptions: If it is not possible to obtain two bids, a written explanation of the circumstances must be provided.

If family or friends will perform free labor, they need not be licensed, registered and bonded, but must still submit a bid for the cost of materials.

(4) A copy of the acknowledgment of responsibilities letter signed by both the worker and the contractor. A copy of this form can be obtained from the department.

NEW SECTION

WAC 296-14-6226 What other information must be submitted to the department in a completed application for a residence modification? (1) The attending health services provider may need to submit medical documentation verifying the worker's condition and the necessity for any residence modification.

(2) The residence modification consultant must submit an evaluation, based on an in-home inspection, of the worker's needs for safety, mobility and activities of daily living. This evaluation must be in the form of a written report with pictures or drawings.

(3) Any additional information requested by the department or self-insured employer that might be needed to evaluate a specific request.

NEW SECTION

WAC 296-14-6228 Who will approve or deny a request for residence modification? The department will pay the benefit only with the approval of the supervisor of industrial insurance. A self-insured employer may pay the benefit without the supervisor's approval, but may not deny the benefit. The supervisor of industrial insurance alone has the authority to deny a residence modification benefit.

NEW SECTION

WAC 296-14-6230 What will the supervisor consider when approving or denying a residence modification request? The supervisor will consider requests for residence modifications on a case-by-case basis. The supervisor may approve all or part of the requested modifications, based on what is reasonable and necessary for the individual worker.

In order to determine what is reasonable and necessary, the supervisor will review the completed application and will consider at least the following:

- (1) Whether the worker is eligible to receive a residence modification benefit; and
- (2) The needs and preferences of the individual worker, based on information provided by the injured worker; and
- (3) Whether the proposed residence is appropriate for modification; and
- (4) Whether the proposed modifications are appropriate for the style, nature and condition of the residence; and
- (5) The attending health care provider's opinions of the medical condition, physical needs of the worker and whether the worker can reside in the residence after the modifications are complete; and
- (6) The residence modification consultant's evaluation of whether the proposed modification is necessary to meet the worker's current need for safety, mobility and activities of daily living; and
- (7) Whether the contractor's proposed plan will satisfy the necessary modification; and
- (8) Whether the proposed plans submitted by the contractors are consistent with state guidelines for specially adapted residential housing, if any; and
- (9) The contractor's proposed modification plan is consistent with the guidelines established by the United States Department of Veterans Affairs in their publication entitled "*Handbook for Design: Specially Adapted Housing*," or the recommendations published in "*The Accessible Housing Design File*" by Barrier Free Environments, Inc.; and
- (10) Whether the proposed modifications are being provided at the least cost while maintaining quality; and
- (11) Whether there are additional funds available to the worker based on the maximum amount for residence modification at the time of the request less the cost of any modifications already provided.

NEW SECTION

WAC 296-14-6232 What happens if the residence modification costs exceed the maximum benefit? The department or self-insured employer may approve a payment of a portion of a residence modification request, not to exceed

the maximum benefit. The department or self-insured employer will identify the portions of the residence modification for which payment will be approved based on the worker's current need for safety, mobility and activities of daily living.

If the costs of the proposed modifications of an existing residence exceed the benefit, the worker is responsible for payment of the balance of the costs. The worker must choose one of the following options:

- (1) Adjust their request for modifications to remain within the benefit; or
- (2) Obtain additional financing. If the worker chooses to obtain additional financing, he or she must submit to the department written verification of the additional financing from the funding source. The supervisor will deny the residence modification if the worker is unable to cover the additional costs.

NEW SECTION

WAC 296-14-6234 Can a worker apply the residence modification benefit to the cost of building a new residence? Yes. However, the benefit may be applied only to the cost difference between a standard residence structure and the modified structure.

NEW SECTION

WAC 296-14-6236 How is a worker advised that the supervisor has approved or denied the request for residence modification benefits? The department will notify the worker, contractors, homeowner (if not the worker), residence modification consultant, attending health services provider and employer of the supervisor's decision in writing.

NEW SECTION

WAC 296-14-6238 Who receives payment from the department? The department will pay the contractor directly for approved and completed residence modifications. In order to determine that modifications have been satisfactorily completed, the department will require the following documents to be submitted before releasing final payment:

- (1) A signed letter of satisfaction from the worker; and
- (2) A positive report of a final inspection from the appropriate inspection authorities, if required; and
- (3) A report of an inspection from the residence modification consultant if requested by the department; and
- (4) A release of lien form signed by the contractors or subcontractors or both.

WSR 05-22-094

PROPOSED RULES

UTILITIES AND TRANSPORTATION
COMMISSION

[Filed November 1, 2005, 1:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-18-087.

Title of Rule and Other Identifying Information: WAC 480-140-020 relating to who must file budgets. The rule making has been assigned WUTC Docket Nos. UT-051261 and UW-051287.

Hearing Location(s): Commission Hearing Room 206, 2nd Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on December 6, 2005, at 9:30 a.m.

Date of Intended Adoption: December 6, 2005.

Submit Written Comments to: Carole J. Washburn, Secretary, P.O. Box 47250, Olympia, WA 98504, e-mail records@wutc.wa.gov, fax (360) 586-1150, by November 23, 2005. Please include Dockets UT-051261 and UW-051287 in your communication.

Assistance for Persons with Disabilities: Contact Mary DeYoung by Monday, December 5, 2005, TTY (360) 586-8203 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 480-140-020 (3) and (4) would be deleted to eliminate the requirement that large telecommunications companies and water companies must file annual budgets with the commission.

Reasons Supporting Proposal: The amendments to WAC 480-140-020 will eliminate an unnecessary regulatory requirement. The requirement that large telecommunications companies and water companies file budget reports is obsolete. The agency can fulfill its responsibility to ensure fair, just, and reasonable rates without this reporting requirement.

Statutory Authority for Adoption: RCW 80.01.040(4), 80.04.160, and 80.04.320.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington Utilities and Transportation Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Betty Erdahl, Regulatory Analyst, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1283; Implementation and Enforcement: Carole J. Washburn, Executive Secretary, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1174.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendments to WAC 480-140-020 will not result in or impose an increase in costs. In fact, the proposed amendments to WAC 480-140-020 will decrease costs due to less reporting by telecommunications and water companies. Because there will not be any increase in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

November 1, 2005
Carole J. Washburn
Executive Secretary

AMENDATORY SECTION (Amending Order No. R-466, Docket No. A-990298, filed 11/15/99, effective 12/16/99)

WAC 480-140-020 Who must file. The following public service companies with annual gross operating revenues exceeding two hundred fifty thousand dollars must file budgets with the commission:

- (1) Gas companies; and
- (2) Electrical companies(~~;~~
- (3) ~~Telecommunications companies that serve more than two percent of the access lines in the state of Washington, except those companies classified as competitive by the commission; and~~
- (4) ~~Water companies that are not required to file water system plans with the department of health in compliance with WAC 246-290-100. Water companies required to file water system plans with the department of health must concurrently file a copy with the commission).~~

WSR 05-22-100
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed November 1, 2005, 4:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-13-173.

Title of Rule and Other Identifying Information: The Division of Employment and Assistance Programs is amending WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)?

Hearing Location(s): Blake Office Park East, Rose Room, 4500 10th Avenue S.E., Lacey, WA 98503 (one block north of the intersection of Pacific Avenue S.E. and Alhadeff Lane, behind Goodyear Tire. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling (360) 664-6097), on December 6, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than December 7, 2005.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, delivery 4500 10th Avenue S.E., Lacey, WA, e-mail fernaax@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., December 6, 2005.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by December 2, 2005, at TTY (360) 664-6178 or phone (360) 664-6097 or by e-mail at schilse@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule change is necessary to increase state supplemental payments to individuals residing in nursing facilities by \$10 per month as mandated by the 2005 legislative session, ESSB 6090.

Reasons Supporting Proposal: To comply with the legislature's budget directive.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.-055, 74.04.057, 74.08.090.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of Social and Health Services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lorri Gagnon, 1009 College S.E., Lacey, WA 98504, (360) 725-4619.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not have an economic impact on small businesses, it only affects DSHS clients by outlining the rules clients must meet in order to be eligible for the department's cash assistance or food benefit programs.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

November 1, 2005

Andy Fernando, Manager
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-07-024, filed 3/8/04, effective 4/8/04)

WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)? (1) The SSP is a payment from the state for certain SSI eligible people (see WAC 388-474-0012).

If you converted to the federal SSI program from state assistance in January 1974, because you were aged, blind, or disabled, and have remained continuously eligible for SSI since January 1974, the department calls you a grandfathered client. Social Security calls you a mandatory income level (MIL) client.

A change in living situation, cost-of-living adjustment (COLA) or federal payment level (FPL) can affect a grandfathered (MIL) client. A grandfathered (MIL) client gets a federal SSI payment and a SSP payment, which totals the higher of one of the following:

- (a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal cost-of-living adjustments (COLA) since then; or
- (b) The current payment standard.

(2) The monthly SSP rates for eligible persons under WAC 388-474-0012 and individuals residing in an institution are:

SSP eligible persons	Monthly SSP Rate
Individual (aged 65 and older) - Calendar Year ((2004) <u>2005</u>)	\$46.00
Individual (blind as determined by SSA) - Calendar Year ((2004) <u>2005</u>)	\$46.00

SSP eligible persons	Monthly SSP Rate
Individual with an ineligible spouse - Calendar Year ((2004) <u>2005</u>)	\$46.00

Grandfathered (MIL)	Varies by individual based on federal requirements. Payments range between \$0.54 and \$199.77.
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Medical institution	Monthly SSP Rate
Individual	\$((11.62)) <u>21.62</u>

**WSR 05-22-104
PROPOSED RULES
WASHINGTON STATE PATROL**

[Filed November 2, 2005, 8:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-17-198.

Title of Rule and Other Identifying Information: Chapter 212-17 WAC, Fireworks.

Hearing Location(s): General Administration Building, 210 11th Avenue S.W., Olympia, WA 98504, (360) 570-3133, on December 14, 2005, at 10:00 a.m.

Date of Intended Adoption: January 3, 2006.

Submit Written Comments to: Deputy State Fire Marshall Larry Glenn, P.O. Box 42600, Olympia, WA 98504-2600, e-mail Larry.Glenn@wsp.wa.gov, fax (360) 570-3136, by December 13, 2005.

Assistance for Persons with Disabilities: Contact Mr. Larry Glenn by December 13, 2005, (360) 570-3133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Modify the rules that apply to public displays of special fireworks fired from floating vessels and platforms to meet the requirements of the state adopted 2000 edition of the National Fire Protection Association (NFPA) Standard 1123.

Statutory Authority for Adoption: Chapters 43.43 and 70.77 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Deputy State Fire Marshall Larry Glenn, General Administration Building, P.O. Box 42600, Olympia, WA 98504-2600, (360) 570-3133.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. There will be no cost to the industry.

November 2, 2005

Paul S. Beckley
for John R. Batiste
Chief

NEW SECTION

WAC 212-17-342 Public display—Floating vessels and platforms. (1) Floating vessels and floating platforms shall be permitted to be manned or unmanned as long as the pyrotechnic crew remains in control of the site and firing of the display.

(2) Floating vessels and floating platforms shall be held in control at all times, whether self-propelled, controlled by another vessel, or secured by mooring or anchoring.

(3) Floating vessels and floating platforms shall be of sufficient strength and stability to safely allow the firing of the display.

(4) The types of fireworks and placement of the fireworks launch tubes and accompanying equipment shall be such that, when fired, the stability of the site structures and sea-worthiness of the floating vessels or platforms shall not be jeopardized.

(5) Floating vessels and floating platforms that are manned during electrical firing shall have a safety shelter. The safety shelter shall meet the following requirements:

(a) Be of sufficient size to accommodate all personnel present during the actual firing of the display.

(b) Have a minimum of three sides and a roof.

(c) Have walls and a roof constructed of at least three-quarter-inch plywood or equivalent material.

(6) The minimum size for the floating vessel or floating platform for electrically fired programs that are manned shall be based upon the area for the setup of the display plus the safety area for the safety shelter.

Exceptions:

(a) Multishot devices up to three inches in diameter shall be calculated at twice the actual footprint of each device (length x width).

(b) Ground display pieces shall be excluded from the calculations for minimum display set-up area.

The required minimum size for a barge (in square feet) for a particular display shall be determined by the following calculations:

Minimum discharge site (in square feet) = sum of (total number of each size mortar times its inside diameter) divided by two.

EXAMPLE:

A display containing 100 - 3 inch shells, 50 - 4 inch shells, 20 - 5 inch shells, 10 - 6 inch shells, and 5 - 8 inch shells would require the following minimum display set-up area.

$$\frac{100 \times 3 + 50 \times 4 + 20 \times 5 + 10 \times 6 + 5 \times 8}{2}$$

$$\frac{300 + 200 + 100 + 60 + 40}{2}$$

$$700 / 2 = 350 \text{ square feet}$$

(7) Separation between mortars and safety shelter shall be two feet per inch of diameter of any mortars up to six inches in diameter. For shells larger than six inches in diameter, the minimum separation distance shall be four feet per inch of shell diameter.

Exception:

If the safety shelter is constructed of stronger material, then the separation distance between mortars and the shelter shall be permitted to be reduced.

(8) At all times a minimum of two separate egress paths shall be provided. Only one egress path shall be required from protective barricades or safety shelters.

(9) Egress paths shall be unobstructed and free of impediments.

(10) Floating platforms constructed of wood or other combustible material shall be permitted to be used as a fireworks launch vessel.

(11) Manual firing of displays shall be permitted on floating vessels and floating platforms under the following conditions:

(a) All shells shall be preloaded into mortars prior to the display.

(b) Shells shall be limited to single-break and shall not exceed six inches in diameter.

(c) The minimum size of the floating vessel or floating platform shall be twice that required for an electrically fired display.

(d) A protective barrier(s) meeting the strength requirements of three-quarter-inch plywood or equivalent shall be provided. All personnel other than the shooter(s) and operator shall be behind the barrier(s) during the display.

(e) Electrical firing on the same vessel or platform where manual firing is used shall be in accordance with the requirements for the electrically fired display.

(12) Shells shall be loaded into mortars and in place prior to the start of a display. There shall be no reloading of any material during the display.

(13) All personnel, other than spotters of fire watch, shall be in safety shelters. Spotters and fire watch on a floating platform or floating vessel shall be behind protective barriers during the display with a minimum wall construction of three-quarter-inch plywood or equivalent material.

(14) A U.S. Coast Guard approved personal flotation device (PFD) shall be provided and available for each person on a display launched from floating vessels and floating platforms. Those PFDs shall be properly worn any time the vessel is not moored at the dock. PFDs shall have or include a visual location device.

(15) A watercraft ready and capable of providing rapid emergency response shall be present during the display.

(16) The positions of the shells or mortars on floating vessels and floating platforms from which fireworks are launched shall comply with minimum safety distance requirements as outlined in WAC 212-17-325.

(17) An operational means of communication, such as a cellular/digital telephone, marine radio, or walkie-talkie system, shall be on board manned vessels and platforms from which fireworks are being discharged.

(18) During the display only necessary personnel shall be aboard any floating vessel or floating platform.

(19) Floating vessels and floating platforms shall be free of all nonessential flammable or combustible materials.

(20) Portable power-generation equipment, motorized vehicles, and material-handling equipment deemed necessary for the performance of the display shall be permitted.

WSR 05-22-106
PROPOSED RULES
PUGET SOUND
CLEAN AIR AGENCY

[Filed November 2, 2005, 8:42 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Amend Regulation I, Section 3.07 (Compliance Tests).

Hearing Location(s): Puget Sound Clean Air Agency, 110 Union Street, Suite 500, Seattle, WA 98101, on December 15, 2005, at 9:15 a.m.

Date of Intended Adoption: December 15, 2005.

Submit Written Comments to: Lynn Sykes, Puget Sound Clean Air Agency, 110 Union Street, #500, Seattle, WA 98101, e-mail lynns@pscleanair.org, fax (206) 343-7522, by December 14, 2005.

Assistance for Persons with Disabilities: Contact Agency Receptionist, (206) 689-4010, by December 8, 2005, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed revision requires that compliance source test notifications be submitted on a form provided by the agency. Currently, source test notifications are received in a variety of formats, which sometimes causes confusion and leads to delays or mistakes in the review and handling of these test notices. This revision will help to eliminate confusion.

Reasons Supporting Proposal: This is an administrative revision that will help document receipt and review of source test notifications as part of the record.

Statutory Authority for Adoption: Chapter 70.94 RCW. Statute Being Implemented: RCW 70.94.141.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The state implementation plan will be updated to reflect these amendments.

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4052; and Implementation and Enforcement: Jim Nolan, 110 Union Street, #500, Seattle, WA 98101, (206) 689-4053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

October 28, 2005
 Steve Van Slyke
 Supervisory Engineer

AMENDATORY SECTION

REGULATION I SECTION 3.07 COMPLIANCE TESTS

(a) Testing of sources for compliance with emission standards shall be performed in accordance with current U.S. Environmental Protection Agency approved methods unless specific methods have been adopted by the Board. Where there is no federally approved or Board approved method, testing shall be performed in accordance with a method approved in writing by the Control Officer.

(b) The owner or operator of a source shall notify the Agency in writing at least 2 weeks prior to any compliance test and provide the Agency an opportunity to review the test plan and to observe the test. Notification of a compliance test shall be submitted on forms provided by the Agency.

(c) The owner or operator of any source required to perform a compliance test shall submit a report to the Agency no later than 60 days after the test. The report shall include:

- (1) A description of the source and the sampling location;
- (2) The time and date of the test;
- (3) A summary of results, reported in units and for averaging periods consistent with the applicable emission standard;
- (4) A description of the test methods and quality assurance procedures employed;
- (5) The amount of fuel burned or raw material processed by the source during the test;
- (6) The operating parameters of the source and control equipment during the test;
- (7) Field data and example calculations; and
- (8) A statement signed by the senior management official of the testing firm certifying the validity of the source test report.

WSR 05-22-111
WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed November 2, 2005, 9:18 a.m.]

The Department of Licensing hereby withdraws WSR 04-09-05-22-034 [05-22-034] filed on October 27, 2005.

Dale R. Brown
 Vehicle Services
 Rules Coordinator

WSR 05-22-126
PROPOSED RULES
STATE BOARD OF HEALTH

[Filed November 2, 2005, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-06-030.

Title of Rule and Other Identifying Information: Chapter 246-650 WAC, Newborn screening, establishes rules to

detect, in newborns, congenital disorders leading to developmental impairment or physical disabilities as required by RCW 70.83.050.

Hearing Location(s): Seattle Airport Hilton and Conference Center, 17620 Pacific Highway South, Seattle, WA 98188-4001, on December 7, 2005, at 1:30 p.m.

Date of Intended Adoption: January 3, 2006.

Submit Written Comments to: Michael Glass, 1610 N.E. 150th, Shoreline, WA 98155, or mike.glass@doh.wa.gov, e-mail <http://www3.doh.wa.gov/policyreview>, fax (206) 418-5415, by November 28, 2005.

Assistance for Persons with Disabilities: Contact Juli Terao-Fast by November 15, 2005, TTY 1-800-833-6388 or (206) 418-5537.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose is to revise WAC 246-650-010, 246-650-020 and 246-650-030, newborn screening to add cystic fibrosis to the definitions (WAC 246-650-010) and to the panel of required screening tests for all newborns (WAC 246-650-020) and to provide a timeline for implementation of screening for cystic fibrosis (WAC 246-650-030). Screening will be conducted by the Department of Health using the same dried blood spot specimen currently submitted by hospitals for screening for the nine conditions currently specified in WAC 246-650-020.

Reasons Supporting Proposal: Newborn screening for cystic fibrosis is recommended by several national groups, including the Centers for Disease Control and Prevention, American College of Medical Genetics, the National March of Dimes and the American Academy of Pediatrics. The Washington State Board of Health and Department of Health have convened two advisory committees to consider the evidence and make recommendations. The first committee consisted of experts in public health and cystic fibrosis who were convened to review the medical/technical evidence. The group found that cystic fibrosis met the technical requirements of the board's criteria for adding disorders to the newborn screening program. Subsequently, a broadly representative group of stakeholders was convened to consider all of the evidence. After reviewing the evidence and issues, this committee has recommended that cystic fibrosis be added to the disorders for which all infants born in our state must be screened.

Statutory Authority for Adoption: RCW 70.83.050.

Statute Being Implemented: RCW 70.83.020.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington State Board of Health, and Department of Health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Michael Glass, 1610 N.E. 150th, Shoreline, WA 98155.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not impose any costs on small businesses, and therefore a small business economic impact statement is not required under RCW 19.85.030.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ala Mofidi, P.O. Box 47890, Olym-

pia, WA 98504-7890, phone (360) 236-4055, fax (360) 586-7424, e-mail ala.mofidi@doh.wa.gov.

November 2, 2005

Craig McLaughlin

Executive Director

AMENDATORY SECTION (Amending WSR 03-24-026, filed 11/24/03, effective 12/25/03)

WAC 246-650-010 Definitions. For the purposes of this chapter:

(1) "Board" means the Washington state board of health.

(2) "Biotinidase deficiency" means a deficiency of an enzyme (biotinidase) that facilitates the body's recycling of biotin. The result is biotin deficiency, which if undetected and untreated, may result in severe neurological damage or death.

(3) "Congenital adrenal hyperplasia" means a severe disorder of adrenal steroid metabolism which may result in death of an infant during the neonatal period if undetected and untreated.

(4) "Congenital hypothyroidism" means a disorder of thyroid function during the neonatal period causing impaired mental functioning if undetected and untreated.

(5) "Cystic fibrosis" means a life-shortening disease caused by mutations in the gene encoding the cystic fibrosis transmembrane conductance regulator (CFTR), a transmembrane protein involved in ion transport. Affected individuals suffer from chronic, progressive pulmonary disease and nutritional deficits. Early detection and enrollment in a comprehensive care system provides improved outcomes and avoids the significant nutritional and growth deficits that are evident when diagnosed later.

(6) "Department" means the Washington state department of health.

~~((6))~~ (7) "Galactosemia" means a deficiency of enzymes that help the body convert the simple sugar galactose into glucose resulting in a buildup of galactose and galactose-1-PO₄ in the blood. If undetected and untreated, accumulated galactose-1-PO₄ may cause significant tissue and organ damage often leading to sepsis and death.

~~((7))~~ (8) "Hemoglobinopathy" means a hereditary blood disorder caused by genetic alteration of hemoglobin which results in characteristic clinical and laboratory abnormalities and which leads to developmental impairment or physical disabilities.

(9) "Homocystinuria" means deficiency of enzymes necessary to break down or recycle the amino acid homocysteine resulting in a buildup of methionine and homocysteine. If undetected and untreated may cause thromboembolism, mental and physical disabilities.

~~((8))~~ (10) "Maple syrup urine disease" (MSUD) means deficiency of enzymes necessary to breakdown the branch chained amino acids leucine, isoleucine, and valine resulting in a buildup of these and metabolic intermediates in the blood. If undetected and untreated may result in mental and physical retardation or death.

~~((9))~~ (11) "Medium chain acyl-coA dehydrogenase deficiency" (MCADD) means deficiency of an enzyme (medium chain acyl-coA dehydrogenase) necessary to break-

down medium chain length fatty acids. If undetected and untreated, fasting, infection or stress may trigger acute hypoglycemia leading to physical and neurological damage or death.

~~((10))~~ (12) "Newborn" means an infant born in a hospital in the state of Washington prior to discharge from the hospital of birth or transfer.

~~((11))~~ (13) "Newborn screening specimen/information form" means the information form provided by the department including the filter paper portion and associated dried blood spots. A specimen/information form containing patient information is "Health care information" as defined by the Uniform Healthcare Information Act, RCW 70.02.010(6).

~~((12))~~ "Phenylketonuria" (PKU) means a deficiency of an enzyme necessary to convert the amino acid phenylalanine into tyrosine resulting in a buildup of phenylalanine in the blood. If undetected and untreated may cause severely impaired mental functioning.

~~(13)~~ "Hemoglobinopathy" means a hereditary blood disorder caused by genetic alteration of hemoglobin which results in characteristic clinical and laboratory abnormalities and which leads to developmental impairment or physical disabilities.)

(14) "Phenylketonuria" (PKU) means a deficiency of an enzyme necessary to convert the amino acid phenylalanine into tyrosine resulting in a buildup of phenylalanine in the blood. If undetected and untreated may cause severely impaired mental functioning.

(15) "Significant screening test result" means a laboratory test result indicating a suspicion of abnormality and requiring further diagnostic evaluation of the involved infant for the specific disorder.

AMENDATORY SECTION (Amending WSR 03-24-026, filed 11/24/03, effective 12/25/03)

WAC 246-650-020 Performance of screening tests.

(1) Hospitals providing birth and delivery services or neonatal care to infants shall:

(a) Inform parents or responsible parties, by providing a departmental information pamphlet or by other means, of:

(i) The purpose of screening newborns for congenital disorders,

(ii) Disorders of concern as listed in WAC 246-650-020(2),

(iii) The requirement for newborn screening, and

(iv) The legal right of parents or responsible parties to refuse testing because of religious tenets or practices as specified in RCW 70.83.020, and

(v) The specimen storage, retention and access requirements specified in WAC 246-650-050.

(b) Obtain a blood specimen for laboratory testing as specified by the department from each newborn prior to discharge from the hospital or, if not yet discharged, no later than five days of age.

(c) Use department-approved newborn screening specimen/information forms and directions for obtaining specimens.

(d) Enter all identifying and related information required on the specimen/information form following directions of the department.

(e) In the event a parent or responsible party refuses to allow newborn screening, obtain signatures from parents or responsible parties on the department specimen/information form.

(f) Forward the specimen/information form with dried blood spots or signed refusal to the Washington state public health laboratory no later than the day after collection or refusal signature.

(2) Upon receipt of specimens, the department shall:

(a) Perform appropriate screening tests for:

(i) ~~((Phenylketonuria))~~ Biotinidase deficiency, congenital hypothyroidism, congenital adrenal hyperplasia, ~~((and hemoglobinopathies,))~~ galactosemia, homocystinuria, hemoglobinopathies, maple syrup urine disease, medium chain acyl-coA dehydrogenase deficiency, and phenylketonuria;

(ii) ~~((Biotinidase deficiency, galactosemia, homocystinuria, maple syrup urine disease and medium chain acyl-coA dehydrogenase deficiency))~~ Cystic fibrosis according to the schedule in WAC 246-650-030;

(b) Report significant screening test results to the infant's attending physician or family if an attending physician cannot be identified; and

(c) Offer diagnostic and treatment resources of the department to physicians attending infants with presumptive positive screening tests within limits determined by the department.

AMENDATORY SECTION (Amending WSR 03-24-026, filed 11/24/03, effective 12/25/03)

WAC 246-650-030 Implementation of screening to detect ~~((biotinidase deficiency, galactosemia, homocystinuria, maple syrup urine disease and medium chain acyl-coA dehydrogenase deficiency))~~ cystic fibrosis. The department shall implement screening ~~((tests for biotinidase deficiency, galactosemia, homocystinuria, maple syrup urine disease and medium chain acyl-coA dehydrogenase deficiency beginning in January 2004. Screening for these disorders shall be fully implemented))~~ to detect cystic fibrosis as quickly as feasible and not later than June ~~((2004))~~ 2006.

WSR 05-22-127

PROPOSED RULES

DEPARTMENT OF HEALTH

[Filed November 2, 2005, 11:30 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-834-990 Midwifery fees and renewal cycle, this proposal adjusts fees for licensed midwives in accordance with an I-601 exemption granted in the 2005-07 operating budget.

Hearing Location(s): Department of Health, Point Plaza East, Room 139, 310 Israel Road S.E., Tumwater, WA 98501, on January 3, 2006, at 10:00 a.m.

Date of Intended Adoption: January 4, 2006.

Submit Written Comments to: Kendra Pitzler, P.O. Box 47864, Olympia, WA 98504-7864, rules comment web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4738, by December 27, 2005.

Assistance for Persons with Disabilities: Contact Kendra Pitzler by December 19, 2005, TTY 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 43.70.250 requires the costs of all professional licensing programs to be borne by members of the profession. Due to the small number of licensed midwives (approximately ninety), balancing the budget has been difficult for this program. The midwifery program cut all but essential services in May 2004 restricting program activities to licensure and disciplinary functions. Between May 2004 and September 2005, there were no disciplinary hearings and very little legal activity (legal reviews of files, statement of charges, settlement conferences, etc). While this has allowed the department to balance the midwifery budget, reasonably predictable disciplinary activities as well as rule making and other activities will require additional funds. An exemption to the I-601 limitation was approved with the passage of the operating budget for 2005-07. This proposal will implement the exemption and allow the program to continue to be supported by the professionals as required by law.

Reasons Supporting Proposal: The midwifery program is required by law to support their programs with revenues obtained through licensure fees. It is anticipated that program expenses will rise significantly during the next biennium. The department requested and received an I-601 exemption with the passage of the 2005-07 operating budget.

Statutory Authority for Adoption: RCW 43.70.250 and 18.50.135.

Statute Being Implemented: Chapters 43.70 and 18.50 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of Health, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Kendra Pitzler, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4723; and Enforcement: Paula Meyer, 301 Israel Road S.E., Tumwater, WA 98501, (360) 236-4713.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3) agencies are not required to prepare a small business economic impact statement if the rule change adjusts fees according to legislative standards per RCW 34.05.310 (4)(f).

A cost-benefit analysis is not required under RCW 34.05.328. A preliminary cost-benefit analysis is not required for rules that adjust fees pursuant to legislative standards according to RCW 34.05.328 (5)(b)(vi).

November 1, 2005
Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 05-12-012, filed 5/20/05, effective 7/1/05)

WAC 246-834-990 Midwifery fees and renewal cycle.

(1) Licenses must be renewed every year on the practitioner's birthday as provided in chapter 246-12 WAC, Part 2. The secretary may require payment of renewal fees less than those established in this section if the current level of fees is likely to result in a surplus of funds. Surplus funds are those in excess of the amount necessary to pay for the costs of administering the program and to maintain a reasonable reserve. Notice of any adjustment in the required payment will be provided to practitioners. The adjustment in the required payment shall remain in place for the duration of a renewal cycle to assure practitioners an equal benefit from the adjustment.

(2) The following fees are nonrefundable:

Title of Fee	Fee
Initial application	\$((515.00)) <u>618.00</u>
National examination administration (initial/retake)	((103.00)) <u>123.50</u>
State examination (initial/retake)	((154.50)) <u>185.00</u>
Renewal	((978.75)) <u>1,174.50</u>
Late renewal penalty	300.00
Duplicate license	25.00
Certification of license	25.00
Application fee—Midwife-in-training program	((978.75)) <u>1,174.50</u>
Expired license reissuance	300.00

**WSR 05-22-128
PROPOSED RULES
DEPARTMENT OF HEALTH**

[Filed November 2, 2005, 11:30 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: The following rule sections are being copied and incorporated, without material change, from chapter 246-810 WAC, Registered counselors, into chapter 246-809 WAC, Licensed mental health counselors, licensed social workers, and licensed marriage and family therapists; WAC 246-809-010 Definitions, 246-809-035 Record keeping and retention, 246-809-040 Reporting of suspected abuse or neglect of a child, dependent adult, or a developmentally disabled person, 246-809-049 Sexual misconduct, 246-809-060 Mandatory reporting, 246-809-061 Health care institutions, 246-809-062 Licensed counselor associations or societies, 246-809-063 Health care service contractors and disability insurance carriers, 246-809-064 Professional liability carriers, 246-809-065 Courts, and 246-809-066 State and federal agencies.

Hearing Location(s): Department of Health, 310 Israel Road, Conference Room 131, Tumwater, WA 98501, on December 12, 2005, at 9:00 a.m.

Date of Intended Adoption: December 12, 2005.

Submit Written Comments to: Janice K. Boden, Program Manager, Department of Health, P.O. Box 47869, Olympia, WA 98504-7869, e-mail [web site] www3.doh.wa.gov/policyreview/, fax (360) 236-4909, by December 1, 2005.

Assistance for Persons with Disabilities: Contact Janice K. Boden by December 1, 2005, TTY (800) 833-6388 or 711 or (360) 236-4912.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules adopt without material change rule sections from the registered counselor Washington Administrative Code (chapter 246-810 WAC). By adopting these rules, there will be consistent standards and definitions for registered and licensed counselors in the areas of record keeping and retention, reporting of abuse, sexual misconduct, mandatory reporting. This will result in greater consistency across the counseling professions and greater public protection.

Reasons Supporting Proposal: These rules will establish practice standards and reporting requirements and will assist the Department of Health in protecting the public from counseling services that exploit or abuse clients and/or are below the standard of care.

Statutory Authority for Adoption: RCW 18.225.040, 18.130.050.

Statute Being Implemented: Chapters 18.225 and 18.130 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of Health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Janice K. Boden, 310 Israel Road, Tumwater, WA 98501, (360) 236-4912.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is exempt from the analytical requirements under RCW 34.05.328 (5)(b)(iii), because the rule adopts without material change other Washington state regulations that regulate the same subject matter and conduct as the adopting or incorporating rule.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt from the analytical requirements under RCW 34.05.328 (5)(b)(iii), because the rule adopts without material change other Washington state regulations that regulate the same subject matter and conduct as the adopting or incorporating rule.

November 1, 2005

Mary C. Selecky
Secretary

NEW SECTION

WAC 246-809-010 Definitions. The following terms are defined within the meaning of this chapter.

"Licensed counselor" means a licensed marriage and family therapist, licensed mental health counselor, licensed advanced social worker, or licensed independent clinical social worker regulated under chapter 18.225 RCW.

NEW SECTION

WAC 246-809-035 Recordkeeping and retention. (1)

The licensed counselor providing professional services to a client or providing services billed to a third-party payor, shall document services, except as provided in subsection (2) of this section. The documentation includes:

- (a) Client name;
- (b) The fee arrangement and record of payments;
- (c) Dates counseling was received;
- (d) Disclosure form, signed by licensed counselor and client;
- (e) The presenting problem(s), purpose or diagnosis;
- (f) Notation and results of formal consults, including information obtained from other persons or agencies through a release of information;
- (g) Progress notes sufficient to support responsible clinical practice for the type of theoretical orientation/therapy the licensed counselor uses.

(2) If a client requests that no treatment records be kept, and the licensed counselor agrees to the request, the request must be in writing and the counselor must retain only the following documentation:

- (a) Client name;
 - (b) Fee arrangement and record of payments;
 - (c) Dates counseling was received;
 - (d) Disclosure form, signed by licensed counselor and client;
 - (e) Written request that no records be kept.
- (3) The licensed counselor may not agree to the request if maintaining records is required by other state or federal law.

(4) The licensed counselor must keep all records for a period of five years following the last visit. Within this five-year period, all records must be maintained safely, with properly limited access.

(5) The licensed counselor must make provisions for retaining or transferring records in the event of going out of business, death or incapacitation. These provisions may be made in the practitioner's will, an office policy, or by ensuring another licensed counselor is available to review records with a client and recommend a course of action; or other appropriate means as determined by the licensed counselor.

NEW SECTION

WAC 246-809-040 Reporting of suspected abuse or neglect of a child, dependent adult, or a developmentally disabled person. As required by chapters 26.44 and 74.34 RCW, all licensed counselors must report abuse or neglect of a child, dependent adult, or developmentally disabled person if the counselor has reasonable cause to believe that an incident has occurred.

The counselor shall report to the local law enforcement agency or to the department of social and health services at the first opportunity, but no longer than forty-eight hours

after deciding there is reasonable cause to believe that the child or adult has suffered abuse or neglect.

NEW SECTION

WAC 246-809-049 Sexual misconduct. (1) A licensed counselor shall not engage in sexual contact or sexual activity with current clients.

(2) Licensed counselors shall not accept as patients or clients individuals with whom they have engaged in sexual contact or activity.

(3) A licensed counselor shall not engage in sexually harassing or demeaning behavior with clients.

(4) Sexual contact or activity with a client, or an individual who has been a client within the past two years, constitutes unprofessional conduct.

(5) Licensed counselors shall never engage in sexual contact or activity with former clients, if the contact or activity involves the abuse of the licensed counselor-client relationship.

(a) The department may consider the following factors in evaluating whether the licensed counselor-client relationship has been abusive:

(i) The amount of time that has passed since therapy was terminated, where there is no contact of any kind between licensed counselor and client;

(ii) The nature and duration of the therapy;

(iii) The circumstances of cessation or termination of therapy;

(iv) The client's personal history;

(v) The client's current mental status, emotional dependence, and vulnerability;

(vi) The likelihood of adverse impact on the client and others; and

(vii) Any statements or actions made by the licensed counselor during the course of therapy suggesting or inviting the possibility of a post termination sexual or romantic relationship with the client.

(b) If a licensed counselor engages in sexual contact or activity with a client more than two years after the last therapeutic session, the licensed counselor has had no contact with the client during the two-year period, and the sexual activity is not abusive of the licensed counselor-client relationship the department will not consider the relationship to be unprofessional conduct.

NEW SECTION

WAC 246-809-060 Mandatory reporting. (1) All reports required by this chapter shall be submitted to the department as soon as possible, but no later than twenty days after a determination is made.

(2) Reports made in accordance with WAC 246-809-061, 246-809-062, 246-809-063, and 246-809-064 should contain the following information if known:

(a) The name, address, and telephone number of the person making the report.

(b) The name, address, and telephone number of the licensed counselor being reported.

(c) The case number of any client or patient whose treatment is a subject of the report.

(d) A brief description or summary of the facts which gave rise to the issuance of the report, including dates of occurrences.

(e) If court action is involved, the name of the court in which the action is filed along with the date of filing and docket number.

(f) Any further information which would aid in the evaluation of the report.

(3) Mandatory reports are exempt from public inspection and copying to the extent permitted under chapter 42.17 RCW.

(4) A person is immune from civil liability, whether direct or derivative, for providing information to the department under RCW 18.130.070.

NEW SECTION

WAC 246-809-061 Health care institutions. (1) The chief administrator or executive officer or designee of any hospital, nursing home, chemical dependency treatment programs defined in chapter 70.96A RCW, drug treatment agency defined in chapter 69.54 RCW, and public and private mental health treatment agencies defined in RCW 71.05.020, and 71.24.025, shall report to the department when:

(a) Any licensed counselor's services are terminated or are restricted based upon a determination that the licensed counselor has committed an act which may constitute unprofessional conduct; or

(b) The licensed counselor may be unable to practice with reasonable skill or safety to clients by reason of a mental or physical condition.

(2) The reports must be made in accordance with WAC 246-809-060.

NEW SECTION

WAC 246-809-062 Licensed counselor associations or societies. (1) The president or chief executive officer of any licensed counselor association or society within this state shall report to the department when the association or society determines:

(a) A licensed counselor has committed unprofessional conduct; or

(b) A licensed counselor may not be able to practice counseling with reasonable skill and safety to clients as the result of any mental or physical condition.

(2) The report required by this section shall be made without regard to whether the licensed counselor appeals, accepts, or acts upon the determination made by the association or society. Notification of appeal shall be included.

(3) Reports must be made in accordance with WAC 246-809-060.

NEW SECTION

WAC 246-809-063 Health care service contractors and disability insurance carriers. (1) The executive officer of every health care service contractor and disability insurer, licensed under chapters 48.20, 48.21, 48.21A, and 48.44 RCW, operating in the state of Washington shall report to the

department all final determinations that a licensed counselor has engaged in fraud in billing for services.

(2) Reports are to be made in accordance with WAC 246-809-060.

NEW SECTION

WAC 246-809-064 Professional liability carriers. (1)

Every institution or organization providing professional liability insurance directly or indirectly to licensed counselors shall send a complete report to the department of any malpractice settlement, award, or payment in excess of twenty thousand dollars as a result of a claim or action for damages alleged to have been caused by an insured licensed counselor's incompetency or negligence in the practice of counseling.

(2) The institution or organization shall also report the award, settlement, or payment of three or more claims during a twelve-month period as a result of the licensed counselor's alleged incompetence or negligence in the practice of counseling.

(3) Reports must be made in accordance with WAC 246-809-060.

NEW SECTION

WAC 246-809-065 Courts. The department requests the assistance of the clerk of trial courts within the state to report to the department all professional malpractice judgments and all convictions of licensed counselors, other than minor traffic violations.

NEW SECTION

WAC 246-809-066 State and federal agencies. (1) The department requests the assistance of executive officers of any state or federal program operating in the state of Washington, under which a licensed counselor is employed to provide client care services, to report to the department when:

(a) A licensed counselor has been judged to have demonstrated his/her incompetency or negligence in the practice of counseling; or

(b) Has otherwise committed unprofessional conduct; or

(c) May not be able to practice with reasonable skill and safety by reason of any mental or physical condition.

(2) These requirements do not supersede any federal or state law.

hearing instrument fitter/dispenser instruction, 246-828-605 Site review procedures for initial and continuing approval of program for two-year degree in hearing instrument fitter/dispenser instruction, 246-828-610 Process for rescinding approval of program for two-year degree in hearing instrument fitter/dispenser instruction, and 246-828-615 Two-year degree in hearing instrument fitter/dispenser instruction standards.

Hearing Location(s): Department of Health, 310 Israel Road S.E., Tumwater, WA 98501, on March 3, 2006, at 1:30 p.m.

Date of Intended Adoption: March 3, 2006.

Submit Written Comments to: Karen Kelley, P.O. Box 47869, Olympia, WA 98504-7869, e-mail www.doh.wa.gov/Rules/default.htm, fax (360) 236-4918, by February 17, 2006.

Assistance for Persons with Disabilities: Contact Karen Kelley by February 24, 2006, TTY 711 or (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 18.35.040 (1)(b) requires satisfactory completion of a two-year degree program in hearing instrument fitter/dispenser instruction.

Reasons Supporting Proposal: RCW 18.35.040 states an applicant for licensure as a hearing instrument fitter/dispenser must complete a two-year degree program in hearing instrument fitter/dispenser instruction approved by the board. Rules need to be established to outline the approval process for two-year degree programs in hearing instrument fitter/dispenser instruction.

Statutory Authority for Adoption: RCW 18.35.040.

Statute Being Implemented: RCW 18.35.040.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Board of Hearing and Speech, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Karen Kelley, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not impose additional costs on licensed hearing aid fitter dispensers.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Karen Kelley, Board of Hearing and Speech, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4856, fax (360) 236-4918, e-mail karen.kelley@doh.wa.gov.

October 17, 2005

Karen Kelley
Program Manager

WSR 05-22-129
PROPOSED RULES
DEPARTMENT OF HEALTH
(Board of Hearing and Speech)
[Filed November 2, 2005, 11:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 02-02-043.

Title of Rule and Other Identifying Information: WAC 246-828-600 Approval of program for two-year degree in

NEW SECTION

WAC 246-828-600 Approval of program for two-year degree in hearing instrument fitter/dispenser instruction. The minimum educational requirement for licensure to practice as a hearing instrument fitter/dispenser in Washington is satisfactory completion of a two-year degree program in hearing instrument/fitter dispenser

instruction approved by the board. The board will consider for approval any program which meets the requirements as outlined in this chapter.

(1) An authorized representative of an institution may apply for approval from the board.

(2) The application for approval must be submitted on forms provided by the department.

(3) The authorized representative of the program may request approval of the program as of the date of the application or retroactively to a specified date.

(4) The program application for approval must include, but may not be limited to, documentation required by the board pertaining to the standards as set in WAC 246-828-615 two-year degree in hearing instrument fitter/dispenser instruction standards.

(5) A program must be fully recognized by the appropriate accreditation body in that jurisdiction.

(6) The board will evaluate the application and may conduct a site inspection of the program prior to granting approval by the board.

(7) Upon completion of the evaluation of the application, the board may grant or deny approval or grant approval conditioned upon appropriate modification of the application.

(8) In the event the board denies an application or grants conditional approval, the authorized representative of the applicant's program may request a review within thirty days of the board's adverse decision/action. If a request for review of an adverse action is made more than thirty days following the board's action, the contesting party must submit a new application to be considered for approval.

(9) The authorized representative of an approved program shall notify the board of significant changes with respect to information provided on the application within sixty days of change.

(10) The board may inspect an approved program at reasonable intervals for compliance. Refer to WAC 246-828-605 Site review procedures for initial and continuing approval of program for two-year degree in hearing instrument fitter/dispenser instruction. The board may withdraw its approval if it finds the program has failed to comply with requirements of law, administrative rules, or representations in the application.

NEW SECTION

WAC 246-828-605 Site review procedures for initial and continuing approval of program for two-year degree in hearing instrument fitter/dispenser instruction. The board may inspect a currently approved program or a program requesting approval. These inspections may be at any reasonable time during the normal business hours of the institution.

NEW SECTION

WAC 246-828-610 Process for rescinding approval of program for two-year degree in hearing instrument fitter/dispenser instruction. In the event the board rescinds approval or grants conditional approval, the authorized representative of the applicant's program may request a review within thirty days of the board's adverse decision/action.

Should a request for review of an adverse action be made after thirty days following the board's action, the contesting party must submit a new application to be considered for review.

NEW SECTION

WAC 246-828-615 Standards for approval of program for two-year degree in hearing instrument fitter/dispenser instruction. The curriculum of the program shall include the components listed in this chapter.

(1) The standards in this section are intended as minimum components of a curriculum, and are not intended as an exact description of program curricula. To assure a graduate is competent and can function on his or her own, the curriculum should be designed to assure proficiency in all these fields through extensive practical work experience in addition to classroom teaching. All the necessary instruments and laboratories based on industry standards are a prerequisite.

(2) Minimum areas of standard:

(a) **Supervised practicum:** Including hands-on experience with patients.

(b) **English composition:** Written presentations.

(c) **Occupational communications:** Oral presentations, documentation of professional activities.

(d) **Occupational human relations:** Code of professional ethics, interpersonal skills, teamwork.

(e) **Basic math and computers:** The physics of sound, basic acoustics, methods of programming hearing instruments, calculating pricing, costs and other business-related math skills.

(f) **Hearing instrument sciences:** Basic electronics, circuit designs of hearing instruments, testing methodology of instruments, test standards, familiarity with all major instruments on the market, basic signal processing, programming of digital instruments using computers.

(g) **Hearing physiology and anatomy:** Anatomy and physiology of the human auditory system.

(h) **Pathophysiology of auditory system:** Introductory level study of genetic disorders and infectious diseases of the auditory system.

(i) **Psychological aspects of hearing loss:** Curricula should be designed so the student understands:

(i) How hearing loss affects patients and others close to them;

(ii) How to follow up with patients after initial fitting; and

(iii) Methods of teaching communication skills to the hearing-impaired.

(j) **Audiometrics:** Performing pure tone and speech audiometry and interpretation, measuring output of instruments both in the lab and in the ear.

(k) **Earmolds:** Emphasis on practical skills and safety.

(l) **Instrument selection:** Recommending the best technology according to the client's needs from conventional through advanced digital/programmable instruments, including referrals for medical implantable devices.

(m) **Health care and business:** Laws governing the profession, insurance aspects, health care management, advertising, marketing and sales.

(n) **Introduction to speech-language pathology.**

(o) **Overview of cochlear implants** including criteria for referrals for medical implantable devices.

WSR 05-22-130
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed November 2, 2005, 11:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-03-056.

Title of Rule and Other Identifying Information: Chapter 246-790 WAC, Special supplemental nutrition program for women, infants, and children (WIC), the WIC program is a federally funded program established in 1972 by an amendment to the Child Nutrition Act of 1966. The purpose of the program is to provide nutrition and health assessment; nutrition education; nutritious food; breast-feeding counseling; and referral services to pregnant, breast-feeding, and postpartum women, infants, and young children in specific risk categories.

Hearing Location(s): Department of Health, Town Center 2, 111 Israel Road S.E., Room 145, Tumwater, WA 98502, on December 6, 2005, at 1:30 p.m.

Date of Intended Adoption: January 3, 2006.

Submit Written Comments to: Susan Evans, P.O. Box 47886, Olympia, WA 98504-7886, e-mail <http://www3.doh.wa.gov/policyreview>, fax (360) 236-2345, by December 2, 2005.

Assistance for Persons with Disabilities: Contact Nina Benson by November 23, 2005, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In June 2004, congress passed the reauthorization bill for the Child Nutrition Act which includes the WIC program. The goal of the reauthorization bill is to reduce program costs and improve integrity. The new regulations include a strong focus on cost containment, the type of retailers the states are allowed to contract with to accept WIC checks, the selection criteria the states use to choose their authorized retailers, the time periods in which states may accept applications from retailers to become authorized, and how WIC checks may be transacted.

Reasons Supporting Proposal: The WIC program has federal authority to impose monetary penalties as one type of sanction for violating WIC program rules. The APA requires a state rule be in place if a program has the authority to impose monetary penalties. In order to remain in compliance with the federal regulations and the APA, the WIC program is revising the existing rule. USDA has set deadlines for implementation of the changes. Washington WIC plans to implement the changes with the new contract cycle beginning April 1, 2006.

Statutory Authority for Adoption: RCW 43.70.120.

Statute Being Implemented: 7 C.F.R. 246.

Rule is necessary because of federal law, 7 C.F.R. 246.12.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fis-

cal Matters: All changes to the proposed rule, with the exception of reordering sections for clarification, are in response to the changes in the Child Nutrition and WIC Reauthorization Act of 2004 (P.L. 108-265).

Name of Proponent: Department of Health WIC Program, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Susan Evans, Becky Waite, 111 Israel Road S.W., Floor 1, Tumwater, WA 98502, (3636); Implementation: Becky White, 111 Israel Road S.W., Floor 1, Tumwater, WA 98502, (3640).

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required under RCW 19.85-030. This rule does not impose more than minor costs on small businesses. The rule is also exempt from the analytical requirements because it adopts without material change federal regulations under RCW 34.05.310(4).

A cost-benefit analysis is not required under RCW 34.05.328. This rule is exempt from the cost-benefit analysis requirements under RCW 34.05.328 (5)(b)(iii) because the rule adopts without material change federal requirements.

November 1, 2005

M. C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 02-11-107, filed 5/20/02, effective 6/20/02)

WAC 246-790-010 Definitions. (1) "Alternate endorser" means a person authorized by the WIC client to pick up WIC checks at the local WIC agency and use the WIC checks at the retailer when the client is unable to do so.

(2) "Appeal hearing" means a formal proceeding to appeal certain program decisions. The appeal hearing process provides a contractor the opportunity to review the case record prior to the hearing, to present its case in an impartial setting, to confront and cross-examine witnesses, and to be represented by counsel.

(3) "Applicant retailer" means any (~~contractor submitting~~) retailer, or person representing a retailer, requesting authorization to participate in the WIC program who has submitted a completed request for authorization ((on behalf of a retailer requesting participation in the program)) packet.

(4) "Authorized" or "authorization" means the (~~applicant~~) retailer has met the selection criteria as ((determined)) required by the United States Department of Agriculture (USDA), received training on WIC program requirements, and signed a contract ((offered by the department signifying eligibility to participate in)) with the WIC program.

(5) "CFR" means the Code of Federal Regulations.

(6) "Contract" or "retailer contract" means a written legal document (~~(binding)) which encompasses WIC program requirements that bind the contractor and the ((department, represented by the WIC program, to designated terms and conditions)) WIC program.~~

(7) "Contractor" means the owner, chief executive officer, controller, or other person legally authorized to represent their corporation, firm, or business and obligate a retailer to a contract.

(8) "Covertly" means in secret, undercover, or not openly announced.

(9) "Current shelf life" or "pull date" or "use by date" means a date and code printed on an item that indicates its best quality. This date shows when a product must be either sold or pulled from a shelf.

(10) "Department" means the Washington state department of health and any of the officers or other officials lawfully representing the department.

~~((9))~~ (11) "Disqualification" means the act of revoking the authorization and ~~((terminating))~~ ending the contract of an authorized retailer permanently or for a specific period of time for noncompliance with WIC program requirements.

~~((10))~~ (12) "Effective policy and program to prevent trafficking" means a written document that states what can and cannot be done with WIC checks and the consequences for failing to follow program requirements. Effectiveness is determined by documentation that a retailer has provided this written policy to all employees, including employees' signatures verifying they have been advised of the policy and understand the consequences of noncompliance, both for the retailer and for the employee, prior to any noncompliance being detected.

~~((11))~~ (13) "Food company" means a manufacturer or broker of food items.

~~((12))~~ "Inadequate client access" means the decision the state agency makes considering a variety of factors to determine how disqualification of a WIC retailer might affect a WIC client's access to WIC foods. The procedure includes, but is not limited to, assessing how many WIC authorized retailers are in a given service area, how many clients currently use the retailer in question, and any geographical or man-made barriers a client would contend with to access WIC foods at a different authorized retailer.

~~((13))~~ (14) "Food stamp EBT" means the electronic system that allows a recipient to authorize transfer of their government food benefits from a federal account to a retailer account to pay for products they buy.

(15) "Local WIC agency" means the contracted clinic or agency where a client receives WIC ~~((services))~~ checks.

~~((14))~~ (16) "Maximum price" means the highest amount that can be charged for WIC approved foods as determined by the WIC program based on evaluation of current prices and market conditions.

(17) "Monetary penalty" means a sum of money imposed by the WIC program for noncompliance with program requirements.

~~((15))~~ (18) "Notice of correction" means a written document given to a retailer when the WIC program discovers noncompliance with program requirements. The notice of correction gives the retailer a reasonable period of time to correct the noncompliance without risk of receiving a sanction.

(19) "Pattern" means more than one documented incidence of noncompliance with WIC program requirements in ~~((any given))~~ a contract period.

~~((16))~~ (20) "Peer group" means a group of retailers who share similar characteristics. The WIC program considers factors such as location, either rural or urban, and the prices

retailers charge when determining a retailer's placement in a peer group.

(21) "Providing credit" means the retailer ~~((submitted and received payment for all))~~ takes a WIC check and deposits it for the full amount of the foods listed ~~((on a WIC check))~~, even though the client ~~((did))~~ does not receive all the foods at the time ~~((the check was redeemed))~~, and tells the client to come back later for the rest of the food.

~~((17))~~ (22) "Reauthorization" or "subsequent authorization" means the process when a retailer, who has a contract with the WIC program which is expiring, has reapplied, met the selection criteria, and signed another contract with the WIC program.

(23) "Redeeming WIC checks outside of authorized channels" means not following the ~~((rules))~~ requirements regarding who can accept WIC checks and how to redeem them. Examples include, but may not be limited to:

(a) A retailer accepting WIC checks without having a signed contract with the WIC program;

(b) ~~((A retailer accepting WIC checks payable to a different authorized retailer or a different outlet of the same chain and redeeming them through that other retailer; or~~

~~((c))~~ A retailer using WIC checks to repay ~~((a))~~ debt at a different authorized retailer~~((-~~

~~((this violation also applies to the))~~; or

(c) A retailer who ~~((receives))~~ accepts and deposits ~~((the))~~ WIC checks from ~~((the retailer who accepted them.~~

(18) "Reauthorization" or "subsequent authorization" means the process when a retailer who has a contract with the department which is expiring, has reapplied, met the selection criteria, and signed another contract with the department to participate in the WIC program) an unauthorized source.

~~((19))~~ (24) "Rights and responsibilities" means the rights a client has within the WIC program and the rules clients and caregivers must follow to participate in the program. The rights and responsibilities are explained in a document the client, caregiver, or alternate endorser must sign.

(25) "Supplemental WIC foods" or "WIC approved foods" means those foods containing nutrients determined to be beneficial for pregnant, ~~((breast-feeding))~~ breastfeeding, and postpartum women, infants, and children, as prescribed by federal regulations and state requirements, and, as ~~((authorized))~~ approved by the Washington state WIC program.

~~((20))~~ (26) "Trafficking" means buying or selling WIC checks for cash.

~~((21))~~ (27) "WIC program" or "program" means the federally funded special supplemental nutrition program for women, infants, and children administered in Washington state by the department of health.

~~((22))~~ (28) "WIC program requirements" or "program requirements" mean the rules contractors and retailers must follow to participate in the WIC program. The rules are explained in the federal regulations, the retailer contract, the *Retailer Selection Criteria*, the *WIC Approved Foods - Minimum Stock Levels*, the *WIC Retailer Handbook*, and the WIC approved formula supplier list.

(29) "WIC retailer" or "retailer" means an individual store ~~((owned by a contractor))~~ authorized to participate in the WIC program.

~~((23))~~ (30) "Wholesaler" or "distributor" or "supplier" means a business ~~((entity that))~~ licensed to sell food and other items to a retailer for resale.

~~((24))~~ (31) "WIC check" means a negotiable instrument issued to and used by a WIC client, caregiver, or alternate endorser to obtain specified supplemental WIC foods from a ~~((contracted))~~ WIC retailer.

~~((25))~~ (32) "WIC client" or "client" means a woman who is pregnant, ~~((breast-feeding))~~ breastfeeding, or postpartum, an infant, or a young child receiving WIC benefits.

(33) "WIC only store" means a for-profit business model that focuses primarily on stocking WIC food items and serving WIC customers.

AMENDATORY SECTION (Amending WSR 02-11-107, filed 5/20/02, effective 6/20/02)

WAC 246-790-050 What is the WIC program? (1) The WIC program in the state of Washington is administered by the department of health.

(2) The WIC program is a federally funded program established in 1972 by an amendment to the Child Nutrition Act of 1966. The purpose of the program is to provide nutrition and health assessment; nutrition education; nutritious food; ~~((breast-feeding))~~ breastfeeding counseling; and referral services to pregnant, ~~((breast-feeding))~~ breastfeeding, and postpartum women, infants, and young children in specific risk categories.

(3) Federal regulations governing the WIC program (7 CFR Part 246) require implementation of standards and procedures to guide the state's administration of the WIC program and are hereby incorporated in this rule by reference. These regulations define the rights, responsibilities, and legal procedures of WIC employees, clients, persons acting on behalf of a client, and retailers. They are designed to promote:

(a) ~~((Consistent and))~~ High quality nutrition services ~~((to clients))~~;

(b) Consistent application of policies and procedures for eligibility ~~((and food issuance; and))~~ determination;

(c) ~~((Client and retailer))~~ Consistent application of policies and procedures for food benefit issuance and delivery; and

(d) WIC program compliance.

(4) The WIC program implements policies and procedures stated in program manuals, handbooks, contracts, forms, and other program documents approved by the USDA Food and Nutrition Service.

(5) The WIC program may impose sanctions against WIC clients for not following WIC program rules stated on the WIC rights and responsibilities.

(6) The WIC program may impose monetary penalties against persons who misuse WIC checks or WIC food but who are not WIC clients.

AMENDATORY SECTION (Amending WSR 00-13-009, filed 6/9/00, effective 7/10/00)

WAC 246-790-060 What are WIC authorized foods?

(1) WIC eligible women, infants, and children receive supplemental WIC foods from one or more of the following food

categories. These foods must meet nutritional standards established by federal regulations and state requirements.

(2) The food categories are:

~~((1))~~ (a) Cereals,

~~((2))~~ (b) Juices,

~~((3))~~ (c) Infant formula,

~~((4))~~ (d) Infant cereal,

~~((5))~~ (e) Liquid nutritional supplements,

~~((6))~~ (f) Milk,

~~((7))~~ (g) Eggs,

~~((8))~~ (h) Dry beans and peas,

~~((9))~~ (i) Peanut butter,

~~((10))~~ (j) Cheese,

~~((11))~~ (k) Tuna, and

~~((12))~~ (l) Carrots.

(3) Additionally, the WIC program ~~((authorizes specific brands of juice, cereal, and infant formula based on federal and state nutritional requirements))~~ approves a reasonable selection of nutritious foods within each food category with the following factors in mind: Cost, client health, client preference, easy identification of approved foods, and consistency with sound buying practices.

(4) The WIC program limits the selection of ~~((authorized))~~ WIC approved foods in accordance with federal cost containment requirements, including, but not limited to, the competitive procurement of a single manufacturer's infant formula.

AMENDATORY SECTION (Amending WSR 02-11-107, filed 5/20/02, effective 6/20/02)

WAC 246-790-065 What is the process for getting a food WIC authorized? (1) The procedure for authorizing a food is:

(a) A food company or other entity ~~((such as a local WIC clinic;))~~ submits a written request to the WIC program ~~((for authorization))~~ asking for approval of a food. ~~((The request includes:))~~

(b) A food company must provide:

(i) Package flats or labels, information on package sizes and prices, and a summary of current distribution, including identification of the wholesaler(s) carrying the food; and

(ii) ~~((Assessment of))~~ Dates when ~~((the))~~ a new food replaces the ~~((old))~~ current food on store shelves when there is a change in formulation.

~~((b))~~ (c) The WIC program verifies ~~((if))~~ that a food considered for ~~((authorization))~~ approval fits within one of the authorized food categories, meets the federal requirements of nutritional standards, is currently available to retailers, and has been available to retailers for at least one year;

~~((e))~~ (d) The WIC program ~~((may))~~ periodically surveys local WIC agency staff and clients for their recommendations regarding need and demand for the food;

~~((f))~~ (e) The WIC program reviews data and recommendations and notifies the food company whether or not a food is ~~((authorized))~~ approved.

(2) Food companies must notify the WIC program in writing of any changes in product formulation, product name, packaging, label design, size, or availability. A food company must notify the WIC program of any changes before any

Washington state wholesaler, distributor, or supplier receives the new product.

~~((3))~~ (3) If a food company fails to notify the WIC program of any changes, the WIC program may revoke or deny WIC ~~((authorization))~~ approval of the product.

~~((3))~~ (4) The WIC program may require a food company to submit a statement guaranteeing a minimum period of time during which a food will be available in the state of Washington.

~~((4))~~ (5) The WIC program ~~((shall))~~ refuses to approve any food that contradicts the nutrition principles promoted by the WIC program ~~((s nutrition component))~~.

~~((5))~~ (6) The WIC program may limit the number of ~~((authorized))~~ approved foods within a food category.

~~((6))~~ (7) The WIC program may ~~((initiate reassessment of))~~ reassess any WIC ~~((authorized))~~ approved food at any time.

~~((7))~~ (8) The WIC program may evaluate a food for ~~((authorization))~~ approval outside of the three-year food review cycle if necessary.

~~((8))~~ (9) A food company or other entity must obtain written approval from the WIC program before using the term "WIC approved" or the WIC program logo.

AMENDATORY SECTION (Amending WSR 02-11-107, filed 5/20/02, effective 6/20/02)

WAC 246-790-070 How do I become a WIC retailer?

(1) ~~((Applicant))~~ Retailers interested in participating in the WIC program must apply for authorization ~~((and enter into a contract with the department))~~.

(2) Applications ~~((procedure))~~.

(a) Applicant retailers submit a completed application to the WIC program, including a price list for authorized WIC foods) for WIC authorization are accepted during the open application period held before the start of each new contract cycle. Exceptions to this time frame are considered when a WIC authorized retailer closes or ownership changes. Exceptions are based solely on the program's determination of program need and effective administration of the program. The WIC program may further limit acceptance of new applications as needed.

~~((b))~~ (3) The WIC program may require applicant retailers to provide ~~((information regarding))~~ shelf price records and inventory records showing all purchases, both wholesale and retail, including but not limited to, wholesale receipts, cash and carry receipts, purchase orders, books of account, invoices that identify the quantity and prices of specific WIC foods and other pertinent records that substantiate ~~((the volume and the))~~ shelf prices ~~((charged))~~ and where, when, and how much of each item was purchased. ~~((Cash register receipts))~~ Records without specific identification of the name of the business where the food was purchased, the date purchased, the quantity, unit price, and ~~((WIC))~~ name of food purchased are not acceptable as evidence ~~((of WIC food purchases))~~.

~~((e))~~ (4) The WIC program conducts ~~((and documents an))~~ on-site preauthorization visits ~~((prior to, or at the time of, initial authorization of an applicant retailer))~~ to verify the information provided on the application, to evaluate the shelf

prices and inventory of WIC foods, and to provide training on WIC requirements.

~~((d))~~ Applications are accepted on an ongoing basis, except for the six months prior to contract expiration during which no applications are accepted. Exceptions can be made in the case of an ownership change or where there is a documented need for a location in order to assure client access. The WIC program may further limit acceptance of new applications as needed.) (5) The WIC program will not offer a contract to a retailer if, during the on-site preauthorization visit, they are unable to satisfactorily verify the information provided on the application or the retailer fails to participate in the initial training offered.

~~((3))~~ (6) The WIC program ~~((shall))~~ authorizes a sufficient number, type, and distribution of retailers to ~~((ensure client access. The WIC program may limit the number of authorized retailers in any given geographic area or statewide to enable effective management of the retailers))~~ meet program need and effectively administer the program.

~~((4))~~ (7) The WIC program will not authorize for-profit WIC only stores.

(8) Per 7 CFR 246.12 (h)(3)(xxi), WIC program authorization is not a right or property interest. Authorization is discretionary and is based solely on the WIC program's determination of program need and effective administration of the program.

(9) The WIC program bases selection of ~~((each))~~ authorized retailers on the following:

(a) ~~((Number of clients served))~~ Program need. The program mission is to improve the lifelong health and nutrition of women, infants, and children in Washington state. Meeting this mission is the foundation for selection of authorized retailers. Retailers are selected to provide clients reasonable access to the nutrition provided by WIC foods.

(b) Check volume.

(i) ~~((An applicant retailer needs to have requests from or the potential of serving at least fifteen WIC clients who are currently receiving checks from the WIC program as verified by the local WIC agency))~~.

~~((ii))~~ Retailers applying for reauthorization must ~~((have a documented check redemption record averaging))~~ take an average of at least forty checks per month ~~((over))~~ in a six-month period.

~~((iii))~~ Exceptions may be made for:

(A) Pharmacies needed as suppliers of special infant formulas; or

(B) Applicant retailers in isolated areas where client access cannot otherwise be assured.

In either case, the need must be documented by the local WIC agency.) (ii) Retailers with no WIC history will be on probation for one year or to the end of the contract period, whichever comes first. The WIC program will evaluate the retailer's check volume at the end of the probation and may take action to end the contract.

~~((b))~~ Minimum stock levels.) (c) WIC approved foods.

(i) ~~((A retailer or applicant retailer must stock a reasonable variety of items with current shelf lives from all food categories on the authorized WIC food list. Minimum quantities specified on the authorized WIC food list must be on the shelf available for purchase before a contract is offered.~~

~~(ii) A retailer or applicant retailer is not required to carry every brand of WIC allowed infant formula, but must carry at least the minimum quantity of the WIC contract formulas.~~

~~(e)) Retailers must have on their shelves:~~

~~(A) At least the minimum quantities of WIC approved foods as specified in the WIC approved foods - Minimum stock levels when they apply.~~

~~(B) The minimum quantity of the WIC contract infant formulas for at least one to two infants, using the quantities specified in the WIC Approved Foods - Minimum Stock Levels.~~

~~(C) At least the minimum variety of items from all WIC food categories as specified in the WIC Approved Foods - Minimum Stock Levels.~~

~~(D) WIC approved foods with current shelf lives.~~

~~(ii) Retailers must:~~

~~(A) Maintain minimum stock levels throughout the contract period.~~

~~(B) Purchase infant formula only from a wholesaler, distributor, retailer, or supplier approved by the WIC program.~~

~~(C) Be prepared to provide documentation identifying where they buy infant formula.~~

~~(d) Prices of WIC approved foods.~~

~~A retailer(s) must agree to and maintain prices (for) of individual WIC foods ((must not exceed one hundred twenty percent of the statewide average price for that food at time of authorization or at any given time in the contract period;~~

~~(d)) at or less than the maximum price within their assigned peer group as determined by the WIC program.~~

~~(e) Business operations.~~

~~(A) Retailers ((or applicant retailer)) must:~~

~~(i) ((Possess)) Have a valid Washington state tax registration (UBI) number(;~~

~~Exception may be made for a store needed in border towns of), Oregon and Idaho ((to ensure client access to WIC foods)) retailers must have all valid licenses required by their respective state.~~

~~(ii) ((Possess a valid)) Have an activated food stamp authorization number.~~

~~((Exception may be made for a pharmacy needed to ensure client access to hard to find formulas.)) Pharmacies are exempt from this requirement.~~

~~(iii) Operate from a fixed, permanent location.~~

~~(iv) Be a full line/full service retailer that stocks a variety of staple foods on a continuous basis in addition to WIC approved foods. Staple foods include fresh, frozen, and/or canned unbreaded meat, poultry, fruits, and vegetables, dairy products, and grain products, such as bread, rice, and pasta.~~

~~(v) Be open for business ((a minimum of)) at least eight hours per day, six days per week.~~

~~((v) Maintain a clean and safe interior environment by, for example, complying with local sanitation rules.~~

~~The WIC program may request a health inspection and report by the local health department at any time in the contract period.~~

~~(e)) (vi) Accept cash and food stamp EBT.~~

~~(vii) Receive or be expected to receive no more than fifty percent of their total annual food sales from WIC transactions.~~

~~(f) Business integrity.~~

~~(i) The WIC program will ((take into consideration)) not authorize a retailer if ((a)), in the last six years, the retailer ((or applicant retailer)) has been disqualified from WIC or the food stamp program or has been assessed a monetary penalty ((in lieu)) instead of a food stamp disqualification ((in the last six years)). Exceptions may be considered based on program need.~~

~~(ii) An owner, officer, or partner of a retailer ((or applicant retailer)) must not have sold a store ((to circumvent)) in order to avoid a WIC sanction.~~

~~(ii) ((A retailer or applicant retailer with any owner, officer, partner, or manager who has been convicted of or had a civil judgment for any of the following in the last six years will be denied authorization or have authorization revoked:)) The WIC program will deny or revoke a retailer's WIC authorization if any of the owners, officers, partners, or managers has been convicted of or had a civil judgment for fraud, anti-trust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, or obstruction of justice in the last six years.~~

~~((iv) The WIC program reserves the right to conduct background checks on any retailer, owner, officer, partner, or manager.~~

~~(f)) (g) Compliance with the WIC contract.~~

~~(i) A retailer must attend ((face-to-face)) training on WIC requirements at least once per contract period.~~

~~(ii) A retailer must comply with ((monitor visits and provide shelf price records and inventory records, upon the WIC program's request, showing all purchases, both wholesale and retail, including but not limited to, wholesale receipts, cash and carry receipts, purchase orders, books of account, invoices that identify the quantity and prices of specific WIC foods, and other pertinent records that substantiate the volume and prices charged.~~

~~(g) History. A retailer or applicant retailer with a history of any of the following may be denied authorization unless client access to WIC food cannot otherwise be assured:~~

~~(i) Redeeming WIC checks without having a signed contract with the department;~~

~~(ii) Changing ownership more than twice during a three-year contract period;~~

~~(iii) Failing to implement corrective action imposed by the WIC program within the time specified;~~

~~(iv) Failing to complete payment, within the time specified, of an imposed monetary penalty or reimbursement of an overcharge)) all program requirements.~~

~~((5)) (10) A retailer must meet all the selection criteria to be considered for WIC authorization and, once authorized, must continue to meet the selection criteria throughout the term of the contract. Exceptions may be made for pharmacies needed to supply special infant formulas or retailers in isolated areas.~~

~~(11) The WIC program ((may)) must deny a retailer authorization for failure to meet any of the stated selection criteria.~~

~~((6)) (12) The WIC program may ((reassess)) review an authorized retailer's compliance with the retailer selection~~

criteria any time in the contract period and must ~~((terminate))~~ end the contract of any retailer which fails to meet them.

AMENDATORY SECTION (Amending WSR 02-11-107, filed 5/20/02, effective 6/20/02)

WAC 246-790-080 What do I need to know about WIC retailer contracts? (1) All ~~((authorized))~~ selected retailers must enter into written contracts with the ~~((department))~~ WIC program. The ~~((contract must be signed by the))~~ contractor and the designee of the contracting officer of the department of health must each sign the contract.

(2) The contract lists all authorized retailer~~(s)~~ locations by name and ~~((location))~~ address. Individual retailers may be added, changed, disqualified, or deleted by contract amendment without affecting the remaining authorized retailer~~(s)~~ locations.

~~((Duration of contract.~~

~~((a)))~~ The WIC program issues contracts for a maximum period of three years.

~~((b)))~~ (4) Neither the WIC program nor the contractor is obligated to ~~((renew the contract))~~ recontract. The WIC program ~~((must))~~ will notify contractors and retailers in writing not less than fifteen days before the expiration of a contract ~~((which is not being renewed))~~.

~~((c)))~~ (5) Authorization is valid for no longer than the period stated in the contract. The retailer must reapply to be considered for subsequent authorization ~~((in the WIC program))~~.

~~((d)))~~ (6) The contractor or the WIC program may ~~((terminate))~~ end the contract at any time by submitting a written notice to the other party with thirty days ~~((in))~~ advance notice.

~~((e)))~~ (7) The contract is null and void in the event of a retailer closure or change in ownership.

~~((f)))~~ (8) The contractor cannot voluntarily withdraw from participating in the WIC program in order to avoid being disqualified.

AMENDATORY SECTION (Amending WSR 02-11-107, filed 5/20/02, effective 6/20/02)

WAC 246-790-085 What is expected of WIC retailers? (1) ~~((The))~~ Retailers must comply with WIC program requirements and terms of the retailer contract, including any changes that occur during the contract period.

(2) ~~((The retailer must stock sufficient quantities of authorized WIC foods to meet the needs of WIC customers, but not less than the minimum stock levels.~~

(3) ~~The retailer must redeem WIC checks made payable only to their store or with the words "any authorized WIC vendor."~~

(4) ~~The retailer must accept WIC checks from a WIC customer on the "first day to use," the "last day to use," or any day in between the dates printed on the WIC check. The retailer must submit the WIC check for payment within sixty days from the "first day to use."~~

(5) ~~The retailer must refuse WIC checks that have the purchase price missing, the client's signature missing, the "first day to use" or the "last day to use" missing, or that are dated too early or too late.~~

~~(6) The retailer must refuse WIC checks with purchase amounts over the "not to exceed" amount printed on the check.~~

~~(7) The retailer must write the actual purchase price of the specific quantity of WIC authorized foods on the WIC check before witnessing the WIC customer countersign the check.~~

~~(8) The retailer must accept only WIC checks on which the WIC customer's countersignature matches the first customer signature on the check.~~

~~(9) The retailer must refuse WIC checks that are altered in any way.~~

~~(10) The retailer must refuse WIC checks from any other retailer.~~

~~(11) The retailer must redeem WIC checks for only the supplemental WIC foods and in no more than the quantity specified on the check.~~

~~(12) The retailer must post the prices of WIC foods so they are visible to the public.~~

~~(13) The retailer must provide supplemental foods at the current price or at less than the current price charged to other customers.~~

~~(14) The retailer must not sell WIC authorized foods after the manufacturer's expiration date.~~

~~(15) The retailer must reimburse the WIC program for documented overcharges and payments made on improperly handled WIC checks.~~

~~(16) The retailer must not seek restitution from WIC customers for WIC checks not paid, partially paid, or reclaimed by the WIC program, nor seek restitution through a collection agency.~~

~~(17) The retailer must not request cash or give change in a WIC transaction.~~

~~(18) The retailer must not impose a surcharge or charge sales tax on any food purchased with WIC checks.~~

~~(19) The retailer must refuse WIC customers' requests for exchanges or cash refunds for returned WIC foods. Exceptions may be made for exchange of food due to spoilage or expired date not noticed by the WIC customer at the time of the WIC transaction. The exchange must be for the identical WIC allowed brand and size as the original authorized food.~~

~~(20) The retailer must not issue rain checks, any form of credit, or otherwise charge the WIC program for foods not received by the WIC customer at the time the WIC check is redeemed.~~

~~(21) The retailer must treat WIC customers with the same courtesy provided to other customers.~~

~~(22) The retailer must comply with federal and state non-discrimination laws.~~

~~(23) The contractor is responsible for the actions or inactions of its owners, officers, managers, employees, agents, and authorized retailers with regard to participation in the WIC program.~~

~~(24) The manager of the retailer or at least one authorized representative, such as head cashier, must attend the mandatory training on WIC program requirements and procedures prior to issuance of a contract and as otherwise required by the WIC program. All individuals receiving training must sign a document verifying their attendance and understanding~~

of the contents of the training. The WIC program provides this training at no cost to the retailer.

~~(25) The individuals attending training must inform and train other employees on WIC program requirements and WIC check cashing procedures.~~

~~(26))~~ The WIC program will notify contractors and retailers of any changes to WIC program requirements in a timely manner.

~~(3) Retailers~~ must provide access to ~~(its)~~ their facilities at all reasonable times for WIC program representatives to monitor, to provide training or technical assistance, and to evaluate performance, compliance, and quality assurance.

~~((27) The)~~ (4) Retailers must provide access to redeemed WIC checks for the purpose of review by the program representative during any on-site visit.

~~((28))~~ (5) Retailers must maintain inventory records, and provide WIC program representatives access to those records on request, showing all purchases, both wholesale and retail, for a period of at least one year after the expiration of the contract with the WIC program. These inventory records include, but are not limited to, shelf price records, wholesale receipts, cash and carry receipts, purchase orders, books of account, invoices that identify the quantity and prices of specific WIC foods, and other pertinent records that substantiate ~~((the volume and prices charged and provide WIC program representatives access to those records on request.~~

~~(29) Each retailer must provide the WIC program with a completed price list of authorized WIC foods on request or at least quarterly.~~

~~(30) The contractor must notify the WIC program in writing of any change of ownership, retailer name, location and/or cessation of operation for any reason at least thirty days before the effective date of the change)~~ shelf prices and where, when, and how much of each item was purchased. Records without specific identification of the name of the business where the food was purchased, the date purchased, the quantity, unit price, and name of food purchased are not acceptable as evidence.

~~((31))~~ (6) Contractors and retailers must observe time lines, such as deadlines for submitting price lists and returning properly signed contracts. Failure ~~((of contractors))~~ to do so may result in denial or termination of authorization.

~~((32) Contractors)~~ (7) Retailers must take corrective action as directed by the WIC program. ~~((Examples of corrective action include, but are not limited to, payment of monetary penalties and reimbursements, conducting monthly education buys, and filing requested progress reports:))~~

AMENDATORY SECTION (Amending WSR 02-11-107, filed 5/20/02, effective 6/20/02)

WAC 246-790-090 How are WIC retailer contracts monitored? (1) The WIC program ~~((conducts on-site compliance))~~ reviews ~~((at))~~ retailers ~~((locations))~~ to monitor ~~((retailer))~~ compliance with program requirements in the following ways.

(2) Preauthorization visits.

(a) Visit is scheduled in advance.

(b) The WIC program representative confirms the information on the application, including information on WIC food stock levels and shelf prices.

~~(c) The WIC program representative provides training on the ((WIC Retailer Handbook that includes information on WIC foods and WIC check handling, and collects information on WIC food stock levels and shelf prices))~~ purpose of the program, WIC approved foods, required minimum stock levels, check handling procedures, sanctions, complaints, and claims.

~~((e))~~ (d) The retailer signs the preauthorization visit form verifying receipt of the training, understanding of program requirements, and the commitment to train store personnel.

(3) Compliance visits.

(a) Visit may or may not be scheduled in advance;

(b) The WIC program representative may do some or all of the following during a visit: Review WIC check handling procedures, WIC food stock levels, ~~((expiration))~~ pull dates ~~((and))~~, shelf prices, WIC checks negotiated but not yet deposited, shelf price records, wholesale receipts, cash and carry receipts, purchase orders, books of account, invoices that identify the quantity and prices of specific WIC foods, and other pertinent records that substantiate the ~~((volume))~~ name of the business where the food was purchased, the date purchased, the quantities purchased, and prices charged; provide training or technical assistance; and verify implementation of a corrective action plan.

(c) The WIC program representative documents the name of the retailer, the name of the program representative, the names of all persons interviewed, the date of the visit, any problems or concerns detected, any corrective action plan required if problems are detected, and the signatures of the program representative and the retailer.

(d) The WIC program representative follows up in writing with the retailer if the retailer needs to correct a problem discovered during the compliance visit.

(4) Compliance purchases.

(a) The WIC program representative acts covertly;

(b) The program representative may make a purchase using WIC checks or may attempt trafficking;

(c) The WIC program representative completes a report ~~((on the visit))~~ itemizing information including, but not limited to, a description of the checker involved, the time and date of the transaction, the number of check stands opened and closed, other customers in line, exact items purchased and/or refused, the prices charged, comments of the checker, observations of the investigator or the investigative aide, any stock deficiencies noted, any other pertinent information, and the signature of the investigator.

(5) Price audits. The WIC program reviews actual prices charged by retailers on an ongoing basis.

(6) Inventory audits.

(a) The WIC program representative requests inventory records showing all purchases, both wholesale and retail ~~((, by a contractor for a retailer)).~~

(b) Acceptable forms of inventory records include wholesale receipts, cash and carry receipts, purchase orders, books of account, invoices that identify the quantity and prices of specific WIC foods, and other pertinent records that

~~((substantiate the volume of WIC foods purchased and prices charged))~~ verify prices, name of the business where the food was purchased, the date purchased, and the quantity purchased.

~~((Cash register receipts))~~ (c) Records without specific identification of the name of the business where the food was purchased, the date purchased, quantity, unit price, and ((WIC)) name of food ((purchased)) are not acceptable as evidence ~~((of WIC food purchases))~~.

~~((b))~~ (d) The WIC program representative compares the inventory records provided by the ((contractor)) retailer with information from preaudit on-site visits and the WIC data system ((showing the volume of WIC food purchased)) to determine any shortfalls in inventory compared to WIC redemptions.

(7) Selection criteria reviews.

(a) The WIC program may review a retailer's compliance with the retailer selection criteria any time during the contract period.

(b) The WIC program will review a new retailer's compliance with the retailer selection criteria at the end of their probation period.

AMENDATORY SECTION (Amending WSR 02-11-107, filed 5/20/02, effective 6/20/02)

WAC 246-790-100 What happens if I don't comply with the WIC retailer contract or ~~((rules))~~ requirements?

(1) Retailers who ((commit acts of noncompliance)) do not comply with WIC program requirements are at risk of losing their contract with the WIC program and may be liable to prosecution in accordance with federal regulations (7 CFR 246.12 and 7 CFR 246.23). ((Noncompliance is failure to follow WIC program requirements.)) Examples of noncompliance include, but are not limited to:

(a) Buying or selling WIC checks for cash (trafficking);

(b) Selling firearms, ammunition, explosives, or controlled substances for WIC checks;

(c) Selling alcohol, alcoholic beverages, or tobacco products for WIC checks;

(d) Buying infant formula from a wholesaler, distributor, retailer, or supplier not approved by the WIC program;

(e) Charging WIC for food not available to buy and having no documentation of having had enough food on the shelf for WIC clients to buy;

~~((e))~~ (f) Providing unauthorized food or other items to WIC ((customers in lieu)) clients instead of, or in addition to ((authorized)), WIC ((supplemental)) approved foods;

~~((f))~~ (g) Selling or offering to sell foods with expired shelf lives;

~~((g))~~ (h) Selling more food than allowed on the WIC check;

(i) Charging the WIC program for foods not received by the ((customer)) client;

~~((h))~~ (j) Charging the WIC program more for ((authorized)) WIC ((supplemental)) approved foods than other customers are charged for the same food;

~~((i))~~ (k) Providing credit or nonfood items to ((customers)) clients in a WIC transaction;

~~((j) Charging)~~ (l) Asking WIC ((customers)) clients for cash or giving change in a WIC transaction;

~~((k))~~ (m) Redeeming WIC checks outside of authorized channels. For example, a retailer accepting WIC checks without having a signed contract with the WIC program; ((a retailer accepting WIC checks and redeeming them through a different authorized retailer or a different outlet of the same chain; or)) a retailer using WIC checks to repay debt at a different authorized retailer ~~((This also includes the));~~ or a retailer who receives and deposits the WIC checks from ~~((another retailer;))~~ an unauthorized source.

~~((l))~~ (n) Failing to write the actual purchase price on the WIC check at the time of the WIC transaction;

~~((m))~~ (o) Failing to maintain adequate stock of WIC foods on the retailer's shelves; and

~~((n))~~ (p) Providing false information in connection with an application for WIC authorization.

(2) A retailer who willfully misapplies, steals, or fraudulently obtains WIC program funds valued at more than one hundred dollars will be subject to a monetary penalty of not more than twenty-five thousand dollars, imprisonment up to five years, or both. If the value of the funds is less than one hundred dollars, the sanctions are a monetary penalty of not more than one thousand dollars, imprisonment up to one year, or both.

(3) The WIC program may deny payment to, impose monetary penalties on, and disqualify retailers for noncompliance with WIC program requirements and terms of the retailer contract.

~~((3))~~ (4) The WIC program must seek reimbursement from retailers for documented overcharges and for payments made on improperly handled WIC checks.

~~((4))~~ (5) Retailers ((found in noncompliance)) who do not comply with WIC program requirements, except for the offenses listed in the first five rows of the table in subsection ~~((6))~~ (7) of this section, will be notified by the WIC program and given the opportunity to correct the ~~((deficiency))~~ problem. Methods of notification include, but are not limited to, technical assistance contacts and notice of correction letters. After the opportunity for corrective action, a retailer who ~~((repeats an act of noncompliance))~~ still does not comply will be subject to sanctions ~~((according to the sanction schedule)).~~

~~((5))~~ (6) When the WIC program denies payment, imposes a monetary penalty, requests reimbursement, or disqualifies a retailer, the program must give the contractor written notice not less than fifteen days prior to the effective date of the action. Denial of authorization and permanent disqualification are effective the date the ~~((notice is received by the))~~ contractor receives the notice. Every notice must state what action is being taken, the effective date of the action, and the procedure for requesting an appeal hearing if the action is one ~~((which))~~ that can be appealed.

~~((6))~~ (7) Per 7 CFR 246.12(l), the WIC program must ~~((disqualify the WIC))~~ sanction a retailer for the following:

	Violation	Length of Disqualification
<u>Mandatory disqualification - no opportunity for correction</u>	Disqualification from the food stamp program by the USDA food and nutrition service;	Time period corresponding to food stamp program disqualification
	Conviction for trafficking in WIC checks or exchanging firearms, ammunition, explosives, or controlled substances for WIC checks;	Permanent
	One incidence of trafficking in <u>WIC checks</u> ;	Six years
	One incidence of exchanging firearms, ammunition, explosives, or controlled substances for WIC checks;	Six years
	One incidence of exchanging (any form of) <u>alcohol, alcoholic beverages, or tobacco products</u> for <u>(a) WIC checks</u> ;	Three years
<u>Notification and opportunity to correct before disqualification or monetary penalty</u>	A documented pattern of charging WIC for food not available to buy and having no documentation of having had enough food on the shelf for WIC clients to buy;	Three years
	A documented pattern of overcharging, including charging more than the shelf price and charging more than for non-WIC customers;	Three years
	A documented pattern of charging for food not received by the <u>((customer)) client</u> ;	Three years

	Violation	Length of Disqualification
	A documented pattern of redeeming WIC checks outside of authorized channels;	Three years
	A documented pattern of providing credit or nonfood items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 N.S.C. 802, in exchange for WIC checks;	Three years
	A documented pattern of selling unauthorized foods or selling more than the amount of food listed on the WIC check.	One year
	<u>A documented pattern of purchasing infant formula from a person or business other than a wholesaler, distributor, retailer, or supplier approved by the WIC program.</u>	<u>One year</u>
	<u>A documented pattern of having no documentation that identifies where infant formula was purchased.</u>	<u>One year</u>

~~((7))~~ (8) At the end of the disqualification period, the retailer must reapply to be considered for authorization.

~~((8))~~ (9) Prior to disqualifying a retailer, the WIC program ~~((must consider whether the disqualification would create inadequate access to WIC foods for WIC clients))~~ considers program need. If the WIC program determines a retailer's disqualification ~~((would result in inadequate client access to WIC foods))~~ prevents clients from getting their WIC foods, the WIC program may impose a monetary penalty ~~((in lieu))~~ instead of disqualification.

~~((9))~~ (10) Monetary penalties are calculated in accordance with federal regulations using the following formula:

(a) Average the retailer's monthly volume of WIC business over at least the six-month period ending with the month preceding when the notice to the retailer is dated;

(b) Multiply the average by ten percent (.10);

(c) Multiply that number by the number of months for which the store would be disqualified. This is the amount of the monetary penalty.

~~((10))~~ (11) Monetary penalties must not exceed ten thousand dollars for each documented violation, except for convictions for trafficking WIC checks and for selling firearms, ammunition, explosives, or controlled substances for WIC checks. For ~~((a))~~ these violations ~~((warranting))~~ requiring permanent disqualification, the monetary penalty is ~~((ten))~~ eleven thousand dollars. If several violations are documented during the course of one investigation, the ~~((department))~~ WIC program must impose a monetary penalty for each violation, not to exceed a total of forty thousand dollars, except for convictions for trafficking WIC checks and for selling firearms, ammunition, explosives, or controlled substances for WIC checks. In this case, the monetary penalty is not to exceed forty-four thousand dollars.

~~((11))~~ (12) Monetary penalties and reimbursements must be paid to the revenue section of the department within the time period specified in the notice. Retailers who fail to pay within the time period specified in the notice will be referred to a ~~((commercial))~~ collection agency and disqualified for the length of time corresponding to the violation.

~~((12))~~ (13) When a retailer who has already been sanctioned for noncompliance is found out of compliance again, the ~~((department))~~ WIC program must double the sanction. A monetary penalty ~~((in lieu))~~ instead of disqualification is not an option for third or subsequent incidences of noncompliance.

~~((13))~~ (14) A contractor who fails to ~~((give the specified notice))~~ notify the WIC program of closure~~((;))~~ or a change in ownership, retailer name, and/or location is liable for resultant costs incurred by the WIC program.

AMENDATORY SECTION (Amending WSR 02-11-107, filed 5/20/02, effective 6/20/02)

WAC 246-790-120 How do I appeal a WIC decision I don't agree with? (1) ~~((The contractor may appeal:~~

~~(a) Notice of denial of payment;~~

~~(b) Denial of authorization;~~

~~(c) An authorization determination made using retailer selection criteria;~~

~~(d) Termination of the retailer contract for cause;~~

~~(e) Termination of the retailer contract because of a change in ownership or location, or cessation of operations;~~

~~(f) Monetary penalty in lieu of disqualification;~~

~~(g) Reimbursement; or~~

~~(h) Disqualification.~~

~~(2) Actions not subject to appeal are:))~~ A request for an appeal hearing must be in writing and must:

(a) State the issue;

(b) Contain a summary of the retailer's position on the issue, indicating whether each charge is admitted, denied, or not contested;

(c) State the name and address of the contractor and retailer requesting the appeal hearing;

(d) State the name and address of the attorney representing the retailer, if applicable;

(e) State the retailer's need for an interpreter or other special accommodations, if necessary; and

(f) Have a copy of the notice from the program attached.

(2) A request for an appeal hearing must be filed at the Department of Health, Adjudicative Service Unit, P.O. Box 47879, Olympia, WA 98504-7879, with a copy sent to the WIC program at P.O. Box 47886, Olympia, WA 98504-7886. The request must be made in writing within twenty days of the date the retailer received the notice.

(3) The decision concerning the appeal must be made within ninety days from the date the request for an appeal hearing was received by the adjudicative service unit. The time for rendering the decision may be extended by as many days as all parties agree to with good cause.

(4) The retailer may not appeal:

(a) Expiration ~~((or nonrenewal))~~ of a WIC contract;

(b) The validity or appropriateness of ~~((client access))~~ criteria used to determine program need and effective administration of the program;

(c) ~~((The department))~~ Determinations regarding ~~((inadequate client access to WIC foods))~~ program need and effective administration of the program;

(d) The validity or appropriateness of retailer limiting or selection criteria;

(e) The validity or appropriateness of the WIC program's criteria for determining whether a retailer receives or is expected to receive more than fifty percent of their total annual food sales from WIC transactions.

(f) The WIC program's determination whether the retailer had an effective policy and program in place to prevent trafficking and whether ownership was aware of, approved of, or was involved in the violation;

~~((f))~~ (g) Disputes regarding check payments and claims (other than the opportunity to justify or correct an overcharge or other check error); and

~~((g))~~ (h) Disqualification based on a food stamp program disqualification.

~~((3))~~ (5) When the action being appealed is disqualification, the retailer must cease redeeming WIC checks effective the date specified in the notice and must not accept WIC checks during the appeal period. The ~~((department))~~ WIC program will not pay any WIC checks redeemed by a retailer during a period of disqualification.

~~((4))~~ A request for an appeal hearing must be in writing and:

(a) State the issue;

(b) Contain a summary of the contractor's position on the issue, indicating whether each charge is admitted, denied, or not contested;

(c) State the name and address of the contractor requesting the appeal hearing;

(d) State the name and address of the attorney representing the contractor, if applicable;

(e) State the contractor's need for an interpreter or other special accommodations, if necessary; and

(f) Have a copy of the notice from the program attached.

~~(5) A request for an appeal hearing must be filed at the Adjudicative Clerk's Office, Department of Health, 1107 Eastside St., P.O. Box 47879, Olympia, WA 98504-7879. The request must be made within twenty-eight days of the date the contractor received the notice.~~

~~(6) The decision concerning the appeal must be made within sixty days from the date the request for an appeal hearing was received by the Adjudicative Clerk's Office. The time for rendering the decision may be extended by as many days as all parties agree to with good cause:))~~

AMENDATORY SECTION (Amending WSR 02-11-107, filed 5/20/02, effective 6/20/02)

WAC 246-790-130 How does the WIC program get input from the food industry? (1) The WIC program may establish a retailer advisory committee for the purpose of soliciting input on policies, procedures, and other matters pertinent to retailer participation in the WIC program.

(2) The retailer advisory committee meets at least two times per year.

(3) The membership of the retailer advisory committee consists of representation ~~((f))~~ from at least the following:

- (a) Washington Food Industry;
- (b) ~~((Manager or checker trainer from a))~~ Large chain;
- (c) ~~((Manager or checker trainer from a))~~ Small chain;
- (d) Independent retailer (single store);
- (e) Minority-owned retailer;
- ~~((e) Instructor of a)~~ (f) Military commissary;
- (g) Loss prevention or risk manager or human resources representative from any size retailer;

~~(h) Technical college checker training program ((with a technical college))~~ instructor;

- ~~((f))~~ (i) Local WIC agency staff person;
- ~~((g))~~ (j) Current or former WIC client; and
- ~~((h) Administrative representative, such as loss prevention or risk manager or human resources representative, from any size retailer;~~

- ~~(i) Owner of an independent retailer (single store);~~
- ~~(j))~~ (k) A union representative(, and
- ~~(k) A military commissary)).~~

