

July 6, 2005

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## CITATION

Cite all material in the Washington State Register by its issue number and sequence within that issue, preceded by the acronym WSR. Example: the 37th item in the August 5, 1981, Register would be cited as WSR 81-15-037.

## PUBLIC INSPECTION OF DOCUMENTS

A copy of each document filed with the code reviser's office, pursuant to chapter 34.05 RCW, is available for public inspection during normal office hours. The code reviser's office is located in the basement of the Pritchard Building in Olympia. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. Telephone inquiries concerning material in the Register or the Washington Administrative Code (WAC) may be made by calling (360) 786-6697.

## REPLICATION OF OFFICIAL DOCUMENTS

All documents appearing in the Washington State Register are prepared and printed at public expense. There are no restrictions on the republication of official documents appearing in the Washington State Register. All news services are especially encouraged to give wide publicity to all documents printed in the Washington State Register.

## CERTIFICATE

Pursuant to RCW 34.08.040, the publication of rules or other information in this issue of the Washington State Register is hereby certified to be a true and correct copy of such rules or other information, except that headings of public meeting notices have been edited for uniformity of style.

DENNIS W. COOPER  
Code Reviser

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## STATE MAXIMUM INTEREST RATE

(Computed and filed by the State Treasurer under RCW 19.52.025)

The maximum allowable interest rate applicable for the month of July 2005 pursuant to RCW 19.52.020 is twelve point zero percent (12.00%) per annum.

The interest rate required by RCW 4.56.110(3) and 4.56.115 for the month of July 2005 is 5.151%.

**NOTICE: FEDERAL LAW PERMITS FEDERALLY INSURED FINANCIAL INSTITUTIONS IN THE STATE TO CHARGE THE HIGHEST RATE OF INTEREST THAT MAY BE CHARGED BY ANY FINANCIAL INSTITUTION IN THE STATE. THE MAXIMUM ALLOWABLE RATE OF INTEREST SET FORTH ABOVE MAY NOT APPLY TO A PARTICULAR TRANSACTION.**

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## WASHINGTON STATE REGISTER

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### WASHINGTON STATE REGISTER

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The Washington State Register is an official publication of the state of Washington. It contains proposed, emergency, and permanently adopted administrative rules, as well as other documents filed with the code reviser's office pursuant to RCW 34.08.020 and 42.30.075. Publication of any material in the Washington State Register is deemed to be official notice of such information.

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# STYLE AND FORMAT OF THE WASHINGTON STATE REGISTER

## 1. ARRANGEMENT OF THE REGISTER

The Register is arranged in the following eight sections:

- (a) **PREPROPOSAL**-includes the Preproposal Statement of Inquiry that will be used to solicit public comments on a general area of proposed rule making before the agency files a formal notice.
- (b) **PROPOSED**-includes the full text of formal proposals, continuances, supplemental notices, and withdrawals.
- (c) **EXPEDITED RULE MAKING**-includes the full text of the rule being proposed using the expedited rule-making process. Expedited rule makings are not consistently filed and may not appear in every issue of the register.
- (d) **PERMANENT**-includes the full text of permanently adopted rules.
- (e) **EMERGENCY**-includes the full text of emergency rules and rescissions.
- (f) **MISCELLANEOUS**-includes notice of public meetings of state agencies, rules coordinator notifications, summaries of attorney general opinions, executive orders and emergency declarations of the governor, rules of the state Supreme Court, and other miscellaneous documents filed with the code reviser's office under RCW 34.08.020 and 42.30.075.
- (g) **TABLE**-includes a cumulative table of the WAC sections that are affected in the current year.
- (h) **INDEX**-includes a cumulative index of Register Issues 01 through 24.

Documents are arranged within each section of the Register according to the order in which they are filed in the code reviser's office during the pertinent filing period. Each filing is listed under the agency name and then describes the subject matter, type of filing and the WSR number. The three part number in the heading distinctively identifies each document, and the last part of the number indicates the filing sequence with a section's material.

## 2. PRINTING STYLE—INDICATION OF NEW OR DELETED MATERIAL

RCW 34.05.395 requires the use of certain marks to indicate amendments to existing agency rules. This style quickly and graphically portrays the current changes to existing rules as follows:

- (a) In amendatory sections—
  - (i) underlined material is new material;
  - (ii) ~~deleted material is ((lined out between double parentheses))~~;
- (b) Complete new sections are prefaced by the heading **NEW SECTION**;
- (c) The repeal of an entire section is shown by listing its WAC section number and caption under the heading **REPEALER**.

## 3. MISCELLANEOUS MATERIAL NOT FILED UNDER THE ADMINISTRATIVE PROCEDURE ACT

Material contained in the Register other than rule-making actions taken under the APA (chapter 34.05 RCW) does not necessarily conform to the style and format conventions described above. The headings of these other types of material have been edited for uniformity of style; otherwise the items are shown as nearly as possible in the form submitted to the code reviser's office.

## 4. EFFECTIVE DATE OF RULES

- (a) Permanently adopted agency rules normally take effect thirty-one days after the rules and the agency order adopting them are filed with the code reviser's office. This effective date may be delayed or advanced and such an effective date will be noted in the promulgation statement preceding the text of the rule.
- (b) Emergency rules take effect upon filing with the code reviser's office unless a later date is provided by the agency. They remain effective for a maximum of one hundred twenty days from the date of filing.
- (c) Rules of the state Supreme Court generally contain an effective date clause in the order adopting the rules.

## 5. EDITORIAL CORRECTIONS

Material inserted by the code reviser's office for purposes of clarification or correction or to show the source or history of a document is enclosed in [brackets].

2004-2005

DATES FOR REGISTER CLOSING, DISTRIBUTION, AND FIRST AGENCY ACTION

Issue Number	Closing Dates <sup>1</sup>			Distribution Date	First Agency Hearing Date <sup>3</sup>	Expedited Rule Making <sup>4</sup>
	Non-OTS and 30 p. or more	Non-OTS and 11 to 29 p.	OTS <sup>2</sup> or 10 p. max. Non-OTS	Count 20 days from -	For hearing on or after	First Agency Adoption Date
For Inclusion in -	File no later than 12:00 noon -					
04 - 15	Jun 23, 04	Jul 7, 04	Jul 21, 04	Aug 4, 04	Aug 24, 04	Sep 21, 04
04 - 16	Jul 7, 04	Jul 21, 04	Aug 4, 04	Aug 18, 04	Sep 7, 04	Oct 5, 04
04 - 17	Jul 21, 04	Aug 4, 04	Aug 18, 04	Sep 1, 04	Sep 21, 04	Oct 19, 04
04 - 18	Aug 4, 04	Aug 18, 04	Sep 1, 04	Sep 15, 04	Oct 5, 04	Nov 2, 04
04 - 19	Aug 25, 04	Sep 8, 04	Sep 22, 04	Oct 6, 04	Oct 26, 04	Nov 23, 04
04 - 20	Sep 8, 04	Sep 22, 04	Oct 6, 04	Oct 20, 04	Nov 9, 04	Dec 7, 04
04 - 21	Sep 22, 04	Oct 6, 04	Oct 20, 04	Nov 3, 04	Nov 23, 04	Dec 21, 04
04 - 22	Oct 6, 04	Oct 20, 04	Nov 3, 04	Nov 17, 04	Dec 7, 04	Jan 4, 05
04 - 23	Oct 20, 04	Nov 3, 04	Nov 17, 04	Dec 1, 04	Dec 21, 04	Jan 19, 05
04 - 24	Nov 3, 04	Nov 17, 04	Dec 1, 04	Dec 15, 04	Jan 4, 05	Feb 1, 05
05 - 01	Nov 24, 04	Dec 8, 04	Dec 22, 04	Jan 5, 05	Jan 25, 05	Feb 23, 05
05 - 02	Dec 8, 04	Dec 22, 04	Jan 5, 05	Jan 19, 05	Feb 8, 05	Mar 8, 05
05 - 03	Dec 22, 04	Jan 5, 05	Jan 19, 05	Feb 2, 05	Feb 22, 05	Mar 22, 05
05 - 04	Jan 5, 05	Jan 19, 05	Feb 2, 05	Feb 16, 05	Mar 8, 05	Apr 5, 05
05 - 05	Jan 19, 05	Feb 2, 05	Feb 16, 05	Mar 2, 05	Mar 22, 05	Apr 19, 05
05 - 06	Feb 2, 05	Feb 16, 05	Mar 2, 05	Mar 16, 05	Apr 5, 05	May 3, 05
05 - 07	Feb 23, 05	Mar 9, 05	Mar 23, 05	Apr 6, 05	Apr 26, 05	May 24, 05
05 - 08	Mar 9, 05	Mar 23, 05	Apr 6, 05	Apr 20, 05	May 10, 05	Jun 7, 05
05 - 09	Mar 23, 05	Apr 6, 05	Apr 20, 05	May 4, 05	May 24, 05	Jun 21, 05
05 - 10	Apr 6, 05	Apr 20, 05	May 4, 05	May 18, 05	Jun 7, 05	Jul 6, 05
05 - 11	Apr 20, 05	May 4, 05	May 18, 05	Jun 1, 05	Jun 21, 05	Jul 19, 05
05 - 12	May 4, 05	May 18, 05	Jun 1, 05	Jun 15, 05	Jul 5, 05	Aug 2, 05
05 - 13	May 25, 05	Jun 8, 05	Jun 22, 05	Jul 6, 05	Jul 26, 05	Aug 23, 05
05 - 14	Jun 8, 05	Jun 22, 05	Jul 6, 05	Jul 20, 05	Aug 9, 05	Sep 7, 05
05 - 15	Jun 22, 05	Jul 6, 05	Jul 20, 05	Aug 3, 05	Aug 23, 05	Sep 20, 05
05 - 16	Jul 6, 05	Jul 20, 05	Aug 3, 05	Aug 17, 05	Sep 6, 05	Oct 4, 05
05 - 17	Jul 27, 05	Aug 10, 05	Aug 24, 05	Sep 7, 05	Sep 27, 05	Oct 25, 05
05 - 18	Aug 10, 05	Aug 24, 05	Sep 7, 05	Sep 21, 05	Oct 11, 05	Nov 8, 05
05 - 19	Aug 24, 05	Sep 7, 05	Sep 21, 05	Oct 5, 05	Oct 25, 05	Nov 22, 05
05 - 20	Sep 7, 05	Sep 21, 05	Oct 5, 05	Oct 19, 05	Nov 8, 05	Dec 6, 05
05 - 21	Sep 21, 05	Oct 5, 05	Oct 19, 05	Nov 2, 05	Nov 22, 05	Dec 20, 05
05 - 22	Oct 5, 05	Oct 19, 05	Nov 2, 05	Nov 16, 05	Dec 6, 05	Jan 3, 06
05 - 23	Oct 26, 05	Nov 9, 05	Nov 23, 05	Dec 7, 05	Dec 27, 05	Jan 24, 06
05 - 24	Nov 9, 05	Nov 23, 05	Dec 7, 05	Dec 21, 05	Jan 10, 06	Feb 7, 06

<sup>1</sup> All documents are due at the code reviser's office by 12:00 noon on or before the applicable closing date for inclusion in a particular issue of the Register; see WAC 1-21-040.

<sup>2</sup> A filing of any length will be accepted on the closing dates of this column if it has been prepared and completed by the order typing service (OTS) of the code reviser's office; see WAC 1-21-040. Agency-typed material is subject to a ten page limit for these dates; longer agency-typed material is subject to the earlier non-OTS dates.

<sup>3</sup> At least twenty days before the rule-making hearing, the agency shall cause notice of the hearing to be published in the Register; see RCW 34.05.320(1). These dates represent the twentieth day after the distribution date of the applicable Register.

<sup>4</sup> A minimum of forty-five days is required between the distribution date of the Register giving notice of the expedited rule making and the agency adoption date. No hearing is required, but the public may file written objections. See RCW 34.05.230 and 1.12.040.

## **REGULATORY FAIRNESS ACT**

The Regulatory Fairness Act, chapter 19.85 RCW, was enacted in 1982 to minimize the impact of state regulations on small business. Amended in 1994, the act requires a small business economic impact analysis of proposed rules that impose more than a minor cost on twenty percent of the businesses in all industries, or ten percent of the businesses in any one industry. The Regulatory Fairness Act defines industry as businesses within a four digit SIC classification, and for the purpose of this act, small business is defined by RCW 19.85.020 as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, that has the purpose of making a profit, and that has fifty or fewer employees."

### **Small Business Economic Impact Statements (SBEIS)**

A small business economic impact statement (SBEIS) must be prepared by state agencies when a proposed rule meets the above criteria. Chapter 19.85 RCW requires the Washington State Business Assistance Center (BAC) to develop guidelines for agencies to use in determining whether the impact of a rule is more than minor and to provide technical assistance to agencies in developing a SBEIS. All permanent rules adopted under the Administrative Procedure Act, chapter 34.05 RCW, must be reviewed to determine if the requirements of the Regulatory Fairness Act apply; if an SBEIS is required it must be completed before permanent rules are filed with the Office of the Code Reviser.

### **Mitigation**

In addition to completing the economic impact analysis for proposed rules, state agencies must take reasonable, legal, and feasible steps to reduce or mitigate the impact of rules on small businesses when there is a disproportionate impact on small versus large business. State agencies are encouraged to reduce the economic impact of rules on small businesses when possible and when such steps are in keeping with the stated intent of the statute(s) being implemented by proposed rules. Since 1994, small business economic impact statements must contain a list of the mitigation steps taken, or reasonable justification for not taking steps to reduce the impact of rules on small businesses.

### **When is an SBEIS Required?**

When:

The proposed rule has more than a minor (as defined by the BAC) economic impact on businesses in more than twenty percent of all industries or more than ten percent of any one industry.

### **When is an SBEIS Not Required?**

When:

The rule is proposed only to comply or conform with a federal law or regulation, and the state has no discretion in how the rule is implemented;

There is less than minor economic impact on business;

The rule REDUCES costs to business (although an SBEIS may be a useful tool for demonstrating this reduced impact);

The rule is adopted as an emergency rule, although an SBEIS may be required when an emergency rule is proposed for adoption as a permanent rule; or

The rule is pure restatement of state statute.



WSR 05-13-039

**PREPROPOSAL STATEMENT OF INQUIRY  
NOXIOUS WEED  
CONTROL BOARD**

[Filed June 7, 2005, 1:21 p.m.]

**Subject of Possible Rule Making:** Chapter 16-750 WAC, State noxious weed list and schedule of monetary penalties.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 17.10.080, 17.10.070, and 17.10.010(5).

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** The state Noxious Weed Control Board is charged with updating the state noxious weed list on an annual basis to ensure it accurately reflects the noxious weed control priorities and noxious weed distribution.

**Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies:** No other state agencies regulate this subject. Federal agencies are subject to the federal noxious weed laws that require them to coordinate with state regulations. Federal agencies in Washington are invited to participate in all stages of noxious weed rule making.

**Process for Developing New Rule:** The state Noxious Weed Control Board annually solicits suggestions from county weed boards, weed districts, state and federal agencies, interest groups and the general public. The Noxious Weed Committee of the board, which includes representation from the Washington Native Plant Society, county weed boards, the nursery industry and several scientific advisors, meets at least twice to review and research the suggestions. These draft suggestions are sent out again for public comment before the Noxious Weed Committee drafts its final recommendation to the board. Public comment is welcome at all committee and board meetings. A press release and information mailing is prepared on the recommended changes and a public hearing is scheduled. The board makes its final decision after considering public input received at the hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Interested parties can submit suggestions for changes to the noxious weed list, and can attend meetings of the Noxious Weed Committee and meetings of the state Noxious Weed Board. Interested parties can also testify at the hearing, and/or submit written testimony. Information on participating in the decision-making process can be obtained from Steve McGonigal, Washington State Noxious Weed Control Board, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-2053, fax (360) 902-2094, e-mail smcgonigal@agr.wa.gov.

June 7, 2005  
Steve McGonigal  
Executive Secretary

WSR 05-13-042

**PREPROPOSAL STATEMENT OF INQUIRY  
GAMBLING COMMISSION**

[Filed June 7, 2005, 4:20 p.m.]

**Subject of Possible Rule Making:** Licensing requirements for all applicants and licensees.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 9.46.070.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** The Gambling Commission is rewriting its rules manual using plain English techniques. We anticipate it will take approximately two years to rewrite the entire Title 230 WAC.

The rules manual will be broken into sections and rewritten a section at a time. The first sections to be reviewed will be chapter 230-02 WAC, General provisions and definitions; chapter 230-04 WAC, Licensing; chapter 230-08 WAC, Records and reports; and chapter 230-12 WAC, Rules of general applicability.

We anticipate these rules will be up for discussion at the August, September and October commission meetings.

There will be some sustentative and policy decisions to be made by the commission during the rewrite. The text of the rules will be posted on our web site approximately two weeks prior to each commission meeting they are discussed at. Please visit our web site at [www.wsgc.wa.gov/PublicMeetings](http://www.wsgc.wa.gov/PublicMeetings), or contact at the information provided below.

**Process for Developing New Rule:** Rule change developed by agency staff. Interested parties can participate in the discussion of this proposed change by attending a commission meeting, or contacting the agency rules coordinator at the contact information below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Rick Day, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3446; Neal Nunamaker, Deputy Director, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3449; and Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504-2400, (360) 486-3466, e-mail [Susana@wsgc.wa.gov](mailto:Susana@wsgc.wa.gov).

[Meetings on] August 12, 2005, at The Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, (360) 254-3100; on September 9, 2005, at the Red Lion Hotel Pasco, 2525 North 20th Avenue, Pasco, WA 99301, (509) 544-3910; and on October 14, 2005, at the Clarion Hotel and Conference Center, 1507 North 1st Street, Yakima, WA 98901, (509) 248-7850.

June 8 [7], 2005  
Susan Arland  
Rules Coordinator

**WSR 05-13-044**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**PARKS AND RECREATION**  
**COMMISSION**

[Filed June 9, 2005, 12:35 p.m.]

**Subject of Possible Rule Making:** The commission is proposing a review of the following chapters found in Title 352 WAC: Public use of state park areas, chapter 352-32 WAC; Moorage and use of marine and inland water facilities, chapter 352-12 WAC; Use of motor driven vehicles in state parks—Parking restrictions—Violations, chapter 352-20 WAC; and Ocean beaches, chapter 352-37 WAC.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** Chapter 79A.05 RCW including; RCW 79A.05.-030, 79A.05.035, 79A.05.055, 79A.05.065, and 79A.05.070.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** State parks will conduct an annual review of the administrative rules pertaining to Public use; Moorage and use of marine and inland water facilities; Use of motor driven vehicles in state parks—Parking restrictions—Violations; and Ocean beaches. This review will be conducted to make minor changes to rules, general review for clarification, corrections and modifications.

**Process for Developing New Rule:** Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Pamela McConkey, Washington State Parks, P.O. Box 42650, Olympia, WA 98504-2650, phone (360) 902-8595, fax (360) 586-5875, e-mail pamm@parks.wa.gov.

June 9, 2005

Jim French  
 Chief of Policy Research  
 and Program Development

**WSR 05-13-046**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed June 9, 2005, 1:26 p.m.]

**Subject of Possible Rule Making:** WAC 415-104-111 How does the department calculate the retirement allowance of a LEOFF Plan 2 member who retires, reenters employment, and then either retires or separates employment again?

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 41.50.050(5), chapter 372, Laws of 2005.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** The department will amend WAC 415-104-111 to incorporate the provisions in HB 1270, enacted during the 2005 legislative session, and make other changes as needed. This bill provides the option for LEOFF Plan 2 retirees who become employed in eligible PERS, TRS, SERS or PSERS positions to either enter into membership in that retirement system (and have their LEOFF benefits suspended during such employment), or not enter into plan membership and continue to receive their LEOFF 2 benefits.

**Process for Developing New Rule:** The Department of Retirement Systems (DRS) will develop the draft rule(s) with the assistance of the Attorney General's Office. The public is invited and encouraged to participate, as described below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. DRS encourages your active participation in the rule-making process. After the rule(s) is drafted, DRS will file a copy with the Office of the Code Reviser with a notice of proposed rule making. The notice will include the time and date of a public rules hearing. DRS will send a copy of the notice and the proposed rule(s) to everyone currently on the mailing list and anyone else who requests a copy. To request a copy or for more information on how to participate, please contact Leslie Saeger, Rules and Contracts Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, voice (360) 664-7291, TTY (360) 586-5450, fax (360) 753-3166, e-mail leslies@drs.wa.gov.

June 8, 2005

Leslie Saeger  
 Rules Coordinator

**WSR 05-13-047**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed June 9, 2005, 1:27 p.m.]

**Subject of Possible Rule Making:** WAC 415-104-480 LEOFF Plan 2 duty disability benefits.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 41.50.050(5), chapter 451, Laws of 2005.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** SSB 5615 amends RCW 41.26.470 so that a LEOFF 2 duty-related disability retirement allowance will no longer be actuarially reduced for early retirement. The department will amend WAC 415-104-480 accordingly.

**Process for Developing New Rule:** The Department of Retirement Systems (DRS) will develop the draft rule(s) with the assistance of the Attorney General's Office. The public is invited and encouraged to participate, as described below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. DRS encourages your active participation in the rule-making process. After the rule(s) is drafted, DRS will file a copy with the Office of the Code Reviser with a notice of proposed rule making. The notice will include the time and date of a public rules hearing. DRS will send a copy of the notice and the proposed rule(s) to everyone currently on the mailing list and anyone else who requests a copy. To request a copy or for more information on how to participate, please contact Leslie Saeger, Rules and Contracts Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, voice (360) 664-7291, TTY



(360) 586-5450, fax (360) 753-3166, e-mail [leslies@drs.wa.gov](mailto:leslies@drs.wa.gov).

June 8, 2005  
Leslie Saeger  
Rules Coordinator

**WSR 05-13-048**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed June 9, 2005, 1:28 p.m.]

Subject of Possible Rule Making: WAC 415-104-225 Am I a LEOFF member?, and other WACs necessary to implement SHB 1936.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.50.050(5), chapter 459, Laws of 2005.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department will amend chapter 415-104 WAC as necessary to implement SHB 1936, enacted during the 2005 legislative session. This bill broadens the definition of "fire fighter" to include full-time, fully compensated emergency medical technicians (EMTs) who work for a LEOFF employer. Eligible PERS members employed as EMTs may transfer to LEOFF and elect to transfer their PERS service credit to LEOFF Plan 2.

Process for Developing New Rule: The Department of Retirement Systems (DRS) will develop the draft rule(s) with the assistance of the Attorney General's Office. The public is invited and encouraged to participate, as described below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. DRS encourages your active participation in the rule-making process. After the rule(s) is drafted, DRS will file a copy with the Office of the Code Reviser with a notice of proposed rule making. The notice will include the time and date of a public rules hearing. DRS will send a copy of the notice and the proposed rule(s) to everyone currently on the mailing list and anyone else who requests a copy. To request a copy or for more information on how to participate, please contact Leslie Saeger, Rules and Contracts Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, voice (360) 664-7291, TTY (360) 586-5450, fax (360) 753-3166, e-mail [leslies@drs.wa.gov](mailto:leslies@drs.wa.gov).

June 9, 2005  
Leslie Saeger  
Rules Coordinator

**WSR 05-13-049**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed June 9, 2005, 1:29 p.m.]

Subject of Possible Rule Making: WAC 415-104-202 Survivor benefit options—LEOFF Plan 1.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.50.050(5), chapter 67, Laws of 2005.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department will amend WAC 415-104-202 to include the provisions of HB 1329, enacted during the 2005 legislative session and make other changes as needed. HB 1329 provides that, if a portion of a LEOFF Plan 1 member's benefit is subject to a property division obligation, the member may select a benefit option with a survivor feature with the remaining portion of the benefit.

Process for Developing New Rule: The Department of Retirement Systems (DRS) will develop the draft rule(s) with the assistance of the Attorney General's Office. The public is invited and encouraged to participate, as described below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. DRS encourages your active participation in the rule-making process. After the rule(s) is drafted, DRS will file a copy with the Office of the Code Reviser with a notice of proposed rule making. The notice will include the time and date of a public rules hearing. DRS will send a copy of the notice and the proposed rule(s) to everyone currently on the mailing list and anyone else who requests a copy. To request a copy or for more information on how to participate, please contact Leslie Saeger, Rules and Contracts Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, voice (360) 664-7291, TTY (360) 586-5450, fax (360) 753-3166, e-mail [leslies@drs.wa.gov](mailto:leslies@drs.wa.gov).

June 9, 2005  
Leslie Saeger  
Rules Coordinator

**WSR 05-13-050**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**

[Filed June 9, 2005, 1:30 p.m.]

Subject of Possible Rule Making: LEOFF Plan 1 requirements for ex spouses to qualify for survivor benefits.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 41.50.050(5), chapter 62, Laws of 2005.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department will write rules to implement HB 1319, enacted during the 2005 legislative session, and make other changes as needed. HB 1319 will make some exspouses eligible for survivor benefits who are currently ineligible for such benefits.

Process for Developing New Rule: The Department of Retirement Systems (DRS) will develop the draft rule(s) with

the assistance of the Attorney General's Office. The public is invited and encouraged to participate, as described below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. DRS encourages your active participation in the rule-making process. After the rule(s) is drafted, DRS will file a copy with the Office of the Code Reviser with a notice of proposed rule making. The notice will include the time and date of a public rules hearing. DRS will send a copy of the notice and the proposed rule(s) to everyone currently on the mailing list and anyone else who requests a copy. To request a copy or for more information on how to participate, please contact Leslie Saeger, Rules and Contracts Coordinator, Department of Retirement Systems, P.O. Box 48380, Olympia, WA 98504-8380, voice (360) 664-7291, TTY (360) 586-5450, fax (360) 753-3166, e-mail [leslies@drs.wa.gov](mailto:leslies@drs.wa.gov).

June 9, 2005

Leslie Saeger  
Rules Coordinator

#### WSR 05-13-063

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Medical Services Administration)**

[Filed June 10, 2005, 12:45 p.m.]

**Subject of Possible Rule Making:** WAC 388-513-1380 Determining a client's participation in the cost of care for long-term (LTC) services.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** To permanently adopt the:

- April 1, 2005, federal changes in the institutional Medicaid standard and community spouse income and family allocation standard.
- July 1, 2005, change in the personal needs allowance (PNA) allowed for clients residing in a medical facility who are not receiving general assistance.

These changes will be adopted on an emergency basis while the permanent rule-making process is completed.

**Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies:** None.

**Process for Developing New Rule:** The department invites the interested public to review and provide input on the draft language of this rule. Draft material and information about how to participate may be obtained from the department representative listed below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Lori Rolley, P.O. Box 45534, Olym-

pia, WA 98504-5534, e-mail [rollej@dshs.wa.gov](mailto:rollej@dshs.wa.gov), phone (360) 725-1304, fax (360) 664-0910, TTY 1-800-848-5429.

June 7, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

#### WSR 05-13-065

**WITHDRAWAL OF  
PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Medical Assistance Administration)**

[Filed June 10, 2005, 12:47 p.m.]

The Medical Assistance Administration requests the withdrawal of preproposal statement of inquiry, filed as WSR 05-11-073 on May 17, 2005.

#### WSR 05-13-067

**PREPROPOSAL STATEMENT OF INQUIRY  
BOARD OF ACCOUNTANCY**

[Filed June 10, 2005, 1:13 p.m.]

**Subject of Possible Rule Making:** Renewal and reinstatement process for Washington certified public accountant (CPA) certificateholders, licensees, and firms.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 18.04.183, 18.04.195, 18.04.205, 18.04.215.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** Currently, CPA individual, CPA firm licenses and CPA certificates lapse at June 30. There have been concerns about the inability of CPAs to practice after June 30, when they have not received notice of license or certificate renewal and are not aware that the license or certificate has lapsed. It is possible that CPAs who fail to change their mailing address contribute to this problem. The board is looking for suggestions to decrease the number of unintentional lapses. The board has information on the existing process available at <http://www.cpaboard.wa.gov/alert/renewalprocess.html>.

**Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies:** None.

**Process for Developing New Rule:** Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. The board plans to hold information gathering meetings with stakeholders statewide and provide written notification to all CPA certificateholders, licensees, and firms. For additional information or to provide input, please contact Sandra K. Shoemaker, CPA, Deputy Director, Washington State Board of Accountancy, P.O. Box 9131, Olympia, WA

98507-9131, phone (360) 753-2586, fax (360) 664-9190, e-mail webmaster@cpaboard.wa.gov.

June 9, 2005

Sandra K. Shoemaker, CPA  
Deputy Director

Avenue, Pasco, WA 99301, phone (509) 547-0511 ext. 2202, fax (509) 546-0404, e-mail lmeyers@columbiabasin.edu.

June 9, 2005

Lee R. Thornton  
President

**WSR 05-13-071**

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
FISH AND WILDLIFE**  
[Filed June 13, 2005, 1:25 p.m.]

Subject of Possible Rule Making: Commercial fishing rules.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 77.12.047.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Recent legislation has created a coastal crab pot buoy tag. Rules are needed to implement this program.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Ron McQueen, Business Program Assistant Director, 600 Capitol Way North, Olympia, WA 98504-1091, phone (360) 902-2204. Contact by August 4, 2005. Expected proposal filing on or after August 5, 2005.

June 13, 2005

Evan Jacoby  
Rules Coordinator

**WSR 05-13-072**

**PREPROPOSAL STATEMENT OF INQUIRY  
COLUMBIA BASIN COLLEGE**  
[Filed June 13, 2005, 3:13 p.m.]

Subject of Possible Rule Making: WAC 132S-50-010 through 132S-50-280, college facilities.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28B.50.140(7).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Purpose of the proposed changes is to bring clarity to existing rules, update titles and clarify definitions and designate authority to the vice-president for administration.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Louise Meyers, Executive Assistant, President's Office, Columbia Basin College, 2600 North 20th

**WSR 05-13-076**

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)  
[Filed June 13, 2005, 4:28 p.m.]

Subject of Possible Rule Making: WAC 388-550-1350 Revenue code categories and subcategories—CPT and HCPCS reporting requirements for outpatient hospitals, 388-550-6000 Payment—Outpatient hospital services, 388-550-7000 Outpatient prospective payment system (OPPS)—General; possible other sections in chapter 388-550 WAC relating to outpatient hospital services.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090, 74.09.500.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department is updating definitions and program policy for outpatient hospital services.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: The department invites the interested public to review and provide input on the draft language of this rule. Draft material and information about how to participate may be obtained from the department representative listed below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kathy Sayre, Rules Program Manager, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1342, fax (360) 586-9727, TTY 1-800-848-5429, e-mail sayrek@dshs.wa.gov.

June 13, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**WSR 05-13-098**

**PREPROPOSAL STATEMENT OF INQUIRY  
SUPERINTENDENT OF  
PUBLIC INSTRUCTION**  
[Filed June 16, 2005, 8:33 a.m.]

Subject of Possible Rule Making: WAC 392-121-262 Finance—General apportionment—Certificated instructional staff.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 28A.150.290(1).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rule changes are needed to implement provisions in RCW 28A.415.023 amended during the 2005 legislative session.

Process for Developing New Rule: Early solicitation of public comments and recommendations respecting new, amended, or repealed rules, and consideration of the comments and recommendations in the course of drafting rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by sending written comments to Rules Coordinator, Administrative Resources, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, TTY (360) 664-3631. For telephone assistance contact: Ross Bunda, (360) 725-6308.

June 15, 2005

Dr. Terry Bergeson  
Superintendent of  
Public Instruction

#### WSR 05-13-101

#### PREPROPOSAL STATEMENT OF INQUIRY

#### DEPARTMENT OF FISH AND WILDLIFE

[Filed June 16, 2005, 9:29 a.m.]

Subject of Possible Rule Making: Shellfish disease rules.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 77.12.047.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Continued testing for the presence of Denman Island disease has documented the absence of this disease in an area currently defined as a prohibited area. Eliminating the defined area from the WAC language provides the shellfish grower industry more flexibility in their operations and the potential for higher economic yields.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Morris Barker, State Marine Resource Manager, 600 Capitol Way North, Olympia, WA 98504-1091, phone (360) 902-2826. Contact by August 4, 2005. Expected proposal filing on or after August 5, 2005.

June 16, 2005

Evan Jacoby  
Rules Coordinator

#### WSR 05-13-102

#### PREPROPOSAL STATEMENT OF INQUIRY

#### DEPARTMENT OF FISH AND WILDLIFE

[Filed June 16, 2005, 9:29 a.m.]

Subject of Possible Rule Making: Ocean spot shrimp fishery rules.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 77.12.047.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: This fishery is implemented under the Emerging Fisheries Act and we are adjusting rules as more information is developed regarding the fishery operation and the biology of the species. Rules being contemplated would add a conservative approach to preserve the viability and robustness of the shrimp population.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Morris Barker, State Marine Resource Manager, 600 Capitol Way North, Olympia, WA 98504-1091, phone (360) 902-2826. Contact by August 4, 2005. Expected proposal filing on or after August 5, 2005.

June 16, 2005

Evan Jacoby  
Rules Coordinator

#### WSR 05-13-127

#### PREPROPOSAL STATEMENT OF INQUIRY

#### DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Aging and Disability Services Administration)

[Filed June 20, 2005, 4:25 p.m.]

Subject of Possible Rule Making: The department will amend chapter 388-105 WAC to:

- Update the home and community residential rates from the four level payment system to the comprehensive assessment reporting evaluation (CARE) payment levels and to reflect the vendor rate increases of July 1, 2005;
- Amend the bed hold section to clarify the requirements for third-party payment and no payment for an absence less than twenty-four hours;
- Amend the capital add-on section to specify that licensed boarding homes with assisted living contracts must have units available for Medicaid clients that meet specific construction requirements; and
- Implement a policy on when an adult family home or boarding home with a contract to provide assisted living (AL), adult residential care (ARC), or enhanced adult residential care (EARC) services may accept: An additional payment from the client, the client's friend or family for a unit/bedroom ame-

nity; or an item or service that is not covered by the Medicaid payment rate.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 74.39A RCW.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The WAC sections that include rates need to reflect the current rates. The legislature limited third-party payments for bed holds to the rate that the Medicaid rate that the client received before discharge to the hospital or nursing home. When a Medicaid client leaves the facility for less than twenty-four hours for hospital or nursing home stay, clarify that the facility will receive the client's daily payment rate rather than the bed hold rate. To limit a capital add-on rate only to AL contractors that make available to Medicaid clients units that meet specific structural requirements. Presently, home and community residential care contractors request payments from the client, family or friends for items not covered by the Medicaid rate. The policy will clarify the contractor's responsibilities and when requesting a supplements payment.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: By publishing in the Washington State Register this CR-101 Preproposal statement of inquiry, the Aging and Disability Services Administration (ADSA) welcomes public participation in developing its rule(s). Anyone interested in reviewing draft rules should contact the staff person indicated below. After review of the draft rules, ADSA will file proposed rules with the Office of the Code Reviser using a CR-102 Notice of proposed rule making and will send a copy of the proposed rules to everyone currently on the home and community services and residential care services mailing list.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. If you would like to receive a copy of the draft rules for review before the Notice of Proposed Rule Making is published or receive a copy of the proposed rules, please contact Patricia Hague, Home and Community Rates, P.O. Box 45600, Olympia, WA 98504-5600, phone (360) 725-2447, fax (360) 728-2641, e-mail HaguePE@dshs.wa.gov.

June 14, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**WSR 05-13-128**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Management Services Administration)

[Filed June 20, 2005, 4:26 p.m.]

Subject of Possible Rule Making: WAC 388-01-180 Who should be contacted to review an interpretive or policy statement index, or to get a copy of the documents? and 388-01-190 How can an individual get an index of DSHS signifi-

cant decisions?; and chapter 388-02 WAC, DSHS hearing rules.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 42.17.250 and 34.05.220.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department plans to amend WAC 388-01-180, 388-01-190, and to adopt a new section of chapter 388-02 WAC. WAC 388-01-180 will be amended to clarify that the department issues and maintains an index of interpretive and policy statements under RCW 42.17.260. WAC 388-01-190 will be amended to clarify the rule, change the stated organization of the index of significant decisions, and add language that paraphrases and references RCW 42.17.260(6). The department also plans to adopt a new section in chapter 388-02 WAC pertaining to the subject matter in WAC 388-01-190.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: The department welcomes public participation in the development of these rules. At a later date, proposed rules will be filed with the Office of the Code Reviser, and the proposal will be sent to those who have requested to receive rule-making notices on this subject. Comments about the proposal will be accepted in writing and at a scheduled public hearing. If you wish to be on a mailing list to receive notices about his rule making, contact Stephanie Schiller, DSHS Rules and Policies Assistance Unit, P.O. Box 45850, Olympia, WA 98504-5850, phone (360) 664-6097, or e-mail schilse@dshs.wa.gov. Contact the person listed below if you have questions or suggestions about the development of this rule or if you want to comment on the draft language of the rule before it is proposed and filed.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Brian Lindgren, Administrator for Rules, Appeals and Certification Services, P.O. Box 45803, Olympia, WA 98504-5803, phone (360) 664-6093, fax (360) 664-6185, TTY (360) 664-6178, e-mail lindgbh@dshs.wa.gov.

June 16, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**WSR 05-13-129**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)

[Filed June 20, 2005, 4:28 p.m.]

Subject of Possible Rule Making: WAC 388-515-1505 Community options program entry system (COPES).

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** DSHS is adding PACE (program of all-inclusive care for the elderly), MMIP (Medicare-Medicaid integration project), and new freedom rules to this WAC section. Also, DSHS is changing some wording to make the rule clearer.

**Process for Developing New Rule:** The department invites the interested public to review and provide input on the draft language of this rule. Draft material and information about how to participate may be obtained from the department representative listed below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Lori Rolley, MAA/EPACE, P.O. Box 45534, Olympia, WA 98504-5534, fax (360) 664-0910, phone (360) 725-1304, TTY 1-800-848-5429, e-mail rollej@dshs.wa.gov.

June 20, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**WSR 05-13-130**  
**WITHDRAWAL OF**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)  
[Filed June 20, 2005, 4:29 p.m.]

The Medical Assistance Administration requests the withdrawal of preproposal statement of inquiry, filed as WSR 05-06-084 on March 1, 2005 (WAC 388-515-1505).

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**WSR 05-13-131**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)  
[Filed June 20, 2005, 4:30 p.m.]

**Subject of Possible Rule Making:** WAC 388-513-1360 Determining excluded resources for long-term care (LTC) services.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** The department is repealing WAC 388-513-1360 in conjunction with the amendment of WAC 388-513-1350 filed as a separate CR-101 notice. The department is incorporating information from WAC 388-513-1360 into WAC 388-513-1350.

**Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies:** None.

**Process for Developing New Rule:** The department invites the interested public to review and provide input on the draft language of this rule. Draft material and information about how to participate may be obtained from the department representative listed below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Lori Rolley, Medical Assistance Administration/EPACE, P.O. Box 45534, Olympia, WA 98504-5534, phone (360) 725-1304, fax (360) 664-0910, TTY 1-800-848-5429, e-mail rollej@dshs.wa.gov.

June 20, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**WSR 05-13-132**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)  
[Filed June 20, 2005, 4:32 p.m.]

**Subject of Possible Rule Making:** Chapter 388-543 WAC, Durable medical equipment (DME) and related supplies, prosthetics, and orthotics, medical supplies and related services.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 74.04.050, 74.04.57 [74.04.057], 74.08.090.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** The Medical Assistance Administration (MAA) is making the following changes to chapter 388-543 WAC:

- Adding "washable protective underwear" to the list of diapers and related supplies under WAC 388-543-1150;
- Clarifying the standard specifications for diapers, pull up pants, briefs, washable protective underwear, underpads, liners and undergarment under WAC 388-543-1150;
- Clarifying products that cannot be used together under WAC 388-543-1150; and
- Removing the word "unwilling" from WAC 388-543-1500 (5)(b) and (6)(b).

During the course of this review, MAA may identify additional changes that are required in order to improve clarity or to update policy. However, reimbursement methodology is not part of this rule-making action. Reimbursement methodology will be addressed in the near future under a different CR-101 notice. The CR-101 filed previously as WSR 04-23-102 on November 17, 2004, is being withdrawn.

**Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies:** None.

**Process for Developing New Rule:** The department invites the interested public to review and provide input on the draft language of this rule. Draft material and informa-

tion about how to participate may be obtained from the department representative listed below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Wendy L. Boedigheimer, Rules Program Manager, Medical Assistance Administration, Rules and Publications Section, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1306, fax (360) 586-9727, TTY 1-800-848-5429, e-mail boediwl@dshs.wa.gov.

June 20, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**WSR 05-13-133**  
**WITHDRAWAL OF**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)  
[Filed June 20, 2005, 4:33 p.m.]

The Medical Assistance Administration requests the withdrawal of preproposal statement of inquiry, filed as WSR 04-23-102 on June 10, 2005 (WAC 388-543-1000, 388-543-1100, 388-543-1150, 388-543-1400, 388-543-1500, 388-543-2100, 388-543-2500, and 388-543-2900).

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**WSR 05-13-134**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)  
[Filed June 20, 2005, 4:35 p.m.]

Subject of Possible Rule Making: WAC 388-531-2000 Increased payments for physician-related services for qualified trauma cases (amend); possible other sections relating to trauma care fund payments and clarifications of existing provisions.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090, 74.09.500.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: This rule amendment corrects an unnecessarily restrictive element in current WAC that prohibits payments from the department's trauma care fund (TCF) to physicians for services provided to general assistance-unemployable (GA-U) and Alcohol and Drug Addiction Treatment and Support Act (ADATSA) clients. The legislature did not intend to put this restriction on TCF payments to physicians for services to GA-U and ADATSA clients since no disproportionate share hospital (DSH) funds are used to pay physicians.

Process for Developing New Rule: The department invites the interested public to review and provide input on

the draft language of this rule. Draft material and information about how to participate may be obtained from the department representative listed below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kathy Sayre, Rules Program Manager, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1342, fax (360) 586-9727, e-mail sayrek@dshs.wa.gov, TTY 1-800-848-5429.

June 20, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**WSR 05-13-135**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)  
[Filed June 20, 2005, 4:36 p.m.]

Subject of Possible Rule Making: WAC 388-418-0025 Effect of changes on medical, 388-424-0010 Citizenship and alien status—Immigrant eligibility restrictions for the temporary assistance for needy families (TANF) program and medical benefits, including nonemergency Medicaid and the state children's health insurance program (SCHIP), 388-450-0210 Countable income for medical programs, 388-478-0075 Medical programs—Monthly income standards based on federal poverty level (FPL), 388-505-0210 Children's medical eligibility, 388-523-0130 Medical extensions—Redetermination; and any related WACs.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.08.090, 74.09.415, and 74.09.530.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: E2SHB 1441 (chapter 279, Laws of 2005) reinstates the children's health program for children up to 100% of the federal poverty level who are not otherwise eligible for Medicaid. The governor also directed the department to reinstate twelve month continuous eligibility for children's medical.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: The department invites the interested public to review and provide input on the draft language of this rule. Draft material and information about how to participate may be obtained from the department representative listed below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Kathy Johansen, Program Manager, P.O. Box 45534, Olympia, WA 98504-5534, phone (360) 725-1321, fax (360) 664-0910, TTY 1-800-848-5429, e-mail johankj@dshs.wa.gov.

June 20, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**WSR 05-13-136**

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Economic Services Administration)**

[Filed June 20, 2005, 4:38 p.m.]

Subject of Possible Rule Making: WAC 388-400-0010 Who is eligible for state family assistance? and 388-442-0010 How does being a fleeing felon or having a conviction for a drug-related felony impact my eligibility for benefits?

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: These rules must be amended in order to comply with SB 5213 which was passed in the 2005 legislative session (chapter 174, Laws of 2005). This legislation exercised the state option to exempt individuals convicted of drug-related felony from the temporary assistance for needy families ban on receipt of benefits.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: DSHS welcomes the public to take part in developing the rules. Anyone interested should contact the staff person identified below. At a later date, DSHS will file proposed [rules] with the Office of the Code Reviser with a notice of proposed rule making. A copy of the proposal will be sent to everyone on the mailing list and to anyone who requests a copy.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Amber Gillum, Legislative Coordinator, Division of Employment and Assistance Programs, P.O. Box 45470, Olympia, WA 98504-5470, phone (360) 725-4612, fax (360) 493-3493, e-mail gilluae@dshs.wa.gov.

June 20, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**WSR 05-13-137**

**WITHDRAWAL OF  
PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Medical Assistance Administration)**

[Filed June 20, 2005, 4:39 p.m.]

The Medical Assistance Administration requests the withdrawal of preproposal statement of inquiry, filed as WSR 05-13-063 on June 10, 2005 (WAC 388-513-1380).

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**WSR 05-13-138**

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Medical Assistance Administration)**

[Filed June 20, 2005, 4:41 p.m.]

Subject of Possible Rule Making: WAC 388-513-1380 Determining a client's participation in the cost of care for long-term (LTC) services.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: DSHS is amending this rule:

- To change the community spouse income and family allocation standard to \$1604 (effective April 1, 2005);
- To increase the shelter allocation standard to \$481;
- To change the personal needs allowance (PNA) allowed for clients residing in a medical facility who are not receiving general assistance to \$51.62 effective July 1, 2005;
- To improve the clarity and readability of the rule.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: The department invites the interested public to review and provide input on the draft language of this rule. Draft material and information about how to participate may be obtained from the department representative listed below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Lori Rolley, P.O. Box 45534, Olympia, WA 98504-5534, e-mail rollelj@dshs.wa.gov, phone (360) 725-1304, fax (360) 664-0910, TTY 1-800-848-5429.

June 17, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**WSR 05-13-139**

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Medical Assistance Administration)**

[Filed June 20, 2005, 4:43 p.m.]

Subject of Possible Rule Making: WAC 388-513-1350 Defining the maximum amount of resources allowed and determining resource availability for long-term care (LTC) services.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.04.050, 74.04.057, 74.08.090, 74.09.500, and 74.09.530.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: DSHS is making changes to the language, clarifying the rules, and updating the state spousal resource standard. Also, DSHS is clarifying that an



individual retirement account (IRA) belonging to a community spouse is a countable resource when determining eligibility for long term care (Social Security Act section 1924 supersedes Social Security Income (SSI)-related rules).

**Process for Developing New Rule:** The department invites the interested public to review and provide input on the draft language of this rule. Draft material and information about how to participate may be obtained from the department representative listed below.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Lori Rolley, MAA/EPACE, P.O. Box 45534, Olympia, WA 98504-5534, fax (360) 664-0910, phone (360) 725-1304, TTY 1-800-848-5429, e-mail rollej@dshs.wa.gov.

June 20, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**WSR 05-13-140**  
**WITHDRAWAL OF**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)

[Filed June 20, 2005, 4:44 p.m.]

The Medical Assistance Administration requests the withdrawal of preproposal statement of inquiry, filed as WSR 05-11-072 on May 17, 2005 (WAC 388-513-1350).

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**WSR 05-13-143**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**BUILDING CODE COUNCIL**

[Filed June 21, 2005, 10:18 a.m.]

**Subject of Possible Rule Making:** Washington State Energy Code, WAC 51-11-1423 Economizers.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 19.27A.025, 19.27A.045.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** The state Building Code Council adopted an amendment to this section, effective July 1, 2005, that has been determined to cause undue expense for residential systems. An emergency rule is in place beginning July 1, 2005, that will provide an exemption for residential cooling units up to 54,000 Btu/h.

**Process for Developing New Rule:** Technical advisory group (TAG) review.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Tim Nogler, Managing Director, Washington State Building Code Council, P.O. Box 42525,

Olympia, WA 98504-2525, (360) 725-2967, fax (360) 586-9383, e-mail sbcc@cted.wa.gov, www.sbcc.wa.gov.

June 10, 2005

John Neff  
Council Chair

**WSR 05-13-145**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**BUILDING CODE COUNCIL**

[Filed June 21, 2005, 10:20 a.m.]

**Subject of Possible Rule Making:** Chapter 51-50 WAC, Adoption and amendment of the 2003 International Building Code, sections 909, 1008, 1101, and 2406.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 19.27.074.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** The state Building Code Council regularly reviews the Washington State Building Code, as outlined in chapter 51-04 WAC and RCW 19.27-074, to review and consider proposals for statewide code amendments.

**Process for Developing New Rule:** Technical advisory group (TAG) review.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Tim Nogler, Managing Director, Washington State Building Code Council, P.O. Box 2525, Olympia, WA 98504-2525, (360) 725-2967, fax (360) 586-9383, e-mail sbcc@cted.wa.gov, www.sbcc.wa.gov.

June 10, 2005

John Neff  
Council Chair

**WSR 05-13-146**  
**PREPROPOSAL STATEMENT OF INQUIRY**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed June 21, 2005, 1:27 p.m.]

**Subject of Possible Rule Making:** Chapter 296-46B WAC, Electrical safety standards, administration, and installation.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** Chapter 19.28 RCW, Electricians and electrical installations.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** The department plans to review the electrical rule for additions or revisions. These rules are developed to aid both stakeholders and the department to clarify and enforce the electrical statute.

**Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies:** None.

Process for Developing New Rule: The Electrical Board and the Electrical Technical Advisory Committee will be used to develop these rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Sally Elliott, Department of Labor and Industries, Specialty Compliance Services Division, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail yous235@lni.wa.gov.

June 21, 2005

Gary Weeks

Director

#### WSR 05-13-147

### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF LABOR AND INDUSTRIES

[Filed June 21, 2005, 1:28 p.m.]

Subject of Possible Rule Making: Chapter 296-130 WAC, Family care.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 49.12 RCW and chapter 243, Laws of 2002 (SSB 5850).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: This rule making is a result of section 2, chapter 243, Laws of 2002 (SSB 5850), which passed the 2005 legislature. The legislation amends the definition of sick leave. The department is updating the rule to be consistent with the statute.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: The department will solicit input from the Employment Law Advisory Committee (ELAC) and interested parties. The public may also participate by providing written comments or giving oral testimony during the public hearing process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Sally Elliott, Department of Labor and Industries, Specialty Compliance Services Division, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail yous235@lni.wa.gov.

June 21, 2005

Gary Weeks

Director

#### WSR 05-13-148

### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF LABOR AND INDUSTRIES

[Filed June 21, 2005, 1:29 p.m.]

Subject of Possible Rule Making: Chapter 296-150M WAC, Manufactured homes.

Statutes Authorizing the Agency to Adopt Rules on this Subject: Chapter 43.22 RCW and chapter 79, Laws of 2004 (SSB [SHB] 1393).

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: This rule making is a result of chapter 79, Laws of 2004 (SHB 1393), which passed the 2005 legislature. This legislation requires the department to perform a fire safety inspection and issue a certificate on all pre-HUD (mobile homes) prior to them being moved from their current location.

The rule changes will outline how to apply for a fire safety inspection with the department and the requirements the mobile home must meet in order to successfully pass the fire safety inspection.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: The department will solicit input from the Factory Assembled Structure Board and Washington Association of Building Officials. Other interested parties and the public may also participate by providing written comments or giving oral testimony during the public hearing process.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, phone (360) 902-6411, fax (360) 902-5292, e-mail yous235@lni.wa.gov.

June 21, 2005

Gary Weeks

Director

#### WSR 05-13-149

### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF LABOR AND INDUSTRIES

[Filed June 21, 2005, 1:29 p.m.]

Subject of Possible Rule Making: 2006 industrial insurance premium rates, chapter 296-17 WAC, General reporting rules, classifications, audit and record keeping, rates and rating system for Washington workers' compensation insurance.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 51.16.035, 51.04.020(1), and 51.18.010.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Labor and industries is required by law to establish and maintain workers' compensation classification plan and set premium rates that maintain actuarial solvency of the accident and medical aid funds. By law, the plan must be consistent with recognized principles of insurance and rates adjusted annually or as needed to ensure solvency of the insurance trust funds. Labor and industries is also required by law to offer retrospective rating plans to employers as a further incentive to encourage workplace safety and injury prevention.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agen-

cies: No other state, local, or federal agency regulates this subject.

**Process for Developing New Rule:** Premium rates for each classification are developed in part from the past loss experience of employers subject to the classification, changes in benefit levels mandated by law or court decisions, medical inflation, economic and business trends and financial markets. Labor and industries will work with the Workers' Compensation Advisory Committee and Retrospective Rating Advisory Committee as changes are developed. The public can participate in these discussions by attending the retrospective advisory committee meetings. Schedules of these meetings are available on the Insurance Services section of the labor and industries internet site. This site can be accessed at [lni.wa.gov/ClaimsInsurance/RatePremium/Reduce/Retro/AdvComm](http://lni.wa.gov/ClaimsInsurance/RatePremium/Reduce/Retro/AdvComm).

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication. Labor and industries is tentatively planning to hold formal public hearings between October 28 and November 8 in Spokane, Yakima, Mt. Vernon, Tukwila, Vancouver, and Tumwater. Public hearings are anticipated to begin at 1 p.m. and last until all public comments are received. Inquiries can be directed to Tammy Turner, Classification Services Section, P.O. Box 44148, Olympia, WA 98504-4148, phone (360) 902-4777, fax (360) 602-4729.

June 21, 2005

Gary Weeks

Director

#### WSR 05-13-159

##### PREPROPOSAL STATEMENT OF INQUIRY

##### DEPARTMENT OF FISH AND WILDLIFE

[Filed June 21, 2005, 3:30 p.m.]

**Subject of Possible Rule Making:** Recreational fishing rules.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 77.12.047.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** Recreational fishing seasons other than those set through the negotiated North of Falcon process are done on major year and minor year cycles. During this major year cycle, rule proposals will be solicited from the public, for rules for the May 2006 through April 2007 recreational year.

**Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies:** None.

**Process for Developing New Rule:** Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Lew Atkins, Fish Program Assistant Director, 600 Capitol Way North, Olympia, WA 98504-

1091, phone (360) 902-2651. Contact by September 14, 2005. Expected proposal filing September 15, 2005.

June 21, 2005

Evan Jacoby

Rules Coordinator

#### WSR 05-13-160

##### PREPROPOSAL STATEMENT OF INQUIRY

##### DEPARTMENT OF FISH AND WILDLIFE

[Filed June 21, 2005, 3:31 p.m.]

**Subject of Possible Rule Making:** Recreational licensing rules.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** RCW 77.12.047.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** The requirement to wear a recreational shellfish license on outer clothing is impractical for divers. A modification of this rule will be proposed for divers.

**Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies:** None.

**Process for Developing New Rule:** Agency study.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Ron McQueen, Business Program Assistant Director, 600 Capitol Way North, Olympia, WA 98504-1091, phone (360) 902-2204. Contact by August 4, 2005. Expected proposal filing on or after August 5, 2005.

June 21, 2005

Evan Jacoby

Rules Coordinator

#### WSR 05-13-167

##### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF AGRICULTURE

[Filed June 21, 2005, 3:53 p.m.]

**Subject of Possible Rule Making:** Chapter 16-752 WAC, Noxious weed control, the department is reviewing current rule language and is considering amending the current list of plants prohibited from transportation, purchase, offer for sale or distribution in Washington state.

**Statutes Authorizing the Agency to Adopt Rules on this Subject:** Chapters 17.10, 17.24, and 34.05 RCW.

**Reasons Why Rules on this Subject may be Needed and What They Might Accomplish:** The intrusion into this state of nonnative, invasive weed species continues to be a concern. The spread of these weeds presents a risk to the economic well-being of the agricultural, forest, horticultural, and floricultural industries, and the environmental quality and natural resources of the state. Initiating quarantines forbidding entry or distribution of weed species may be critical for their exclusion or control.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Department staff will discuss any proposed amendments with affected stakeholders. Affected stakeholders will also have an opportunity to submit written comments on the proposed rules during the public comment period and will be able to present oral testimony at the public hearing.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Mary A. Martin Toohey, Assistant Director, Plant Protection Division, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1907, fax (360) 902-2094; or Tom Wessels, Plant Services Program Manager, Plant Protection Division, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1984, fax (360) 902-2094.

June 21, 2005

Mary Toohey  
Assistant Director

#### WSR 05-13-173

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Economic Services Administration)**

[Filed June 21, 2005, 4:19 p.m.]

Subject of Possible Rule Making: WAC 388-478-0055  
How much do I get from my state supplemental payments (SSP)?

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.04.050, 74.04.057, 74.08.090.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: 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 (section 207, chapter 518, Laws of 2005).

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: DSHS welcomes the public to take part in developing the rules. Anyone interested should contact the staff person identified below. At a later date, DSHS will file a proposal with the Office of the Code Reviser with a notice of proposed rule making. A copy of the proposal will be sent to everyone on the mailing list and to anyone who requests a copy.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Lorri Gagnon, Program Manager, Division of Employment and Assistance Programs, P.O. Box

45470, Olympia, WA 98504-5470, phone (360) 725-4619, fax (360) 493-3493, e-mail [gagnola@dshs.wa.gov](mailto:gagnola@dshs.wa.gov).

June 21, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

#### WSR 05-13-174

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Aging and Disability Services Administration)  
(Division of Developmental Disabilities)**

[Filed June 21, 2005, 4:21 p.m.]

Subject of Possible Rule Making: The department is writing rules in chapter 388-825 WAC governing Division of Developmental Disabilities Services to implement ESSB 6090, Section 205 of the 2005-2007 conference budget.

Statutes Authorizing the Agency to Adopt Rules on this Subject: ESSB 6090, Section 205 (1)(e) 2005-2007 Conference Budget, RCW 71A.12.030.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: These rules are needed to implement Section 205 (1)(e) in the budget for the implementation of a flexible family support pilot project program for families who are providing care and support for family members with developmental disabilities for fiscal year 2006 and fiscal year 2007.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: DSHS welcomes the public to participate in the development of these rules. Contact the person listed below with questions or suggestions, or to be placed on the mailing list to receive further rule-making notices on these rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Shirley Everard, Family Support Program Manager, Department of Social and Health Services, Division of Developmental Disabilities, P.O. Box 45310, Olympia, WA 98504-45310 [98504-5310], phone (360) 725-3444, fax (360) 407-0955, e-mail [EveraSH@dshs.wa.gov](mailto:EveraSH@dshs.wa.gov).

June 21, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

#### WSR 05-13-175

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Economic Services Administration)**

[Filed June 21, 2005, 4:23 p.m.]

Subject of Possible Rule Making: The Division of Child Care and Early Learning is revising the Working Connec-

tions Child Care, WAC 388-290-0180, 388-290-0190, 388-290-0200, 388-290-0205, 388-290-0245, 388-290-0247, 388-290-0250, and other WACs related to reimbursements as appropriate.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.04.050, 74.12.340, and 74.13.085.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department is revising the rules to change reimbursements paid to licensed providers.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: All interested parties are invited to review and provide input on proposed draft language. Obtain draft material by contacting the identified representative.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Lisa Lind, Subsidy Program Manager, Division of Child Care and Early Learning, 1009 College Street S.E., Mailstop 45480, Lacey, WA 98503-45480 [98504-5480], phone (360) 725-4691, fax (360) 413-3482, e-mail lindlm@dshs.wa.gov.

June 21, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

#### WSR 05-13-176

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Economic Services Administration)**

[Filed June 21, 2005, 4:25 p.m.]

Subject of Possible Rule Making: The Division of Child Care and Early Learning is revising the Working Connections Child Care, WAC 388-290-0030, 388-290-0032, 388-290-0240, 388-290-0255, 388-290-0260, 388-290-0271, 388-290-0273, and other WACs related to exempt in-home relative providers. New WACs may be developed as part of this process.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 74.04.050, 74.12.340, and 74.13.085.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The department is revising the rules to comply with an Internal Revenue Service (IRS) directive regarding third party payment rules.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: All interested parties are invited to review and provide input on proposed draft language. Obtain draft material by contacting the identified representative.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Lisa Lind, Subsidy Program Manager,

Division of Child Care and Early Learning, 1009 College Street S.E., Mailstop 45480, Lacey, WA 98503-45480 [98504-5480], phone (360) 725-4691, fax (360) 413-3482, e-mail lindlm@dshs.wa.gov.

June 21, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

#### WSR 05-13-181

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF LICENSING**

[Filed June 22, 2005, 8:30 a.m.]

Subject of Possible Rule Making: Chapter 308-96A WAC, Vehicle licenses, to include rules associated with the special vehicle license plate rule, WAC 308-96A-560. Specific issues to be addressed are criteria for continued issuance of special license plates and repealing rules that are no longer needed.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 46.16.010, 46.16.313.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rule making may be required to inform the public about how to apply for special license plates; special tabs on personalized plates for individuals with disabilities; and about how to add personalized messages to special plates. These changes would inform customers on how to obtain and transfer these special plates and would include any special requirements identified in the law.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Negotiated rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Dale R. Brown, Management Analyst, Policy and Project Office, Mailstop 48001, P.O. Box 2956 [2957], Olympia, WA 98507-2957, or by phone (360) 902-4020, fax (360) 902-3827, TTY (360) 664-8885, e-mail DBROWN@dol.wa.gov.

June 21, 2005

Steve Boruchowitz, Manager  
Policy and Project Office

#### WSR 05-13-183

**PREPROPOSAL STATEMENT OF INQUIRY  
DEPARTMENT OF HEALTH**

[Filed June 22, 2005, 8:43 a.m.]

Subject of Possible Rule Making: WAC 246-12-040 (3)(b) How to return to active status after a credential has expired.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 43.70.280 and 18.135.030.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: RCW 18.135.040 requires that certification made by one health care facility or health care practitioner cannot be transferred to another health care facility or health care practitioner. This makes it impossible for an individual to maintain an active health care assistant (HCA) credential after leaving employment. This situation also imposes upon the individual a late renewal penalty fee (\$50.00), an expired certificate reissuance fee (\$50.00), and a renewal fee (\$60.00). The current rules create an unfair burden to HCAs and the facilities they work for. A rule amendment is needed to remove the burden and barrier created by charging these various fees for HCAs who leave employment at a facility and then later return for reemployment.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: The agency is amending these rules as the result of a petition the agency received. As the agency develops the rule, the program will seek input from interested parties through public workshops.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Tracy Hansen, Program Manager, P.O. Box 7869, Olympia, WA 98504-7869, office phone (360) 236-4915, fax (360) 236-4909, tracy.hansen@doh.wa.gov.

June 21, 2005  
M. C. Selecky  
Secretary

#### WSR 05-13-184

#### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF HEALTH

(Board of Hearing and Speech)

[Filed June 22, 2005, 8:44 a.m.]

Subject of Possible Rule Making: WAC 246-828-025 Definitions, 246-828-045 Interim permit, and 246-828-075 Student supervisors.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.35.040(2), 18.35.161.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: The Board of Hearing and Speech is considering amending these rules to provide clarification and direction for hearing instrument fitter and dispensers, audiology and speech-language pathology students, interim permit holders, and licensees regarding supervision requirements for students and individuals who are completing the postgraduate work experience.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: No other agencies regulate this subject.

Process for Developing New Rule: Collaborative rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Karen Kelley, Program Manager, Board of Hearing and Speech, P.O. Box 47869, Olympia,

WA 98504-7869, (360) 236-4856, or (360) 236-4918 fax, karen.kelley@doh.wa.gov. Meeting Dates: August 5, 2005, in Ocean Shores and November 4, 2005, in Kent.

May 12, 2005

Bob Nicoloff

Executive Director

#### WSR 05-13-185

#### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF HEALTH

(Dispensing Opticians)

[Filed June 22, 2005, 8:45 a.m.]

Subject of Possible Rule Making: WAC 246-824-075 Continuing education requirements for dispensing opticians. Consider amending WAC 246-824-075 by creating categories of approved continuing education and setting a maximum allowable number of hours within those categories. It is not the intention of this review to increase the number of hours that a practitioner must complete.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.34.120.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Dispensing opticians may now obtain all continuing education through independent study such as a correspondence course or internet study. While independent study is viewed as a valid method for obtaining required hours, a well-rounded continuing education program should include opportunities for interaction and exchanges with course presenters and peers. The purpose of the review is to consider whether there is value in providing specific categories of continuing education and limiting the number of credits that can be obtained in any one category. Providing categories and limiting the number of hours within categories will cause licensees to broaden their continuing educational activities to include more interactive exchanges.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: None.

Process for Developing New Rule: Collaborative rule making.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Judy Haenke, P.O. Box 47870, Olympia, WA 98504-7870, (360) 236-4947, fax (360) 586-4359, judy.haenke@doh.wa.gov.

June 21, 2005

M. C. Selecky

Secretary

#### WSR 05-13-191

#### PREPROPOSAL STATEMENT OF INQUIRY DEPARTMENT OF AGRICULTURE

[Filed June 22, 2005, 10:18 a.m.]

Subject of Possible Rule Making: WAC 16-157-220.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 15.86.070.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Applications for organic certification flood the organic food program office in March of every year. The program is proposing to move the application deadline to February 1 to enable more time for processing applications prior to the growing season.

The organic producer fee schedule maximum fee is \$7,000 for \$7,000,000 in organic sales. The costs of providing inspections and certification to these operations exceeds the revenue received. The program is proposing to eliminate the caps on fees and establish a percentage fee for organic sales over \$7,000,000.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The Washington State Department of Agriculture (WSDA) organic certification program is accredited by the United States Department of Agriculture (USDA) national organic program. The subject of the rule will not affect the status of WSDA's accreditation. WSDA will provide the amended rules to USDA when the rule-making process is finalized.

Process for Developing New Rule: The agency is developing the proposal in coordination with the WSDA Organic Advisory Board. The Organic Advisory Board meetings are open to the public. Meeting agendas are available on the WSDA organic food program web pages at [agr.wa.gov/food-animal/organic](http://agr.wa.gov/food-animal/organic).

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Miles McEvoy, Organic Program Manager, Washington State Department of Agriculture, P.O. Box 42560, Olympia, WA 98504-2560, [mmcevoy@agr.wa.gov](mailto:mmcevoy@agr.wa.gov), (360) 902-1924, fax (360) 902-2087.

June 22, 2005

Kathy Kravit-Smith  
Assistant Director





**WSR 05-13-026  
PROPOSED RULES  
DEPARTMENT OF LICENSING**

[Filed June 3, 2005, 3:07 p.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 05-09-017.

Title of Rule and Other Identifying Information: WAC 308-13-150 Landscape architect fees.

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard, Olympia, WA 98502, on July 26, 2005, at 10:00 a.m.

Date of Intended Adoption: July 26, 2005.

Submit Written Comments to: Joan Robinson, P.O. Box 9045, Olympia, WA, e-mail jorobinson@dol.wa.gov, fax (360) 664-1495, by July 15, 2005.

Assistance for Persons with Disabilities: Contact Joan Robinson by July 15, 2005, TTY (360) 664-8885 or (360) 664-1387.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule is needed to increase the charge that candidates pay for the landscape architect registration examination (LARE) and the department collects on the vendor's behalf.

Statutory Authority for Adoption: RCW 18.96.080 Applications—Contents—Fees.

Statute Being Implemented: RCW 43.24.086 Fee policy for professions, occupations and businesses; requires fees to be at a sufficient level to defray the costs of administering the program.

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

Name of Proponent: Board of Registration for Landscape Architects, Department of Licensing, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joan Robinson, Olympia, Washington, (360) 664-1387; and Enforcement: Joseph Vincent Jr., Olympia, Washington, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This increase in charges is to individual applicants not business enterprises. The vendor will provide the tests only at these prices. The costs are not negotiable.

Without these increases in examination charges the refund account would be a deficit with the first examination session.

A cost-benefit analysis is not required under RCW 34.05.328. This section of regulations is not a "significant legislative rule" as defined by RCW 34.05.328 (5)(C)(iii) and is exempt under the provisions of RCW 34.05.328 (5)(b)(vi).

June 3, 2005

Joseph Vincent Jr.  
Administrator

**AMENDATORY SECTION** (Amending WSR 05-04-050, filed 1/28/05, effective 2/28/05)

**WAC 308-13-150 Landscape architect fees and charges.** The following fees will be collected from the candidates:

Title of Fee	Fee
Application fee	\$50.00
Reexamination administration fee	50.00
Renewal (2 years)	200.00
Late renewal penalty	100.00
Duplicate license	25.00
Initial registration (2 years)	200.00
Reciprocity application fee	200.00
Replacement wall certificate	20.00

The following charges assessed by the Council of Landscape Architectural Registration Boards (CLARB), collected from candidates for the costs of the examinations shall be paid to CLARB.

Examination and Sections	Charges
Entire examination	\$470.00
Section C:	
Planning and site design	((235.00)) <u>245.00</u>
Section E:	
Grading, drainage and storm water management	((235.00)) <u>245.00</u>

The following sections of the examination will only be administered by CLARB:

- Section A:  
Legal and administrative aspects of practice
- Section B:  
Analytical aspects of practice
- Section D:  
Structural considerations and materials and methods of construction

**WSR 05-13-041  
PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Aging and Disability Services Administration)  
[Filed June 7, 2005, 4:17 p.m.]**

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 03-20-103.

Title of Rule and Other Identifying Information: Chapter 388-825 WAC, Division of Developmental Disabilities Service rules, proposing new sections WAC 388-825-125 through 388-825-165 and 388-825-300 through 388-825-400; amending WAC 388-825-120; and repealing WAC 388-825-170, 388-825-180, 388-825-190, 388-825-260, 388-825-262, 388-825-264, 388-825-266, 388-825-268, 388-825-270,

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388-825-272, 388-825-276, 388-825-278, 388-825-280, 388-825-282, and 388-825-284.

Hearing Location(s): Blake Office Park East (behind Goodyear Courtesy Tire), Rose Room, 4500 10th Avenue S.E., Lacey, WA, on July 26, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 27, 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., July 26, 2005.

Assistance for Persons with Disabilities: Contact Fred Swenson, DSHS Rules Consultant, by July 22, 2005, TTY (360) 664-6178 or (360) 664-6097.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Division of Developmental Disabilities has received approval from the federal Centers for Medicare and Medicaid Services (CMS) to implement four home and community based service (HCBS) waivers, which replace the current community alternatives program (CAP) waiver.

The proposed rules establish provider qualifications and clarify client appeal rights.

Reasons Supporting Proposal: See above.

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

Statute Being Implemented: Chapter 71A.12 RCW.

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: Steve Brink, P.O. Box 5310, Olympia, WA 98507-5310, (360) 725-3416; Implementation: Shannon Manion, P.O. Box 5310, Olympia, WA 98507-5310, (360) 725-3445; and Enforcement: Sue Poltl, P.O. Box 5310, Olympia, WA 98507-5310, (360) 725-3454.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DDD has analyzed these proposed rule amendments and concludes that costs to small businesses would be minor. The preparation of a comprehensive SBEIS is not required.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Steve Brink, P.O. Box 5310, Olympia, WA 98507, phone (360) 725-3416, fax (360) 407-0955, e-mail brinksc@dshs.wa.gov.

June 1, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 04-02-014, filed 12/29/03, effective 1/29/04)

**WAC 388-825-120 ((Administrative proceeding))**  
**When can I appeal department decisions through an administrative hearing process?** (1) Administrative hearings are governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 71A.10.050, the rules in this chapter and by chapter 388-02 WAC. If any provision in this

chapter conflicts with chapter 388-02 WAC, the provision in this chapter shall prevail.

(2) A client, former client, or applicant acting on the applicant's own behalf or through an authorized representative has the right to ~~((an adjudicative proceeding to contest the following department actions:~~

~~(a)) an administrative hearing.~~

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

(a) Authorization, denial, reduction, or termination of ((eligibility set forth in WAC 388-825-030 and 388-825-035)) services;

(b) ((Development or modification of the individual service plan set forth in WAC 388-825-050;

~~(e)) Authorization, denial, ((reduction,)) or termination of ((services or funds paid directly to the client set forth in WAC 388-825-055 or payment of SSP set forth in chapter 388-827 WAC)) eligibility;~~

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

(d) Admission or readmission to, or discharge from, a residential habilitation center;

((e)) (e) Refusal to abide by your request not to send notices to any other person;

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

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

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

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

(j) A claim the client, former client, or applicant owes an overpayment debt((;

~~(f) A decision of the secretary under RCW 71A.10.060 or 71A.10.070;~~

~~(g) A decision to change a client's placement from one category of residential services to a different category of residential services.~~

~~(2) Adjudicative proceedings are governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 71A.10.050, the rules in this chapter, and by chapter 388-02 WAC. If any provision in this chapter conflicts with chapter 388-02 WAC, the provision in this chapter shall govern.~~

~~(3) The applicant's application for an adjudicative proceeding shall be in writing and filed with the DSHS office of appeals within twenty-eight days of receipt of the decision the appellant wishes to contest.~~

~~(4) The department shall not implement the following actions while an adjudicative proceeding is pending:~~

~~(a) Termination of eligibility;~~

~~(b) Reduction or termination of service, except when the action to reduce or terminate the service is based on the availability of funding and/or service; or~~

~~(c) Removal or transfer of a client from a service, except when a condition in subsection (5)(f) of this section is present.~~

~~(5) The department shall implement the following actions while an adjudicative proceeding is pending:~~

- ~~(a) Denial of eligibility;~~
- ~~(b) Development or modification of an individual service plan;~~
- ~~(c) Denial of service;~~
- ~~(d) Reduction or termination of service when the action to reduce or terminate the service is based on the availability of funding or service;~~
- ~~(e) After notification of an administrative law judge's (or review judge) ruling that the appellant has caused an unreasonable delay in the proceedings; or~~
- ~~(f) Removal or transfer of a client from a service when:~~
  - ~~(i) An immediate threat to the client's life or health is present;~~
  - ~~(ii) Service termination or transfer for a specific group of clients in order to meet the intent of and comply with sections 205 and 207, chapter 371, Laws of 2002;~~
  - ~~(iii) The client's service provider is no longer able to provide services due to:~~
    - ~~(A) Termination of the provider's contract;~~
    - ~~(B) Decertification of the provider;~~
    - ~~(C) Nonrenewal of provider's contract;~~
    - ~~(D) Revocation of provider's license; or~~
    - ~~(E) Emergency license suspension.~~
  - ~~(iv) The client, the parent when the client is a minor, or the guardian when the client is an adult, approves the decision.~~

~~(6) When the appellant files an application to contest a decision to return a resident of a state residential school to the community, the procedures specified in RCW 71A.10.050(2) shall govern the proceeding. These procedures include:~~

- ~~(a) A placement decision shall not be implemented during any period during which an appeal can be taken or while an appeal is pending and undecided unless the:~~
  - ~~(i) Client's or the client's representative gives written consent; or~~
  - ~~(ii) Administrative law judge (or review judge) after notice to the parties rules the appellant has caused an unreasonable delay in the proceedings.~~
- ~~(b) The burden of proof is on the department; and~~
- ~~(c) The burden of proof is whether the specific placement proposed by the department is in the best interests of the resident.~~

~~(7) The administrative law judge shall issue an initial or final order within sixty days of the department's receipt of the application for an adjudicative proceeding. When a party files a petition for administrative review, allowed under WAC 388-02-0215 (4)(w)(x) and/or (y), the review order shall be made within sixty days of the department's receipt of the petition. The decision rendering time is extended by as many days as the proceeding is continued on motion by, or with the assent of, the appellant).~~

#### NEW SECTION

**WAC 388-825-125 How do I request an administrative hearing?** (1) Your notice of the department decision will include instructions on how to file an administrative hearing,

where to send it, and the length of time you have to file for a hearing.

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

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

#### NEW SECTION

**WAC 388-825-130 How long do I have to file a request for an administrative hearing?** (1) You have to request an administrative hearing within ninety days of receipt of the notification of the decision you are disputing.

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

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

#### NEW SECTION

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

(2) An oral request for an administrative hearing is complete if it contains enough information to identify the person making the request, the DDD action, and the case involved in the hearing request.

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

#### NEW SECTION

**WAC 388-825-140 Who else can help me appeal a department decision?** Department staff may assist you in requesting an administrative hearing. However, you can authorize anyone except an employee of the department to represent you at an administrative hearing.

#### NEW SECTION

**WAC 388-825-145 Will my benefits continue if I request an administrative hearing?** (1) If you request an administrative hearing within the ten-day notice period, as described in chapter 388-458 WAC, unless one or more of the conditions in WAC 388-825-150 applies, the department will take no action until there is a final decision on your appeal of the department's decision to:

- (a) Terminate your eligibility;
- (b) Reduce or terminate your services; or
- (c) Reduce or terminate the payment of SSP set forth in chapter 388-827 WAC.

(2) The department will take no action until there is a final decision on your appeal of the department's decision to

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remove or transfer you to another residential service unless one or more of the conditions in WAC 388-825-150 applies.

(3) The department will take no action to terminate your provider of choice unless one or more of the circumstances described in WAC 388-825-150 applies.

(4) After the administrative hearing, you have to pay back continued benefits you get, as described in chapter 388-410 WAC, if the administrative hearing decision is in favor of the department.

**NEW SECTION**

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

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

(2) Your DDD eligibility has expired.

(3) There is no longer funding for the service.

(4) The service no longer exists in rule or statute.

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

(6) You are in imminent jeopardy.

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

(a) A lack of a contract;

(b) Decertification;

(c) Revocation or suspension of a license; or

(d) Lack of required registration, certification, or licensure.

(8) The parent of a person under the age of eighteen or the legal guardian approves the department's decision.

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

(10) You:

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

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

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

**NEW SECTION**

**WAC 388-825-155** **What are my appeal rights if I am appealing a decision to move me from a state residential habilitation center to the community?** The procedures in RCW 71A.10.050(2) govern the proceeding.

(1) The department will take no action until there is a final decision on your appeal to move you from a state residential habilitation center to the community unless you or your legal representative consent or the administrative law judge or review judge rules that you have caused an unreasonable delay in the proceedings.

(2) The burden of proof is on the department.

(3) The burden of proof is whether the proposed placement is in your best interest.

**NEW SECTION**

**WAC 388-825-160** **When will a decision on my appeal be made?** The administrative law judge shall issue a hearing decision within ninety calendar days after the record is closed, in accordance with WAC 388-02-0515.

**NEW SECTION**

**WAC 388-825-165** **Can I appeal the initial order of the administrative law judge?** You may file a petition for administrative review, pursuant to chapter 388-02 WAC.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 388-825-170 Community alternatives program (CAP).

WAC 388-825-180 Eligible persons.

WAC 388-825-190 Community alternatives program (CAP)—Services.

**INDIVIDUAL PROVIDER AND AGENCY PROVIDER QUALIFICATIONS**

**NEW SECTION**

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

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

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

**NEW SECTION**

**WAC 388-825-305** **What service providers are governed by the qualifications in these rules?** These rules govern individuals and agencies contracted with to provide:

(1) Respite care services;

(2) Companion home services;

(3) Personal care services through the Medicaid Personal Care program or DDD HCBS Basic, Basic Plus, or CORE waivers;

(4) Alternative living services; or

(5) Attendant care services.

**NEW SECTION**

**WAC 388-825-310** **What are the qualifications for providers?** (1) Individuals and agencies providing Medicaid personal care (chapter 388-71 and 388-106 WAC) and DDD HCBS waiver personal care (chapter 388-845 WAC) must

meet the qualifications and training requirements in WAC 388-71-0500 through 388-71-05909.

(2) Individuals and agencies providing nonwaiver DDD home and community based services (HCBS) in the client's residence or the provider's residence or other setting must meet the requirements in WAC 388-825-300 through 388-825-400.

(3) Individuals and agencies providing HCBS waiver services must meet the provider qualifications in chapter 388-845 WAC for the specific service.

#### NEW SECTION

**WAC 388-825-315 What is your responsibility when you hire an individual respite care, attendant care or personal care provider? You or your legal representative:**

(1) Have the primary responsibility for locating, screening, hiring, supervising, and terminating an individual respite care, attendant care or personal care provider;

(2) Establish an employer/employee relationship with the individual provider; and

(3) May receive assistance from the social worker/case manager or other resources in this process.

#### NEW SECTION

**WAC 388-825-316 How do I choose a companion home or alternative living provider? You can choose a qualified companion home or alternative living provider contracted with DDD or refer your choice of provider to DDD for contracting if your provider does not have a contract with DDD.**

#### NEW SECTION

**WAC 388-825-320 How does a person become an individual provider, companion home provider or an alternative living provider? In order to become an individual provider, companion home provider or an alternative living provider, a person must:**

(1) Be eighteen years of age or older.

(2) Provide the social worker/case manager/designee with:

(a) Picture identification; and

(b) A Social Security card.

(3) Complete and submit to the social worker/case manager/designee the department's criminal conviction background inquiry application, unless the provider is also the parent of the adult DDD client and exempted, per chapter 74.15 RCW.

(a) Preliminary results may require a thumbprint for identification purposes.

(b) An FBI fingerprint-based background check is required if the person has lived in the state of Washington less than three years.

(4) Provide references as requested.

(5) Complete orientation, if contracting as an individual provider.

(6) Sign a service provider contract to provide services to a DDD client.

(7) Meet additional requirements in WAC 388-825-355.

#### NEW SECTION

**WAC 388-825-325 What are required skills and abilities for individuals and agencies contracted to provide respite care, companion home services, personal care services through the Medicaid personal care program or the DDD HCBS Basic, Basic Plus or CORE waivers, alternative living services or attendant care services? (1) As a provider of respite care, companion home services, personal care services through the Medicaid personal care program or the DDD HCBS Basic, Basic Plus, or CORE waivers, alternative living services or attendant care services, you must be able to:**

(a) Adequately maintain records of services performed and payments received;

(b) Read and understand the person's service plan. Translation services may be used if needed;

(c) Be kind and caring to the DSHS client for whom services are authorized;

(d) Identify problem situations and take the necessary action;

(e) Respond to emergencies without direct supervision;

(f) Understand the way your employer wants you to do things and carry out instructions;

(g) Work independently;

(h) Be dependable and responsible;

(i) Know when and how to contact the client's representative and the client's case resource manager;

(j) Participate in any quality assurance reviews required by DSHS;

(2) If you are working with an adult client of DSHS as a provider of alternative living, attendant care or companion home services, you must also:

(a) Be knowledgeable about the person's preferences regarding the care provided;

(b) Know the resources in the community the person prefers to use and enable the person to use them;

(c) Know who the person's friends are and enable the person to see those friends; and

(d) Enable the person to keep in touch with his/her family as preferred by the person.

#### NEW SECTION

**WAC 388-825-330 What is required for agencies wanting to provide care in the home of a person with developmental disabilities? (1) Agencies providing personal care services must be licensed as a home care agency or a home health agency through the department of health.**

(2) If a residential agency certified per chapter 388-820 WAC wishes to provide Medicaid personal care or respite care in the client's home, the agency must have home care agency certification or a home health license.

#### NEW SECTION

**WAC 388-825-335 Is a background check required of a home care agency provider? In order to be a home care agency provider, a person must complete the department's criminal conviction background inquiry application, which is submitted by the agency to the department. This includes an**

FBI fingerprint-based background check if the home care agency provider has lived in the state of Washington less than three years.

#### NEW SECTION

**WAC 388-835-340 What is required for a provider to provide respite or residential service in their home?** Unless you are related to the client, or the client lives in a companion home, respite or residential services must take place in a home licensed by DSHS. Services are limited to those age-specific services contained in your license.

**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.

#### NEW SECTION

**WAC 388-825-345 What "related" providers are exempt from licensing?** (1) Relatives of a specified degree are exempt from the licensing requirement and may provide out-of-home respite in their home.

(2) Relatives of specified degree include parents, grandparents, brother, sister, step-parent, step-brother, step-sister, uncle, aunt, first cousin, niece or nephew.

#### NEW SECTION

**WAC 388-825-355 Are there any educational requirements for individuals providing respite care, attendant care, personal care services, companion home services, or alternative living services?** (1) If you are an individual providing personal care services for adults, you must meet the training requirements in WAC 388-71-05665 through 388-71-05909.

(2) If you are an individual contracted to provide companion homes services or alternative living services, you must:

- (a) Have a high school diploma or GED;
- (b) Successfully complete DDD specialty training within the first six months of beginning service; and
- (c) Complete ten hours of continuing education related to the job responsibilities each subsequent calendar year.

(3) If you provide personal care for children, or provide respite care, there is no required training but DDD retains the authority to require training of any provider.

#### NEW SECTION

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

(1) If an individual wishes to "quit" or terminate employment as a provider, the individual must give at least two weeks written notice to his/her employer, their representative (if applicable) and the DDD case manager.

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

#### NEW SECTION

**WAC 388-825-365 Are providers expected to report abuse, neglect, exploitation or financial exploitation?** Providers are expected to report any abuse or suspected abuse immediately to child protective services, adult protective services or local law enforcement and make a follow-up call to the person's case manager.

#### NEW SECTION

**WAC 388-825-370 What are the responsibilities of an individual or home care agency when employed to provide respite care, attendant care, personal care, companion home services or alternative living services to a client?** An individual or home care agency employed to provide respite care, attendant care, personal care, companion home services, or alternative living services must:

(1) Understand the client's individual service plan or plan of care that is signed by the client or legal representative and social worker/case manager, and translated or interpreted, as necessary, for the client and the provider;

(2) Provide the services as outlined on the client's service plan, within the scope of practice in WAC 388-71-0215 and WAC 388-71-0230;

(3) Accommodate client's individual preferences and differences in providing care, within the scope of the service plan;

(4) Contact the client's representative and case manager when there are changes which affect the personal care and other tasks listed on the service plan;

(5) Observe the client for change(s) in health, take appropriate action, and respond to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately if the client dies;

(8) Notify the department immediately when unable to staff/serve the client; and

(9) Notify the department when the individual or home care agency will no longer provide services. Notification to the client/legal guardian must:

- (a) Give at least two weeks' notice, and
- (b) Be in writing.

(10) Complete and keep accurate time sheets that are accessible to the social worker/case manager; and

(11) Comply with all applicable laws, regulations and contract requirements.

#### NEW SECTION

**WAC 388-825-375 When will the department deny payment for services of an individual or home care agency providing respite care, attendant care, personal care, companion home services or alternative living services?** (1) The department will deny payment for the services of an individual or home care agency providing respite care, attendant care, personal care, companion home services or alternative living services who:

(a) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a Chore ser-

vices client. Note: For Chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0030;

(b) Is providing services under this chapter to their natural/step/adoptive minor client aged seventeen or younger;

(c) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

(d) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(e) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

(f) Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05909; or

(g) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

(2) The department will deny payment for the services of an individual or a home care agency providing companion home services or alternative living services to their natural/step/adoptive adult child.

(3) The department will deny payment for services of a legal representative appointed by the courts providing companion home services to the client for whom they are the legal representative.

(4) In addition, the department may deny payment to or terminate the contract of an individual provider as provided under WAC 388-825-380, 388-825-381, 388-825-385 and 388-825-390.

#### NEW SECTION

**WAC 388-825-380** When can the department reject the client's choice of an individual respite care, attendant care or personal care provider? The department may reject a client's request to have a family member or other person serve as his or her individual respite care, attendant care or personal care provider if the case manager has a reasonable, good faith belief that the person will be unable to appropriately meet the client's needs. Examples of circumstances indicating an inability to meet the client's needs could include, without limitation:

(1) Evidence of alcohol or drug abuse;

(2) A reported history of domestic violence, no-contact orders, or criminal conduct (whether or not the conduct is disqualifying under RCW 43.43.830 and 43.43.842);

(3) A report from the client's health care provider or other knowledgeable person that the requested provider lacks the ability or willingness to provide adequate care;

(4) Other employment or responsibilities that prevent or interfere with the provision of required services;

(5) Excessive commuting distance that would make it impractical to provide services as they are needed and outlined in the client's service plan.

#### NEW SECTION

**WAC 388-825-381** When can the department reject the client's choice of a companion home services or alternative living services provider? The department can reject the client's choice of a companion home services or alternative living services provider for any reason listed in WAC 388-825-380 or when:

(1) The department has assessed the client to need more than forty hours of alternative living services, thereby requiring services be provided by a DDD certified supportive living agency per chapter 388-820 WAC; and/or

(2) The client's choice of companion home provider is the client's parent or court appointed legal representative unless the provider was contracted and paid to provide companion home services prior to February 2005.

#### NEW SECTION

**WAC 388-825-385** When can the department terminate or summarily suspend an individual respite care, attendant care, personal care, companion home services or alternative living services provider's contract? The department may take action to terminate an individual respite care, attendant care, personal care, companion home services or alternative living services provider's contract if the provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being. The department may summarily or immediately suspend the contract pending a hearing based on a reasonable, good faith belief that the client's health, safety, or well-being is in imminent jeopardy. Examples of circumstances indicating jeopardy to the client could include, without limitation:

(1) Domestic violence or abuse, neglect, abandonment, or exploitation of a minor or vulnerable adult;

(2) Using or being under the influence of alcohol or illegal drugs during working hours;

(3) Other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm;

(4) A report from the client's health care provider that the client's health is negatively affected by inadequate care;

(5) A complaint from the client or client's representative that the client is not receiving adequate care;

(6) The absence of essential interventions identified in the service plan, such as medications or medical supplies; and/or

(7) Failure to respond appropriately to emergencies.

#### NEW SECTION

**WAC 388-825-390** When can the department otherwise terminate an individual's contract to provide respite care, attendant care, personal care, companion home services or alternative living services? The department may otherwise terminate the individual's contract to provide respite care, attendant care, personal care, companion home services or alternative living services for default or convenience in accordance with the terms of the contract and to the extent that those terms are not inconsistent with these rules.

NEW SECTION

**WAC 388-825-395** What are the client's rights if the department denies, terminates, or summarily suspends an individual's contract to provide respite care, attendant care, personal care, companion home services or alternative living services? If the department denies, terminates, or summarily (immediately) suspends the individual's contract to provide respite care, attendant care, personal care, companion home services or alternative living services, the client has the right to:

- (1) A fair hearing to appeal the decision, per chapter 388-02 WAC and WAC 388-825-120; and
- (2) Receive services from another currently contracted individual or home care agency, or other options the client is eligible for, if a contract is summarily suspended.
- (3) The hearing rights afforded under this section are those of the client, not the individual provider.

NEW SECTION

**WAC 388-825-396** Does the provider of respite care, attendant care, personal care, companion home services or alternative living services have a right to a fair hearing? (1) The hearing rights afforded under WAC 388-825-395(1) are those of the client.

(2) The provider of respite care, attendant care, personal care, companion home services or alternative living services does not have a right to a fair hearing.

NEW SECTION

**WAC 388-825-400** Self-directed care—Who must direct self-directed care? Self-directed care under chapter 74.39 RCW must be directed by an adult client for whom the health-related tasks are provided. The adult client is responsible to train the individual provider in the health-related tasks which the client self-directs.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-825-260 What are qualifications for individual service providers?
- WAC 388-825-262 What services do individuals provide for persons with developmental disabilities?
- WAC 388-825-264 If I want to provide services to persons with developmental disabilities, what do I do?
- WAC 388-825-266 If I want to provide respite care in my home, what is required?
- WAC 388-825-268 What is required for agencies wanting to provide care in the home of a person with developmental disabilities?

- WAC 388-825-270 Are there exceptions to the licensing requirement?
- WAC 388-825-272 What are the minimum requirements to become an individual provider?
- WAC 388-825-276 What are required skills and abilities for this job?
- WAC 388-825-278 Are there any educational requirements for individual providers?
- WAC 388-825-280 What are the requirements for an individual supportive living service (also known as a companion home) contract?
- WAC 388-825-282 What is "abandonment of a vulnerable adult"?
- WAC 388-825-284 Are providers expected to report abuse?

**WSR 05-13-051  
WITHDRAWAL OF PROPOSED RULES  
DEPARTMENT OF HEALTH**

[Filed June 9, 2005, 1:32 p.m.]

The department is withdrawing the CR-102, notice of proposed rule making, for WAC 246-310-261 and 246-310-262, which was filed November 22, 2004, and published as WSR 04-24-017. WSR 04-24-017 was a continuance for WSR 04-11-099, which was filed May 19, 2004. The department continued the proposal to review the large volume of public comment, new literature being published and to await the new American College on Cardiology guidelines.

The original proposal was intended to reduce many regulatory requirements prohibiting the establishment of heart surgery and interventional cardiology programs and to increase access to those services while maintaining high quality programs. Since the filing of WSR 04-24-017, the American College on Cardiology has not published new guidelines and the science regarding interventional cardiology is still evolving. Additionally, during the 2005 legislative session, the legislature passed E2SHB 1688, which requires a study of the certificate of need approach used in Washington. While the study will not specifically review these proposed rules, the outcome of the study will likely impact the future of Washington's certificate of need program. For these reasons, the department is withdrawing the CR-102 for WAC 246-310-261 and 246-310-262.

Individuals seeking information on this rule should contact Gary Bennett, Director, Facilities and Services Licensing, at (360) 236-2900.

M. C. Selecky  
Secretary

PROPOSED



WSR 05-13-070

PROPOSED RULES

**UTILITIES AND TRANSPORTATION  
COMMISSION**

[Docket No. P-041344—Filed June 13, 2005, 11:10 a.m.]

Continuance of WSR 05-09-122.

Preproposal statement of inquiry was filed as WSR 04-17-056.

**Title of Rule and Other Identifying Information:** This rule-making proposal would amend WAC 480-75-240 Annual pipeline safety fee methodology and 480-93-240 Annual pipeline safety fee methodology, to change the current pipeline safety fee methodology for allocating pipeline safety program costs to regulated pipeline companies.

**Hearing Location(s):** Commission Hearing Room 206, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, on July 29, 2005, at 9:30 a.m.

Date of Intended Adoption: July 29, 2005.

**Submit Written Comments to:** Carole J. Washburn, Executive Secretary, P.O. Box 47250, Olympia, WA 98504, e-mail records@wutc.wa.gov, fax (360) 586-1150, by July 15, 2005. Please include Docket No. P-041344 in your communication.

**Assistance for Persons with Disabilities:** Contact Mary De Young by Wednesday, July 27, 2005, TTY (360) 586-8203 or (360) 664-1133.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** The proposal changes the method by which pipeline safety fees are allocated to regulated pipeline companies. The effect will be that some companies may pay more than under the current rule and others may pay less. The rule does not change the overall amount of fee collection.

The purpose of the continuance of WSR 05-09-122 is to provide notice of a change in the date of the hearing to receive public comment regarding adoption of the rule proposal in this document. The date of the hearing as been changed from June 15, 2005, at 9:30 a.m. to July 9, 2005, at 9:30 a.m.

**Statutory Authority for Adoption:** RCW 80.01.040, 80.04.160, 81.04.160, 80.24.060, and 81.24.090.

**Statute Being Implemented:** RCW 80.24.060 and 81.24.090.

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:** Tim Sweeney, Team Leader, 1300 Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1118; **Implementation and Enforcement:** Carole J. Washburn, Executive Secretary, 1300 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.

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

June 13, 2005

Carole J. Washburn  
Executive Secretary

WSR 05-13-084

PROPOSED RULES

**BELLEVUE COMMUNITY COLLEGE**

[Filed June 14, 2005, 12:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-09-044.

**Title of Rule and Other Identifying Information:** Student responsibilities, amends existing WAC 132H-120-200; clarifying the section on controlled substances, and adding a section on stalking.

**Hearing Location(s):** Bellevue Community College, Room B-125M, Dean of Student Services Office, 3000 Landerholm Circle S.E., Bellevue, WA, on Wednesday July 27, 2005, at 1:00 p.m.

Date of Intended Adoption: August 3, 2005.

**Submit Written Comments to:** Tika Esler, Dean of Student Services, Bellevue Community College, 3000 Landerholm Circle S.E., Bellevue, WA 98007, e-mail tesler@bcc.ctc.edu, fax (425) 564-4065, by July 27, 2005.

**Assistance for Persons with Disabilities:** Contact Susan Gjomesli by July 21, 2005, TTY (425) 564-4110 or (425) 564-2498.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** This proposal updates the student responsibilities section of Bellevue Community College's student code to better clarify the section on controlled substances and adds a section on stalking.

**Statutory Authority for Adoption:** RCW 28B.50.140.

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

**Name of Proponent:** Bellevue Community College District VII, governmental.

**Name of Agency Personnel Responsible for Drafting:** Debra Ross, Executive Assistant to the President, Bellevue Community College, A-201, (425) 564-2302; **Implementation:** Tika Esler, Dean of Student Services, Bellevue Community College, B-125, (425) 564-2205; and **Enforcement:** Joe Fithian, Director of Public Safety, Bellevue Community College, K-100, (425) 564-2250.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This policy does not impact small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. There are no costs associated with implementation of this rule.

June 13, 2005

Debra P. Ross  
Rules Coordinator

PROPOSED

**AMENDATORY SECTION** (Amending WSR 03-14-015, filed 6/19/03, effective 7/20/03)

**WAC 132H-120-200 Student responsibilities.** Any student shall be subject to disciplinary action as provided for in this chapter, who either as a principal actor, aide, abettor or accomplice as defined in RCW 9A.08.020:

(1) Materially and substantially interferes with the personal rights or privileges of others or the educational process of the college;

(2) Engages in unlawful conduct;

(3) Violates any provisions of this chapter; or

(4) Commits any prohibited act, including but not limited to the following:

(a) Alcoholic beverages. Being demonstrably under the influence of any form of alcoholic beverage. Possessing or consuming any form of liquor or alcoholic beverage except as a participant of legal age in a student program, banquet or educational program which has the special written authorization of the college president or his/her designee.

(b) Controlled substances. Using, possessing, delivering, selling or being under the influence of ~~((any narcotic drug))~~ legend drugs, including anabolic steroids, androgens, or human growth hormones, as defined by RCW 69.50.101 or any other controlled substance as defined in RCW 69.50.101 as now law or hereafter amended, except ((when the use or possession of a drug is specifically prescribed as medication by an authorized medical doctor or dentist)) upon valid prescription or order of a practitioner is subject to additional sanctions, including disqualification from participation in college-sponsored athletic events. For the purpose of this regulation, "sale" shall include the statutory meaning defined in RCW 69.04.005 as now law or hereafter amended.

(c) Illegal entry. Unauthorized entry into or onto any locked or otherwise closed college property or facility in any manner, at any time, without permission of the college employee or agent in charge thereof.

(d) Forgery or alteration of records. Forgery, as defined in RCW 9A.60.010 - 9A.60.020 as now law or hereafter amended or any district record of instrument or tendering any forged record of instrument to any employee or agent of the district acting in his/her official capacity as such.

(e) Illegal assembly. Participation in an assembly which materially and substantially interferes with vehicular or pedestrian traffic, classes, hearings, meetings, the educational and administrative functions of the college, or the private rights and privileges of others.

(f) Malicious mischief. Intentional or negligent damage to or destruction of any college facility or other public or private real or personal property.

(g) Failure to follow instructions. Failure to comply with directions of properly identified college officials acting in performance of their duties.

(h) Physical abuse. Physical abuse of any person or conduct which is intended unlawfully to threaten imminent bodily harm or to endanger the health or safety of any person on college-owned or controlled property or at college-sponsored or supervised functions.

(i) Assault. Assault, reckless endangerment, intimidation or interference upon another person in the manner set forth in

RCW 9A.36.010 through 9A.36.050 or RCW 28B.10.570 through 28B.10.572 as now or hereafter amended.

(j) Disorderly, abusive, or bothersome conduct. Disorderly or abusive behavior that interferes with the rights of others or which obstructs or disrupts teaching, research, or administrative functions.

(k) Weapons. Possession or use of firearms, explosives, dangerous chemicals or other dangerous weapons or instrumentalities on the college campus, except for authorized college purposes or for law enforcement officers, unless written approval has been obtained from the dean of student services or any other person designated by the president.

(l) Lewd conduct. Engaging in lewd, indecent, or obscene behavior on college-owned or controlled property or at college-sponsored or supervised functions.

(m) False alarms. Falsely setting off or otherwise tampering with any emergency safety equipment, alarm or other device established for the safety of individuals and/or college facilities.

(n) Cheating and plagiarism. Engaging in cheating, stealing, plagiarizing, knowingly furnishing false information to the college, or submitting to a faculty member any work product that the student fraudulently represents as his or her own work for the purpose of fulfilling or partially fulfilling any assignment or task required as part of a program of instruction.

(o) Sexual harassment. Engaging in unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where such behavior knowingly offends the recipient, causes discomfort or humiliation, or interferes with job or school performance.

(p) Theft or robbery. Theft or robbery from the district or from another as defined in RCW 9A.56.010 through 9A.56.050 and RCW 9A.56.100 as now law or hereafter amended.

(q) Unauthorized use of property. Converting or using college equipment, supplies or other property without proper authority.

(r) Refusal to provide identification. Refusal to provide positive identification (e.g., valid driver's license or state identification card) in appropriate circumstances to any college employee in the lawful discharge of said employee's duties.

(s) Smoking. Smoking in any college facility or on campus grounds except where specifically posted as permitted, or any other smoking not complying with chapter 70.160 RCW.

(t) False complaint. Filing a formal complaint falsely accusing another student or college employee with violating a provision of this chapter.

(u) Improper use of computer, telephone or other electronic devices. Conduct that violates WAC 132H-120-210. Trespassing or gaining access, without authorization, to a computer, system, network, or electronic data owned, used by, or affiliated with the college.

(v) Ethics violation. The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking courses or is pursuing as an educational goal or major. These ethics codes must be distributed to students as part of an educational program, course,

or sequence of courses and the student must be informed that a violation of such ethics may subject the student to disciplinary action by the college.

(w) Criminal law violation, illegal behavior, other unlawful violations. Students can be reported to proper authorities for acts which constitute violations to applicable local, state and federal laws. When the student's behavior is determined to threaten the health, safety and/or property of the college and its members, the college may immediately and summarily suspend the student and refer any such violation to the proper authorities for disposition.

(x) Stalking. Stalking behavior or conduct in which a student willfully and repeatedly follows or contacts someone with the intent and/or reasonable effect of creating fear or emotional distress and where the College determines that such behavior or conduct serves no legitimate purpose.

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

**WSR 05-13-085**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF HEALTH**

[Filed June 14, 2005, 3:27 p.m.]

WAC 246-310-132 and 246-310-990, proposed by the Department of Health in WSR 04-24-017 appearing in issue 04-24 of the State Register, which was distributed on December 15, 2004, 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 05-13-093**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**  
(Public Employees' Benefits Board)  
[Order 05-01—Filed June 16, 2005, 8:07 a.m.]

Continuance of WSR 05-12-050.

Preproposal statement of inquiry was filed as WSR 05-07-158.

Title of Rule and Other Identifying Information: Change in the hearing location and start time of the hearing from the location originally filed on May 26, 2005, under WSR 05-12-050.

Hearing Location(s): New location DIS Boardroom, James E. Larson Forum Building, 605 East 11th Street, Olympia, WA, on July 12, 2005, at 1:00 p.m.

Date of Intended Adoption: July 12, 2005.

Submit Written Comments to: Barbara Scott, PEBB Benefit Services, P.O. Box 42684, Olympia, WA 98504-2684, e-mail bsco107@hca.wa.gov, fax (360) 923-2608, by July 11, 2005.

Assistance for Persons with Disabilities: Contact Nikki Johnson by July 5, 2005, TTY (888) 923-5622 or (360) 923-2805.

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

June 16, 2005  
Cyndi Presnell  
Rules Coordinator

**WSR 05-13-094**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed June 16, 2005, 8:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-10-097.

Title of Rule and Other Identifying Information: WAC 392-121-465 Formula for and distribution of state money for the state incentive grants for increased enrollment in vocational skills centers program.

Hearing Location(s): Old Capitol Building, 600 South Washington, Olympia, WA 98504-7200, on July 26, 2005, at 9:00 a.m.

Date of Intended Adoption: August 23, 2005.

Submit Written Comments to: Rules Coordinator, Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, e-mail cbrodie@ospi.wednet.edu, fax (360) 753-4201, by July 25, 2005.

Assistance for Persons with Disabilities: Contact Sheila Emery by July 20, 2005, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A new section is needed in chapter 392-121 WAC, Finance—General apportionment, to implement language from the recently passed 2005-07 budget that directs the Office of Superintendent of Public Instruction to develop criteria to award incentive grants to encourage school districts to increase enrollment in vocational skills centers. Up to \$500 for each full-time equivalent student may be proportionally distributed to a school district or school districts increasing skills centers enrollment above the levels in the 2004-05 school year.

Reasons Supporting Proposal: These rules are required by the 2005-07 State Operating Appropriation Act.

Statutory Authority for Adoption: RCW 28A.150.290.

Statute Being Implemented: Chapter 28A.150 RCW.

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 CR-101 indicated that a new section would be added to chapter 392-122 WAC, Finance—Categorical apportionment. Upon further investigation, it was determined that the authorizing language in the 2005-07 State Operating Appropriation Act is in the general apportionment

section. Therefore, the new section should be added to chapter 392-121 WAC, Finance—General apportionment.

Name of Proponent: Office of Superintendent of Public Instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Kim Thompson, Office of Superintendent of Public Instruction, (360) 725-6300; Implementation: Calvin W. Brodie, Office of Superintendent of Public Instruction, (360) 725-6308; and Enforcement: Jennifer Priddy, Office of Superintendent of Public Instruction, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is not applicable to nongovernmental agencies.

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

June 15, 2005

Dr. Terry Bergeson  
State Superintendent

#### NEW SECTION

**WAC 392-121-465 Formula for and distribution of state moneys for the state incentive grants for increased enrollment in vocational skills centers program.** The purpose of this section is to establish policies and procedures for the calculation and distribution of state incentive moneys to school districts increasing their enrollments in vocational skills centers.

(1) As used in this section, the term "average annual full-time equivalent students" or AAFTE shall be defined as that term is defined in WAC 392-121-133(1).

(2) Enrollment used in this calculation shall be the AAFTE reported in the form and by the deadline required by the superintendent of public instruction.

(3) A district's state incentive grants for increased enrollment in vocational skills centers shall be calculated as follows:

(a) Determine the increase in the vocational skill center AAFTE of the resident district from the base year of 2004-05 to the current year;

(b) Multiply the number of students obtained in (a) of this subsection by the per pupil allocation established and subject to the limitations in the State Operating Appropriations Act in effect at the time the apportionment is due; and

(c) The product is the district's annual incentive payment.

(4) The superintendent of public instruction shall apportion to districts for the state incentive grants for increased enrollment in vocational skills centers the amount calculated per district in this section in June of each year commencing June 2006.

WSR 05-13-095

PROPOSED RULES

### SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed June 16, 2005, 8:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-08-029.

Title of Rule and Other Identifying Information: WAC 392-140-900 through 392-140-913, Finance—Special allocations—K-4 staff enhancement.

Hearing Location(s): Old Capitol Building, 600 South Washington Street, P.O. Box 47200, Olympia, WA 98504-7200, on July 26, 2005, at 9:00 a.m.

Date of Intended Adoption: August 23, 2005.

Submit Written Comments to: Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, fax (360) 753-4201, by July 25, 2005.

Assistance for Persons with Disabilities: Contact Sheila Emery by July 20, 2005, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules are part of the state funding formula for K-12 education. These revisions will provide for the correct calculation of the school district's funded K-4 staff/student ratio for the 2004-05 school year and thereafter. The maximum state-funded K-4 ratio decreases from 54.0 certificated instructional staff (CIS) per 1,000 FTE students to 53.2 CIS per 1,000 FTE students. Also, supplemental contracts for extended learning opportunities in grades K-6 (duty suffix 4) no longer contribute to a district's state-funded K-4 ratio.

Reasons Supporting Proposal: Rule revisions are needed to implement provisions in the 2003-05 state biennial operating budget. This change is in section 502 (2)(a) of ESHB 2459 (the 2004 supplemental operating budget).

Statutory Authority for Adoption: RCW 28A.150.290 (1).

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

Name of Proponent: Office of Superintendent of Public Instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Charlie Schreck, Office of Superintendent of Public Instruction, (360) 725-6136; Implementation: Ross Bunda, Office of Superintendent of Public Instruction, (360) 725-6308; and Enforcement: Jennifer Priddy, Office of Superintendent of Public Instruction, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable. No small business impact.

A cost-benefit analysis is not required under RCW 34.05.328. The Superintendent of Public Instruction is not subject to RCW 34.05.328 per subsection (5)(a)(i). Addition-

ally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

June 15, 2005  
Dr. Terry Bergeson  
Superintendent of  
Public Instruction

**AMENDATORY SECTION** (Amending WSR 02-09-024, filed 4/8/02, effective 5/9/02)

**WAC 392-140-903 K-4 Staff enhancement—Definitions.** As used in WAC 392-140-900 through 392-140-913:

(1) "Report S-275" means the school district personnel report as defined in WAC 392-121-225.

(2) "Form SPI 1158" means the form provided by the superintendent of public instruction on which school districts report a net change in K-12 full-time equivalent (FTE) staff and/or K-4 FTE staff after October 1 (~~and K-6 supplemental contracts for extended learning opportunities not reportable on Report S-275~~).

(3) "Report 1159" means the report produced by the superintendent of public instruction displaying the calculations of K-4 certificated instructional staffing and K-4 apportionment ratios and other information as necessary.

(4) "Form SPI 1160" means the form provided by the superintendent of public instruction on which school districts may select the period of enrollment the superintendent of public instruction shall use to calculate staffing ratios.

(5) "Form SPI 1230" means the form provided by the superintendent of public instruction on which school districts had the option of reporting 1989-90 FTE K-3 basic education classified instructional assistants before September 1, 1999.

(6) "Form SPI 1230K-4" means the form provided by the superintendent of public instruction on which school districts have the option of reporting 1989-90 FTE K-4 basic education classified instructional assistants after September 1, 1999.

(7) "FTE K-4 basic education enrollment" means the school district's K-4 full-time equivalent enrollment reported for basic education funding pursuant to WAC 392-121-122 for the month of October or such other period selected by the district on optional Form SPI 1160.

(8) "FTE basic education certificated instructional employee" means the FTE calculated pursuant to WAC 392-121-215 for a basic education certificated instructional employee assigned in whole or in part to the following programs as defined in the *Accounting Manual for Public School Districts in the State of Washington*:

- (a) Basic education, program 01;
- (b) Vocational, basic, state, program 31;
- (c) Skills center, basic, state, program 45; and
- (d) District-wide support, program 97.

(9) "FTE K-4 basic education certificated instructional employee" means for a FTE basic education certificated instructional employee the following:

- (a) If the basic education certificated instructional employee serves only K-4 students, one hundred percent of the FTE assigned to basic education; or
- (b) If the basic education certificated instructional employee serves K-4 students and students of one or more

other grades, multiply the FTE assigned to basic education by:

- (i) The proportion of time spent serving K-4 students to all time serving students;
- (ii) The proportion of K-4 students served to all students served; or
- (iii) Any combination of (i) or (ii) of this subsection as appropriate.

(10) "FTE K-4 basic education certificated instructional staff" means the sum of FTE K-4 basic education certificated instructional employees for a school district.

(11) (~~"Extended learning opportunities" means additional classroom contact time provided to students by teachers beyond the normal school day for more than half day or half year kindergarten, before and after school programs, weekend school programs, summer school programs, and inter-session opportunities to assist students in meeting the essential academic learning requirements and student assessment performance standards.~~

(12) ~~"K-6 basic education supplemental contracts for extended learning opportunities" means time-related supplemental contracts for extended learning opportunities provided by teachers for students enrolled in grades kindergarten through six (K-6). For the purposes of this subsection, these supplemental contract hours shall include only the following staff assignments as defined in the S-275 Personnel Reporting Handbook:~~

- (a) Program 01, basic education; and
- (b) Activity 27, teaching; and
- (c) Duty roots:
  - (i) 31, elementary teacher; or
  - (ii) 33, other teacher; or
  - (iii) 63, contractor teacher; and
- (d) Duty suffix 4, extended learning opportunities; and
- (e) Grade groups:
  - (i) K, kindergarten; or
  - (ii) E, elementary (grades 1, 2, 3, or 4); or
  - (iii) M, middle (grades 5 or 6).

(13) ~~"Basic education classified instructional assistant" means a person who is assigned in whole or in part to:~~

- (a) Program 01 - basic education; 31 - vocational, basic, state; or 45 - skills center, basic, state; and
- (b) Activity 27 - teaching; and
- (c) Duty 910 - aide.

~~((14)) (12) "Basic education classified instructional assistant FTE" means the number determined for a basic education classified instructional assistant as follows:~~

~~(a) Determine the hours per year that the employee is assigned as a basic education classified instructional assistant; and~~

- ~~(b) Divide by 2080.~~

~~((15)) (13) "District FTE K-4 basic education classified instructional assistants" means the sum of a school district's FTE K-4 basic education classified instructional assistants.~~

~~(a) If the basic education classified instructional assistant serves only K-4 students, one hundred percent of the FTE determined pursuant to subsection ((14)) (12) of this section.~~

~~(b) If the basic education classified instructional assistant serves K-4 students and students of one or more other~~

grades, multiply the FTE determined pursuant to subsection ~~((14))~~ (12) of this section by:

- (i) The proportion of time spent serving K-4 students to all time serving students;
- (ii) The proportion of K-4 students served to all students served; or
- (iii) Any combination of (b)(i) or (ii) of this subsection as appropriate.

~~((16))~~ (14) "Actual average salary for basic education classified instructional assistants" means the dollar amount determined for a school district for a school year as follows:

- (a) For each basic education certificated instructional assistant reported on Report S-275 determine the assignment salary reported;
- (b) Sum the dollar amounts determined pursuant to (a) of this subsection; and
- (c) Divide the result of (b) of this subsection by the sum of the school district's FTE basic education classified instructional assistants as reported on Report S-275.

**AMENDATORY SECTION** (Amending WSR 02-09-024, filed 4/8/02, effective 5/9/02)

**WAC 392-140-904 K-4 Staff enhancement—School district reporting.** School districts shall report staff information to the superintendent of public instruction as follows:

(1) Required Report S-275. School districts shall report K-4 basic education certificated instructional staff and K-4 basic education classified instructional assistants employed as of October 1 of the school year on Report S-275 pursuant to instructions provided by the superintendent of public instruction. ~~((K-6 basic education supplemental contracts for extended learning opportunities provided by staff employed by the district as of October 1 shall be reported on Report S-275 and shall be updated throughout the school year as needed to reflect actual hours employed.))~~

(2) Optional Form SPI 1158. School districts may use this form to report ~~((the following:~~

~~(a))~~ net changes in K-4 basic education certificated instructional staff or in K-4 basic education classified instructional assistants after October 1 determined as follows:

~~((i))~~ (a) Determine the base contract K-4 basic education FTE that would be reported for each employee for the school year on Report S-275 if the current date were substituted for the October 1 snapshot date as required in S-275 instructions and subtract the base contract K-4 basic education FTE as of October 1 actually reported for the employee on the school district's most current Report S-275.

~~((ii))~~ (b) Include decreases as well as increases in FTE staff after October 1 and not reflected in Report S-275. Decreases include terminations, retirements, unpaid leave, and reassignment of staff.

~~((b) K-6 basic education supplemental contracts for extended learning opportunities for staff that were not employed by the district as of October 1 of the school year and not reported on Report S-275.))~~

(3) Optional Form SPI 1160. School districts may use this form to select an enrollment period other than October:

- (a) Enrollment for any month of the school year; or
- (b) Annual average enrollment for the school year.

(4) Optional Form SPI 1230 K-4. School districts may use this form to report 1989-90 FTE K-4 classified instructional assistants. This is a one-time form. Once filed, the information from this form is used for all subsequent years unless revised by the district.

(5) Optional report forms for a school year must be filed with the superintendent of public instruction by September 30 following the close of the school year.

**AMENDATORY SECTION** (Amending WSR 03-03-001, filed 1/2/03, effective 2/2/03)

**WAC 392-140-912 K-4 Staff enhancement—Determination of K-4 apportionment ratios.** The superintendent of public instruction shall determine each school district's ratio of state allocated certificated instructional staff units per one thousand K-4 students for state basic education apportionment as follows:

(1) For the months of September through December, the superintendent shall use the district's estimated K-4 ratio as submitted on Report F-203 Estimates of State Revenue, or as submitted on a letter to the superintendent after submission of Report F-203.

(2) Beginning with the January apportionment payment and each month thereafter, the superintendent shall calculate the district's K-4 apportionment ratio as the greater of (a) or (b) of this subsection:

(a) The district's minimum state-funded K-4 staffing ratio, using FTE enrollment for state apportionment, and calculated as follows:

(i) Sum the district's K-3 FTE enrollment times 0.049 and the district's fourth grade FTE enrollment times 0.046;

(ii) Divide the result of (a)(i) of this subsection by the district total K-4 FTE enrollment;

(iii) Multiply the result of (a)(ii) of this subsection by 1000.

(b) The lesser of:

(i) ~~((55.4 for the 2001-02 school year and 54.0 for the 2002-03 school year and thereafter))~~ 53.2; or

(ii) The sum of the following:

(A) The district's K-4 certificated instructional staff ratio pursuant to WAC 392-140-910; and

(B) ~~((The lesser of 2.2 for the 2001-02 school year and 0.8 for the 2002-03 school year and thereafter or the district's K-4 staff ratio equivalent of K-6 basic education supplemental contracts for extended learning opportunities pursuant to WAC 392-140-904; and~~

~~(C))~~ If the district's K-4 basic education certificated instructional staff ratio is 51.00 or greater, the lesser of 1.3 or the district's K-4 certificated staff ratio equivalent of the increased K-4 classified instructional assistants pursuant to WAC 392-140-908 if applicable, otherwise zero.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 392-140-905

K-4 Staff enhancement—  
Determination of the K-4  
staff ratio equivalent of K-6

basic education supplemental contracts for extended learning opportunities.

**WSR 05-13-096**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed June 16, 2005, 8:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-10-048.

Title of Rule and Other Identifying Information: Definition—Enrollment exclusions, WAC 392-121-108.

Hearing Location(s): Old Capitol Building, 600 South Washington, Olympia, WA 98504-7200, on July 26, 2005, at 9:00 a.m.

Date of Intended Adoption: August 23, 2005.

Submit Written Comments to: Rules Coordinator, Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, e-mail cbrodie@ospi.wednet.edu, fax (360) 753-4201, by July 25, 2005.

Assistance for Persons with Disabilities: Contact Sheila Emery by July 20, 2005, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To revise current rules to include the emergency expulsion WAC reference in the expulsion exclusion in subsection (5) and clarify that the agreement in the absence exception in subsection (1)(a) needs to be written.

Statutory Authority for Adoption: RCW 28A.150.290.

Statute Being Implemented: Chapter 28A.150 RCW.

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

Name of Proponent: Office of Superintendent of Public Instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Kim Thompson, Office of Superintendent of Public Instruction, (360) 725-6300; Implementation: Calvin W. Brodie, Office of Superintendent of Public Instruction, (360) 725-6308; and Enforcement: Jennifer Priddy, Office of Superintendent of Public Instruction, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is not applicable to nongovernmental agencies.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not applicable to nongovernmental agencies.

June 15, 2005

Dr. Terry Bergeson  
 State Superintendent

**AMENDATORY SECTION** (Amending Order 97-06, filed 10/27/97, effective 11/27/97)

**WAC 392-121-108 Definition—Enrollment exclusions.** A person who qualifies for any of the exclusions set forth in this section shall not be counted as an enrolled student pursuant to WAC 392-121-106.

(1) Absences - except as provided in (a) and (b) of this subsection, a student whose consecutive days of absence from school exceed twenty school days shall not be counted as an enrolled student until attendance is resumed.

(a) If there is ~~((a))~~ a written agreement between the appropriate school official and a student's parent or guardian pursuant to RCW 28A.225.010 that the student's temporary absence is not deemed to cause a serious adverse effect upon the student's educational progress, the absent student may be counted as an enrolled student for up to two monthly enrollment count dates as specified in WAC 392-121-122.

(b) A student receiving home and/or hospital service pursuant to WAC 392-172-218 shall be counted as an enrolled student as provided in WAC 392-122-145.

(2) Dropouts - a student for whom the school district has received notification of dropping out of school by the student or the student's parent or guardian shall not be counted as an enrolled student until attendance is resumed.

(3) Transfers - a student who has transferred to another public or private school and for whom the school district has received notification of transfer from the school to which the student has transferred, from the student, or from the student's parent or guardian shall not be counted as an enrolled student unless the student reenrolls in the school district.

(4) Suspensions - a student who has been suspended from school pursuant to WAC 180-40-260, when the conditions of the suspension will cause the student to lose academic grades or credit, shall not be counted as an enrolled student until attendance is resumed.

(5) Expulsions - a student who has been expelled from all school subjects or classes by the school district pursuant to WAC 180-40-275 or 180-40-290 shall not be counted as an enrolled student; a student who has been partially expelled, such as from a single school subject or class, by the school district pursuant to WAC 180-40-275 or 180-40-290 may be considered a part-time enrolled student.

(6) Graduates - a student who has met the high school graduation requirements of chapter 180-51 WAC by the beginning of the school year.

**WSR 05-13-097**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**  
 [Filed June 16, 2005, 8:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-10-047.

Title of Rule and Other Identifying Information: Definition—State institutional education program—Educational activity, WAC 392-122-212.

PROPOSED

Hearing Location(s): Old Capitol Building, 600 South Washington, Olympia, WA 98504-7200, on July 26, 2005, at 9:00 a.m.

Date of Intended Adoption: August 23, 2005.

Submit Written Comments to: Rules Coordinator, Legal Services, Office of Superintendent of Public Instruction, P.O. Box 47200, Olympia, WA 98504-7200, e-mail cbrodie@ospi.wednet.edu, fax (360) 753-4201, by July 25, 2005.

Assistance for Persons with Disabilities: Contact Sheila Emery by July 20, 2005, TTY (360) 664-3631 or (360) 725-6271.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective September 1, 2004, WAC 392-121-124 Full-time equivalent enrollment for work based learning, which applies to basic education, was revised to implement several changes. The intention has always been to keep the work based learning rules consistent across all K-12 education, regardless of whether the work based learning takes place in a high school or an institution. Therefore, the institution education WAC 392-122-212 needs to reflect these same changes. We propose to change the institution WAC to refer to the basic education work based learning WAC. This will keep the institution WAC in sync with the basic education work based learning WAC both now and in the future.

Statutory Authority for Adoption: RCW 28A.150.290.

Statute Being Implemented: Chapter 28A.150 RCW.

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

Name of Proponent: Office of Superintendent of Public Instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Kim Thompson, Office of Superintendent of Public Instruction, (360) 725-6300; Implementation: Calvin W. Brodie, Office of Superintendent of Public Instruction, (360) 725-6308; and Enforcement: Jennifer Priddy, Office of Superintendent of Public Instruction, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule is not applicable to nongovernmental agencies.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not applicable to nongovernmental agencies.

June 15, 2005

Dr. Terry Bergeson  
State Superintendent

**AMENDATORY SECTION** (Amending Order 98-09, filed 10/20/98, effective 11/20/98)

**WAC 392-122-212 Definition—State institutional education program—Educational activity.** As used in WAC 392-122-200 through 392-122-275, "educational activity" means the following teaching/learning experiences provided by a school district or other education provider:

(1) Instruction, testing, counselling, supervision, advising, and other services provided directly by certificated staff or by classified staff who are supervised by certificated staff.

(2) Up to one hour per day of scheduled study time if the study is in conjunction with other educational activity and if

the study is monitored by educational staff who are present during the study.

(3) Up to two hours per day of individual study conducted by a student when educational staff are not present if all of the following conditions are met:

(a) The study is in pursuit of high school graduation credit; or the study is in a department of corrections facility and is in pursuit of a certificate of educational competence pursuant to RCW 28B.50.536 and chapter 131-48 WAC;

(b) The study is part of a program of instruction defined by a certificated employee who evaluates the student's progress in that program;

(c) The student is making progress in the program;

(d) The study is not counted as work training experience pursuant to subsection (4) of this section; and

(e) Combined individual study time and scheduled study time pursuant to subsection (2) of this section claimed in determining the student's full-time equivalent pursuant to WAC 392-122-225 do not exceed two hours per day.

(4) Work ~~((experience training))~~ based learning meeting the requirements of WAC 180-50-315: Provided, That ~~((each hour of work training experience shall be considered equivalent to 0.40 hours of educational activity))~~ for work based learning provided pursuant to WAC 180-50-315, a student's full-time equivalent shall be determined pursuant to WAC 392-121-124.

WSR 05-13-103

PROPOSED RULES

UTILITIES AND TRANSPORTATION  
COMMISSION

[Docket No. P-041344—Filed June 16, 2005, 10:44 a.m.]

Supplemental Notice to WSR 05-09-122.

Preproposal statement of inquiry was filed as WSR 04-17-056.

Title of Rule and Other Identifying Information: This rule-making proposal would amend WAC 480-75-240 Annual pipeline safety fee methodology and 480-93-240 Annual pipeline safety fee methodology, to change the current pipeline safety fee methodology for allocating pipeline safety program costs to regulated pipeline companies.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Chandler Plaza Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, on July 29, 2005, at 9:30 a.m.

Date of Intended Adoption: July 29, 2005.

Submit Written Comments to: Carole J. Washburn, Executive Secretary, P.O. Box 47250, Olympia, WA 98504, e-mail records@wutc.wa.gov, fax (360) 586-1150, by July 15, 2005. Please include Docket No. P-041344 in your communication.

Assistance for Persons with Disabilities: Contact Mary De Young by Wednesday, July 27, 2005, TTY (360) 586-8203 or (360) 664-1133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This supplementen-



tal proposal makes additional changes to the rule language published at WSR 05-09-122, including:

- Clarification that the commission can set the total fee amount at less than the appropriation amount,
- Conversion to a calendar year instead of a fiscal year for determining the effort data, and
- Replacement of the terms "assignable" and "assigned" with the term "attributable."
- Removes incident investigations that result in a penalty issued under RCW 19.122.055 from consideration in the fee allocation.

Affected WACs: WAC 480-75-240 and 480-93-240  
Annual pipeline safety fee methodology.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160, 81.04.160, 80.24.060, and 81.24.090.

Statute Being Implemented: RCW 80.24.060 and 81.24.090.

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 proposal would carry an effective date that would apply the new pipeline fee methodology for the first time to the 2007 fiscal year fees (for the period commencing July 1, 2006).

Name of Proponent: Washington Utilities and Transportation Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Tim Sweeney, Team Leader, 1300 Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1118; Implementation and Enforcement: Carole J. Washburn, Executive Secretary, 1300 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 changes to the pipeline fee methodology rules will not result in or impose an increase in costs. Because there will not be an 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).

June 16, 2005

Carole J. Washburn  
Executive Secretary

**AMENDATORY SECTION** (Amending Docket No. UG-010522, General Order No. R-497, filed 1/4/02, effective 2/4/02)

**WAC 480-75-240 Annual pipeline safety fee methodology.** (1) Every hazardous liquid pipeline company subject to inspection or enforcement by the commission will pay an annual pipeline safety fee as established in the methodology set forth in section (2) below.

(2) The fee will be set by general order of the commission entered before July 1 of each year and will be collected

in four equal installments payable on the first day of each calendar quarter(~~(, beginning July 1, 2004)~~).

(a) The total of pipeline safety fees will be calculated to recover no more than the costs of the legislatively authorized workload represented by current appropriations, less the amount received in ~~((federal funds))~~ total base grants through the Federal Department of Transportation(~~(s Hazardous Liquids Pipeline Safety Program base grant))~~) and less any amount received from penalties collected under RCW 19.122.050. Federal grants, other than the federal base grant, received by the commission for additional activities not included or anticipated in the legislatively directed workload will not be credited against company pipeline safety fees, nor will the work supported by such grants be considered a cost for purposes of calculating such fees. To the extent that the actual base grant proceeds are different than the amount credited, the difference will be applied in the following year.

(b) Total pipeline safety fees as determined in (a) of this subsection will be ~~((divided between intrastate hazardous liquid pipeline companies and interstate hazardous liquid pipeline companies based on two components))~~ calculated in two parts:

(i) ~~((The first component is direct assignment of average costs associated with a company's standard inspections, including the average number of inspection days per year which will be determined annually. Standard inspections are conducted to comply with the state's participation requirement under the "Guidelines for States Participating in the Pipeline Safety Program" of the Federal Department of Transportation, Office of Pipeline Safety.~~

~~((ii) The second component is an allocation of the remaining program costs that are not directly assigned in (i). Distribution of these costs between interstate and intrastate hazardous liquid pipeline companies will be based on miles of pipeline operated within Washington state.~~

(b)) The commission's annual overhead charge to the pipeline safety program will be allocated among companies according to each company's share of the total of all pipeline miles within Washington as reported by the companies in their annual reports to the commission.

(ii) After deducting the commission's annual overhead charge, the remainder of the total pipeline safety fees will be allocated among companies in proportion to each company's share of the program staff hours that are directly attributable to particular companies. The commission will determine each company's share by dividing the total hours directly attributable to the company during the two preceding calendar years (as reflected in the program's timekeeping system) by the total of directly attributable hours for all companies over the same period.

(iii) Any program hours related to a staff investigation of an incident attributed to third-party damage resulting in penalties collected under RCW 19.122.055 will not be directly attributed to the operator of the damaged pipeline for fee-setting purposes.

(c) The commission general order setting fees pursuant to this rule will detail the specific calculation of each company's pipeline safety fee including the allocations ~~((of program costs between interstate and intrastate hazardous liquid~~

companies and the specific calculation of each company's pipeline fee) set forth in (b) of this subsection.

(3) ~~((By April 1 of each year every hazardous liquids pipeline company subject to this section must file an annual report as prescribed by the commission that is necessary to establish the annual pipeline safety fee.))~~ By June 1 of each year the commission staff will mail to each company ~~((subject to this section))~~ an ~~((annual))~~ invoice ~~((showing an estimate of the quarterly amounts)).~~

(4) All funds received by the commission for the pipeline safety program will be deposited to the pipeline safety account. For those companies subject to RCW 81.24.010 the portion of the company's total regulatory fee applicable to pipeline safety will be transferred from the public service revolving fund to the pipeline safety account.

(5) Any company wishing to contest the amount of the fee imposed under this section must pay the fee and, within 6 months of the due date of the fee, file a petition in writing with the commission requesting a refund. The petition shall state the name of the petitioner; the date and the amount paid, including a copy of any receipt, if available; the amount of the fee that is contested; and any reasons why the commission may not impose the fee. The commission may grant the petition administratively or may set the petition for adjudication or for brief adjudication.

**AMENDATORY SECTION** (Amending Docket No. UG-010522, General Order No. R-497, filed 1/4/02, effective 2/4/02)

**WAC 480-93-240 Annual pipeline safety fee methodology.** (1) Every gas company and every interstate gas pipeline company subject to inspection or enforcement by the commission will pay an annual pipeline safety fee as established in the methodology set forth in section (2) below.

(2) The fee will be set by general order of the commission entered before July 1 of each year and will be collected in four equal installments payable on the first day of each calendar quarter ~~((beginning July 1, 2001)).~~

(a) The total of pipeline safety fees will be calculated to recover no more than the costs of the legislatively authorized workload represented by current appropriations, less the amount received in ~~((federal funds))~~ total base grants through the Federal Department of Transportation ~~((s Natural Gas Pipeline Safety Program base grant))~~ and less any amount received from penalties collected under RCW 19.122.050. Federal grants, other than the federal base grant, received by the commission for additional activities not included or anticipated in the legislatively directed workload will not be credited against company pipeline safety fees, nor will the work supported by such grants be considered a cost for purposes of calculating such fees. To the extent that the actual base grant proceeds are different than the amount credited, the difference will be applied in the following year.

(b) Total pipeline safety fees as determined in ~~((subsection))~~ (a) of this subsection will be ~~((divided between gas companies and interstate gas pipeline companies based on two components))~~ calculated in two parts:

(i) ~~((The first component is direct assignment of average costs associated with a company's standard inspections,~~

including the average number of inspection days per year, which will be determined annually. Standard inspections are conducted to comply with the state's participation requirement under the "Guidelines for States Participating in the Pipeline Safety Program" of the Federal Department of Transportation, Office of Pipeline Safety.

(ii) The second component is an allocation of the remaining program costs that are not directly assigned in (i). Distribution of these costs between gas companies and interstate gas pipeline companies will be based on miles of transmission lines as defined in WAC 480-93-005(18) and miles of main as defined in WAC 480-93-005(12) operated within Washington state.)) The commission's annual overhead charge to the pipeline safety program will be allocated among companies according to each company's share of the total of all pipeline miles within Washington as reported by the companies in their annual reports to the commission.

(ii) After deducting the commission's annual overhead charge, the remainder of the total pipeline safety fee commission's annual pipeline safety program allotment will be allocated among companies in proportion to each company's share of the program staff hours that are directly attributable to particular companies. The commission will determine each company's share by dividing the total hours directly attributable to the company during the two preceding calendar years (as reflected in the program's timekeeping system) by the total of directly attributable hours for all companies over the same period.

(iii) Any program hours related to a staff investigation of an incident attributed to third-party damage resulting in penalties collected under RCW 19.122.055 will not be directly attributed to the operator of the damaged pipeline for fee-setting purposes.

(c) The commission general order setting fees pursuant to this rule will detail the specific calculation of each company's pipeline safety fee including the allocations ~~((of program costs between gas companies and interstate gas pipeline companies, and the specific calculation of each company's pipeline safety fee))~~ set forth in (b) of this subsection.

(3) ~~((By April 1 of each year every gas company and every interstate gas pipeline company subject to this section must file an annual report as prescribed by the commission that is necessary to establish the annual pipeline safety fee.))~~ By June 1 of each year the commission staff will mail to each company ~~((subject to this section))~~ an ~~((annual))~~ invoice ~~((showing an estimate of the quarterly amounts)).~~

(4) All funds received by the commission for the pipeline safety program will be deposited to the pipeline safety account. For those companies subject to RCW 80.24.010, the portion of the company's total regulatory fee applicable to pipeline safety will be transferred from the public service revolving fund to the pipeline safety account.

(5) Any company wishing to contest the amount of the fee imposed under this section must pay the fee and, within 6 months of the due date of the fee, file a petition in writing with the commission requesting a refund. The petition must state the name of the petitioner; the date and the amount paid, including a copy of any receipt, if available; the amount of the fee that is contested; and any reasons why the commission may not impose the fee. The commission may grant the peti-

tion administratively or may set the petition for adjudication or for brief adjudication.

**WSR 05-13-105**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**  
**(Basic Health)**

[Order 05-03—Filed June 17, 2005, 9:14 a.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 05-10-082.

**Title of Rule and Other Identifying Information:** Basic Health eligibility, to exclude full-time students who have received a temporary visa to study in the United States.

**Hearing Location(s):** Health Care Authority, 676 Woodland Square Loop S.E., West Wing, 3rd Floor Conference Room, Lacey, WA, on July 26, 2005, at 3:00 p.m.

**Date of Intended Adoption:** July 27, 2005.

**Submit Written Comments to:** Rosanne Reynolds, P.O. Box 42686, Olympia, WA 98504-2686, e-mail Rrey107@hca.wa.gov, fax (360) 923-2605, by July 26, 2005.

**Assistance for Persons with Disabilities:** Contact Nikki Johnson by July 12, 2005, TTY (888) 923-5622 or (360) 923-2805.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** Revise rules regarding Basic Health eligibility to be consistent with chapter 188, Laws of 2005, which exclude full-time students who have received a temporary visa to study in the United States from enrollment in subsidized Basic Health.

**Reasons Supporting Proposal:** Rules need to be revised to comply with the requirements of HB 1170, which was passed by the 2005 legislature.

**Statutory Authority for Adoption:** RCW 70.47.050.

**Statute Being Implemented:** Chapter 188, Laws of 2005.

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

**Name of Proponent:** Health Care Authority, governmental.

**Name of Agency Personnel Responsible for Drafting:** Rosanne Reynolds, Lacey, Washington, (360) 923-2948;  
**Implementation and Enforcement:** Beth Dupre, Lacey, Washington, (360) 412-4307.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The Health Care Authority is not required by chapter 19.85 RCW to prepare a small business economic impact statement. There will be little, if any, cost to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the Health Care Authority rules unless requested by the Joint Administrative Rules [Review] Committee or applied voluntarily.

June 17, 2005

Cyndi Presnell

Rules Coordinator

**AMENDATORY SECTION** (Amending Order 04-03, filed 11/5/04, effective 1/1/05)

**WAC 182-25-010 Definitions.** The following definitions apply throughout these rules.

(1) "Administrator" means the administrator of the Washington state health care authority (HCA) or designee.

(2) "Appeal procedure" means a formal written procedure for resolution of problems or concerns raised by enrollees which cannot be resolved in an informal manner to the enrollee's satisfaction.

(3) "Basic health plan" (or "BHP") means the system of enrollment and payment for basic health care services administered by the administrator through managed health care systems.

(4) "BHP Plus" means the program of expanded benefits available to children through coordination between the department of social and health services (DSHS) and basic health plan. Eligibility for BHP Plus is determined by the department of social and health services, based on Medicaid eligibility criteria. To be eligible for the program children must be under age nineteen, with a family income at or below two hundred percent of federal poverty level, as defined by the United States Department of Health and Human Services. They must be Washington state residents, not eligible for Medicare, and may be required to meet additional DSHS eligibility requirements.

(5) "Co-payment" means a payment indicated in the schedule of benefits which is made by an enrollee to a health care provider or to the MHCS.

(6) "Covered services" means those services and benefits in the BHP schedule of benefits (as outlined in the member handbook issued to the enrollee, or to a subscriber on behalf of the enrollee), which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable co-payments, coinsurance and deductible.

(7) "Disenrollment" means the termination of coverage for a BHP enrollee.

(8) "Effective date of enrollment" means the first date, as established by BHP, on which an enrollee is entitled to receive covered services from the enrollee's respective managed health care system.

(9) "Dependent," as it applies to the subsidized or non-subsidized programs, means:

(a) The subscriber's lawful spouse, not legally separated, who resides with the subscriber; or

(b) The unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, legal guardianship, or placement pending adoption, who is:

(i) Younger than age nineteen, and who has not been relinquished for adoption by the subscriber or the subscriber's dependent spouse; or

(ii) Younger than age twenty-three, and a registered student at an accredited secondary school, college, university, technical college, or school of nursing, attending full time, other than during holidays, summer and scheduled breaks; or

(c) A person of any age who is incapable of self-support due to disability, and who is the unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, or legal guardianship; or

PROPOSED

(d) An unmarried child younger than age nineteen who is residing with the subscriber under an informal guardianship agreement. For a child to be considered a dependent of the subscriber under this provision:

(i) The guardianship agreement must be signed by the child's parent;

(ii) The guardianship agreement must authorize the subscriber to obtain medical care for the child;

(iii) The subscriber must be providing at least fifty percent of the child's support; and

(iv) The child must be on the account for BHP coverage.

(10) "Eligible full-time employee" means an employee who meets all eligibility requirements in WAC 182-25-030 and who is regularly scheduled to work thirty or more hours per week for an employer. The term includes a self-employed individual (including a sole proprietor or a partner of a partnership, and may include an independent contractor) if the individual:

(a) Is regularly scheduled to work thirty hours or more per week; and

(b) Derives at least seventy-five percent of his or her income from a trade or business that is licensed to do business in Washington.

Persons covered under a health benefit plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements.

(11) "Eligible part-time employee" means an employee who meets all the criteria in subsection (10) of this section, but who is regularly scheduled to work fewer than thirty hours per week for an employer.

(12) "Employee" means one who is in the employment of an employer, as defined by RCW 50.04.080.

(13) "Employer" means an enterprise licensed to do business in Washington state, as defined by RCW 50.04.080, with employees in addition to the employer, whose wages or salaries are paid by the employer.

(14) "Enrollee" means a person who meets all applicable eligibility requirements, who is enrolled in BHP, and for whom applicable premium payments have been made.

(15) "Family" means an individual or an individual and eligible spouse and dependents. For purposes of eligibility determination and enrollment in BHP, an individual cannot be a member of more than one family.

(16) "Financial sponsor" means a person, organization or other entity, approved by the administrator, that is responsible for payment of all or a designated portion of the monthly premiums on behalf of a subscriber and any dependents.

(17) "Gross family income" means total cash receipts, as defined in (a) of this subsection, before taxes, from all sources, for subscriber and dependents whether or not they are enrolled in BHP, with the exceptions noted in (b) of this subsection. An average of documented income received over a period of several months will be used for purposes of eligibility determination, unless documentation submitted confirms a change in circumstances so that an average would not be an accurate reflection of current income. A twelve-month average will be used when calculating gambling income, lump-sum payments, and income from capital gains. A twelve-month history of receipts and expenses will be

required for calculating self-employment or rental income unless the applicant or enrollee has not owned the business for at least twelve months.

(a) Income includes:

(i) Wages, tips and salaries before any deductions;

(ii) Net receipts from nonfarm self-employment (receipts from a person's own business, professional enterprise, or partnership, after deductions for business expenses). In calculating net self-employment income, deductions will not be allowed for noncash-flow items such as depreciation, amortization, or business use of home, and a net loss from this calculation will not be used to offset other income sources;

(iii) Net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses). In calculating net self-employment income, deductions will not be allowed for noncash-flow items such as depreciation, amortization, or business use of home, and a net loss from this calculation will not be used to offset other income sources;

(iv) Periodic payments from Social Security, railroad retirement, military pension or retirement pay, military disability pensions, military disability payments, government employee pensions, private pensions, unemployment compensation, and strike benefits from union funds;

(v) One-time insurance payments other than reimbursement for a loss, periodic insurance or annuity payments, and compensation for injury other than reimbursement for medical costs, including workers' compensation;

(vi) Public assistance, alimony, child support, and military family allotments;

(vii) Work study, assistantships, or training stipends;

(viii) Dividends and interest accessible to the enrollee without a penalty for early withdrawal;

(ix) Net rental income, net royalties, and net gambling or lottery winnings;

(x) Lump sum inheritances and periodic receipts from estates or trusts; and

(xi) Net income from capital gains.

(b) Income does not include the following types of money received:

(i) Any assets drawn down as withdrawals from a bank, the sale of property, a house or a car;

(ii) Tax refunds, gifts, loans;

(iii) Noncash receipts, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, goods or services received due to payments a trust makes to a third party, and such noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, state supplementary payment income that is specifically dedicated to reimburse for services received, and housing assistance;

(iv) Income earned by dependent children with the exception of distributions from a corporation, partnership, or business;

(v) Income of a family member who resides in another household when such income is not available to the subscriber or dependents seeking enrollment in BHP;

(vi) College or university scholarships, grants, and fellowships;

(vii) Payments from the department of social and health services adoption support program authorized under RCW 26.33.320 and 74.13.100 through 74.13.145;

(viii) Documented child care expenses for the care of a dependent child of a subscriber may be deducted (at a rate set by the administrator and consistent with Internal Revenue Service requirements) when calculating gross family income. To qualify for this deduction:

(A) The subscriber and the spouse listed as a dependent on the account, if any, must be employed or attending school full-time during the time the child care expenses were paid; and

(B) Payment may not be paid to a parent or stepparent of the child or to a dependent child of the subscriber or his/her spouse.

(18) "Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence, and is licensed by the department of social and health services (DSHS) as a home care agency. In order to qualify, the agency must be under contract with one of the following DSHS programs: Chore, Medicaid Personal Care, Community Options Program Entry System (COPES) or Respite Care (up to level three).

(19) "Institution" means a federal, state, county, city or other government correctional or detention facility or government-funded facility where health care historically has been provided and funded through the budget of the operating agency, and includes, but is not limited to: Washington state department of corrections institutions; federal, county and municipal government jail and detention institutions; Washington state department of veterans affairs soldiers' and veterans' homes; department of social and health services state hospitals and facilities and juvenile rehabilitation institutions and group homes. An institution does not include: Educational institutions; government-funded acute health care or mental health facilities except as provided above; chemical dependency facilities; and nursing homes.

(20) "Institutionalized" means to be confined, voluntarily or involuntarily, by court order or health status, in an institution, as defined in subsection (19) of this section. This does not include persons on work release or who are residents of higher education institutions, acute health care facilities, alcohol and chemical dependency facilities, or nursing homes.

(21) "Insurance broker" or "agent" means a person who is currently licensed as a disability insurance broker or agent, according to the laws administered by the office of the insurance commissioner under chapter 48.17 RCW.

(22) "Managed health care system" (or "MHCS") means:

(a) Any health care organization (including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof) which has entered into a contract with the HCA to provide basic health care services; or

(b) A self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under

RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(23) "Maternity benefits through medical assistance," also known as S-Medical, means the coordinated program between BHP and DSHS for eligible pregnant women. This program includes all Medicaid benefits, including maternity coverage. Eligible members must be at or below one hundred eighty-five percent of the federal poverty level. Eligibility for this program is determined by DSHS, based on Medicaid eligibility criteria.

(24) "Medicaid" means the Title XIX Medicaid program administered by the department of social and health services, and includes the medical care programs provided to the "categorically needy" and the "medically needy" as defined in chapter 388-503 WAC.

(25) "Medicare" means programs established by Title XVIII of Public Law 89-97, as amended, "Health Insurance for the Aged and Disabled."

(26) "Nonsubsidized enrollee" or "full premium enrollee" means an individual who enrolls in BHP, as the subscriber or dependent, and who pays or on whose behalf is paid the full costs for participation in BHP, without subsidy from the HCA.

(27) "Open enrollment" means a time period designated by the administrator during which enrollees may enroll additional dependents or apply to transfer their enrollment from one managed health care system to another.

(28) "Participating employee" means an employee of a participating employer or home care agency who has met all the eligibility requirements and has been enrolled for coverage under BHP.

(29) "Participating employer" means an employer who has been approved for enrollment in BHP as an employer group.

(30) "Preexisting condition" means any illness, injury or condition for which, in the six months immediately preceding an enrollee's effective date of enrollment in BHP:

(a) Treatment, consultation or a diagnostic test was recommended for or received by the enrollee; or

(b) Medication was prescribed or recommended for the enrollee; or

(c) Symptoms existed which would ordinarily cause a reasonably prudent individual to seek medical diagnosis, care or treatment.

(31) "Premium" means a periodic payment, determined under RCW 70.47.060(2), which an individual, an employer, a financial sponsor, or other entity makes to BHP for enrollment in BHP.

(32) "Program" means subsidized BHP, nonsubsidized BHP, BHP Plus, maternity benefits through medical assistance, or other such category of enrollment specified within this chapter.

(33) "Provider" or "health care provider" means a health care professional or institution duly licensed and accredited to provide covered services in the state of Washington.

(34) "Rate" means the amount, including administrative charges and any applicable premium and prepayment tax imposed under RCW 48.14.0201, negotiated by the administrator with and paid to a managed health care system, to provide BHP health care benefits to enrollees.

(35) "Schedule of benefits" means the basic health care services adopted and from time to time amended by the administrator, which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable co-payments, as described in the member handbook.

(36) "Service area" means the geographic area served by a managed health care system as defined in its contract with HCA.

(37) "Subscriber" is a person who applies to BHP on his/her own behalf or on behalf of his/her dependents, if any, who is responsible for payment of premiums and to whom BHP sends notices and communications. The subscriber may be a BHP enrollee or the spouse, parent, or guardian of an enrolled dependent and may or may not be enrolled for coverage. Notices to a subscriber and, if applicable, a financial sponsor or employer shall be considered notice to the subscriber and his/her enrolled dependents.

(38) "Subsidized enrollee" or "reduced premium enrollee" means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA. Full-time students who have received a temporary visa to study in the United States are not eligible to enroll as subsidized enrollees. To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(39) "Subsidy" means the difference between the amount of periodic payment the HCA makes to a managed health care system on behalf of a subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(40) "Washington state resident" or "resident," for purposes of this chapter, means a person who physically resides and maintains a residence in the state of Washington.

(a) To be considered a Washington resident, enrollees who are temporarily out of Washington state for any reason:

(i) May be required to demonstrate their intent to return to Washington state; and

(ii) May not be out of Washington state for more than three consecutive calendar months.

(b) Dependent children who meet the requirements of subsection (9)(b)(ii) of this section and are attending school out-of-state may be considered to be residents if they are out-of-state during the school year, provided their primary residence is in Washington state and they return to Washington state during breaks. Dependent children attending school out-of-state may also be required to provide proof that they pay out-of-state tuition, vote in Washington state and file their federal income taxes using a Washington state address.

(c) "Residence" may include, but is not limited to:

(i) A home the person owns or is purchasing or renting;

(ii) A shelter or other physical location where the person is staying in lieu of a home; or

(iii) Another person's home.

**AMENDATORY SECTION** (Amending Order 04-03, filed 11/5/04, effective 1/1/05)

**WAC 182-25-040 Enrollment in the plan.** (1) Any individual applying for enrollment in BHP must submit a signed, completed BHP application for enrollment. Applications for enrollment of children under the age of eighteen must be signed by the child's parent or guardian, who shall also be held responsible for payment of premiums due on behalf of the child. If an applicant is accepted for enrollment, the applicant's signature acknowledges the applicant's obligation to pay the monthly premium in accordance with the terms and conditions identified in the member handbook. Applications for BHP Plus enrollment on behalf of children under the age of nineteen will be referred to the department of social and health services for Medicaid eligibility determination.

(2) Each applicant for subsidized enrollment or BHP Plus must list all eligible dependents, whether or not the dependents will be enrolled, and must supply other information and documentation as required by BHP and, where applicable, DSHS medical assistance.

(a) Applicants for subsidized enrollment must provide documentation showing the amount and sources of their gross family income. Income documentation must include a copy of the applicant's most recently filed federal income tax form or verification of nonfiling status, and copies of pay stubs or other documents showing income for the most recent thirty days or complete calendar month as of the date of application. Applicants who were not required to file a federal income tax return may be required to provide other documentation showing year-to-date income. As described in WAC 182-25-010(17), BHP may use an average of documented income when determining eligibility.

(b) Applicants for subsidized or nonsubsidized enrollment must provide documentation of Washington state residence, displaying the applicant's name and current address, for example, a copy of a current utility bill or rent receipt. Other documentation may be accepted if the applicant does not have a physical residence, for example, a signed statement from a person or other entity who is providing temporary shelter.

(c) BHP may request additional information from applicants for purposes of establishing or verifying eligibility, premium responsibility, immigration status, or MHCS selection.

(d) Submission of incomplete or inaccurate information may delay or prevent an applicant's enrollment in BHP. Intentional submission of false information will result in disenrollment of the subscriber and all enrolled dependents.

(3) Each member may be enrolled in only one BHP account. Each family applying for enrollment must designate a MHCS from which the applicant and all enrolled dependents will receive covered services. All applicants from the same family who are covered under the same account must

receive covered services from the same MHCS (with the exception of cases in which a subscriber who is paying for BHP coverage for his/her dependent who lives in a different service area). No applicant will be enrolled for whom designation of a MHCS has not been made as part of the application for enrollment. Procedures for the selection of MHCS are set forth in the BHP member handbook. Generally, enrollees may change from one MHCS to another only during open enrollment or if they are able to show good cause for the transfer, for example, when enrollees move to an area served by a different MHCS or where they would be billed a higher premium for their current MHCS.

(4) When a MHCS assists BHP applicants in the enrollment process, it must provide them with the toll-free number for BHP and information on all MHCS available within the applicant's county of residence and the estimated premiums for each available MHCS.

(5) If specific funding has been appropriated for that purpose, insurance brokers or agents who have met all statutory and regulatory requirements of the office of the insurance commissioner, are currently licensed through the office of the insurance commissioner, and who have completed BHP's training program, will be paid a commission for assisting eligible applicants to enroll in BHP.

(a) Individual policy commission: Subject to availability of funds, and as a pilot program, BHP will pay a one-time fee to any currently licensed insurance broker or agent who sells BHP to an eligible individual applicant if that applicant has not been a BHP member within the previous five years.

(b) Group policy commission: Subject to availability of funds, and as a pilot program, fees paid for the sale of BHP group coverage to an eligible employer will be based on the number of employees in the group for the first and second months of the group's enrollment.

(c) Insurance brokers or agents must provide the prospective applicant with the BHP toll-free information number and inform them of BHP benefits, limitations, exclusions, waiting periods, co-payments, all MHCSs available to the applicant within his/her county of residence and the estimated premium for each of them.

(d) All statutes and regulations of the office of the insurance commissioner will apply to brokers or agents who sell BHP, except they will not be required to be appointed by the MHCS.

(e) BHP will not pay renewal commissions.

(6) Except as provided in WAC 182-25-030(7), applications for enrollment will be reviewed by BHP within thirty days of receipt and those applicants satisfying the eligibility criteria and who have provided all required information, documentation and premium payments will be notified of their effective date of enrollment.

(7)(a) Eligible applicants will be enrolled in BHP in the order in which their completed applications, including all required documentation, have been received by BHP, provided that:

(i) At least one MHCS is accepting new enrollment in the program for which the applicant is applying and from the geographic area where the applicant lives; and

(ii) The applicant also remits full payment of the first premium bill to BHP by the due date specified by BHP.

(b) In the event a waiting list is implemented, eligible applicants will be enrolled in accordance with WAC 182-25-030(6).

(8) An open enrollment period of at least twenty consecutive days will be held annually. During this open enrollment period, enrollees may apply to enroll additional family members or to transfer their enrollment to a different MHCS, provided the MHCS selected is accepting new enrollment for the enrollee's program in the geographic area where the enrollee lives.

(9) Not all family members are required to apply for enrollment in BHP; however, any family member for whom application for enrollment is not made at the same time that other family members apply, may not subsequently enroll as a family member until the next open enrollment period, unless the subscriber has experienced a "qualifying change in family status." "Qualifying changes in family status" include:

(a) The loss of other health care coverage, for a family member who has previously waived coverage, provided BHP receives the family member's application within thirty days of the loss of other coverage, along with proof of the family member's continuous medical coverage from the date the subscriber enrolled in BHP;

(b) Marriage or assuming custody or dependency of a child or adult dependent (other than newborn or newly adopted children), provided BHP receives the new family member's application within thirty days of the change in family status;

(c) Addition of an eligible newborn child or a child newly placed for adoption provided BHP receives the child's application for enrollment within sixty days of the date of birth or placement for adoption. These children may be enrolled effective from the date of birth or placement for adoption; or

(d) Addition of a family member who was not previously eligible for coverage, and who has become eligible.

(10) Subscribers must notify BHP of any changes that could affect their eligibility or subsidy or their dependents' eligibility or subsidy:

(a) Within thirty days of the end of the first month of receiving an increased income; or

(b) Within thirty days of a change other than an income change (for example, a change in family size or address).

(11) BHP will verify the continuing eligibility of subsidized enrollees through the recertification process at least once every twelve months. Upon request of BHP, subsidized enrollees must submit evidence satisfactory to BHP, proving their continued eligibility for enrollment and for the premium subsidy they are receiving.

(a) BHP will verify income of subsidized enrollees through comparison with other state and federal agency records or other third-party sources.

(b) If the enrollee's income on record with other agencies or third-party source differs from the income the enrollee has reported to BHP, or if questions arise concerning the documentation submitted, BHP will require updated documentation from the enrollee to prove continued eligibility for the subsidy they are receiving. At that time, BHP may also require updated documentation of residence to complete the recertification process.

(c) Subsidized enrollees who have been enrolled in BHP six months or more and have not provided updated income documentation for at least six months will be required to submit new income documentation if their wage or salary income cannot be compared to an independent source for verification.

(12) In addition to verification of income, subsidized and nonsubsidized enrollees must annually submit documentation satisfactory to BHP of the following:

(a) Washington state residence;

(b) Full-time student status for dependent students age nineteen through twenty-two; and

(c) Medicare ineligibility for enrollees age sixty-five or over.

(13) When determining eligibility for subsidized enrollment, noncitizens may be required to provide proof of immigration status, to verify whether they are here on a temporary visa to study in the United States.

(14) For good cause such as, but not limited to, when information received indicates a change in income or a source of income the enrollee has not reported, BHP may require enrollees to provide verification required in subsections (11) and (12) of this section more frequently, regardless of the length of time since their last recertification.

~~((14))~~ (15) Enrollees who fail to comply with a recertification request will be disenrolled, according to the provisions of WAC 182-25-090 (2)(e).

~~((15))~~ (16) If, as a result of recertification, BHP determines that an enrollee has not reported income or income changes accurately, the enrollee will be subject to the provisions of WAC 182-25-085.

#### WSR 05-13-107

#### PROPOSED RULES

#### HORSE RACING COMMISSION

[Filed June 17, 2005, 12:58 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 05-07-094.

Title of Rule and Other Identifying Information: WAC 260-12-250 Problem gambling signs must be posted and 260-84-060 Penalty matrixes.

Hearing Location(s): Peppertree Auburn Inn, 401 8th Street S.W., Auburn, WA 98001, on August 11, 2005, at 9:30 a.m.

Date of Intended Adoption: August 11, 2005.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by August 8, 2005.

Assistance for Persons with Disabilities: Contact Patty Sorby by August 8, 2005, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 260-12-250 Problem gambling signs must be posted is being amended to remove the penalties listed in this section. The penalties for violating WAC 260-12-250 are being moved to WAC 260-84-060 Penalty matrixes.

Reasons Supporting Proposal: Continues the effort of the commission to provide one place for our stakeholders to go to determine the penalty for a violation of Title 260 WAC.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington Horse Racing Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

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.

June 16, 2005

R. M. Leichner

Executive Secretary

AMENDATORY SECTION (Amending WSR 95-07-142, filed 3/22/95, effective 4/22/95)

**WAC 260-12-250 Problem gambling information sign must be posted.** The legislature recognizes that some individuals in Washington state are problem or compulsive gamblers. Because the state promotes and regulates gambling through the activities of the lottery commission, gambling commission and horse racing commission, the state has the responsibility to continue to provide resources for the support of services for problem and compulsive gamblers. RCW 9.46.071 requires that the lottery commission, gambling commission and horse racing commission shall jointly develop informational signs concerning problem and compulsive gambling, and that signs shall be placed in establishments of horse racing licensees, gambling licensees and lottery retailers.

All Class A, B and C licensees shall post problem and compulsive gambling informational signs in locations of their establishments, including satellite locations, which are clearly visible in patron traffic areas. The informational signs will be provided to the licensee by the horse racing commission and will contain a toll-free hot line number for problem and compulsive gamblers.

~~((If a licensee fails to post the problem and compulsive gambling informational signs in its establishment or satellite locations, it shall be fined \$50.00 for the first violation, \$100.00 for the second violation and \$200.00 for each violation noted thereafter.))~~

#### WSR 05-13-108

#### PROPOSED RULES

#### HORSE RACING COMMISSION

[Filed June 17, 2005, 12:59 p.m.]

Original Notice.



Preproposal statement of inquiry was filed as WSR 05-09-008.

Title of Rule and Other Identifying Information: New section WAC 260-28-290 Trainer—Ownership interests.

Hearing Location(s): Peppertree Auburn Inn, 401 8th Street S.W., Auburn, WA 98001, on August 11, 2005, at 9:30 a.m.

Date of Intended Adoption: August 11, 2005.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by August 8, 2005.

Assistance for Persons with Disabilities: Contact Patty Sorby by August 8, 2005, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To regulate when a trainer, with ownership interest in a horse, may allow that horse to run in a race where the trainer is licensed.

Reasons Supporting Proposal: This new section is intended to strictly control when a trainer with ownership interest in a horse may allow that horse to run in a race at a race meet where the trainer is licensed as a trainer.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington Horse Racing Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

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.

June 16, 2005

R. M. Leichner  
Executive Secretary

## NEW SECTION

**WAC 260-28-290 Trainer—Ownership interest.** A trainer who has ownership interest, in part or in whole, in a horse on the grounds of any racetrack during its licensed race meet shall be prohibited from allowing that horse to be trained and run under the control of another trainer, who is also licensed as a trainer at the same track. The horse may be entered and allowed to run in a race only when the horse is trained solely by the trainer with ownership interest in the horse. A horse that is owned by more than one trainer shall be prohibited from running in a race at the same track where the trainers are licensed.

## WSR 05-13-109 PROPOSED RULES HORSE RACING COMMISSION

[Filed June 17, 2005, 1:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-09-007.

Title of Rule and Other Identifying Information: WAC 260-32-160 Physical examinations.

Hearing Location(s): Peppertree Auburn Inn, 401 8th Street S.W., Auburn, WA 98001, on August 11, 2005, at 9:30 a.m.

Date of Intended Adoption: August 11, 2005.

Submit Written Comments to: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, e-mail rlopez@whrc.state.wa.us, fax (360) 459-6461, by August 8, 2005.

Assistance for Persons with Disabilities: Contact Patty Sorby by August 8, 2005, TTY (360) 459-6462.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Eliminates the requirement that all jockeys, prior to the beginning of a race meet, to be examined by licensed physician to establish their physical condition and freedom from disabling defects and/or disease. Instead, the commission will grant the board of stewards the authority to request a jockey provide a physician's written statement before being allowed to ride.

Reasons Supporting Proposal: Eliminates the need for the racetrack to retain a licensed physician and for all jockeys to be examined. Rather the new rule only requires a jockey provide a written statement from a physician on their condition to ride.

Statutory Authority for Adoption: RCW 67.16.020.

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

Name of Proponent: Washington Horse Racing Commission, governmental.

Name of Agency Personnel Responsible for Drafting: Robert J. Lopez, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462; Implementation and Enforcement: Robert M. Leichner, 6326 Martin Way, Suite 209, Olympia, WA 98516-5578, (360) 459-6462.

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.

June 16, 2005

R. M. Leichner  
Executive Secretary

## AMENDATORY SECTION (Amending Rules of racing, filed 4/21/61)

**WAC 260-32-160 ((Physical examinations.)) Physician's written statement.** ((Before the commencement of a meeting all jockeys must be examined by a licensed physician, designated by the board of stewards in order to establish their physical condition and freedom from disabling defects or contagious disease.)) During the conduct of a ((meeting.)) race meet the board of stewards may require ((that any)) a

jockey ((~~be reexamined and may refuse to allow said jockey to ride until he successfully passes such examination~~)) to provide a physician's written statement before being allowed to ride in a race.

WSR 05-13-112

PROPOSED RULES

DEPARTMENT OF ECOLOGY

[Order 05-07—Filed June 17, 2005, 4:15 p.m.]

WSR 05-13-111

PROPOSED RULES

LIQUOR CONTROL BOARD

[Filed June 17, 2005, 1:30 p.m.]

Continuance of WSR 05-12-141.

Title of Rule and Other Identifying Information: WAC 314-02-010 Definitions, 314-02-014 What is a food counter, a liquor bar, and a service bar and are minors allowed in these areas?, 314-02-015 What is a spirits, beer, and wine restaurant license?, 314-02-020 What are the fee categories for a spirits, beer, and wine restaurant license?, 314-02-025 What are the floor space requirements to obtain and maintain a spirits, beer, and wine restaurant license or a beer and/or wine restaurant license?, 314-02-030 Can a spirits, beer, and wine restaurant exclude persons under twenty-one years of age from the premises?, 314-02-033 Do spirits, beer, and wine restaurants that exclude minors from the premises have to put barriers around their dedicated dining area(s)?, 314-02-035 What are the food service requirements for a spirits, beer, and wine restaurant license?, 314-02-045 What is a beer and/or wine restaurant license?, 314-02-055 Can a beer and/or wine restaurant exclude minors from the dining area?, corrects cross-references in other WACs and repeals WAC 314-16-190 Spirits, beer, and wine restaurant—Qualifications, 314-16-196 Spirits, beer, and wine restaurant—Floor space requirements—Conditions for service bar only premises, and 314-02-050 What are the floor space requirements to obtain and maintain a beer and/or wine restaurant license?

Hearing Location(s): Liquor Control Board Headquarters Board Room, 3000 Pacific Avenue S.E., Olympia, WA, on July 20, 2005, at 10:00 a.m.

Date of Intended Adoption: No earlier than August 10, 2005.

Submit Written Comments to: Pam Madson, P.O. Box 43080, Olympia, WA 98504-3080, e-mail rules@liq.wa.gov, fax (360) 704-4021, by August 1, 2005.

Assistance for Persons with Disabilities: Contact Pam Madson by July 18, 2005, TTY (800) 855-2880 or (360) 664-1648.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This notice is intended to change the date of the public hearing to Wednesday, July 20, 2005, and to extend the public comment period to August 1, 2005.

June 16, 2005

Merritt D. Long

Chairman

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-08-141.

Title of Rule and Other Identifying Information: Changes to chapter 173-415 WAC, Primary aluminum plants and chapter 173-481 WAC, Ambient air quality and environmental standards for fluorides, are being proposed to update and streamline these rules that affect the aluminum industry.

Hearing Location(s): Ecology Headquarters Building, Room ROA-36, 300 Desmond Drive, Lacey, WA 98504, on July 26, 2005, at 1:30 p.m.

Date of Intended Adoption: August 23, 2005.

Submit Written Comments to: W. Thomas Todd, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, e-mail ttod461@ecy.wa.gov, fax (360) 407-7534, by 5:00 p.m., August 5, 2005.

Assistance for Persons with Disabilities: Contact Tami Dahlgren by July 18, 2005, TTY 1-800-833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Ecology proposes to amend parts of chapter 173-415 WAC by changing sections that deal with applicability, emissions standards, monitoring and reporting (including reports of startup, shutdown, breakdown or upset conditions), and modifying some definitions. Some duplicative sections are proposed for elimination. In chapter 173-481 WAC, ecology is proposing amending sections that deal with applicability, definitions, forage and ambient standards, and compliance.

Reasons Supporting Proposal: Regulatory reform, ecology is proposing to streamline the rule language without weakening the underlying requirements.

Statutory Authority for Adoption: RCW 70.94.395 and 70.94.331.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: Washington Department of Ecology, governmental.

Name of Agency Personnel Responsible for Drafting: W. Thomas Todd, Olympia, (360) 407-7528; Implementation and Enforcement: Carol Kraege, Olympia, (360) 407-6906.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule amendment has been reviewed and is exempt from economic analysis under RCW 34.05.328 and chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. The rule amendment has been reviewed and is exempt from economic analysis under RCW 34.05.328 and chapter 19.85 RCW.

June 16, 2005

Polly Zehm

Deputy Director

NEW SECTION

**WAC 173-415-015 Applicability.** (1) In addition to the general applicability of chapter 173-400 WAC to all emission sources, all primary aluminum reduction plants are required to meet the emissions standards of this chapter. Specific emissions standards and requirements listed in this chapter shall supersede the general emissions standards and general requirements in chapter 173-400 WAC.

(2) All primary aluminum reduction plants are required to meet applicable National Emissions Standards for Hazardous Air Pollutants (NESHAPs). New primary aluminum reduction plants must meet federal New Source Performance Standards (NSPS).

(3) In this rule, whenever a federal regulation is cited, the most recent version that has been adopted into Washington Administrative Code is the version of the federal regulation that is referenced. These most recent adoptions by reference can be found in chapter 173-400 WAC.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-415-020 Definitions.** The definitions of terms contained in chapter 173-400 WAC are incorporated into this chapter by reference. Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter, shall have the following meanings:

(1) ("~~Fluorides~~" means compounds of the element fluorine.

(2) "~~Forage~~" means grasses, pasture and other vegetation that is normally consumed or is intended to be consumed by livestock.

(3) "~~Primary aluminum plant~~" or) "Potline" means a single discreet group of electrolytic reduction cells connected in series, in which alumina is reduced to form aluminum.

(2) "Primary aluminum reduction plant" ((or "~~primary aluminum mill~~")) means ((a plant which produces aluminum metal from aluminum oxide (alumina))) any facility manufacturing aluminum by electrolytic reduction. For the purposes of this regulation "primary aluminum reduction plant" is equivalent to "source."

((4)) (3) ("~~Potline~~) Primary emission control system" means the equipment ((and procedures designed to collect and remove contaminants from the exhaust gases which are captured at the pot)) used to capture the gases and particulate matter evacuated directly from the reduction cell and the emission control device(s) used to remove pollutants prior to discharge of the cleaned gas to the atmosphere. A roof scrubber is not part of the primary control system.

(4) "Total fluorides (TF)" means elemental fluorine and all fluoride compounds as measured by Methods 13A, 13B or 14A in 40 CFR Part 60 Appendix A or by an EPA approved alternative method.

AMENDATORY SECTION (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-415-030 Emission standards.** ((In addition to the general applicability of chapters 173-400 and 173-490 WAC to all emission sources; all primary aluminum plants

~~are required to meet the emission standards of this chapter. Specific emissions standards listed in this chapter will take precedence over the general emission standards of chapter 173-400 WAC.)) (1) Fluoride. The emission of total fluorides from a primary aluminum reduction plant shall meet the MACT requirements specified in 40 CFR 63 Subpart LL. If the department has reason to believe that adverse fluoride impacts are occurring in violation of chapter 173-481 WAC, a primary aluminum reduction plant must establish, in response to a request from the department, an ambient air and/or forage monitoring program approved by the department as required by WAC 173-481-150.~~

((a) ~~The emission of gaseous and particulate fluorides for all emissions units within a primary aluminum plant shall be restricted so that the plant's emissions will not cause ambient air and forage standards for fluorides established by chapter 173-481 WAC to be exceeded outside the property controlled by the aluminum plant owner(s) or operator(s).~~

(b) ~~Each potline primary emission control system shall be designed so that the control of fluoride emissions will be equivalent to a total fluoride collection efficiency of: (i) Eighty percent for vertical stud soderberg and side worked prebake pots, (ii) eighty five percent for horizontal stud soderberg pots, and (iii) ninety five percent for center worked prebake pots. A primary emission control system with a design removal efficiency of at least ninety five percent of the fluoride collected is required.)~~

(2) Particulate. The total emission of particulate matter to the atmosphere from the reduction process (potlines) shall be reduced to the lowest level consistent with reasonably available control technology (RACT) for primary aluminum reduction plants. The emission of solid particulate shall not exceed 7.5 grams per kilogram (fifteen pounds per ton) of aluminum produced on a daily basis. Aluminum produced shall be calculated by the method used to determine aluminum production rate in 40 CFR 63.847 (e)(6).

(3) Visible emissions. Visible emissions from any emissions unit in a primary aluminum reduction plant shall not exceed an average twenty percent opacity for more than six consecutive minutes in any sixty minute period. This provision shall not apply:

(a) When the presence of uncombined water is the only reason for the opacity of the plume to exceed twenty percent; or

(b) When an alternate opacity limit has been established under RCW 70.94.331 (2)(c).

(4) Fugitive emissions. Each primary aluminum reduction plant shall use RACT to prevent fugitive emissions. Fugitive dust is included in fugitive emissions.

(5) Sulfur dioxide.

(a) Total emissions of sulfur dioxide from all emissions units shall not exceed thirty grams of sulfur dioxide per kilogram of aluminum produced on a monthly average (sixty pounds per ton). Those primary aluminum plants which were in excess of the above sulfur dioxide limit on January 1, 1978, will be allowed to emit at the January 1, 1978, level of emissions provided that the owners or operators did demonstrate to ecology by July 1, 1981, by use of modeling and ambient measurements, that the emissions will not cause the

ambient standard to be exceeded, and that the limits are placed in a regulatory order(s).

(b) In no case shall any plant cause or permit the emission of a gas containing sulfur dioxide in excess of one thousand parts per million corrected to dry standard conditions for an hourly average.

(6) Operation and maintenance (O&M). At all times, including periods of abnormal operation and upset conditions, owners and operators shall, to the extent practicable, maintain and operate an affected facility, ~~((and operate and maintain air pollution control equipment associated with such facility))~~ including associated air pollution control equipment, in a manner consistent with good air pollution control practice. ~~((A plant may elect to establish a program, subject to the approval of ecology, for monitoring each potroom in order to demonstrate good operation and maintenance.))~~ Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to ecology which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source. The means for demonstrating ongoing compliance with good O&M may include, but not be limited to: More frequent source testing, prescriptive procedures or inspections, control values for emissions at values less than the applicable regulatory requirements and that function as an investigative trigger rather than as a limit, collection and efficiency requirements, or the use of CEMs.

(7) Source testing. To demonstrate compliance with this chapter, the testing provisions of chapter 173-400 WAC ((173-400-105 shall apply to all sources to which this chapter is)) and MACT requirements as specified in 40 CFR 63 Subpart LL shall be used as applicable.

**AMENDATORY SECTION** (Amending Order 90-06, filed 2/19/91, effective 3/22/91)

**WAC 173-415-060 Monitoring and reporting.** (1) When requested by the department, each primary aluminum reduction plant shall conduct routine monitoring of emissions, ambient air, and forage in accordance with a program that has been approved by the department of ecology. Results of monitoring shall be reported within thirty days of the end of each calendar month ((and)). In addition to the information required by the Primary Aluminum MACT, 40 CFR 63 Subpart LL, the approved program shall include data as follows:

(a) ~~((Ambient air: Twenty-four hour concentrations of gaseous fluoride in the ambient air expressed in micrograms of hydrogen fluoride per cubic meter of ambient air.~~

(b) ~~Forage: Concentrations of fluoride in forage expressed in parts per million of fluoride on a dried weight basis.~~

(e)) Particulate emissions: Results of all emission sampling conducted during the month for particulates, shall be expressed in ((grains per standard dry cubic foot, in pounds per day, and in pounds per ton of aluminum produced)) units used in the applicable requirements or in units specified in the monitoring plan. The method of calculating pounds per ton shall be as specified in the approved monitoring programs.

For each potline, particulate data shall be reported as total particulates and percentage of fluoride ion contained therein. For other units at a primary aluminum reduction plant, particulate data shall be reported as total particulates.

Compliance with WAC 173-415-030(2) shall be determined by measurements of emissions from the potline primary control system plus measurements of emissions from the potline roof ((monitor)).

~~((d))~~ (b) Fluoride emissions: Results of all sampling conducted during the month for fluoride emissions((--All results shall be expressed as hydrogen fluoride in parts per million on a volume basis and pounds per day of hydrogen fluoride)) shall be reported in pounds of total fluoride per ton of aluminum produced. Aluminum produced shall be calculated by the method used to determine aluminum production rate in 40 CFR 63.847(e)(6).

~~((e))~~ (c) Other emission and ambient air data as specified in the approved monitoring program.

(2) Other data: ~~((For ecology to evaluate a plant's emissions or emission control program, each primary aluminum))~~ Each primary aluminum reduction plant shall furnish other data requested by the department of ecology to evaluate a plant's emission control program.

(3) Change in raw materials or fuel: Any change or series of changes in raw material or fuel which results in a cumulative increase in emissions of sulfur dioxide of five hundred tons per year or more over that stated in the 1979 emissions inventory ~~((required by WAC 173-415-080))~~ shall require the submittal of sufficient information to the department of ecology so that the effect upon ambient concentrations of sulfur dioxide can be determined. The department of ecology may issue regulatory orders requiring controls to reduce the effect of such increases.

#### **REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 173-415-040	Standards of performance.
WAC 173-415-045	Creditable stack height and dispersion techniques.
WAC 173-415-050	New source review (NSR).
WAC 173-415-051	Prevention of significant deterioration (PSD).
WAC 173-415-070	Report of startup, shutdown, breakdown or upset conditions.
WAC 173-415-080	Emission inventory.

**AMENDATORY SECTION** (Amending Order 87-21, filed 9/16/87)

**WAC 173-481-020 Applicability.** The forage provisions of this chapter apply to all areas ((of the state of Washington)) where livestock are grazed, and where forage is grown for livestock feed. The ambient action levels apply to areas where fluoride sensitive vegetation is grown for com-

mercial purposes and in public land use areas, such as parks, where fluoride damage to vegetation would adversely impact the use and enjoyment of the area. The ambient action levels are independent of the forage standards and are not designed to relate to potential concentrations in forage.

AMENDATORY SECTION (Amending Order 87-21, filed 9/16/87)

**WAC 173-481-030 Definitions.** Unless a different meaning is clearly required by context, words and phrases used in this chapter shall have the following meanings; general terms common with other chapters of Title 173 WAC as defined in chapter 173-403 WAC, and terms specific to standards for fluorides as defined below:

(1) "Fluorides" means compounds of the element of fluorine.

(2) "Forage" means grasses, pasture and other vegetation that is consumed or is intended to be consumed by livestock.

~~((2) "Cured forage" means hay, straw, ensilage that is consumed or is intended to be consumed by livestock.))~~ (3) "Growing season" means April 1 to September 30 unless a different period is specified by the department by an order.

(4) "Injury" means any fluoride induced measurable change in a plant that is metabolic, visual, or physiological such as alterations in the assimilation rate of plant constituents, leaf necrosis, leaf or fruit abscission, or reduced or altered growth.

(5) "Damage" means any fluoride induced injury to a plant that causes economic loss, or would adversely impact the use and enjoyment of public land use areas.

(6) "Public land use area" means land belonging to the community as a whole through its representatives in government, and within which fluoride sensitive vegetation is important to the purpose of the land use such as parks, national forests, etc.

AMENDATORY SECTION (Amending Order 87-21, filed 9/16/87)

**WAC 173-481-100 Forage standards.** (1) All sampling to determine compliance with these standards shall be conducted in locations and during time periods consistent with protecting livestock ~~((and vegetation)).~~

(2) The fluoride content of forage calculated by dry weight shall not exceed:

(a) Forty parts per million fluoride ion (40 ppm F<sup>-</sup>) average for ~~((any twelve consecutive months))~~ the growing season.

(b) Sixty parts per million fluoride ion (60 ppm F<sup>-</sup>) each month for more than two consecutive months during the growing season.

(c) Eighty parts per million fluoride ion (80 ppm F<sup>-</sup>) more than once in any two consecutive months during the growing season.

~~((3) In areas where cattle are not grazed continually, but are fed cured forage part of the year, the fluoride content of the cured forage shall be used as the forage fluoride content for as many months as it is fed to establish the yearly average.~~

~~(4) Cured forage grown for sale as livestock feed shall not exceed forty parts per million fluoride ion (40 ppm F<sup>-</sup>) by dry weight after curing or preparing for sale.))~~

AMENDATORY SECTION (Amending Order 87-21, filed 9/16/87)

**WAC 173-481-110 Ambient ~~((standards))~~ action levels.** (1) All sampling to determine compliance with these standards shall be conducted in locations and during time periods consistent with protecting ~~((livestock and))~~ vegetation of the type and in areas covered by this chapter.

(2) Gaseous fluorides in the ambient air calculated as HF at standard conditions shall not exceed:

~~((a) (Three and seven-tenths micrograms per cubic meter (3.7 µg/m<sup>3</sup>) average for any twelve consecutive hours;~~

~~((b))~~ Two and nine-tenths micrograms per cubic meter (2.9 µg/m<sup>3</sup>) average for any nonoverlapping twenty-four consecutive hours;

~~((c))~~ ~~((b))~~ One and seven-tenths micrograms per cubic meter (1.7 µg/m<sup>3</sup>) average for any seven consecutive days;

~~((d))~~ ~~((c))~~ Eighty-four one-hundredths micrograms per cubic meter (0.84 µg/m<sup>3</sup>) average for any thirty consecutive days;

~~((e))~~ ~~((d))~~ Five-tenths micrograms per cubic meter (0.5 µg/m<sup>3</sup>) average for the ~~((period March 1 through October 31 of any year))~~ growing season.

AMENDATORY SECTION (Amending Order 87-21, filed 9/16/87)

**WAC 173-481-150 ~~((Compliance with standards,))~~ Corrective action.** (1) When requested by the department, persons emitting fluorides to the ambient air shall demonstrate their compliance with WAC 173-481-100 and 173-481-110 by conducting a monitoring program approved in writing by the department. ~~((All monitoring data shall be submitted to the department.))~~ Monitoring shall be required only in areas with forage or vegetation to be protected by this chapter. Monitored exceedances of the ambient action level shall not require corrective action or be considered violations of this chapter unless there is demonstrated related fluoride induced damage to vegetation protected by this chapter. If an ambient action level is exceeded, the persons emitting fluorides shall provide a plan for ecology approval for determining if damage has occurred. If damage is found the facility shall determine the cause of the damage and take corrective action approved by ecology to prevent further damage. When evaluating corrective action, work practices shall be considered before considering additional controls.

(2) Concurrent violations of the action levels found in WAC 173-481-100 and 173-481-110 shall not contain overlapping time periods for any one standard or action level.

**WSR 05-13-114**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed June 20, 2005, 1:34 p.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 03-10-084.

**Title of Rule and Other Identifying Information:** Chapter 308-20 WAC, Cosmetologists, barbers, manicurists, and estheticians, amending WAC 308-20-010 Definitions and 308-20-101 Apprentice credit for training in an approved apprentice salon/shop.

**Hearing Location(s):** Department of Licensing, Business and Professions Division, Building 2, Conference Room 209, 405 Black Lake Boulevard, Olympia, WA 98502, on August 1, 2005, at 10:00 a.m.

**Date of Intended Adoption:** August 2, 2005.

**Submit Written Comments to:** Sandra Gonzales, Cosmetology Program, P.O. Box 9026, Olympia, WA 98507, e-mail sgonzales@dol.wa.gov, fax (360) 570-4957, by July 29, 2005.

**Assistance for Persons with Disabilities:** Contact Sandra Gonzales by July 29, 2005, TTY (360) 664-6649 or (360) 664-8885.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** The purpose of the proposed rules is to allow an apprentice to receive in classroom theory hours of instruction from a licensed instructor at a location other than a licensed school.

**Reasons Supporting Proposal:** In 2004, legislation passed that implemented an apprenticeship training program for the professions of cosmetology, manicuring, esthetics and barbering.

One of the requirements of that legislation was that the Department of Licensing to adopt rules, including a mandatory requirement that apprentices complete in classroom theory courses as part of their training. In line with that the department did adopt WAC 308-20-101(3) that stated theory hours must be taught in a licensed school by a licensed instructor.

However, it has come to our attention that the apprenticeship salons are having a difficult time finding licensed cosmetology schools that are interested in providing theory hours to the apprentices. In order to accommodate the need for theory training hours the department would like to change the existing rule to state that theory hours for apprentices must be taught by a licensed instructor. This will allow a licensed instructor to teach the required theory hours at a location other than a licensed school.

**Statutory Authority for Adoption:** RCW 18.16.030, 18.16.280, 43.24.023.

**Statute Being Implemented:** RCW 18.16.030 and 18.16.280.

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

**Name of Proponent:** Department of Licensing, governmental.

**Name of Agency Personnel Responsible for Drafting:** Trudie Touchette, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-6626; **Implementation:** Rose McGrew, 405

Black Lake Boulevard, Olympia, WA 98502, (360) 664-6626; and **Enforcement:** Susan Colard, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-6626.

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.

A cost-benefit analysis is not required under RCW 34.05.328. Washington State Department of Licensing is not a named agency, therefore, exempt from this provision.

June 20, 2005

Trudie Touchette

Administrator

**AMENDATORY SECTION** (Amending WSR 04-05-005, filed 2/6/04, effective 3/8/04)

**WAC 308-20-010 Definitions.** (1) "Chemical compounds formulated for professional use only" are those compounds containing hazardous chemicals in a form not generally sold to the public; including but not limited to, bulk concentrates of permanent wave solution, neutralizers, chemical relaxers, oxidizing agents, flammable substances, facial creams, or approved chemical compounds. These compounds must be designated for use on the hair, face, neck, skin, or scalp.

(2) "Monthly student report" are forms provided by the school, approved by the department, preprinted with the school name. The report must include the daily activities of the student in each subject, (i.e., number of shampoos, haircuts, perms, colors, etc.) within each course (i.e., barbering, manicuring, cosmetology, esthetics, or instructor-trainee).

(3) "Completed and graduated" is the completion of the school curriculum and the state approved minimum hourly course of training.

(4) "Apprentice salon/shop" is a location certified by the advisory committee that provides training for individuals accepted into the apprenticeship program. Apprentice salon/shops shall not receive payment from the apprentice for training.

(5) "Apprentice trainer" is a person that is currently licensed and in good standing. This person provides training in a licensed shop approved for the apprenticeship program, who must have received Journey Level training and have held a license in the curriculum for which he or she is providing training for a minimum of three years.

(6) "Completion of the apprenticeship program" is the completion of the apprentice salon/shop curriculum that includes the state approved hourly course of training as described in WAC 308-20-080 (~~and the in-classroom theory training from a school licensed with the department of licensing~~).

(7) "Monthly apprentice report" forms provided by the apprentice shop, approved by the department, printed with the shop name, for use in recording apprentice training hours and activities.

**AMENDATORY SECTION** (Amending WSR 04-05-005, filed 2/6/04, effective 3/8/04)

**WAC 308-20-101 Apprentice credit for training in an approved apprentice salon/shop.** (1) A minimum of one trainer per apprentice is required.

~~(2) ((Only the hours of instruction an apprentice is given under the direction of a trainer as defined in WAC 308-20-010 and in the standards developed by the apprenticeship program shall be credited toward completion of the apprenticeship training.~~

~~(3) Theory hours must be taught in a licensed school by a licensed instructor.)) Only those hours of theory instruction given under the direction of an instructor licensed under chapter 18.16 RCW shall be credited towards completion of the apprentice curriculum requirements for theory hours. Cosmetologist, barber, manicurist and esthetician theory hours must be taught in a classroom setting under the direct supervision of an instructor licensed in the curriculum for which he or she is providing theory instruction.~~

~~(3) With the exception of theory hours, only those hours of instruction an apprentice is given under the direction of an apprentice trainer as defined in WAC 308-20-010 and in the standards developed by the apprenticeship program shall be credited toward completion of the apprenticeship training.~~

(4) When all of the apprenticeship program requirements have been met by the apprentice and within thirty days of an apprentice's completed training, the committee shall provide to the apprentice a copy of the apprentice's final report.

(5) An apprentice may transfer between shops only when the committee approves the transfer.

(6) Apprentice trainers and instructors must be physically present where apprentices are training.

#### WSR 05-13-115

#### PROPOSED RULES

#### GAMBLING COMMISSION

[Filed June 20, 2005, 2:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-04-098.

Title of Rule and Other Identifying Information: WAC 230-20-325 Manner of conducting a raffle and 230-20-335 Members-only raffles—Procedures—Restrictions.

Hearing Location(s): Red Lion Hotel Pasco, 2525 North 20th Avenue, Pasco, WA 99301, (509) 544-2910, on September 9, 2005, at 9:30 a.m.

Date of Intended Adoption: September 9, 2005.

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 September 1, 2005.

Assistance for Persons with Disabilities: Contact Shirley Corbett by September 1, 2005, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Agency rules set requirements for conducting raffles. Raffles have three major

elements; selling sequentially prenumbered tickets (for the same price); randomly drawing a winner from the population of sold tickets; and awarding a prize. All tickets must be sold for the same price (\$25 maximum price for a single ticket) and winners determined by drawing tickets from a receptacle (for example, a bowl).

Our rules provide exceptions to the same price per ticket requirement and allows tickets to be sold at a discount. We also allow tickets to be drawn using an alternative drawing format (such as a duck race).

If an organization wants to operate an alternative drawing format or offer tickets at a discount, it must have a raffle license and written approval from the commission. The criteria staff used for approving alternative drawing formats are as follows: Every participant must have an equal chance of winning (random selection process); the licensed organization must ensure the tickets are drawn in a controlled and secure manner; and an adequate audit trail must be used to reconcile ticket sales and the verification of the selection process. Subsection (2) allows for a single discount level on the price of a raffle ticket. For example, one ticket for \$2.00 or three tickets for \$5.00.

Over the years the majority of these alternative drawing formats have become fairly standardized and more routine in nature. The rule change would eliminate the written approval process for alternative drawing formats and discount schemes by adding language describing categories for the different types of authorized alternative drawing formats for organizations to follow. The proposed rule change would allow discount schemes at all licensed raffle classes and eliminate the requirement for organizations to submit their discount schemes for written approval from agency staff. The changes will be added to rules relating to public and members-only raffles. Organizations will still be required to have a raffle license to operate alternative drawing formats and discount tickets.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0277.

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

Name of Proponent: Washington State Gambling Commission, governmental.

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. The amendment will not impose additional costs on licensees.

A cost-benefit analysis is not required under RCW 34.05.328. Amendment does not impose additional costs to licensees.

June 10, 2005

Susan Arland

Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 01-23-054, filed 11/20/01, effective 1/1/02)

**WAC 230-20-325 Manner of conducting a raffle.** ((Only charitable and nonprofit organizations may conduct a raffle. All raffles, except as authorized in WAC 230-02-335 (members only raffles), shall be conducted utilizing the following operating procedures:

**Price per ticket – maximum \$25.**

(1) Each raffle ticket may not be sold for more than twenty five dollars. Every raffle ticket for a particular raffle must be sold for the same price. Provided, That tickets may be bundled together and sold at a discount, as authorized by subsection (2) of this section.

**Discount schemes for tickets.**

(2) The director may authorize a raffle licensee to sell tickets at a discount when the following requirements are met:

**License required.**

(a) The organization must have a current Class E or higher raffle license. Provided, That Class C or Class D raffle licensees may offer discounted tickets if all recordkeeping requirements of WAC 230-08-070 are followed.

**Request for approval.**

(b) A request for approval of discounted sales must be received at the Lacey headquarters office at least thirty days prior to beginning the first raffle for which such approval is requested. The request for approval shall include, at a minimum, the following information:

- (i) A full description of the discount scheme;
- (ii) The account controls and records that will be used; and
- (iii) A copy of a raffle ticket and the booklet cover to be used in the raffle.

**Subsequent discount schemes.**

((e) After a licensee has received approval for a discount scheme, the licensee may utilize the identical discount scheme in subsequent raffles, unless approval is rescinded or commission rules change.))

**Cost of approval.**

(d) The licensee shall reimburse the commission for costs incurred to review discount schemes. Provided, That the licensee will not be charged for the first two hours of service (WAC 230-12-315).

**Amount of discount.**

(e) Only one discount scheme is allowed for each raffle. The amount of the discount must be set prior to selling any raffle tickets and must not be changed during the raffle.

**Bundling tickets.**

(f) Raffle tickets bundled to be sold at a discount must meet the following requirements:

(i) Discounted tickets must be bundled into booklets that contain the number of tickets set forth in the approved scheme. For example, if single tickets are sold for five dollars each, the discount scheme may allow three tickets to be bundled together and sold for ten dollars;

(ii) Tickets bundled into booklets shall not be removed from the booklet and sold individually; and

(iii) The cover of each ticket booklet shall be imprinted with the following:

(A) A description of the sales scheme;

(B) The number of tickets in the booklet;

(C) The total cost of the booklet; and

(D) A control number that meets the requirements of subsection (3) of this section.

**Accounting.**

(g) Accounting procedures must be established and provide controls necessary to allow commission staff the ability to audit gross gambling receipts from ticket sales.

**Numbering of tickets.**

(3) To provide an adequate audit trail, all raffle tickets shall be:

(a) Consecutively numbered; or

(b) Imprinted with letters or symbols which are not repeated within the population of all tickets sold for a particular raffle.

**Purchasing tickets.**

(4) No person shall be required to purchase more than one raffle ticket.

**No free tickets or chances to win.**

(5) Free tickets, or an opportunity to participate in a raffle drawing without purchasing a ticket, are not allowed for any reason, including, but not limited to, the following:

(a) Awarded or given away as a prize;

(b) For purchasing a certain number of raffle tickets; or

(c) As a reward for selling raffle tickets.

**Ticket stub information.**

(6) Raffle tickets sold to the general public or for raffles that do not require the winner to be present at the drawing shall include a stub or other detachable section bearing a duplicate number, letter, or symbol corresponding to the number, letter, or symbol on the ticket or object representing the player's chance. The portion retained by the raffle operator shall include the participant's name, complete address, telephone number, and/or other information necessary to notify the winner.

**Ticket stubs to be placed in receptacle for drawing.**

(7) Each person that sells a raffle ticket shall give the raffle licensee all ticket stubs or other detachable section of all tickets sold. The licensee shall place each stub or other detachable section of each ticket sold into a receptacle from which the winning tickets will be drawn.



**Drawing the winning tickets.**

~~(8) The ticket collection receptacle shall be designed so that each ticket has an equal opportunity to be drawn. Provided, That an alternative drawing format to determine the winners may be utilized, as authorized by subsection (9) of this section.~~

**Alternative drawing format.**

~~(9) The director may authorize a raffle licensee to determine the winners utilizing an alternative drawing format when the following requirements are met:~~

***License required.***

~~(a) The organization must have a current raffle license.~~

***Request for approval.***

~~(b) A request for approval for an alternative drawing format must be received at the Laeey headquarters office at least thirty days prior to beginning the first raffle for which such approval is requested. The request shall include, at a minimum, the following information:~~

~~(i) The type of random selection process to be used and complete details of its operation;~~

~~(ii) The name and telephone number of the raffle manager; and~~

~~(iii) The signature of the organization's chief executive officer.~~

***Subsequent alternative drawing formats.***

~~(c) After a licensee has received approval to utilize an alternative drawing format, the licensee may utilize the identical drawing format in subsequent raffles, unless approval is rescinded or commission rules change.~~

***Cost of approval.***

~~(d) The licensee shall reimburse the commission for costs incurred to review alternative drawing formats. Provided, That the licensee will not be charged for the first two hours of service (WAC 230-12-315).~~

***Additional requirements.***

~~(e) The alternate drawing format must meet the definition of a drawing as defined by WAC 230-02-500;~~

~~(f) The random selection process used in the alternative format shall be fully disclosed to each player prior to selling a ticket; and~~

~~(g) The alternate drawing format must be closely controlled by the licensee.~~

**Selling tickets.*****Members only to sell—exception.***

~~(10) Tickets must be sold by members of the organization or volunteers under the supervision of a member under the requirements set forth in WAC 230-20-070(1).~~

***Compensation or incentives for sales.***

~~(11) Members shall not be paid for selling tickets, managing or operating a raffle. Provided, That noneash incentive~~

awards may be provided to members for selling tickets if the following requirements are met:

~~(a) Individual awards do not exceed a fair market value of ten dollars;~~

~~(b) The awards are based on the number of chances sold; and~~

~~(c) The fair market value of the total amount awarded for an individual raffle does not exceed two percent of the gross gambling receipts of the raffle.~~

**Prizes.**

~~(12) Prizes must be owned by the organization conducting the raffle prior to drawing the winning tickets. Raffle prizes must meet the following requirements:~~

~~(a) Firearms shall not be awarded as prizes. Provided, That a raffle licensee may award firearms as prizes under the provisions set forth in WAC 230-12-040;~~

~~(b) Liquor shall not be awarded as prizes. Provided, That unopened containers of liquor may be awarded as a prize in members only raffles when the proper permit is obtained from the liquor control board (RCW 9.46.0315 and WAC 230-20-335);~~

~~(c) The amount of money spent on prizes must meet the requirements set forth in WAC 230-20-015; and~~

~~(d) Prizes shall be controlled as set forth in WAC 230-20-300.~~

**Rules must be provided to participants.**

~~(13) All participants in a raffle must be informed of all rules by which prizes may be won at the time the ticket is purchased. This information shall be provided by either imprinting such on the participant's portion of the ticket or otherwise providing such to each participant in writing.~~

~~The following information shall be provided to each participant:~~

~~(a) The cost of each chance;~~

~~(b) All prizes available, whether cash or merchandise;~~

~~(c) Date and time of drawing;~~

~~(d) Location of drawing;~~

~~(e) Whether an entrant is required to be present at a raffle drawing in order to be eligible to win a prize; and~~

~~(f) Name of organization conducting the raffle.~~

**Posting the raffle license.**

~~(14) The raffle license or a copy of the license must be posted in a location readily visible by all raffle participants during the entire time the drawing of winners is being conducted.~~

**Joint raffles.**

~~(15) Raffle licensees may join together to conduct a raffle when the provisions set forth in WAC 230-20-350 are met.~~

**Members only raffles.**

~~(16) Organizations may conduct members only raffles under simplified procedures set forth in WAC 230-20-335.) Charitable and nonprofit organizations may operate raffles under the following conditions. Raffle ticket must be sold for twenty-five dollars or less. No person shall be required to~~

purchase more than one raffle ticket. Every ticket for a particular raffle must be sold for the same price. However, tickets may be offered at a discount under the following conditions:

**Bundling and selling tickets at a discount.**

(1) Organizations may put tickets together in a bundle and sell them at a discount if the organization:

- (a) Has a current raffle license;
- (b) Sets the discount before selling any raffle tickets and does change the discount plan during the raffle;
- (c) Keeps records that meet all commission requirements;
- (d) Makes single nondiscounted tickets available to all participants; and
- (e) Uses only one discount plan for each raffle.

(2) Booklets of bundled discounted tickets must contain the number of tickets set forth in the discount plan. For example, a single ticket is sold for five dollars each and three tickets bundled together are sold for ten dollars.

(3) Bundled tickets cannot be removed from a booklet and sold individually. Each booklet of bundled tickets must have the following information printed on the cover:

- (a) A description of the discount plan;
- (b) The number of tickets in the booklet;
- (c) The total cost of the booklet; and
- (d) A consecutive number.

**Ticket accounting.**

(4) Organizations must establish accounting procedures and provide controls necessary to allow for an audit of gross gambling receipts from ticket sales. To provide an adequate audit trail, all raffle tickets must:

- (a) Be consecutively numbered; or
- (b) Be imprinted with letters or symbols which are not repeated within the population of all tickets sold for a particular raffle.

**No free tickets.**

(5) Organizations must not give raffle tickets away for free and no one can be given an opportunity to participate in a raffle drawing without purchasing a ticket.

**Selling tickets.**

(6) Organizations must not sell raffle tickets via the internet.

(7) Tickets must be sold by members of the organization or volunteers under the supervision of a member under the requirements set forth in WAC 230-20-070(1).

**Incentives for selling tickets.**

(8) Members or volunteers of the organization must not be paid for selling tickets, managing, or operating a raffle. Organizations may provide members or volunteers with non-cash incentive awards for selling tickets if:

- (a) The awards are based on the number of chances sold;
- (b) The fair market value of the total amount awarded for an individual raffle does not exceed five percent of the gross gambling receipts of the raffle; and

(c) A record of the name, address, and telephone number is maintained for all persons receiving incentive awards.

**Rules must be provided to participants.**

(9) Organizations must inform all participants at the time a ticket is purchased of all rules by which prizes may be won in a raffle. This information must be provided by either imprinting such on the participant's portion of the ticket or otherwise providing such to each participant in writing. Organizations must give each participant the following information:

- (a) The cost of each chance;
- (b) All prizes available, whether cash or merchandise;
- (c) Date and time of drawing;
- (d) Location of drawing;
- (e) Whether an entrant is required to be present at a raffle drawing in order to be eligible to win a prize; and
- (f) Name of organization conducting the raffle.

**Posting the raffle license.**

(10) The raffle license or a copy of the license must be posted in a readily visible location at the site of the drawing.

**Ticket stub information.**

(11) If organizations sell raffle tickets to the general public or for raffles that do not require the winner to be present at the drawing, the organization must include a stub or other detachable section bearing a duplicate number, letter, or symbol corresponding to the number, letter, or symbol on the ticket or object representing the player's chance. The portion kept by the organization must include the participant's name, complete address, telephone number, and/or other information necessary to notify the winner.

**Ticket stubs to be placed in receptacle for drawing.**

(12) Each person that sells a raffle ticket must give the organization all ticket stubs or other detachable section of all tickets sold. The organization must place each stub or other detachable section of each ticket sold into a receptacle from which the winning tickets will be drawn.

**Prizes.**

(13) Organizations must own the prizes before drawing the winning tickets. Raffle prizes must:

- (a) Not be firearms, unless awarded as prizes under the provisions set forth in WAC 230-12-040;
- (b) Not be liquor;
- (c) Meet the requirements to the amount of money spent on prizes set forth in WAC 230-20-015; and
- (d) Be controlled as set forth in WAC 230-20-300.

**Drawing winning tickets.**

(14) Organizations must design the ticket collection receptacle so that each ticket has an equal opportunity to be drawn unless the organization is using an authorized alternative drawing format.

**Using alternative drawing formats.**

(15) Organizations may use an alternative drawing format that randomly determines winners when the organization:

- (a) Has a current raffle license;
  - (b) Maintains records sufficient to meet all requirements of WAC 230-08-070 regardless of license class;
  - (c) Meets the definition of a drawing as defined by WAC 230-02-500 with the alternate drawing format;
  - (d) Fully discloses to each player the random selection process used in the alternative format before selling tickets;
  - (e) Maintains a copy of the disclosure with the permanent raffle records;
  - (f) Ensures all participants have an equal chance of winning; and
  - (g) Uses raffle tickets that are prenumbered and sequential.
- (16) Alternative formats involving an element of skill are prohibited.

- (17) Internal controls and accounting procedures must:
- (a) Provide the ability to audit gross gambling receipts from ticket sales;
  - (b) Have sufficient controls to prevent manipulation of the random selection process; and
  - (c) Document the random selection process.

**Authorized alternative drawing formats.**

(18) Organizations must not conduct an alternative drawing that does not meet the criteria outlined in this section or WAC 230-20-335 for member-only raffles.

**Mock raffle races.**

(a) Sequentially numbered and issued tickets/adoption papers are numbered to identify a specific corresponding numbered mock animal(s), ball(s), or other similar objects that can be raced using natural elements to move the objects (water, gravity, wind). Objects must be released simultaneously at a start line. The winner will be the numbered object to first cross the finish line. All objects must be identical in weight, size, and shape, to have an equal opportunity to win.

**Poker runs.**

(b) Sequentially numbered and issued tickets/poker tally sheets are sold to participants. Participants will travel a predetermined course with predetermined drawing stations (typically five drawing stations). At each drawing station, the participant will draw one playing card for each ticket purchased. Station attendants will verify the card drawn and will record the card value on the poker ticket tally sheet. After all participants have completed the course, the best recorded poker hand will be declared the winner.

**Ball drops.**

(c) Sequentially numbered and issued tickets are numbered to identify a specific corresponding numbered ball. All purchased numbered balls will be suspended in air and simultaneously released over a target zone. The ball, closest or first, to hit the predetermined target will be declared the win-

ner. All balls must be equal in size, weight, and shape, to have an equal opportunity to win.

**Animal plops.**

(d) Sequentially numbered and issued tickets are numbered to identify a specific corresponding square on a numbered grid. The animal of choice will be released into the grid area until the animal has completed its plop. The numbered square containing the plop will determine the winner.

**Multiple stage drawings.**

(e) Tickets or objects are sequentially numbered and issued. Winners will be determined using multiple drawing phases to eliminate participants until the remaining ticket holder(s) are declared the winner. Second element chance plans are allowed as long as they meet the criteria set out in this rule.

**Bucket raffles.**

(f) Tickets are sequentially numbered and issued. Participants are allowed to place their tickets into any number of separate drawings for separate prizes. The multiple drawings are considered one single raffle unless the organization uses different numbered tickets for each drawing.

**Calendar raffle.**

(g) Calendars are sequentially numbered and issued. All sold calendar numbers are entered into the drawing receptacle. On predetermined dates, identified on the calendar, drawings will be conducted. All winning tickets must be replaced into the drawing receptacle for future drawings.

**Using a second element of chance.**

(19) Organizations may use second elements of chance to:

(a) Determine the final prize winner (for example: Ten finalists are drawn and each finalist will choose a key. The finalist with the key that unlocks the safe wins);

(b) Determine which prize is awarded among a group of prizes (for example: The winner selects one of three keys and wins the vehicle the key starts);

(c) Increase the prize (for example: The winning ticket matches a predetermined sequence of numbers and wins an additional prize).

(20) All aspects of the alternate drawing format must be closely controlled by the licensee.

**Joint raffles.**

(21) Organizations holding a raffle license may join together with another raffle licensee to conduct a raffle when the provisions set forth in WAC 230-20-350 are followed.

**Members-only raffles.**

(22) Organizations may conduct members-only raffles under simplified procedures set forth in WAC 230-20-335.

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 Order 443, filed 3/18/05, effective 7/1/05)

**WAC 230-20-335 Members-only raffles—Procedures—Restrictions.** (~~Organizations may conduct members-only raffles utilizing simplified procedures. For purposes of this section, "members-only raffle" means a raffle conducted by selling chances only to members of the organization and a limited number of guests, and determining the winners from among those members and guests that have purchased chances. The following procedures and restrictions supplement or modify WAC 230-08-070 and 230-20-325 and apply only to members-only raffles:~~

**Licensed-versus-licensed.**

~~(1) An organization may conduct an unlimited number of unlicensed members-only raffles if the combined gross revenue from the raffles does not exceed five thousand dollars during a calendar year. If the organization plans to exceed the five thousand dollar gross receipts limit, it must obtain a raffle license.~~

**Raffle to begin and end during membership meeting.**

~~(2) In order to conduct raffles utilizing these simplified procedures, all phases of the raffle must be completed during a meeting of the members, and the meeting must be completed on the same day and at the same location without interruption;~~

**Limit on number of guests.**

~~(3) If guests are allowed to participate, the total number of guests, as a percentage of the total attendance of the meeting, shall not exceed twenty five percent. Records shall be maintained that will allow commission staff to determine compliance with this requirement;~~

**Rules of play.**

~~(4) All disclosures required to be imprinted on a raffle ticket or chance may be provided to participants by posting a sign at each ticket sales point;~~

**Tickets.**

~~(5) Chances to enter a raffle may be included as a part of a package that includes dues, entertainment, or other fund-raising activities if the value of each component of the package is disclosed to the purchaser and the value of each individual raffle chance does not exceed twenty-five dollars. Provided, That initial applications for membership and any fees paid for such shall not include chances to enter raffles or to participate in any gambling activities;~~

**Modified pricing schemes for tickets.**

~~(6) The director may authorize an organization to deviate from the "same price" requirements of WAC 230-20-325(1) when the following requirements are met:~~

**License required.**

~~(a) The organization must have a current raffle license.~~

**Request for approval.**

~~(b) A request for approval of a modified pricing scheme must be received at the Lacey headquarters office at least thirty days prior to beginning the first raffle for which such approval is requested.~~

**Subsequent pricing schemes.**

~~(c) After an organization has received approval for a modified pricing scheme, the organization may utilize the identical approved pricing scheme in subsequent raffles, unless approval is rescinded or commission rules change. The following modified pricing schemes may be approved by the director:~~

**Different prices for tickets—one cent to ten dollars.**

~~(d) Chances to enter a raffle may be sold for different values, ranging from one cent to a maximum of ten dollars, if the following conditions are met:~~

~~(i) The scheme for assigning the cost of the ticket must be disclosed to the player before selling them a chance to participate. This disclosure shall include the total number of tickets in the population and the number of tickets at each price level;~~

~~(ii) Participants must be allowed to randomly select their ticket from the population of remaining tickets. Participants pay the amount imprinted upon the ticket they select;~~

~~(iii) The scheme provides an adequate audit trail that will allow commission staff and taxing authorities to determine gross gambling receipts;~~

~~(iv) The total gross gambling receipts available from raffles utilizing such schemes are limited to five thousand five dollars for each drawing;~~

~~(v) No more than two such drawings are conducted during a meeting of the members.~~

**Discount based on number of tickets purchased.**

~~(e) Chances may be sold for a discounted price that is based on the number of tickets a player purchases if:~~

~~(i) Participants are allowed to purchase a single ticket;~~

~~(ii) Only one discount scheme is allowed for each raffle. The amount of the discount must be set prior to beginning sales for the raffle;~~

~~(iii) The cost of a single ticket, without a discount, does not exceed ten dollars;~~

~~(iv) The total cost of a discount package does not exceed twenty-five dollars;~~

~~(v) The cost of a single ticket shall be imprinted on each ticket (i.e., one dollar a piece or twelve for ten dollars; or two dollars a piece or fifteen for twenty dollars); and~~

~~(vi) The licensee shall establish an audit system that includes controls and procedures that will allow commission agents and taxing authorities the ability to determine gross gambling receipts from the sale of tickets utilizing discounts. Such system shall be submitted to the director or the director's designee as a part of the approval request;~~

***Other pricing schemes.***

~~(f) Multiple tickets to enter one or more drawings may be sold as a package as long as the total price of the package does not exceed twenty-five dollars; and~~

~~(g) Alternative pricing schemes may be used if specifically authorized by the director. Approval will be issued on an individual basis and will require a detailed written request;~~

***Alternative drawing formats.***

~~(7) The director may authorize an organization to determine the winners utilizing an alternative drawing format when the following requirements are met:~~

***License required.***

~~(a) The organization must have a current raffle license.~~

***Request for approval.***

~~(b) A request for approval of an alternative drawing format for a members-only raffle must be received at the Lacey headquarters office at least thirty days prior to beginning the first raffle for which such approval is requested. Requests for approval of alternative drawing formats shall be signed by the organization's raffle manager.~~

***Subsequent alternative drawing formats.***

~~(c) After an organization has received approval for an alternative drawing format, the organization may utilize the identical alternative drawing format in subsequent raffles, unless approval is rescinded or commission rules change.~~

***Incentives for selling tickets.***

~~(8) The limitations on noncash incentive awards for an individual raffle, set forth in WAC 230-20-325(11), are modified to allow awards that do not exceed five percent of the combined gross gambling receipts for all raffles conducted during a membership meeting if a record of the name, address, and telephone number is maintained for all persons receiving awards valued in excess of fifty dollars;~~

***Prizes.***

~~(9) Prizes must be owned by the organization conducting the raffle prior to drawing the winning tickets. Raffle prizes must meet the following requirements:~~

~~(a) Firearms shall not be awarded as prizes. Provided, That a raffle licensee may award firearms as prizes under the provisions set forth in WAC 230-12-040;~~

~~(b) Unopened containers of liquor may be awarded as a prize when the proper permit is obtained from the liquor control board;~~

~~(c) Prize limits must meet the requirements set forth in WAC 230-20-015; and~~

~~(d) Prizes shall be controlled as set forth in WAC 230-20-300.~~

***Records.***

~~(10) Raffle records, as required by WAC 230-08-070, are modified as follows:~~

~~(a) The threshold value for maintaining a record of the name, address, and telephone number of each winner of a~~

~~prize is increased to include only prizes valued in excess of fifty dollars;~~

~~(b) Ticket disbursement records are not required; and~~

~~(c) Minimum record retention period is reduced to a period that is not less than one year following the date of each individual raffle drawing;)) Charitable and nonprofit organizations may conduct a members-only raffle using simplified procedures. For purposes of this section, "members-only raffle" means a raffle where chances are sold only to members of the organization and a limited number of guests. Winners must be determined from among those members and guests that have purchased chances.~~

**Licensed versus unlicensed.**

(1) Organizations may conduct an unlimited number of unlicensed members-only raffles if the combined gross revenue from the raffles does not exceed five thousand dollars during a calendar year. If organizations plan to exceed the five thousand dollar gross revenue limit, they must obtain a raffle license.

**Raffle to begin and end during membership meeting.**

(2) All phases of the raffle must be completed during a meeting of the members or special event, and the meeting or event must be completed on the same day and at the same location without interruption.

**Limit on number of guests.**

(3) If organizations allow guests to participate, the total number of guests, as a percentage of the total attendance of the meeting, must not exceed twenty-five percent. The organization must maintain records to show compliance with this requirement.

**Providing rules of play.**

(4) Organizations must post a sign at each ticket sales point to provide participants with all rules of play or the required disclosures must be imprinted on the raffle ticket or chance.

**Tickets in packages.**

(5) Organizations may include chances to enter a raffle as a part of a package that includes dues, entertainment, or other fund-raising activities if the value of each component of the package is disclosed to the purchaser and the value of each individual raffle chance does not exceed twenty-five dollars. However, initial applications for membership and any fees paid for such must not include chances to enter raffles or to participate in any gambling activities.

**Modified pricing plans for tickets.**

(6) Organizations may use modified ticket pricing plans at members-only raffles as long as gross revenue does not exceed five thousand five dollars. Chances to enter a raffle may be sold for different values not to exceed ten dollars for a single chance if:

(a) The plan for assigning the cost of the ticket is disclosed to the players before selling them a chance to participate. The information must include the total number of tick-

ets in the population and the number of tickets at each price level;

(b) Participants are allowed to randomly select their ticket from the population of remaining tickets and pay the amount imprinted on the ticket they select;

(c) There is an adequate audit trail to determine gross gambling receipts;

(d) No more than two such drawings are held during a meeting or event.

#### **Discount based on number of tickets purchased.**

(7) Chances may be sold for a discounted price that is based on the number of tickets a player purchases if:

(a) The amount of the discount is set before any raffle tickets are sold;

(b) Participants are allowed to purchase a single ticket;

(c) There is only one discount plan for each raffle;

(d) The cost of a single ticket, without a discount, does not exceed ten dollars;

(e) The total cost of a discount package does not exceed twenty-five dollars;

(f) The cost of a single ticket is imprinted on each ticket (for example, one dollar each);

(g) The discounted tickets are identified by a unique ticket audit numbering system; and

(h) An audit system is established that includes controls and procedures to determine gross gambling receipts from the sale of tickets utilizing a modified pricing plan.

#### **Other pricing plan.**

(8) Multiple tickets to enter one or more drawings may be sold as a package as long as the total price of the package does not exceed twenty-five dollars.

#### **Alternative drawing formats.**

(9) Organizations may use alternative drawing formats set forth in WAC 230-20-325 for members-only raffles. Organizations may substitute prenumbered raffle tickets with similar objects that can be used to randomly determine winners if the organization:

(a) Has a current raffle license; and

(b) Establishes internal controls and accounting procedures that will:

(i) Provide permanent records with enough information to verify gross gambling receipts;

(ii) Prevent the manipulation of the random selection process; and

(iii) Document, in detail, the random selection process used.

#### **Authorized members-only alternative drawing formats.**

(10) In addition to the alternative drawing formats authorized in WAC 230-20-325, the following are also authorized members-only alternative drawing formats:

#### **Mock raffle races (horse race raffles).**

(a) Sequentially numbered and issued tickets/race forms are sold to participants to wager on a specific mock animal in a field of mock animal racers (typically five to ten racers). The mock animals will race in individual lanes divided into

equal spaces or squares (for example, bingo boards are sometimes used as race lanes). Animals will move forward based on the numbers rolled on dice or balls drawn from a set of bingo balls. The first mock animal to cross the finish line will be declared the winner. All winning ticket holders will split the prize pool or a drawing of winning tickets will determine a single winner.

#### **Video race raffles.**

(b) Sequentially numbered and issued tickets/race forms are sold to participants to wager on the outcome of an unknown video taped race, typically horse races. The previously taped races must be obtained from an outside source and no participants must have knowledge of the specific race or the specific racers before conducting the video race drawing. Participants will be allowed to wager on the specific racers, identified by numbers, or a specific race lane. All participants holding a winning race number ticket or winning lane number ticket will be declared the winner. A drawing of the winning tickets may be held to determine a single winner.

#### **Paddle wheel raffles.**

(c) Numbered paddles or numbered tickets are sold to participants that correspond with numbered spaces on a spinning wheel. A balanced wheel divided into numbered segments is spun, at least one full revolution. The specific number the wheel stops on will determine the winning ticket holder.

#### **Pick your own ticket.**

(d) A predetermined number of objects or tickets are sold to participants. Each object or ticket may only be issued one time. If using a modified pricing plan, the selection of tickets must be based totally on chance and no participant can determine the price of a ticket before making their selection. All modified pricing plans must follow the requirements set out in subsection (6) of this section.

#### **Incentives for selling tickets.**

(11) Organizations may provide members with noncash incentive awards for selling tickets if:

(a) The awards are based on the number of chances sold;

(b) The fair market value of the total amount awarded for an individual raffle does not exceed five percent of the gross gambling receipts of the raffle; and

(c) A record of the name, address, and telephone number is maintained for all persons receiving incentive awards.

#### **Prizes.**

(12) Organizations must own the prizes before drawing the winning tickets. Raffle prizes must:

(a) Not be firearms, unless awarded as prizes under the provisions set forth in WAC 230-12-040;

(b) Not be liquor, unless unopened containers of liquor are awarded as a prize in members-only raffles when the proper permit is obtained from the liquor control board (RCW 9.46.0315 and WAC 230-20-335);

(c) Meet the dollar amount limits set forth in WAC 230-20-015; and

(d) Be controlled as set forth in WAC 230-20-300.

**Records.**

(13) For members-only raffle records, WAC 230-08-070 is modified as follows:

(a) The name, address, and telephone number must be recorded for all winners of a prize valued at greater than fifty dollars;

(b) A ticket disbursement log is not required; and

(c) All records must be maintained for a minimum of one year following the date of each individual raffle drawing period.

**WSR 05-13-116  
PROPOSED RULES  
GAMBLING COMMISSION**

[Filed June 20, 2005, 2:30 p.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 05-07-004.

**Title of Rule and Other Identifying Information:** Repealing WAC 230-12-330 Availability of gambling equipment and related products and services—Prices—Contracts—Discounts—Restrictions—Exceptions, 230-12-320 Manufacture and distribution of gambling equipment and services—Prohibited practices—Gifts, promotional activities, and loans—Exceptions and 230-12-345 Leases, rentals, and license agreements—Requirements—Restrictions; and amending WAC 230-12-340 Sale of gambling equipment, devices, supplies, paraphernalia, and related services—Credit prohibited—Exceptions and 230-12-350 Use of checks to purchase gambling equipment, products, and services—Restrictions.

**Hearing Location(s):** Red Lion Hotel Pasco, 2525 North 20th Avenue, Pasco, WA 99301, (509) 544-2910, on September 9, 2005, at 9:30 p.m.

**Date of Intended Adoption:** September 9, 2005.

**Submit Written Comments to:** Susan Arland, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, e-mail [Susana@wsgc.wa.gov](mailto:Susana@wsgc.wa.gov), fax (360) 486-3625, by September 1, 2005.

**Assistance for Persons with Disabilities:** Contact Shirley Corbett by September 1, 2005, TTY (360) 486-3637 or (360) 486-3447.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** This rules package is necessary due to the recent elimination of the manufacturer/distributor coordinator position. This staff reduction is in response to the legislature's transfer of \$2.5 million from our working capital to the state's general fund in 2004. Currently agency rules require manufacturers and distributors to offer their products and services to all licensees without discrimination. Volume discounts are allowed only if they are offered to all licensees and based on a single sales transaction. The intent of this rule is to prevent market control and predatory pricing. Staff currently does periodic pricing checks as distributors to ensure compliance with the discriminatory pricing rules. The proposed amendments open the market and allow manufacturers and distributors to sell their products for different prices to different customers. The

agency would no longer be involved with how companies price their products. Agency rules also require gambling equipment to be purchased, rented or leased on a cash basis only. The proposal allows manufacturers and distributors to have credit between each other and the agency would no longer be involved in the collection of debt for manufacturers. Operators would also be allowed to use credit cards to purchase, rent, or lease gambling equipment. It would also allow operators, to have license agreements, to use a manufacturer's patented, copyrighted, or trademarked games on credit. Restrictions on how distributors and manufacturers handle dishonored checks would be removed from the rules and the commission would no longer regulate NSF checks between manufacturers and distributors. An amendment would allow operators and distributors to use credit cards to make purchases. Agency rules limiting the amount of gifts manufacturers, distributors and operators can offer as incentives to purchase products would be repealed. All of the entities are required to be licensed and undergo thorough background checks before they receive a gambling license. Whether or not to remove pricing and credit restrictions is a policy decision for the commission.

**Statutory Authority for Adoption:** RCW 9.46.070.

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

**Name of Proponent:** Washington State Gambling Commission, governmental.

**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. The amendment will not impose additional costs on licensees.

A cost-benefit analysis is not required under RCW 34.05.328. Amendment does not impose additional costs to licensees.

June 10, 2005

Susan Arland

Rules Coordinator

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 230-12-345

Leases, rentals, and license agreements—Requirements—Restrictions.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 230-12-320

Manufacture and distribution of gambling equipment and services—Prohibited practices—Gifts, promotional

activities, and loans—Exceptions.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 230-12-330 Availability of gambling equipment and related products and services—Prices—Contracts—Discounts—Restrictions—Exceptions.

**AMENDATORY SECTION** (Amending Order 411, filed 4/18/02, effective 7/1/02)

**WAC 230-12-340 Sale of gambling equipment, devices, supplies, paraphernalia, and related services—**~~((Credit prohibited—Exceptions))~~ **Authorized transactions.** ~~((The use of))~~ Manufacturers and distributors must not offer credit to operators in the sale of gambling equipment, devices, related supplies or paraphernalia, and services ((is prohibited. Except as authorized by this section,)). Manufacturers and distributors must conduct all sales of such ((shall be transacted)) to operators on a cash basis. ~~((The following definitions, restrictions, and procedures apply to this section:))~~ "Cash basis" means full payment is received by the seller on or before actual delivery of the product or service to the purchaser.

**Capital leases.**

(1) All licensed manufacturers and distributors may sell gambling equipment such as dispensers, bingo blowers, roulette wheels, etc., and gambling-related support equipment through capital lease agreements or other financing arrangements to operators subject to the following conditions and requirements:

(a) The cost of a single item, or group of similar and related items included in the sale, exceeds one thousand dollars;

(b) The term of the contract does not exceed forty-eight months;

(c) All terms of the contract are in writing and copies of such agreements are provided to the commission within thirty days of execution;

(d) The manufacturer or distributor retains only a security interest in the item sold and cannot obtain any ownership interest in the licensee, or exercise any control over the use of the item in the licensed activity;

(e) The amount of payments is not based on the size or level of gambling activity and is determined by use of a standard amortization schedule for the term and stated interest rate;

(f) The interest rate charged by the contract is set at the time of sale and does not vary during the term of the contract; and

(g) The contract does not require the purchaser to directly or indirectly purchase any other products or services from the seller.

~~((Definitions))~~ **Rental or license agreements.**

(2) ~~((The following definitions only apply to subsections (3) through (9) of this section:~~

~~(a) "Manufacturers and distributors" refers only to the manufacturers and distributors of pull-tabs, punch boards, and bingo supplies.~~

~~(b) A "cash basis" means full payment is received by the seller on or before actual delivery of the product or service to the purchaser;~~

~~(c) A "trade account" is a payment system that allows distributors to place orders for inventory or services from manufacturers or distributors and to make payment for such within a specific period of time after shipment of the product or completion of the service;~~

~~(d) "Prescribed time period" is the maximum period of time a distributor has to pay for purchases of goods or services made under trade account terms prior to being restricted to cash basis terms. The time period begins when a product is shipped or service completed and ends on the date payment is actually delivered to the manufacturer or distributor, or if delivered by the U.S. mail, the U.S. postmark date of the envelope containing the payment. For purposes of this section, prescribed time period means no later than sixty days after shipment of the products or completion of the services.~~

**Authorized transactions.**

~~(3) For purposes of this WAC title, the following transactions are authorized and shall not be deemed as credit or loans of money when applicable requirements are met:~~

~~(a)) Except for punch boards, pull-tabs, bingo paper, bingo supplies, playing cards, and other consumable gambling-related equipment or devices, manufacturers and distributors may lease or rent gambling equipment to operators. Manufacturers may also enter into license agreements with operators for use of the manufacturer's patented, copyrighted, or trademarked games.~~

~~(3) Manufacturers and distributors may only base fee structures for electronic bingo equipment on the number of times a device is used or the number of bingo sessions in which devices are used. Fees must not be determined by a percentage of sales, the number of bingo cards sold through the device, or the average amount a player spends on a device.~~

**Check or credit card purchases.**

~~(4) Operators may purchase((s-ef)) goods and services from manufacturers or distributors when paid for by checks, or credit card issued by a state and/or federally regulated financial institution that meet the requirements of WAC 230-12-350((;~~

~~(b) Purchases of goods or services by distributors from manufacturers or other distributors when utilizing trade account terms and the requirements of subsection (4) of this section are followed;~~

~~(c) Promissory notes between manufacturers and distributors for payment of debts incurred prior to the effective date of this section;~~

~~(d) Purchases made under capital lease agreements when the requirements of this section are followed;~~

PROPOSED



(e)).

**Exceptions.**

(5) All transactions between manufacturers or distributors and tribal governments or companies certified to manage class III gambling activities operated under a tribal/state compact are exempt from all provisions of this section;

((f)) (6) Charitable or nonprofit organizations licensed to conduct bingo may purchase bingo cards and bingo supplies from distributors and/or manufacturers and receive such without making immediate payment if payment is made, by check or cash, no later than thirty days after delivery of the product. (If the distributor or manufacturer does not receive payment within thirty days, they must immediately restrict the licensee to sales on a cash on delivery basis until payment is received. Licensees paying for bingo supplies on terms other than a cash basis must document on the purchase invoice the date paid and the check number; and

(g) The sales of nongambling equipment, fixtures, supplies, or commodities to licensees are exempt from all provisions of this section when the requirements of WAC 230-12-330 are met.

**Trade account conditions.**

(4) Manufacturers and distributors may allow distributors to establish "trade accounts" to purchase gambling-related inventory or services without making immediate payment under the following conditions:

(a) Trade account terms, if offered to any distributor, shall be made available to all distributors without discrimination. Provided, That trade accounts may be restricted to distributors that:

(i) Meet objective credit criterion established by a manufacturer or distributor. Such criterion must be in writing, available to the commission for review, and provided to any distributor upon request. A manufacturer or distributor may include a distributor's payment history as a part of the trade account approval criterion;

(ii) Meet minimum purchase requirements established by the manufacturer. Provided, That the minimum purchase requirement shall not be greater than five hundred dollars per transaction;

(b) Trade account terms shall not allow a manufacturer or distributor to gain any ownership or financial interest in a licensee. This section is not intended to prohibit or restrict a manufacturer or distributor from gaining a security interest in inventory sold for credit, as authorized by the Uniform Commercial Code. Provided, That this section shall not allow a manufacturer to obtain an interest in inventory sold by any other manufacturer under trade account terms;

(c) A distributor shall make full payment for all goods or services purchased under trade account terms within the prescribed time period. Failure to pay within the prescribed time period may be deemed solicitation of credit by the distributor.

**Procedures for past due accounts—notification and sales restrictions.**

(5) When a distributor fails to pay for goods or services purchased under trade account terms within the prescribed time period, the creditor manufacturer or distributor shall

comply with the procedures set forth below. Failure to comply with these procedures may result in the manufacturer or distributor being deemed to have extended credit to the distributor. The following procedures must be followed when a distributor fails to make required payments:

(a) Notify the delinquent distributor of failure to pay by telephone no later than the end of the next business day;

(b) Restrict sales of all goods and services to the delinquent distributor no later than the end of the third business day after the default. Provided, That sales may be made to a delinquent distributor on a cash basis only;

(c) Notify the commission and all licensed manufacturers and distributors in writing by letter, facsimile or e-mail no later than the end of the fifth business day after default. Written notification shall include at least the following:

(i) The distributor's name;

(ii) The invoice or shipping order numbers involved in the transaction;

(iii) The date the item was shipped or service was provided; and

(iv) Any other information requested by the commission.

**Cash only sales to delinquent distributors.**

(6) Upon receipt of notification from the manufacturer that a distributor has a delinquent account, manufacturers and distributors shall immediately cease sales, shipments of products, and providing services to the delinquent distributor on other than a cash basis.

**Notification of payment on past due accounts.**

(7) The manufacturer shall notify the commission and all manufacturers and distributors in writing by letter, facsimile or e-mail, no later than the next business day after receiving payment from the delinquent distributor for the outstanding account. Trade account sales may then resume with all manufacturers.

(8) The distributor that was placed on a credit hold shall notify the commission in writing by letter, facsimile or e-mail, no later than the next business day after payment has been made to the manufacturer in which they were delinquent.

**Failure to pay promissory notes.**

(9) A creditor manufacturer or distributor shall immediately notify the commission if a distributor fails to abide by the terms of the promissory note and the process being pursued to correct the situation.))

**AMENDATORY SECTION** (Amending WSR 97-20-026, filed 9/22/97, effective 1/1/98)

WAC 230-12-350 Use of checks and credit cards to purchase gambling equipment, products, and services—Restrictions. Checks and credit cards may be used by licensed operators and distributors to purchase gambling equipment, devices, related supplies or paraphernalia, and services in lieu of cash under the following conditions:

PROPOSED

**~~((What are the restrictions on checks utilized for payment of gambling products or services?))~~**

(1) Checks and credit cards must be drawn on the licensee's business account: Provided, That personal checks and credit cards drawn on the account of an owner, partner, or officer or substantial interest holder of a corporate licensee may be accepted.

(2) Checks received by distributors from operators must be negotiable and dated on or before the delivery date of the product or service. Checks shall not be postdated.

**~~((When must a check be deposited?))~~**

(3) Checks shall not be held and must be presented for payment at the manufacturer's or distributor's bank within the prescribed time frames. Failure to present checks within the prescribed time period shall be prima facie evidence of extension of credit to the drawer licensee by the manufacturer or distributor. Prescribed time frames are as follows:

(a) Checks received from operators shall be deposited within ten calendar days after the date the product or service was delivered; and

(b) Checks received from distributors shall be deposited within ten days of the date received or, if delivered by mail, thirteen days from the postmark of the envelope containing the payment.

**~~((What are the procedures for handling a dishonored check presented to a distributor by an operator?))~~**

~~(4) Checks from licensed operators that are initially returned by a bank for lack of sufficient funds may be deposited again if within five banking days after return by the bank. If dishonored by the bank a second time, the distributor shall:~~

~~(a) Deliver dishonored checks to an owner, manager, or officer of the licensee within seven banking days after return from the bank and demand payment in cash. If unable to deliver such checks to an owner, manager, or officer of the licensee within seven days, the distributor shall notify the commission; and~~

~~(b) Upon being presented with a check returned by the bank, licensees shall immediately replace such check with cash or a cash equivalent such as a money order, certified check, or other guaranteed negotiable instrument; or~~

~~(c) Failure of an operator to replace a check returned by a distributor with cash or a cash equivalent shall be prima facie evidence of solicitation of credit and must be reported to the commission by the distributor within seven days.~~

**~~What are the procedures for handling a dishonored check presented to a manufacturer or distributor by a distributor?~~**

~~(5) Checks from distributors that are initially returned by a bank for lack of sufficient funds shall be processed by manufacturers or distributors using the following procedures:~~

~~(a) Checks received for payment for a prepaid or COD transaction may be deposited again if within five banking days after return by the bank. If dishonored by the bank a second time, the manufacturer or distributor shall:~~

~~(i) Contact an owner, manager, or officer of the distributor within seven banking days by telephone or facsimile and demand payment by a certified check, postal money order, or other cash equivalent. If unable to contact an owner, manager, or officer within seven days, the manufacturer shall notify the commission;~~

~~(ii) Upon receipt of a cash equivalent to replace the dishonored check, the manufacturer or distributor shall return the check to the distributor by mail;~~

~~(iii) If a distributor that is presented a dishonored check does not immediately replace such check, the manufacturer or distributor shall cease all sales to the distributor and notify the commission within seven days. Failure to replace a dishonored check with cash or cash equivalent shall be prima facie evidence of solicitation of credit by the distributor.~~

~~(b) If payment is for a transaction completed with trade account terms, the manufacturer:~~

~~(i) May deposit the check again if the prescribed time period for payment has not passed; or~~

~~(ii) May contact an owner, manager, or officer of the distributor by telephone or facsimile and demand payment by a cash equivalent such as a certified check or postal money order;~~

~~(iii) If the bank clears the check or payment is otherwise received prior to the prescribed time period for payment, no further action is required; and~~

~~(iv) If the prescribed time period for payment has passed and the dishonored check is not replaced prior to such, the manufacturer shall comply with the procedures set forth in WAC 230-12-340 for failure to make timely payment under trade account terms.))~~

**WSR 05-13-117****PROPOSED RULES****GAMBLING COMMISSION**

[Filed June 20, 2005, 2:31 p.m.]

Supplemental Notice to WSR 05-11-087.

Preproposal statement of inquiry was filed as WSR 05-06-032.

Title of Rule and Other Identifying Information: WAC 230-02-505 Recreational gaming activity—Defined.

Hearing Location(s): The Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, (360) 254-3100, on August 12, 2005, at 9:30 a.m.

Date of Intended Adoption: August 12, 2005.

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 August 1, 2005.

Assistance for Persons with Disabilities: Contact Shirley Corbett by August 1, 2005, TTY (360) 486-3637 or (360) 486-3447.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: **Changes after the May commission meeting:** This alternative would allow individual departments within an organization, business or association to each offer two events. Language was also added to require licensed distributors to submit a monthly

schedule of events they operate and they must also ask organizations if they have already sponsored an RGA during the calendar year.

Statutory Authority for Adoption: RCW 9.46.070.

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

Name of Proponent: Washington State Gambling Commission, governmental.

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. The amendment will not impose additional costs on licensees.

A cost-benefit analysis is not required under RCW 34.05.328. Amendment does not impose additional costs to licensees.

June 10, 2005

Susan Arland

Rules Coordinator

**AMENDATORY SECTION** (Amending Order 224, filed 7/17/91, effective 8/17/91)

**WAC 230-02-505 Recreational gaming activity—**  
**Defined.** A recreational gaming activity is a nongambling activity (~~(utilizing)~~) using poker tables and/or gambling devices authorized for use in fund-raising events, conducted no more than two times per calendar year, by or on behalf of a single department of an organization ((that has been in existence for at least six months)), business, or association. Only members and guests of the sponsoring (~~(organization)~~) department may participate and (~~(such)~~) the activity ((shall be)) is subject to the requirements of WAC 230-25-330.

If a licensed distributor contracts with an organization's department, business, or association to organize and conduct the recreational gaming activity on their behalf, the licensed distributor must send the commission a monthly schedule of activities for which they have contracted. This schedule must include the name of the organization's department, business, or association, and the date, location, and time of the activity. The schedule must identify any prior recreational gaming activities conducted by a licensed distributor on behalf of the organization's department, business, or association within the last calendar year.

WSR 05-13-119

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed June 20, 2005, 3:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-08-001.

Title of Rule and Other Identifying Information: Chapter 308-08 WAC, Brief adjudicative proceedings (BAPs).

Hearing Location(s): Dealer and Manufacturer Services, 2424 Bristol Court S.W., 3rd Floor Conference Room, Olympia, WA 98502, on July 26, 2005, at 10:30 a.m.

Date of Intended Adoption: August 2, 2005.

Submit Written Comments to: Kim Johnson, P.O. Box 9039, Olympia, WA 98507, e-mail kijohnson@dol.wa.gov, fax (360) 586-6703, by July 20, 2005.

Assistance for Persons with Disabilities: Contact Linda Whipple by July 20, 2005, TTY (360) 664-0116 or (360) 664-6455.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department may use brief adjudicative proceedings (BAPs) where their use will not violate any provisions of law, and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties.

Statutory Authority for Adoption: RCW 34.05.220.

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

Name of Proponent: Department of Licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Cal Sanders, 2424 Bristol Court, Olympia, WA 98502, (360) 664-6459; Implementation: Chuck Coach, 2424 Bristol Court, Olympia, WA 98502, (360) 664-6453; and Enforcement: Daniel Devoe, 2424 Bristol Court, Olympia, WA 98502, (360) 664-6451.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no small business impact.

A cost-benefit analysis is not required under RCW 34.05.328. There is no impact for the Department of Licensing or small business.

Daniel Devoe  
Administrator

#### NEW SECTION

**WAC 308-08-535 Brief adjudicative proceedings conversion to formal adjudicative proceedings—Dealer and manufacturer services.** (1) At least five days before the scheduled issuance of either an initial or a final order, any party, including the department, may file a written objection to resolution of a matter by a brief adjudicative proceeding and may request that it be converted to a formal adjudicative proceeding. Upon receiving a timely written objection, the presiding officer or reviewing officer, shall determine whether the matter should be converted. Regardless of whether any party files a timely objection, the presiding or reviewing officer may convert any brief adjudicative proceeding to a formal adjudicative proceeding whenever it appears that a brief adjudicative proceeding is insufficient to determine the issues pending before the agency.

(2) In determining whether to convert a proceeding, the presiding officer may consider the following factors:

(a) Whether witness testimony will aid the presiding or reviewing officer in resolving contested issues of fact;

(b) Whether the legal or factual issues are sufficiently complex to warrant a formal adjudicative proceeding, including whether there are multiple issues of fact or law;

(c) Whether a brief adjudicative proceeding will establish an adequate record for further agency or judicial review;

(d) Whether the legal issues involved in the proceeding present questions of legal significance or are being raised for the first time before the agency;

(e) Whether conversion of the proceeding will cause unnecessary delay in resolving the issues; and

(f) Any other factors that the presiding or reviewing officer deems relevant in reaching a determination.

### NEW SECTION

**WAC 308-08-545 Brief adjudicative proceedings. To what do they apply?** The department of licensing, dealer and manufacturer services section, adopts the provisions of RCW 34.05.482 through 34.05.494 for the matters listed in this section. The department may use brief adjudicative proceedings (BAPs) where their use will not violate any provisions of law, and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties.

The department may use BAPs including, but not limited to, the following matters:

(1) Whether a surety bond (or insurance) has been exhausted or cancellation pursuant to RCW 46.70.070, 46.80.070, 46.55.030 or 88.02.060, or the insurance required in RCW 46.55.030;

(2) Whether the licensee has failed to maintain an established place of business pursuant to RCW 46.70.023, WAC 308-66-140, RCW 46.80.130, WAC 308-63-070, RCW 46.55.060, WAC 308-61-108, RCW 88.02.078, 46.79.030, or WAC 308-65-030;

(3) Whether a person has failed to comply with an order or to pay a previously assessed fine, pursuant to RCW 46.70.101, 46.55.200, 46.80.110, or 88.02.188;

(4) Whether a licensee has been selling, exchanging, offering, brokering, auctioning, soliciting, advertising new or current model vehicles without a service agreement with a manufacturer, pursuant to RCW 46.70.101 or 46.70.041;

(5) Whether a licensee had failed to promptly transfer title, pursuant to RCW 46.70.122, WAC 308-66-190, 308-56A-420, or 308-90-150;

(6) Whether a licensee had failed to notify the department of a fact in which the licensee is required to timely notify the department (e.g., WAC 308-66-210 or 308-61-108);

(7) Whether a licensee has failed to have a current certificate or registration with the department of revenue pursuant to RCW 46.70.101;

(8) Whether the applicant whose license was suspended for cause and the terms of the suspension have not been fulfilled pursuant to RCW 46.70.101;

(9) Whether the applicant having been adjudged guilty of a crime which directly relates to the business of a vehicle dealer and the time elapsed since the adjudication is less than ten years, or suffering any judgment within the preceding five years in any civil action involving fraud, misrepresentation,

or conversion pursuant to RCW 46.70.101 or 46.80.110 in the case of vehicle wreckers, or RCW 46.79.070 in the case of hulk haulers or scrap processors;

(10) Whether the applicant knowingly or with reason to know made a false statement of a material fact in his or her application for license or any data attached thereto pursuant to RCW 46.70.101;

(11) Whether an applicant or licensee has sufficient education credits as required by RCW 46.70.079;

(12) Whether a person is engaging in or about to engage in the business of a licensee as referenced in RCW 46.70.115, 46.80.180, or 46.55.210;

(13) Whether an applicant or licensee is solvent within the meaning of RCW 46.70.101;

(14) Whether a licensee has failed to maintain records as required by RCW 46.70.120, WAC 308-66-180, RCW 46.55.150 or 46.80.080.

The sole issue to be heard at the adjudicative proceedings shall be whether the applicant is in compliance with the requirements set forth in subsections (1) through (14) of this section.

### WSR 05-13-120

#### PROPOSED RULES

#### DEPARTMENT OF LICENSING

[Filed June 20, 2005, 3:35 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 05-08-004.

Title of Rule and Other Identifying Information: WAC 308-66-160 Dealer's and manufacturer's license plates.

Hearing Location(s): Dealer and Manufacturer Services, 2424 Bristol Court S.W., 3rd Floor Conference Room, Olympia, WA 98502, on July 26, 2005, at 1:30 p.m.

Date of Intended Adoption: August 2, 2005.

Submit Written Comments to: Kim Johnson, P.O. Box 9039, Olympia, WA 98507, e-mail kijohnson@dol.wa.gov, fax (360) 586-6703, by July 20, 2005.

Assistance for Persons with Disabilities: Contact Linda Whipple by July 20, 2005, TTY (360) 664-0116 or (360) 664-6455.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To allow vehicle manufacturers to use their manufacturer's license plates to test vehicles.

Statutory Authority for Adoption: RCW 46.70.160.

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

Name of Proponent: Department of Licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Cal Sanders, 2424 Bristol Court, Olympia, WA 98502, (360) 664-6459; Implementation: Chuck Coach, 2424 Bristol Court, Olympia, WA 98502, (360) 664-6453; and Enforcement: Daniel Devoe, 2424 Bristol Court, Olympia, WA 98502, (360) 664-6451.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no small business impact.

A cost-benefit analysis is not required under RCW 34.05.328. There is no impact for the Department of Licensing or small business.

Daniel Devoe  
Administrator

**AMENDATORY SECTION** (Amending WSR 04-16-090, filed 8/3/04, effective 9/3/04)

**WAC 308-66-160 Dealer's and manufacturer's license plates.** (1) When dealer's plates are used on any vehicle being demonstrated to a prospective customer, it is not necessary that the dealer or a member of his firm accompany the prospective customer except as provided in RCW 46.70.090 (7)(c). Prospective customers, when not accompanied by a dealer or member of his firm, must be issued a demonstration permit by the dealer authorizing them to operate the vehicle for a period not to exceed seventy-two hours for the purpose of demonstration and possible purchase.

(2) When a dealer receives a vehicle bearing foreign license plates, such plates must be covered by the dealer's plates while that vehicle is being demonstrated. Upon the sale of the vehicle, the foreign plates shall be removed and destroyed by the dealer prior to the delivery of the vehicle. When foreign-plated vehicles are sold to residents of a state whose plate is so displayed on the vehicle and the purchaser returns the vehicle immediately to his home state for use there and not in Washington, the dealer may deliver the vehicle with foreign plates attached if either one of two conditions is also met. The conditions are:

(a) The purchaser must sign a nonresident affidavit to apply to their home state's vehicle licensing authority to register the vehicle in their own name, or

(b) The purchaser must have obtained a trip permit to move the vehicle from the dealer's place of business to the purchaser's own state.

(3) A dealer, corporate officer, member of a limited liability company; or spouse of the dealer, corporate officer, or member of a limited liability company; or an employee of a dealer must carry a vehicle dealer identification card when operating any vehicle bearing dealer plates.

(4) Dealer plates may not be used on any vehicle belonging to a member of the dealer's family.

(5) Dealer plates may not be used on any vehicle owned by the dealer if such vehicle is used exclusively by members of the dealer's family.

(6) Vehicles bearing dealer's plates may not be loaned to the dealer's service customers.

(7) Dealers are required to provide accurate records reflecting the use of dealer plates.

(8) Pursuant to RCW 46.70.090, testing vehicles for repair is limited to testing for a preexisting, identifiable problem known to the vehicle dealer or manufacturer before the testing is to begin. In addition, vehicle manufacturers may test vehicles for purposes of product evaluation/performance and problem identification, as long as loads are within the

legal limits, no commercial hauling is involved, and a company employee with identification is driving the vehicle.

WSR 05-13-124  
PROPOSED RULES  
COMMISSION ON  
JUDICIAL CONDUCT  
[Filed June 20, 2005, 4:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-09-057.

Title of Rule and Other Identifying Information: The proposed rule would amend existing Rule 24 (b)(8) of the commission's rules of procedure relating to participation in commission deliberations and decisions by a member of the commission who has not heard all of the evidence.

Hearing Location(s): The Cowlitz Room, The Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, on September 9, 2005, at 11:00 a.m.

Date of Intended Adoption: September 9, 2005.

Submit Written Comments to: Barrie Althoff, Commission on Judicial Conduct, P.O. Box 1817, Olympia, WA 98507, e-mail balthoff@cjc.state.wa.us, fax (360) 586-2918, by August 29, 2005.

Assistance for Persons with Disabilities: Contact Kathy Sullivan by August 29, 2005, TTY (360) 753-4585 or (360) 753-4585.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule would amend existing Rule 24 (b)(8) of the commission's rules of procedure relating to participation in commission deliberations and decisions by a member of the commission who has not heard all of the evidence. This amendment would alleviate any appearance of due process violations.

Reasons Supporting Proposal: The changes clarify the existing Rule 24 (b)(8).

Statutory Authority for Adoption: Washington Constitution Article IV, Section 31(10).

Statute Being Implemented: Chapter 2.64 RCW.

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

Name of Proponent: Commission on Judicial Conduct, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Barrie Althoff, 210 11th Avenue S.W., Olympia, WA 98504, (360) 753-4585.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business impact statement is required for this proposal by chapter 19.85 RCW. The rules are procedural in nature.

A cost-benefit analysis is not required under RCW 34.05.328. The action would amend existing procedural rules only.

June 17, 2005  
Barrie Althoff  
Executive Director

COMMISSION ON JUDICIAL CONDUCT  
RULES OF PROCEDURE (CJCRP)

AMENDATORY SECTION

RULE 24. HEARING

(a) Scheduling. Upon receipt of respondent's answer or upon expiration of the time to answer, the commission shall schedule a public hearing and notify disciplinary counsel and respondent of the date, time, and place of the hearing. Respondent will be provided at least fourteen days notice of hearing, which will also include the name or names of the commission members and the presiding officer, if any.

(b) Conduct of hearing.

(1) All testimony shall be under oath.

(2) Disciplinary counsel shall present the case in support of the statement of charges.

(3) Disciplinary counsel may call respondent as a witness.

(4) Both parties shall be permitted to present evidence and produce and cross-examine witnesses.

(5) The hearing shall be recorded verbatim. Whenever a transcript is requested by respondent, disciplinary counsel, or a member of the commission, a transcript of the hearing shall be produced at the requesting party's expense.

(6) Counsel may recommend and argue for a discipline appropriate to the misconduct supported by the evidence, including argument on aggravating and mitigating factors.

(7) Disciplinary counsel and respondent may submit their respective proposed findings, conclusions, and recommendations for discipline or order of dismissal to the commission.

(8) Where a member of the commission has not heard all the evidence, that member shall not participate in any deliberations or decisions (~~until he or she personally considers the whole record, or portion of the hearing from which that member was absent~~).

(9) At least six members, or their alternates, must continually be present during presentation of testimony at the hearing.

(c) Dismissal or recommendation for discipline. The commission shall dismiss the case, discipline respondent, or in the case of incapacity, recommend to the supreme court the retirement of respondent.

(d) Submission of the report. After the hearing, the commission shall file the record of the proceeding and a decision setting forth written findings of fact, conclusions of law, any minority opinions, and the order, within ninety days following the evidentiary hearing or after the filing of the transcript if one is requested, unless the presiding officer extends the time. The decision shall be announced in open session. If personal attendance is required, respondent shall have at least fourteen days notice of the announcement, unless otherwise agreed. A copy of the decision shall be served upon respondent.

(e) Motion for reconsideration. The commission decision is final fourteen days after service unless a motion for reconsideration is filed by respondent or disciplinary counsel. A motion for reconsideration, if filed, shall be specific and detailed, with appropriate citations to the record and legal

authority. Any response to the motion must be filed within fourteen days after service. The motion will be decided without oral argument unless requested by the commission. If the motion for reconsideration is denied, the decision is final when the order denying the motion is filed. If the motion for reconsideration is granted, the reconsidered decision is final when filed in the commission's office.

WSR 05-13-125  
PROPOSED RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Economic Services Administration)

[Filed June 20, 2005, 4:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-07-074.

Title of Rule and Other Identifying Information: WAC 388-310-0600 WorkFirst—Job search.

Hearing Location(s): Blake Office Park East (behind Goodyear Courtesy Tire), Rose Room, 4500 10th Avenue S.E., Lacey, WA, on July 26, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 27, 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](mailto:fernaax@dshs.wa.gov), fax (360) 664-6185, by 5:00 p.m., July 26, 2005.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by July 22, 2005, TTY (360) 664-6178 or phone (360) 664-6097 or by e-mail at [schilse@dshs.wa.gov](mailto:schilse@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule change will allow other training programs that meet the high wage/high demand criteria to be accessible to WorkFirst families.

Reasons Supporting Proposal: The change will increase the availability of training for high wage/high demand jobs.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, and 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: Ian Horlor, Lacey Government Center, (360) 725-4634.

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 for their training at a private institution be approved as a WorkFirst activity. The clients are required to provide the information on the training program they wish to pursue.

These requirements are the same as when the clients are attending a state community or vocational college.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Ian Horlor, P.O. Box 45470, Olympia, WA 98504, phone (360) 725-4634, fax (360) 413-3493, e-mail horloit@dshs.wa.gov.

June 10, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 02-15-067, filed 7/11/02, effective 8/1/02)

**WAC 388-310-0600 WorkFirst—Job search. (1) What is job search?**

Job search is an opportunity to learn and use skills you need to find and keep a job. Job search may include:

- (a) Classroom instruction; and/or
- (b) Structured job search that helps you find job openings, complete applications, practice interviews and apply other skills and abilities with a job search specialist or a group of fellow job-seekers; and/or
- (c) Preemployment training; and/or
- (d) High-wage/high-demand training.

**(2) What is preemployment training?**

Preemployment training helps you learn skills you need for an identified entry level job that pays more than average entry level wages.

(a) Preemployment training is an acceptable job search activity when an employer or industry commits to hiring or giving hiring preference to WorkFirst participants who successfully complete preemployment training.

(b) You can find out about current preemployment training opportunities by asking your job service specialist, your case manager or staff at your local community and technical college.

**(3) What is high-wage/high-demand training?**

(a) There are two types of high-wage/high-demand (HWHD) full-time training options for TANF recipients to complete a certificate or degree that will lead to employment in a high-wage/high-demand occupation:

(i) Information technology ((&)), health care or other professional-technical programs: This option allows you to start and finish a one-year or shorter state community or technical college training program in the information technology ((&)), health care fields or other professional-technical programs that meet high-wage high-demand criteria; and/or

(ii) Certificate/degree completion: This option allows you to finish up the last year of ~~((a two or four year))~~ any certificate or degree program in a high-wage/high-demand field on an exception basis. The high-wage/high-demand criteria for this option is based on median income and high-demand occupations within the local labor market as determined by employment security department.

(b) For both types of HWHD training, the training can be approved one-time only (barring an approved exception to policy). There is no work requirement with either option for the twelve months of training time.

(c) To qualify for HWHD training, you must also:

- (i) Meet all of the prerequisites for the course;
- (ii) Obtain the certificate or degree within twelve calendar months;
- (iii) Participate full time in the training program and make satisfactory progress;
- (iv) Work with colocated ESD staff during the last quarter of training for job placement; and
- (v) Return to job search once you completes the educational program if still unemployed.

**(4) Who provides me with job search?**

You get job search from the employment security department or another organization under contract with WorkFirst to provide these services.

**(5) How long do I stay in job search?**

Periods of job search may last up to twelve continuous weeks. Job search specialists will monitor your progress. By the end of the first four weeks, a job search specialist will determine whether you should continue in job search. Job search will end when:

- (a) You find a full-time job; or
- (b) You become exempt from WorkFirst requirements (see WAC 388-310-0300); or
- (c) Your situation changes and the case manager changes the activities on your IRP to fit your new circumstances (see WAC 388-310-0400); or
- (d) After fully participating in job search, and based on your experience in looking for work in the local labor market, it is determined that you need additional skills and/or experience to find a job; or
- (e) You have not found a job at the end of the job search period.

(6) **What happens at the end of job search if I have not found a job?**

At the end of each job search period, you will be referred back to your case manager who will conduct a new employability evaluation if you have not found a job. You and your case manager will also modify your individual responsibility plan.

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.

At the end of each job search period, you will be referred back to your case manager who will conduct a new employability evaluation if you have not found a job. You and your case manager will also modify your individual responsibility plan.

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

**WSR 05-13-126**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed June 20, 2005, 4:22 p.m.]

**Original Notice.**

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

Title of Rule and Other Identifying Information: Chapter 388-76 WAC, Adult family homes minimum licensing requirements; amending WAC 388-76-540 Definitions, 388-76-560 License eligibility, 388-76-575 Licensing of state employees, 388-76-585 Change of provider or provider address, 388-76-595 Inspections and ombudsman visits, 388-76-655 General management and administration, 388-76-858

Criminal history disclosure and background inquiries and 388-76-715 Dispute resolution; and repealing WAC 388-76-59020 What definitions apply to adult family home designations?, 388-76-64005 Definitions, 388-76-9970, 388-76-9972, 388-76-9974, 388-76-9976, 388-76-9978 and 388-76-9980, relating to the moratorium.

Hearing Location(s): Blake Office Park East (behind Goodyear Courtesy Tire), Rose Room, 4500 10th Avenue S.E., Lacey, WA, on August 9, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 10, 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., August 9, 2005.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by August 5, 2005, TTY (360) 664-6178 or phone (360) 664-6097.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to correct name and address changes, correct outdated rule and statute references, consolidate all definitions into one section and repeal obsolete sections.

The proposal also amends the existing adult family home licensing rule to be consistent with currently adopted statutes in chapter 70.128 RCW and recent amendments to this statute (HB 2444 - chapter 223, Laws of 2002; and SB 5733 - chapter 140, Laws of 2004) and other rules, and consolidates information for ease of reading.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 70.128.040.

Statute Being Implemented: Chapter 70.128 RCW, Adult family homes; chapter 223, Laws of 2002; chapter 140, Laws of 2004.

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: A CR-101 preproposal notice was not filed and is not required for rules incorporating language from state statutes without material change, or correcting or clarifying rules without changing the effect, see RCW 34.05.310 (4)(c) and (d).

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

Name of Agency Personnel Responsible for Drafting: Roger A. Woodside, 4500 10th Avenue S.E., Lacey, WA, (360) 725-3204; Implementation and Enforcement: Pat Bosert, 4500 10th Avenue S.E., Lacey, WA, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 34.05.310 (4)(c) and (d) exempts this rule from the requirement of a small business economic impact statement as the rule ... adopts and incorporates by reference without material change ... Washington state statutes, rules of other Washington state agencies ... and the material adopted and incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and ... makes address or name changes, or clarify language of a rule without changing its effect.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) and (iv) exempts this rule from the requirement of a cost-benefit analysis as the rule ... adopts and incorporates by reference without material change ... Washington state statutes, and rules of other Washington state agencies ... and the material adopted and incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and the rule ... makes address or name changes, or clarify language of a rule without changing its effect.

June 13, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 05-14 issue of the Register.

**WSR 05-13-150**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed June 21, 2005, 1:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-20-095.

Title of Rule and Other Identifying Information: Payroll deduction rules in chapter 296-126 WAC.

Hearing Location(s): Department of Labor and Industries, 7273 Linderson Way S.W., Auditorium, Tumwater, WA, on July 26, 2005, at 1:00 p.m.; and at the Department of Labor and Industries, 901 North Monroe Street, Room Spok 4, Spokane, WA, on July 27, 2005, at 11:00 a.m.

Date of Intended Adoption: August 23, 2005.

Submit Written Comments to: Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail yous235@lni.wa.gov, fax (360) 902-5292, by July 27, 2005.

Assistance for Persons with Disabilities: Contact Sally Elliott by July 18, 2005, (360) 902-6411 or yous235@lni.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current payroll deductions rule (WAC 296-126-025) is in conflict with chapters 49.46 and 49.52 RCW and have been since the ruling of *Pope v. University of Washington*. This court case addressed which deductions are permitted and determined they were only permitted from the worker's termination wages. The proposed wording also includes two new sections (WAC 296-126-028 and 296-126-030) for wage deductions during on-going employment and adjustments for overpayments.

The proposed rule will clarify when an employer can deduct an employee's wages from final paychecks, on-going employment, or overpayments. It also clarifies when the employee's paycheck cannot go below minimum wage. The proposed rules are consistent with RCW 49.46.090, 49.48.-010, and 49.52.060.



Reasons Supporting Proposal: These rules are necessary in order to make sure employers understand and don't misapply the payroll deduction laws and rules.

Statutory Authority for Adoption: Chapters 49.12, 49.46, 49.48, 49.52 RCW, and RCW 43.22.270.

Statute Being Implemented: Chapters 49.12, 49.46, 49.48, 49.52 RCW, and RCW 43.22.270.

Rule is necessary because of state court decision, Pope v. UW, 121 Wn.2d 479, 852 P.2d 1055 (1994).

Name of Proponent: Department of Labor and Industries, governmental.

Name of Agency Personnel Responsible for Drafting: Rich Ervin, Tumwater, Washington, (360) 902-5310; Implementation and Enforcement: Patrick Woods, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has considered whether these proposed rules are subject to the Regulatory Fairness Act and has determined that they do not require a small business economic impact statement because the costs associated with the proposed changes are exempted by law (see RCW 19.85.025 referencing RCW 34.05.310 (4)(c), (d), and (e)) from the small business economic impact requirements and/or do not impose a more than minor economic impact on business.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not [subject] to a cost-benefit analysis (see RCW 34.05.328 (5)(iii), (iv), and (v)). The department also concluded the proposed rules do not impose a more than minor cost on business.

June 21, 2005

Gary Weeks

Director

AMENDATORY SECTION (Amending Order 74-9, filed 3/13/74, effective 4/15/74)

WAC 296-126-025 Deductions from final wages. ((Except as otherwise provided by law, no employer shall make any deduction from the wage of an employee:

(1) For any cash shortage, walkout (failure of customer to pay), breakage, or loss of equipment, unless it can be shown that the shortage, walkout, breakage or loss was caused by a dishonest or willful act of the employee.

(2) For acceptance of a bad check, unless it can be shown that the employee accepted such a check in violation of procedures previously made known to him or her by the employer.

(3) For any cash shortage from a cash register, drawer or portable depository provided for that purpose, unless the employee has sole access to the cash and has participated in the cash accounting at the beginning of his or her shift and again at the end of said shift. Where a portable cash depository is in use the employer shall provide for periodic withdrawals of cash receipts during the shift to prevent large accumulations of cash.) (1) An employer may deduct any portion of an employee's final wages and may reduce the employee's final gross wages below the state minimum wage that is in effect at the time the work is performed, if the deduction is for any of the following:

(a) Required by state or federal law; or

(b) For medical, surgical, or hospital care or service. No deductions may be made for these services if covered under RCW 51.48.050; or

Example: The business paid a worker's medical costs for an injury not related to the employee's job duties, and the employee agreed to a deduction from final wages to repay those costs to the employer.

(c) For pension, medical, dental, or other benefit plans when such agreement has been specifically agreed upon orally or in writing by the employee and employer; or

Example: The employee chose a 401K pension plan and agreed orally or in writing to a payroll deduction for the specified amount to participate in that plan.

(d) To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments; or

(e) For a payment to a creditor or other third party if the employee authorizes it in advance in writing to pay a sum for the benefit of the employee. The creditor or other third party cannot be the employer of the employee.

Example: Assignment to third party: An employee may request in writing the employer to withhold four hundred dollars from the final paycheck for an automobile loan to be paid directly to the employee's financial institution by the employer.

(2) An employer may withhold or divert a portion of an employee's wages only if the deduction is specifically agreed upon orally or in writing by the employee and employer. None of the deductions contained in this subsection can reduce the employee's final gross wages below the state minimum wage. If the employee is paid the minimum wage rate, no deductions for violations in (a) through (d) of this subsection may be made. An employer can deduct wages from an employee's final paycheck for the reasons in (a), (b), (c), and (d) of this subsection, but only when these incidents have occurred in the final pay period.

(a) For acceptance of a bad check or credit card, if it can be shown that the employee accepted the check or credit card in violation of procedures previously made known to the employee by the employer; or

(b) For any cash shortage from a cash register, drawer or portable depository provided for that purpose, if it can be shown that the employee has sole access to the cash and has participated in the cash accounting at the beginning of the employee's shift and again at the end of said shift; or

(c) For any cash shortage, walkout (failure of customer to pay), breakage, or loss of equipment, if it can be shown that the shortage, walkout, breakage or loss was caused by a dishonest or willful act of the employee; or

(d) Deductions taken due to alleged employee theft are permissible only if it can be shown that the employee's intent was to deprive and that the employer filed a police report.

(3) It is the employer's responsibility to prove the existence of any agreement. Therefore, the department recommends that all agreements, policies, and procedures be in writing and signed by the affected employees.

(4) The employer must identify and record all wage deductions openly and clearly in employee payroll records.

Helpful information:

The following are examples of situations when deductions are allowed from the employee's final paycheck. Examples 1, 2, 3 cannot reduce the employee's gross wages below the state minimum wage but Example 4 may:

• Example 1: Employee purchase of employer's goods or services: An employee worked for a tire store. The employee purchased tires from the store and entered into a written agreement with the employer to deduct an agreed amount each pay period until the debt was paid in full, and the agreement further specified that any remaining balance due at the time of termination could be withheld from the final paycheck. This type of deduction cannot reduce the employee's wage below the state minimum wage.

• Example 2: Cost of uniforms: An employee and employer may agree orally or in writing that the employer may deduct the cost of uniforms provided by the employer if the uniforms are not returned by the employee at the time of termination. This type of deduction cannot reduce the employee's wage below the state minimum wage.

• Example 3: Cash shortages: An employee and employer may agree orally or in writing that the employer may deduct wages for cash shortages if the provisions of WAC 296-126-028 have been met. This type of deduction cannot reduce the employee's wage below the state minimum wage.

• Example 4: Advance on wages already earned: An employer and employee may agree in writing that the employee may get an advance on wages already earned. Because the advance is for wages already earned, the employer may deduct the advance from the employee's paycheck for the pay period in which the advance was given, and the deduction may reduce the employee's gross paycheck below the state minimum wage. The employer must record the advance payment in the employee's payroll records. This type of deduction may reduce the employee's wage below the state minimum wage.

## NEW SECTION

**WAC 296-126-028 Wage deductions during on-going employment.** (1) During an on-going employment relationship, an employer may deduct any portion of an employee's wages below the state minimum wage if the deduction is for any of the following reasons:

- (a) Required by state or federal law; or
- (b) For medical, surgical, or hospital care or service; or

Example: The business paid a worker's medical costs for an injury not related to the employee's work, and the employee agreed in writing and in advance to deductions from wages to repay those costs to the employer.

(c) For pension, medical, dental, or other benefit plans when the agreement has been specifically agreed upon orally or in writing by the employee and employer; or

Example: The employee chose a 401K pension plan and agreed in writing and in advance to payroll deductions for the specified amount(s) to participate in that plan.

(d) To satisfy a court order, judgment, wage attachment, trustee process, bankruptcy proceeding, or payroll deduction notice for child support payments; or

(e) For a payment to a creditor or other third party if the employee authorizes it in writing and in advance to pay a sum for the benefit of the employee. The employer cannot derive any financial benefit from these deductions.

Example: An employee may request the employer to withhold four hundred dollars from the final paycheck for an automobile loan to be paid directly to the employee's financial institution by the employer.

(2) During an on-going employment relationship, an employer may deduct wages when the employee expressly authorizes the deduction in writing and in advance for a lawful purpose for the benefit of the employee. These deductions may not reduce the employee's gross wages below the state minimum wage.

Example 1: Employee purchase of employer's goods or services: An employee works for a tire store and wants to buy tires from the store. The employee can enter into a written agreement in advance with the employer to buy the tires through a payroll deduction. However, the employer must sell the tires to the employee for the same price or less than they would sell the tires to the customer because the employer cannot gain financially from the deduction.

Example 2: Employee loan: An employee worked for a hardware store and asked the employer for a loan. The employer loaned the employee money and charged reasonable interest. An agreement with the terms of repaying the loan and interest through payroll deductions was made in writing and in advance between the employer and employee.

(3) Neither the employer nor any person acting in the interest of the employer, directly or indirectly, can derive any financial profit or benefit from any of the deductions under this regulation. For the purposes of this regulation, reasonable interest charged by the employer for a loan or credit extended to the employee is not considered to be of financial benefit to the employer.

(4) The employer must identify and record all wage deductions openly and clearly in employee payroll records.

### Helpful information:

The following are examples of situations when deductions are not allowed from the employee's wages during an on-going employment relationship:

• **Example 1: Customer's bad check:** The amount of a customer's check that is returned for nonsufficient funds when an employee accepts a check in violation of established policies.

• **Example 2: Shortage from cash register:** The amount of a till shortage even when an employee participates in cash accounting at the beginning and end of their shift, has sole access to the cash register, and is short at the end of the shift.

• **Example 3: Customer walks out without paying:** An unpaid bill when a customer leaves the restaurant without paying even when an employee is not watching their customers at a restaurant and ignores the fact the customers are finished dining and are ready for their check.

• **Example 4: Damage or loss:** The cost for replacing broken glasses when the employee drops a tray of glasses when unloading the dishwasher.

**NEW SECTION****WAC 296-126-030 Adjustments for overpayments.**

(1) An overpayment occurs when an employer pays an employee for:

- (a) More than the agreed-upon wage rate; or
- (b) More than the hours actually worked.

(2) Recouping the overpayment cannot reduce the employee's gross wages below the state minimum wage.

(3) An employer cannot recover an overpayment when the disputed amount concerns the quality of work.

(4) An employer can recover an overpayment from an employee's paycheck provided the overpayment was infrequent and inadvertent. Infrequent means rarely, not occurring regularly, or not showing a pattern. Inadvertent means an error that was accidental, unintentional, or not deliberately done. The burden of proving the inadvertent error rests with the employer who made the error. The employer has ninety days from the initial overpayment to detect and implement a plan with the employee to collect the overpayment. If the overpayment is not detected within the ninety-day period, the employer cannot adjust an employee's current or future wages to recoup the overpayment. Recouping of overpayments is limited to the ninety-day detection period.

In the case of employees covered by an unexpired collective bargaining agreement that expires on or after October 1, 2005, the effective date of this rule shall be the later of:

(a) The first day following expiration of the collective bargaining agreement; or

(b) The effective date of the revised collective bargaining agreement.

**Example 1: Allowed.** Overpayment of agreed wage rate: An employee was paid an agreed rate of ten dollars per hour but received a paycheck at the rate of eleven dollars per hour. The employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the amount overpaid in the previous pay period.

**Example 2: Allowed.** Overpayment for hours worked: An employee worked seventy-two hours in the pay period, but the employee was paid for eighty hours for that period. The employer provided documentation of the overpayment to the affected employee and adjusted the employee's next paycheck for the eight hours overpaid in the previous pay period.

**Example 3: Not allowed.** Overpayment not detected within ninety days of first occurrence: An employer agreed to pay an employee ten dollars per hour, but when the first check was received, the amount paid was paid at eleven dollars per hour. The employee may or may not have brought it to the attention of the employer. Six months later the employer detected the overpayments and adjusted the employee's wages in the next paycheck for the entire amount of the overpayment. This is not an allowable adjustment because it was not detected within ninety days from the first occurrence.

(5) The employer must provide advance written notice to the employee before any adjustment is made. The notice must include the terms under which the overpayment will be recouped. For example: One adjustment or a series of adjustments.

(6) The employer must provide documentation of the overpayment to the affected employee or employees.

(7) The employer must identify and record all wage deductions openly and clearly in employee payroll records.

(8) Regardless of the provisions of this section, if appropriate, employers retain the right of private legal action to recover an overpayment from an employee.

(9) This regulation does not apply to public employers. See chapter 49.48 RCW, Wages—Payment—Collection.

**WSR 05-13-157****PROPOSED RULES****EMPLOYMENT SECURITY DEPARTMENT**

[Filed June 21, 2005, 2:57 p.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 04-21-085.

Title of Rule and Other Identifying Information: Unemployment insurance rules concerning predecessor and successor employers, employer penalties, tax rates, and industry classifications.

Hearing Location(s): Employment Security Department, 4th Floor Conference Room A, 212 Maple Park, Olympia, on August 2, 2005, at 1:30 p.m.

Date of Intended Adoption: August 23, 2005.

Submit Written Comments to: Larry Oline, P.O. Box 9046, Olympia, WA 98507-9046, e-mail loline@esd.wa.gov, fax (360) 438-3226, by August 1, 2005.

Assistance for Persons with Disabilities: Contact Mary Mendoza by August 1, 2005, TTY (360) 902-9589 or (360) 902-9281.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 4, Laws of 2003 2nd sp.s. (2ESB 6097) made substantive changes to the unemployment insurance program. A number of those changes became effective in 2005. The proposed rules are intended to clarify the requirements of employers, define terms, update penalties, and revise existing rules consistent with the amended statutes.

Reasons Supporting Proposal: To provide clarity for employers, claimants, and staff regarding how the department will administer the changes to the unemployment insurance program made by 2ESB 6097 and effective in 2005. The proposal also updates the penalties for employers who report or pay taxes improperly, and replaces obsolete rules with language consistent with the amended statute.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, and 50.12.042.

Statute Being Implemented: Chapter 4, Laws of 2003 2nd sp.s. (2ESB 6097).

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

Name of Proponent: Employment Security Department, governmental.

Name of Agency Personnel Responsible for Drafting: Juanita Myers, 212 Maple Park, Olympia, (360) 902-9665; Implementation and Enforcement: Annette Copeland, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The requirements placed on employers are established in statute. The rules simply provide additional clarification concerning the circumstances under which the statutory penalties will be imposed.

A cost-benefit analysis is not required under RCW 34.05.328. The provisions concerning reporting and payment of taxes, and transfers of ownership, are contained in state law. These rules are interpretive and simply clarify the situations under which the statutory penalties will be imposed. The revised tax rates are also contained in state law, while the rules simply clarify the calculations the department will use. The transition from the standard industrial classification to the North American classification system is required by statute, while the rules explain how that transition will be accomplished.

Karen T. Lee  
Commissioner

**AMENDATORY SECTION** (Amending WSR 04-23-058, [filed 11/15/04,] effective 12/16/04)

**WAC 192-300-050 Predecessor-successor relationship defined.** This section applies only to those individuals and organizations that meet the definition of an employer contained in RCW 50.04.080.

(1) **Predecessor.** You are a "predecessor" if, during any calendar year, you transfer any of the following to another individual or organization:

(a) All, or a portion, of your operating assets as defined in subsection (3) below; or

(b) A separate unit or branch of your trade or business.

(2) **Successor.** You are a "successor" if, during any calendar year, you acquire substantially all of a predecessor employer's operating assets. You are a "partial successor" if, during any calendar year, you acquire:

(a) A portion of a predecessor employer's operating assets, or

(b) A separate unit or branch of a predecessor employer's trade or business.

(3) **Operating assets.** "Operating assets" include the properties you use in the normal course of business operations to generate your operating income. They may include properties that are real or personal, and tangible or intangible. Examples include land, buildings, machinery, equipment, stock of goods, merchandise, fixtures, employees, or goodwill. (~~Employees are not operating assets.~~)

(4) **Transfer of assets.** Transfers from a predecessor to a successor employer may occur by sale, lease, gift, or any legal process, except those listed in subsection (6) below.

(5) **Simultaneous acquisition.** For purposes of successor simultaneous acquisition, the term "simultaneous" means all transfers that occurred as a result of the business acquisition or reorganization, beginning when the acquisition started and ending when the primary entity is transferred.

(6) **Exceptions.** A predecessor-successor relationship will not exist:

(a) For the purposes of chapter 50.24 RCW (payment of taxes), when the property is acquired through court proceed-

ings, including bankruptcies, to enforce a lien, security interest, judgment, or repossession under a security agreement unless the court specifies otherwise;

(b) For the purposes of chapter 50.29 RCW (experience rating), when any four consecutive quarters, one of which includes the acquisition date, pass without reportable employment by either the predecessor, successor, or a combination of both.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

**AMENDATORY SECTION** (Amending WSR 04-23-058, [filed 11/15/04,] effective 12/16/04)

**WAC 192-310-010 Employer reports—RCW 50.12.070. (1) Master application.** Every person or entity, which has one or more individuals performing services for it in the state of Washington, must file a master application with the department in a format prescribed by the commissioner.

(2) **Quarterly tax and wage reports:**

(a) **Tax report.** Each employer must file a quarterly tax report with the commissioner listing the total wages paid to all individuals in its employ during that calendar quarter.

(b) **Report of employee's wages.** Each employer must file a quarterly report of employee's wages with the commissioner. This report must list each employee by name, social security number, total hours worked for the quarter, and wages paid during that calendar quarter.

(i) Social security numbers are required for persons working in the United States:

(ii) If an individual has a social security card, he or she must present the card to the employer at the time of hire or shortly thereafter, except agricultural workers who, under federal rules, are permitted to show their social security card on the first day they are paid:

(iii) If the individual does not have a social security card, Internal Revenue Service rules permit an employer to hire the individual with the clear understanding that the individual will apply for a social security number within seven days of beginning work for the employer. The individual must provide the employer with a document showing they have applied for a social security card and, upon receipt, a copy of the card itself. An employer should retain copies of the document(s) for his or her records; and

(iv) If the employee does not show his or her social security card or application for a card within the seven day window allowed by the Internal Revenue Service and the employer continues to employ the worker, the employer does not meet the reporting requirements of this section and no waiver of the incomplete report penalty will be granted (see WAC 192-310-030).

(c) **Format.** The quarterly tax and wage reports must be filed in one of the following formats:

(i) Electronically, using the current version of UIFast-Tax, UIWebTax, or ICESA Washington; or

(ii) Paper forms supplied by the department (or a certified version of those forms).

(d) **Due dates.** The quarterly tax and wage reports are due by the last day of the month following the end of the calendar quarter being reported. Calendar quarters end on March

31, June 30, September 30 and December 31 of each year. Therefore, reports are due by April 30, July 31, October 31, and January 31, respectively. If these dates fall on a Saturday, Sunday, or holiday, reports are due the next business day. Exceptions to the time and manner of filing the report must be approved in advance by the commissioner.

(e) Termination of business. Each employer who ceases business or whose account is closed by the department must immediately file:

(i) A tax report for the current calendar quarter which covers tax payments due to the date such account is closed;

(ii) A report of employee's wages for the current calendar quarter which includes all wages paid to the date such account is closed.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 04-23-058, [filed 11/15/04,] effective 12/16/04)

**WAC 192-310-030 Reports and tax payments subject to penalty.** (1) ~~Penalty for ((L))late tax reports.~~ An employer who files a tax report as described in WAC 192-310-010 (2)(a) but does not file it within the time frame prescribed in WAC 192-310-010 (2)(c) is subject to a penalty of twenty-five dollars per violation, unless the penalty is waived by the department.

(2) Definition of ((H))incomplete ((F))tax ((R))report((s)). An employer is required to file the report required by WAC 192-310-010 in a complete manner and in the format required by the commissioner.

(a) An "incomplete report" is defined as any report submitted by either a contributory or reimbursable employer or their agent where:

- (i) The entire wage report is not submitted timely; or
- (ii) A required element is not reported (social security number, name, hours worked, or wages paid); or
- (iii) A significant number of employees are not reported; or
- (iv) A significant number of any given element is not reported such as, but not limited to, missing social security numbers, names, hours, wages; or
- (v) Either the employer reference number or Unified Business Identifier (UBI) number is not included with the tax or wage report((-)); or

(vi) The report includes duplicate social security numbers, or impossible social security numbers as indicated by the Social Security Administration (such as 999-99-9991, 999-99-9992, etc.).

(b) An "incorrect format" means any report that is not submitted in the format required by the commissioner under WAC 192-310-010 (2)(c).

(c) For purposes of this section, the term "significant" means an employer who has:

- (i) Two to 19 employees and reports incomplete wage records for two or more employees; or
- (ii) Twenty to 49 employees and reports incomplete wage records for three or more employees; or
- (ii) Fifty or more employees and reports incomplete wage records for four or more employees.

(3) **Penalty for filing an incomplete or incorrect format tax report.** An employer who files an incomplete or incorrectly formatted tax and wage fails to file a report as required by RCW 50.12.070 will receive a warning letter for the first occurrence. For subsequent occurrences the employer is subject to penalty as follows:

~~(a) ((Incomplete tax report. The penalty for filing an incomplete tax report will be:))~~ Two hundred fifty dollars or ten percent of the quarterly contributions for each occurrence, whichever is less.

(b) When no quarterly tax is due and an employer has submitted an incomplete report or filed the report in an incorrect format, the following schedule will apply after the initial warning letter:

(i)	1st Occurrence	\$75.00
(ii)	2nd Occurrence	\$150.00
(iii)	3rd and subsequent occurrences	\$250.00

~~((b) Filing tax report in an incorrect format. The penalty for filing a tax report in an incorrect format will be two hundred fifty dollars or ten percent of the quarterly contributions for each occurrence, whichever is less. When no quarterly tax is due and an employer has submitted a tax report in an incorrect format, the following schedule will apply:~~

(i)	1st Occurrence	\$150.00
(ii)	2nd and subsequent occurrences))	\$250.00

(4) **Penalty for ((K))knowingly misrepresenting amount of payroll.** If an employer knowingly misrepresents to the department the amount of his or her payroll, upon which contributions under this title are based, the employer is liable for a penalty of ten times the difference between the contributions paid, if any, and the amount of contributions the employer should have paid for the period. This penalty is in addition to the amount the employer should have paid. The employer is also liable to the department for the reasonable expenses of auditing his or her books and collecting such sums as provided in WAC 192-340-100.

~~(5) ((Report of employee's wages. Any decision to assess a penalty for filing a late or incomplete report of employee's wages as described in WAC 192-310-010 (2)(b) will be made on an individual basis by the chief administrative officer of the tax branch as provided in RCW 50.12.220.~~

~~(6)) ((Delinquent)) Late tax payments. ((For purposes of RCW 50.12.220, tax payments are delinquent as provided in WAC 192-310-020 and RCW 1.12.070.)) All employers must file a tax report every quarter, including employers who have no payroll for a given quarter. If an employer does not report on time, it will be charged a late fee of \$25 for each report as described in subsection (1). If the payment is late, the employer will also be charged interest at a rate of one percent of taxes due per month. A late payment penalty is also charged for overdue taxes:~~

- (a) First month: Five percent of the total taxes due or \$10.00, whichever is greater;
- (b) Second month: An additional 5 percent of total taxes due or \$10.00, whichever is greater;

PROPOSED

(c) Third month: An additional 10 percent of total taxes due or \$10.00, whichever is greater; and

(d) Fourth month and every month following for the life of the delinquent debt: A total of 20 percent of total taxes due or \$10.00, whichever is greater.

~~((7))~~ **(6) Late filing and late payment Ppenalty waivers.** The department may, for good cause, waive penalties for late filing of a report and late payment of taxes that are due with a report, if the commissioner determines that the failure to timely file reports or pay taxes was not the employer's fault. ~~(, -waive penalties in the following situations:)~~

(a) The department may waive late penalties if it finds there are circumstances beyond the control of the employer. Circumstances beyond the control of the employer include, but are not necessarily limited to, the following:

(i) The return was filed on time with payment but inadvertently mailed to another agency;

~~((b))~~ (ii) The delinquency was due to an action of an employee of the department, such as providing incorrect information to the employer when the source can be identified ~~(, -or not furnishing proper forms to permit the filing of tax reports or the payment of taxes on time));~~

~~((c))~~ (iii) The delinquency was caused by the death or serious illness, before the filing deadline, of the employer, a member of the employer's immediate family, the employer's accountant, or a member of the accountant's immediate family;

(iv) The delinquency was caused by the unavoidable absence of the employer or key employee prior to the filing date. "Unavoidable absence" does not include absences because of business trips, vacations, personnel turnover, or terminations;

~~((d))~~ (v) The delinquency was caused by the accidental destruction of the employer's place of business or business records; ~~((e))~~

(vi) The delinquency was caused by an act of fraud, embezzlement, theft, or conversion on the part of the employer's employee or other persons contracted with the employer, which the employer could not immediately detect or prevent, provided that reasonable safeguards or internal controls were in place; or

(vii) The employer, prior to the time for filing the return, filed a timely request with the department's central office or with a district tax office for proper forms, and the forms were not furnished in sufficient time to permit the completed report to be filed and paid before the due date. "Timely request" does not mean the date the report is due, but must be at least three days in advance of the due date.

~~((e))~~ (b) The department may waive late penalties if it finds the employer to be out of compliance during an employer-requested audit, but the department determines the employer made a good faith effort to comply with all applicable laws and rules ~~(:); and~~

(c) The department will not consider waiver of late penalties if the employer has been untimely with filing or with payment in any of the last eight consecutive quarters immediately preceding the period covered by the return for which a waiver is requested. If an employer has been in business for fewer than the eight preceding quarters, then all preceding

quarters must have been filed paid timely and a one-time only waiver may be granted.

~~((8))~~ (7) **Incomplete reports or incorrect format penalty waivers.** For good cause, the department may waive penalties for incomplete reports or reports in an incorrect format one time only when the employer can demonstrate making a good faith attempt to correct the problem in a timely manner after the department provided notification of the problem.

~~((b))~~ (8) **Missing and Impossible Social Security Numbers.** When a social security number is impossible or missing, the department may waive penalties for incomplete reports only once for each worker and only when:

(a) The report was incomplete due to the inclusion of impossible social security numbers, but the employer can demonstrate that the impossible social security numbers were provided to the employer by the employees; or

(b) The report was incomplete due to missing social security numbers, but the employer can demonstrate that the employee did not work for the employer after failing to provide a valid social security card or application for social security number within seven days of employment.

~~((9))~~ (2) **Waiver requests.** A request for a waiver of penalties must be written, contain all pertinent facts, be accompanied by available proof, and be filed through a tax office. In all cases the burden of proving the facts is on the employer.

~~((9))~~ (10) **Extensions.** The department, for good cause, may extend the due date for filing a report. The employer must make a deposit with the department in an amount equal to the estimated tax liability for the reporting period or periods for which the extension is granted. This deposit will be credited to the employer's account and applied to the employer's debt. The amount of the deposit is subject to approval by the department.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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

## NEW SECTION

**WAC 192-320-005 Experience defined—RCW 50.29.021.** As used in this chapter, the term "experience" includes factors that bear a direct relation to the risk of unemployment. Any benefits paid which are based on wages paid by the employer and chargeable under RCW 50.29.020 are considered experience.

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.

## NEW SECTION

**WAC 192-320-010 Experience transferred to successor employer—Definition.** (1) Any benefits paid which are based on wages paid by the predecessor employer prior to the transfer of ownership must be charged to the successor employer. Just as the successor employer acquires the organization, trade, business, assets, and experience of a predecessor employer as of the date of transfer, it must also acquire

the benefit charges for past, current, or future claims related to the predecessor employer (or segregable part of the predecessor employer) prior to the transfer.

(2) Once experience has been transferred, it becomes the successor employer's experience. It must be used in determining the successor's rates for any rate year that follows the year in which the transfer occurs. (There is an exception when, following the transfer, the successor still does not have sufficient experience to meet the definition of a qualified employer in RCW 50.29.010(6).) Since the transferred experience belongs to the successor employer, it may no longer be used to compute rates for the predecessor employer for subsequent rate years.

### NEW SECTION

**WAC 192-320-020 Calculation of industry average—RCW 50.29.025.** (1) As used in this title, the term "NAICS" is an abbreviation for North American Industry Classification System.

(2) When calculating the industry average array calculation factor rate and the industry average graduated social cost factor rate, the department will use the first four digits of the NAICS code to determine the industry that is being calculated.

(3) **Industry average array calculation factor rate.** (a) The department will calculate the industry average array calculation factor rate as follows:

(i) A matrix will be prepared that contains each of the 40 rate classes;

(ii) For each rate class, all qualified employers assigned to that rate class and assigned the NAICS code being calculated will have their taxable payrolls multiplied by the appropriate array calculation factor rate, totaled and displayed;

(iii) The sum of the 40 rate class array calculation factor rates will be divided by the total of all payrolls used in the calculation; and

(iv) The result will be increased by fifteen percent and expressed as a percentage rounded to two decimal places.

(b) The calculated industry average array calculation factor rate shall be no less than 1.00 percent or greater than 5.4 percent.

(4) **Industry average graduated social cost factor rate.** (a) The department will calculate the industry average graduated social cost factor rate as follows:

(i) The industry average matrix of the 40 rate classes will display the graduated social cost factor rate for each of the 40 rate classes;

(ii) The payroll sum in each rate class will be multiplied by the corresponding graduated social cost factor rate for that rate class, totaled and displayed;

(iii) The sum of the 40 rate class array calculation factor rates shall be divided by the total of all payrolls used in the calculation; and

(iv) The result will be increased by fifteen percent and expressed as a percentage rounded to two decimal places.

(b) The calculated industry average graduated social cost factor rate shall be no greater than the graduated social cost factor rate assigned rate class 40.

(4) If no qualified employers are in the four digit level of the NAICS code, the rates shall be calculated at the corresponding three digit level and the result assigned to the four digit level. If no qualified employers are in the three digit level, the rates shall be calculated at the corresponding two digit level and the result assigned to both the three and four digit levels.

**AMENDATORY SECTION** (Amending WSR 00-05-068, [filed 2/15/00,] effective 3/17/00)

**WAC 192-320-050 Requirements of partial successors—Chapter 50.29 RCW.** (1) If you are a partial successor, both you and the predecessor employer must return the partial transfer of experience letter provided to you by the department within thirty days of the mailing date. Your response must indicate the percentage of operating assets transferred to you as the partial successor. Operating assets include the employees of the business.

(2) If you ((do not return the letter within thirty days,)) are an employer at the time of the transfer, you will keep your rate class for the remainder of the current rate year. If you are not an employer when you acquire the predecessor's business, you will keep the ((tax)) rate class that was assigned to the predecessor employer for the remainder of the rate year. ((However, in the following calendar year you will receive the average industry rate. You will keep this rate until you qualify for a different rate in your own right.))

(3) If a response is not received, for subsequent rate years the commissioner will estimate the percentage of employees transferred based on employment reports filed. That percentage will transfer unless and until compelling evidence is provided to change the estimate.

(4) Changes in rate class are effective for the rate year the information was provided and for subsequent rate years only.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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.

### NEW SECTION

**WAC 192-320-051 Requirements of partial predecessors—Chapter 50.29 RCW.** (1) If you are a partial predecessor, both you and the successor employer must return the partial transfer of experience letter provided to you by the department within thirty days of the mailing date. Your response must indicate the percentage of operating assets transferred by you as the partial successor. Operating assets include the employees of the business.

(2) If you do not return the letter within thirty days, you keep the tax rate class assigned for the remainder of the rate year.

(3) If a response is not received, for subsequent rate years the commissioner will estimate the percentage of employees transferred based on employment reports filed. That percentage will transfer unless and until compelling evidence is provided to change the estimate.

(4) Changes in rate class are effective for the rate year the information was provided and for subsequent rate years only.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 192-320-060 Delinquent predecessor taxes.

**WSR 05-13-158  
PROPOSED RULES  
EMPLOYMENT SECURITY DEPARTMENT**

[Filed June 21, 2005, 2:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-21-084.

Title of Rule and Other Identifying Information: Unemployment insurance rules related to part-time workers and clarifying the differences between partially unemployed and part-time workers, and the conditions under which part-time workers are eligible for benefits. Additional housekeeping changes are made to existing rules.

Hearing Location(s): Employment Security Department, 212 Maple Park Drive, 4th Floor Conference Room A, Olympia, WA, on August 2, 2005, at 2:30 p.m.

Date of Intended Adoption: August 23, 2005.

Submit Written Comments to: Larry Oline, Employment Security Department, P.O. Box 9046, Olympia, 98506, e-mail loline@esd.wa.gov, fax (360) 438-3226, by August 1, 2005.

Assistance for Persons with Disabilities: Contact Mary Mendoza by August 1, 2005, TTY (360) 902-9589 or (360) 902-9281.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules are intended to clarify those sections of 2ESB 6097 pertaining to unemployment benefits that took effect in 2005. New rules are adopted to define terms and clarify the job search requirements of partially unemployed and part-time workers. The rule discussing workers on standby is amended to eliminate references to partially unemployed workers, which are included in a separate new rule, and to incorporate the department's longstanding policies related to workers on standby.

Reasons Supporting Proposal: To provide clarity for employers, claimants, and staff concerning the job search requirements of individuals working less than full time and the conditions under which a part-time worker may limit his or her availability to part-time work and remain eligible for benefits. Other changes incorporate existing policies into rule format for the convenience of the regulated community.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, and 50.12.042.

Statute Being Implemented: RCW 50.20.119.

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

Name of Proponent: Employment Security Department, governmental.

Name of Agency Personnel Responsible for Drafting: Juanita Myers, 212 Maple Park, Olympia, (360) 902-9665; Implementation and Enforcement: Annette Copeland, 212 Maple Park, Olympia, (360) 902-9665.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Any costs incurred by employers by reason of paying benefits to some part-time workers are the result of the enabling legislation, 2ESB 6097, not these rules.

A cost-benefit analysis is not required under RCW 34.05.328. These rules are interpretive in nature and simply clarify existing law.

Karen T. Lee  
Commissioner

**AMENDATORY SECTION** (Amending 99-08-073, [filed 4/5/99,] effective 5/6/99)

**WAC 192-110-015 Applications by ~~((partially unemployed or))~~ standby workers—RCW ((50.04.310,)) 50.20.010((g)) and 50.20.130. (1) ((Definitions:**

(a) "Employer" means any person or business for which you work in exchange for wages.

(b) "Partially unemployed" means that during a week:

(i) You worked for your regular employer less than full time because of lack of work; and

(ii) You earned less than one and one-third times your weekly benefit amount plus five dollars.

(e)) "Standby" means you are temporarily unemployed due to lack of work but expect to return to work with your regular employer. You do not have to register for work or look for other work while on standby but must be available for all hours of work offered by your regular employer.

(2) ((Your rights when you are partially unemployed:

(a) You may file your application or claim for benefits as many as five weeks after your hours are reduced without it being considered late.

(b) You do not have to register for work, however, you must accept all hours offered by your regular employer.

(3) Your rights when you are on)) **Duration of standby:**

(a) You can ask to be on standby for up to four weeks.

(b) ((You do not have to register for work.

(e)) We will ask your employer to verify that you are on standby and your expected return to work date:

(i) If your employer does not respond, you can be on standby for up to four weeks;

(ii) If your employer confirms you are on standby, you can be on standby for up to four weeks or until the return to work date given by your employer, whichever is earlier;

(iii) If your employer responds that you are not on standby or do not have a return to work date within eight weeks, you will be required to immediately register for work and to look for work.

((d))((c) Your regular employer ((must)) may request to extend your standby status for more than four, but no more than eight, weeks in any benefit year, except as provided in subsection (2)(d). This request is subject to approval by the

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department. We will consider the following before deciding whether to extend standby status for more than four weeks:

- (i) How long you have been out of work;
- (ii) Whether other suitable work is available;
- (iii) The impact on you and your employer if you accept other work; and
- (iv) Other factors that apply to your situation.

(d) At his or her discretion, the commissioner may grant standby for more than eight weeks in a benefit year. The employer must apply in writing and demonstrate there are conditions that apply to his or her business that are so unique or unusual that having their employees on standby for more than eight weeks is justified.

(e) You can be granted standby if you have obtained a new job that has a definite start date within four weeks.

(3) The following conditions apply to a request for standby:

(a) You must have a definite date by which you will return to work for your regular employer;

(b) Standby will not be granted if you only have prospects of future work with the employer or a promise of more work at some unspecified date, or when the return to work date depends on conditions beyond the employer's control, such as weather;

(c) Except for claimants who qualify as part-time eligible workers under RCW 50.20.119, standby will not be granted if you regularly work fewer than forty hours each week for the employer; and

(d) Except as provided in subsection (2)(d), standby will not be granted for more than eight weeks in any benefit year. Any week(s) in which you do not qualify for benefits because of excess earnings will not be considered as part of the eight weeks. After eight consecutive weeks of unemployment, the department will no longer consider you attached to that employer.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

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.

#### NEW SECTION

**WAC 192-110-017 Applications by partially unemployed workers—RCW 50.04.310.** If you are partially unemployed as defined in WAC 192-180-013, you may file your application for benefits as many as five weeks after your hours are reduced without it being considered late.

#### NEW SECTION

**WAC 192-170-070 Availability requirements for part-time eligible workers—RCW 50.20.119.** (1) If you are a part-time eligible worker as defined in RCW 50.20.119, you may limit your availability for work to 17 or fewer hours per week. You may refuse any job that is for 18 or more hours per week.

(2) You must be available for work during the hours that are customary to your occupation. For example, if your occupation normally requires both day and evening hours of work, you must be available for work both day and evening hours.

(3) You must be available for work all days of the week that are customary for your occupation, even if you have not worked those days in the past. If you are unavailable for work on any day that is a customary day of work for your occupation, your benefits will be reduced as provided in RCW 50.20.130. For example, your occupation customarily works Monday through Friday, although you normally have worked weekends only. If you are unavailable for work Monday through Friday, your benefits will be reduced as provided in RCW 50.20.130.

#### NEW SECTION

**WAC 192-180-013 Job search requirements for individuals working less than full-time.** (1) "Partially unemployed" workers are those individuals:

- (a) Who were hired to work full time,
- (b) Whose weekly hours of work have been temporarily reduced to less than full time by their employer,
- (c) Who earn less than one and one-third times their weekly benefit amount plus five dollars during a week, and
- (d) Who are expected to return to full time work for their employer within six months.

These workers are considered to be employer attached and are not required to register for or seek work. They must be available for all work offered by their regular employer.

(2) "Part time" workers are individuals who normally work less than full time, or who accept work that is less than full time. To be eligible for benefits, these workers must be available for and actively seeking full time work, and their job search is subject to review. If they obtain part time work, they must continue to seek full time work or benefits will be denied as provided in RCW 50.20.010 (1)(c). This definition of "part time" workers addresses individuals who work part time, but do not meet the requirements of RCW 50.20.119.

(3) "Part time eligible" workers are individuals who have worked no more than 17 hours in any week of their base year and are eligible for benefits under RCW 50.20.119. These individuals may seek work for 17 or fewer hours per week and their job search is subject to review. If they obtain work of 17 or fewer hours per week, they are considered to be employer attached and are no longer required to look for work, nor are they subject to the job search monitoring program.

**WSR 05-13-161**

**PROPOSED RULES**

**DEPARTMENT OF CORRECTIONS**

[Filed June 21, 2005, 3:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-08-143.

Title of Rule and Other Identifying Information: Amendments to WAC 137-70-040 Reimbursable impacts/rates.

Hearing Location(s): Department of Corrections, 2nd Floor Conference Room, 410 West 5th Street, Olympia, WA 98504, on July 26, 2005, at 1 p.m.

Date of Intended Adoption: July 26, 2005.

Submit Written Comments to: John R. Nispel, Rules Coordinator, Department of Corrections, P.O. Box 41114, Olympia, WA 98504-1114, fax (360) 664-2009, by July 20, 2005.

Assistance for Persons with Disabilities: Contact John R. Nispel by July 21, 2005, (360) 586-2160.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Increase the reimbursement rates for criminal justice expenses.

Summary: Increase the rates for reimbursement of criminal justice costs of local jurisdictions impacted by Department of Corrections institutions.

Explanation of Rule, its Purpose, and Anticipated Effects: The proposed changes will enhance discipline in the institutions operated by the department, further refining and clarifying disciplinary behavior. The following changes are proposed: WAC 137-70-040 Reimbursable impacts/rates, increase reimbursement rates of criminal justice costs.

Reasons Supporting Proposal: The reimbursement rates need adjustment to provide additional resources to local governments performing law enforcement and criminal justice activities related to criminal behavior of offenders in institutions located in their jurisdiction.

Statutory Authority for Adoption: RCW 72.01.090, 72.72.040.

Statute Being Implemented: Chapter 72.72 RCW.

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

Name of Proponent: Washington State Department of Corrections, governmental.

Name of Agency Personnel Responsible for Drafting: John Nispel, P.O. Box 41114, Olympia, WA 98504-1114, (360) 586-2160; Implementation and Enforcement: Eldon Vail, Deputy Secretary, P.O. Box 41118, Olympia, WA 98504-1118, (360) 753-1502.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules will not impose costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule adoption as the agency is not named in RCW 34.05.328 (5)(a)(i).

June 21, 2005

H. W. Clarke  
Secretary

**AMENDATORY SECTION** (Amending Order 89-04, filed 5/25/89)

**WAC 137-70-040 Reimbursable impacts/rates—Criminal justice costs.** Reimbursement shall be restricted to fully documented law enforcement, prosecutorial, judicial and jail facility costs, as defined herein, at the actual costs of the submitting jurisdiction, not to exceed the following rates:

(1) Law enforcement costs are costs incurred by any political subdivision in apprehending escapees, in investigating crimes committed by state institutional inmates including pretrial investigations within or outside the institution, or in providing security for inmates outside the jail facility. These costs are reimbursable at the following rates:

~~((a) \$19.03 per hour for the period July 1, 1985, through June 30, 1986.~~

~~(b) \$19.81 per hour for the period July 1, 1986, through June 30, 1989.))~~ \$23.96 per hour.

(2) If an escape or investigation results in the filing of a criminal complaint, the impacted political subdivision shall be entitled to attorney costs associated with the prosecution and/or defense of the filed action. These costs are reimbursable at the following maximum rates:

~~((a) \$45.50 per hour from July 1, 1985, through June 30, 1986.~~

~~(b) \$47.37 per hour from July 1, 1986, through June 30, 1989.))~~ \$57.32 per hour.

(3) Reimbursement for judicial costs incurred as a result of the filing of a criminal complaint shall be limited to judges, court reporters, transcript typing or preparation, witness fees and jury fees. These costs are reimbursable at the following maximum rates:

(a) Judges - ~~(((\$42.41 per hour from July 1, 1985, through June 30, 1986, and \$44.15 per hour for the period July 1, 1986, through June 30, 1989.))~~ \$57.32 per hour. These costs shall include the services of court clerks and bailiffs.

(b) Court reporters - ~~(((\$19.08 per hour from July 1, 1985, through June 30, 1986, and \$19.86 per hour for the period July 1, 1986, through June 30, 1989.))~~ \$24.71 per hour.

(c) Transcript typing services - ~~(((\$3.80 per page from July 1, 1985, through June 30, 1986, and \$3.96 per page for the period July 1, 1986, through June 30, 1989.))~~ \$4.79 per page.

(d) Expert witnesses - ~~(((\$63.86 per hour from July 1, 1985, through June 30, 1986, and \$66.48 per hour for the period July 1, 1986, through June 30, 1989.))~~ \$80.43 per hour.

(e) Witness fees/nonexpert - jury fees - reimbursable at the rate established by the local governmental legislative authority up to a maximum of ~~(((\$28.67 per day for the period July 1, 1985, through June 30, 1986, and \$29.85 for the period July 1, 1986, through June 30, 1989.))~~ \$36.11 per day.

(4) Jail facility costs resulting from the escape or criminal complaint shall be reimbursed at the ~~((following maximum rate: \$15.00 per inmate day from July 1, 1985, through June 30, 1987, \$18.00 for the period July 1, 1987, through July 31, 1988, and \$30.00 for the period August 1, 1988, through June 30, 1989))~~ rates established by OFM.

(5) Coroner - Where an inmate dies as a result of criminal activity of another inmate, coroner costs incurred by a local jurisdiction may be reimbursed up to a maximum amount established by the department as reasonable.

(6) Medical costs - Where an inmate is in the custody of a local jurisdiction as a result of a crime committed while incarcerated in a state institution, extraordinary medical costs, beyond the routine medical services of the jail, may be reimbursed at the discretion of the department. Counties, cities, and towns shall notify the department prior to incurring expenses for extraordinary medical expenses, where practicable, to allow the department an opportunity to provide the necessary medical care directly.

**WSR 05-13-162**  
**PROPOSED RULES**  
**DEPARTMENT OF CORRECTIONS**

[Filed June 21, 2005, 3:38 p.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 05-10-035.

**Title of Rule and Other Identifying Information:** Amendments to WAC 137-28-160 Definitions and 137-28-260 Serious infractions.

**Hearing Location(s):** Department of Corrections, 4th Floor Conference Room, 410 West 5th Street, Olympia, WA 98504, on July 26, 2005, at 9 a.m.

**Date of Intended Adoption:** July 26, 2005.

**Submit Written Comments to:** John R. Nispel, Rules Coordinator, Department of Corrections, P.O. Box 41114, Olympia, WA 98504-1114, fax (360) 664-2009, by July 20, 2005.

**Assistance for Persons with Disabilities:** Contact John R. Nispel by July 21, 2005, (360) 586-2160.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** Refine the definitions of sexual assault and add a new infraction.

**Summary:** Clarify the definitions of sexual assault and add separate infractions for "attempted sexual assault" for data collection purposes for reporting under the Prison Rape Elimination Act; add a new infraction regarding unauthorized entry by an offender into a cell, tier or unit other than the one to which the offender is assigned.

**Explanation of Rule, its Purpose, and Anticipated Effects:** The proposed changes will enhance discipline in the institutions operated by the department, further refining and clarifying disciplinary behavior. The following changes are proposed: WAC 137-28-160 Definitions, add definitions of abusive sexual contact, attempted suicide and mental health professional.

WAC 137-28-260 Serious infractions, add infractions #611, 612, 636 and 637 dealing with sexual assaults, amending the definition of infraction; #712 Attempted suicide; and adding infraction #713 Self mutilation/self harm.

**Reasons Supporting Proposal:** These changes are necessary to capture data required under the Prison Rape Elimination Act of 2003 and maintain discipline in the prisons.

**Statutory Authority for Adoption:** RCW 72.01.090.

**Statute Being Implemented:** P.L. 108-79 108th Congress Prison Rape Elimination Act of 2003.

Rule is necessary because of federal law, P.L. 108-79 108th Congress Prison Rape Elimination Act of 2003.

**Name of Proponent:** Washington State Department of Corrections, governmental.

**Name of Agency Personnel Responsible for Drafting:** Lori Ramsdell-Gilkey, P.O. Box 41118, Olympia, WA 98504-1118, (360) 586-3490; Implementation and Enforcement: Eldon Vail, Deputy Secretary, P.O. Box 41118, Olympia, WA 98504-1118, (360) 753-1502.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules affect incarcerated offenders only and will not impose costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule adoption as the agency is not named in RCW 34.05.328 (5)(a)(i).

June 21, 2005

H. W. Clarke

Secretary

**AMENDATORY SECTION** (Amending WSR 02-12-023, filed 5/28/02, effective 6/28/02)

**WAC 137-28-160 Definitions.** For the purposes of this chapter, the following words have the following meanings:

**Abusive sexual contact - an incident in which the contact occurs without his/her consent or he/she was unable to consent or refuse. Abusive sexual contact includes one or more of the following behaviors:**

• **Intentional touching, either directly or through the clothing of the genitalia, anus, groin, breast, inner thigh, or buttocks of the victim. It does not include kicking, grabbing or punching genitals when the intent is to harm or debilitate rather than to sexually exploit.**

**Adult correctional institution and institution - a facility identified in RCW 72.01.050(2) and any similar facility hereinafter established.**

**Aggravated assault - an assault resulting in physical injury and requiring medical care (see definition of medical care).**

**Assault - a physical attack upon the body of another person. The attack may be made with any instrument including, but not limited to weapons, body parts, food products or bodily secretions.**

**Attempted suicide - an unsuccessful attempt to kill oneself as determined by a medical or mental health professional.**

**Attempt - putting forth an effort to commit any infraction shall be considered the same as commission of the infraction. However, attempted aggravated assault shall be considered an attempted assault.**

**Bodily harm - physical pain or injury, illness, or impairment of physical condition.**

**Cell tag - if contraband or other violation is discovered in an area under control of the inmate (such as within the confines or contents of a cell), the contraband or other violation shall be constructively attributed to the inmate(s) assigned to that area, unless the inmate(s) can establish a lack of involvement in the infraction at the disciplinary hearing.**

**Conspiracy - an agreement between two or more persons to commit an infraction. Conspiracy to commit an infraction shall be considered the same as commission of the infraction.**

**Deputy secretary - the deputy secretary of the office of correctional operations of the Washington state department of corrections, or the deputy secretary's designee.**

**Discovery - when a staff member discovers that an infraction has occurred or when an investigation into the incident is concluded.**

**Earned time - means that portion of time an offender is eligible to earn for program participation approved by the classification process and consistent with his/her case management plan.**

**Earned release time - means the combined earned time and good conduct time credit an offender is eligible to earn**

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off the minimum term established by the indeterminate sentence review board or the sentencing court.

Good conduct time credits - that portion of an inmate's potential reduction to minimum term which is authorized by RCW 9.95.070 and 72.09.130 and which may be lost by receiving serious infractions.

Hearing officer - Staff member(s) designated by the superintendent to conduct disciplinary hearings.

Infraction - commission of, attempt to commit, or conspiracy with another to commit any violation of prison rules as enumerated in this code. Aiding or abetting another to commit an infraction will be considered the same as commission of the infraction.

Infraction review officer - staff member(s) designated by the superintendent to review a serious infraction.

Lesser included offense - any infraction that must necessarily have been committed in order to commit another infraction.

Medical care - any care conducted in a medical facility/treatment center by medical staff to treat a documented, physical injury, including, but not limited to bandaging, suturing, surgery, etc. An examination conducted by medical staff to determine whether an injury has been sustained shall not be considered medical care.

Mental health professional - an individual with a unique set of knowledge, skills and abilities that makes him/her competent in either development, research, administration, assessment, prevention, treatment, education or training aimed at effecting the onset, occurrence, and maintenance of mental, behavioral and in some cases physical health disorders.

Mitigating factors - factors to be considered by the infracting officer in deciding whether to charge a #328 general infraction rather than a #728 serious infraction. Also, factors to be considered by the infraction review officer, hearings officer, and superintendent for the purpose of deciding whether a #728 serious infraction should be reduced to a #328 general infraction. Mitigating factors may include the seriousness of the sexually explicit material involved, whether the inmate has been convicted of a sexually motivated crime, the treatment needs of the inmate, the prior history of similar behavior, and the source of the material.

Possession - established when an item(s) is found on a person or in an area which is under the control of the individual(s) charged.

Promptly - to act as soon as reasonably possible, consistent with institutional goals of safety, security, and rehabilitation.

Secretary - the secretary of the Washington state department of corrections, or the secretary's designee.

Sexual harassment - any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.

Sexually explicit - means a depiction of one of the following:

- One of the participants in the sexual act is, or appears to be, nonconsenting;
- One of the participants in the sexual act appears to be forceful, threatening, or violent;

- One of the partners in the sexual act is dominating one of the other participants and one of the individuals is obviously in a submissive role or one of the participants is degraded, humiliated, or willingly engages in behavior that is degrading or humiliating;

- One of the participants in the sexual act is a minor, or appears to be a minor, or a minor alone is depicted in a sexually suggestive way;

- Actual penetration, be it penile/vaginal-oral, penile-anal, or penile-vaginal; digital-anal; digital-vaginal; or insertion of any inanimate object in the vaginal or anal cavity, and the depiction in the context presented is deemed to be a threat to legitimate penological objectives;

- Any bodily excretory function which is sexual in nature;

- Bestiality, sadomasochistic behavior, bondage; or

- Material reasonably deemed to be a threat to legitimate penological objectives.

Staff member - for purposes of this chapter includes employees of the department of corrections, contract employees, and volunteers.

Superintendent - superintendent of an adult correctional institution or the superintendent's designee.

Working days - Monday through Friday, excluding weekends and holidays.

AMENDATORY SECTION (Amending WSR 04-07-163, filed 3/23/04, effective 4/23/04)

#### WAC 137-28-260 Serious infractions.

##### (1) Assault/threatening actions/causing injury to another person

- 501 - Committing homicide.
- 502 - Aggravated assault on another offender.
- 503 - Extortion, blackmail, or demanding or receiving money or anything of value in return for protection against others, or under threat of informing.
- 505 - Fighting with any person.
- 506 - Threatening another with bodily harm or with any offense against another person, property or family.
- 508 - Throwing objects, materials, substances or spitting at staff, visitors, or other inmates.
- 511 - Aggravated assault on a visitor.
- 521 - Taking or holding any person hostage.
- 588 - Causing a valid and documented threat of transmission of a contagious disease to any person due to intentional, negligent or reckless action.
- 604 - Aggravated assault on a staff member.
- 611 - Sexual assault on a staff member.
- 612 - Attempted sexual assault on staff.\*
- 613 - Abusive sexual contact with staff.
- 633 - Assault on another offender.
- 635 - Sexual assault on another offender.
- 636 - Attempted sexual assault on another offender.\*
- 637 - Abusive sexual contact with another offender.
- 663 - Using physical force, intimidation or coercion against any person.

- 704 - Assault on a staff member.
- 711 - Assault on a visitor.
- 717 - Causing a threat of injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.
- 777 - Causing injury to another person by resisting orders, resisting assisted movement or physical efforts to restrain.

#### Unauthorized possession

- 559 - Gambling; possession of gambling paraphernalia.
- 601 - Possession, manufacture or introduction of an explosive device or any ammunition, or any components of an explosive device or ammunition.
- 602 - Possession, manufacture or introduction of any gun, firearm, weapon, sharpened instrument, knife, or poison or any components thereof.
- 620 - Receipt or possession of contraband during participation in off-grounds or outer perimeter activity or work detail.
- 660 - Unauthorized possession of money, stamps, or negotiable instruments, the value of which is five dollars or more.
- 702 - Possession, manufacture or introduction of an unauthorized tool.
- 736 - Possession, manufacture or introduction of unauthorized keys.
- 738 - Possession of the clothing of a staff member.
- 739 - Possession of personal information about currently employed staff, contractors or volunteers, or their immediate family members, not voluntarily given to the offender by the individual involved, including, but not limited to: Social Security numbers, unpublished home addresses or telephone numbers, drivers license numbers, medical, personnel, financial or real estate records, bank or credit card numbers, or other like information not authorized by the court or the superintendent.

#### Tattooing

- 710 - Being tattooed while incarcerated, tattooing another, or possessing tattoo paraphernalia.

#### Theft/possession of stolen property

- 555 - Theft of property or possession of stolen property.
- 741 - Theft of food, the value of which is more than five dollars.
- 755 - Misuse or waste of issued supplies, goods, services or property, the replacement value of which is ten dollars or more.

#### Forgery

- 654 - Counterfeiting, forging, altering or unauthorized reproduction of any document, article of identification, money, security, or official paper.

#### Setting fire, damaging or destroying property

- 553 - Setting a fire.
- 554 - Mutilating, altering, defacing or destroying any item, the value of which is ten dollars or more and that is not the personal property of the inmate.

- 563 - Making a false fire alarm, tampering, damaging, blocking or interfering with fire alarms, fire extinguishers, fire hoses, fire exits, or other fire fighting equipment or devices.

- 600 - Tampering with, damaging, blocking, or interfering with any locking or security device.

- 720 - Flooding a cell or other area of the institution.

#### Inciting others/participation in unacceptable group behavior

- 650 - Rioting.

- 651 - Inciting others to riot.

- 652 - Engaging in or inciting a group demonstration.

- 682 - Engaging in or inciting an organized work stoppage.

- 708 - Organizing or participating in an unauthorized group activity or meeting.

- 734 - Participating or engaging in the activities of any unauthorized club, organization, gang or security threat group; or wearing or possessing the symbols of an unauthorized club, organization, gang or security threat group.

- 746 - Engaging in or inciting an organized hunger strike.

#### Inappropriate sexual behavior

- 504 - Engaging in sexual acts with others with the exception of spouses during approved extended family visits.

- 659 - Sexual harassment; any word, action, gesture or other behavior that is sexual in nature and that would be offensive to a reasonable person.

- 728 - Possession of any written, photographic or hand-drawn material that depicts a sexually explicit act as defined in WAC 137-28-160.

- 750 - Indecent exposure.

#### Providing false statements

- 551 - Providing false information to a disciplinary hearing officer or on a disciplinary appeal.

- 552 - Causing an innocent person to be penalized or proceeded against by providing false information.

- 706 - Giving false information about proposed community residence when proposing a release plan, community placement, etc.

#### Interfering with staff/impersonating

- 558 - Interfering with staff members, medical personnel, fire fighters, or law enforcement personnel in the performance of their duties.

- 605 - Impersonating any staff member, other inmate or visitor.

#### Failure to follow orders and rules

- 509 - Refusing a direct order by any staff member to proceed to or disperse from a particular area.

- 556 - Refusing to submit to or cooperate in a search when ordered to do so by a staff member.

- 557 - Refusing to participate in an available education or work program or other mandatory programming assignment.

- 609 - Refusing or failing to submit to testing required by policy, statute, or court order, such as DNA blood tests, when ordered to do so by a staff member.
- 658 - Failing to comply with any administrative or post-hearing sanction imposed for committing any general or serious infraction.
- 724 - Refusing a cell or housing assignment.
- 745 - Refusing a transfer to another facility.

#### Counts/unauthorized absence

- 653 - Causing an inaccurate count by means of unauthorized absence, hiding, concealing ones self or other form of deception or distraction.

#### Escape/attempted escape

- 525 - Violating conditions of furlough.
- 550 - Escape or attempted escape.
- 560 - Unauthorized possession of items or materials likely to be used in an escape attempt.

#### Committing crimes/excess infractions

- 507 - Committing any act that is a felony under state or federal law that is not otherwise included in these rules.
- 517 - Committing any act that is a misdemeanor under local, state, or federal law that is not otherwise included in these rules.
- 657 - Being found guilty of four or more general infractions which have been reported in writing arising out of separate incidents, all of which occur within a six-month period.

#### Unacceptable communication

- 718 - Use of mail or telephone in violation of court order or local, state or federal law.
- 726 - Telephoning or sending written communication or otherwise initiating communication with a minor without the approval of that minor's parent or guardian.
- 727 - Telephoning or sending written communications to any person contrary to previous written warnings and/or documented disciplinary actions.

#### Misuse of controlled substances, drugs, alcohol and related programs

- 603 - Possession, introduction, or transfer of any narcotic, controlled substance, illegal drug, unauthorized drug or drug paraphernalia.
- 606 - Possession, introduction or transfer of any tobacco, tobacco products, matches, or tobacco paraphernalia.
- 607 - Refusing to submit to a urinalysis and/or failure to provide a urine sample when ordered to do so by a staff member.
- 608 - Refusing or failing to submit to a breathalyzer or other standard sobriety test when ordered to do so by a staff member.
- 610 - Unauthorized accumulation of prescribed medication greater than a single or daily dose.

- 655 - Making intoxicants, alcohol, controlled substances, narcotics, or the possession of ingredients, equipment, items, formulas or instructions that are used in making intoxicants, alcohol, controlled substances, or narcotics.
- 707 - Possession, introduction, or transfer of any alcoholic or intoxicating beverage.
- 716 - Unauthorized use of drugs, alcohol or other intoxicants.
- 752 - Receiving a positive test for use of unauthorized drugs, alcohol, or other intoxicants.

#### Soliciting/fraud

- 656 - Giving, offering or receiving from any person a bribe or anything of value for an unauthorized favor or service.
- 662 - Soliciting goods or services for which the provider would expect payment when the inmate knows or should know that no funds are available to pay for those goods or services.
- 714 - Giving, selling, borrowing, lending, or trading money or anything of value to, or accepting or purchasing money or anything of value from, another inmate or that inmate's friend(s) or family, the value of which is ten dollars or more.
- 740 - Fraud, embezzlement, or obtaining goods, services, money, or anything of value under false pretense.

#### Creating an emergency situation

- 712 - Attempted suicide (~~or self-mutilation~~) as determined by mental health staff.
- 713 - Self-mutilation or self-harm.
- 742 - Creating a false emergency by feigning illness when contrary to medical/mental health screening results.
- 744 - Making a bomb threat.

(2) In determining whether a #728 infraction or a #328 infraction pursuant to WAC 137-28-220 should be charged, the infracting officer shall consider mitigating factors as defined in WAC 137-28-160.

\*Attempts to commit infractions #611 or #635 are now separate infractions #612 and #636 for the Prison Rape Elimination Act (PREA) reporting purposes only and do not impact the definition in WAC 137-28-160 which includes "attempts."

**WSR 05-13-169**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

[Filed June 21, 2005, 4:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-08-091.

Title of Rule and Other Identifying Information: WAC 388-450-0215 How does the department estimate my assistance unit's income to determine my eligibility and benefits?

Hearing Location(s): Blake Office Park East (behind Goodyear Courtesy Tire), Rose Room, 4500 10th Avenue S.E., Lacey, WA, on July 26, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 27, 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. on June 26, 2005.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by July 22, 2005, 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: The proposed amendments are necessary to clarify when the department is required to use the income budgeting method "anticipated monthly" when determining benefit allotments, consistent with federal food stamp program regulations under 7 C.F.R. 273.10 (a)(1)(i). Also, the amendments more clearly describe the method in which income that is expected to fluctuate over the certification period is to be averaged.

Reasons Supporting Proposal: The current version does not clearly articulate that any income received in the month of application must be budgeted using the actual amounts for that month's calculation. This results in confusion and misapplication of the intent of the federal rule.

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: Rebecca Henrie, 1009 College S.E., Lacey, WA 98504, (360) 725-4615.

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."

June 17, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-06-052, filed 3/1/04, effective 4/1/04)

**WAC 388-450-0215 How does the department estimate my assistance unit's income to determine my eligibility and benefits?** The department uses prospective budgeting to determine if your assistance unit (AU) is eligible and to calculate your benefits.

(1) We determine if your AU is eligible for benefits and calculate your monthly benefits based on an estimate of your AU's income and expenses for that month. This is known as prospective budgeting.

(2) We base this estimate on what can be reasonably expected based on your current, past and future circumstances.

(3) We determine if our estimate is reasonable by looking at documents, statements, and other verification.

(4) We use two methods to estimate your AU's income:

(a) **Anticipating monthly income:** We estimate the actual amount of income you expect to receive in the month; and

(b) **Averaging income:** We estimate your income based on adding the total income you expect to receive for a period of time and dividing by the number of months in the time period.

(5) When we use the anticipating monthly method, we estimate the actual amount of income your AU expects to receive in the month. Your benefits will vary based on the income that is expected for that month.

(6) In general, you can choose which method we use to estimate your income. However, we **must** use the anticipating monthly method:

(a) For the month you apply for benefits, any income your AU receives in that month. If we do not have to use the anticipating monthly method for any other reason, we may average this income source for the remaining months of your certification period.

(b) For all your AU's income in the following circumstances:

(i) If you receive SSI-related medical benefits under chapter 388-475 WAC; or

(ii) If you are a destitute migrant or destitute seasonal farmworker under WAC 388-406-0021, we must use the anticipating monthly method for the month your AU applied for benefits.

~~((b))~~ (c) For the income of any member of your AU who has income allocated to someone receiving SSI-related medical benefits under chapter 388-475 WAC;

~~((e))~~ (d) For the following sources of income to your AU:

(i) SSI; or

(ii) Social Security benefits(~~or~~

~~(iii) Income your AU already received in the month that you applied for benefits. If we do not have to use the anticipating monthly method for any other reason, we may average this income for the remaining months of your certification or review period)).~~

(7) When we use the averaging method, we take the expected changes in your AU's income into consideration so your benefits do not change as much:

(a) If you receive your income weekly or every other week, we convert this income to a monthly amount. If you are paid:

- (i) Weekly, we multiply your expected pay by 4.3; or
- (ii) Every other week, we multiply your expected pay by 2.15.

(b) In most cases if you receive your income other than weekly or every other week, we estimate your ~~((monthly))~~ expected income over the certification period by:

(i) Adding the total ~~((amount of))~~ income ~~((we expect you to receive for your certification or review))~~ in a representative time period; ~~((and))~~

(ii) Dividing by the number of ~~((months))~~ pay periods in the ~~((period of time))~~ timeframe; and

(iii) Determining the monthly average from this amount.

(c) If you receive your yearly income over less than a year because you are self employed or work under a contract, we average this income over the year unless you are:

- (i) Paid on an hourly or piecework basis; or
- (ii) A migrant or seasonal farmworker under WAC 388-406-0021.

(8) If you report a change in your AU's income, and we expect the change to last for at least a month beyond the month you reported the change, we recalculate your AU's income based on this change.

(9) If your actual income is different than the income we estimated, we do not make you repay an overpayment under chapter 388-410 WAC or increase your benefits unless:

- (a) You provided incomplete or false information; or
- (b) We made an error in calculating your benefits.

**WSR 05-13-170**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)

[Filed June 21, 2005, 4:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 04-17-106.

Title of Rule and Other Identifying Information: WAC 388-505-0220 Family medical eligibility.

Hearing Location(s): Blake Office Park East (behind Goodyear Courtesy Tire), Rose Room, 4500 10th Avenue S.E., Lacey, WA, on July 26, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 27, 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., July 26, 2005.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by July 22, 2005, 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: The department is

amending the rule to add language that persons receiving tribal TANF also receive Medicaid and clarifying that an adult meeting Medicaid criteria cannot be determined as eligible for a family Medicaid program unless the household includes a child eligible for and receiving Medicaid.

Reasons Supporting Proposal: It would eliminate confusion over the policy and reduce requests for policy clarification.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.530.

Statute Being Implemented: RCW 74.04.050, 74.04.-057, 74.08.090, and 74.09.530.

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: Joanie Scotson, P.O. Box 45535, Olympia, WA 98504-5534, (360) 725-1330.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. Client eligibility rules are exempt under RCW 34.05.328 (5)(b)(vii).

June 16, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 02-17-030, filed 8/12/02, effective 9/12/02)

**WAC 388-505-0220 Family medical eligibility.** (1) A person is eligible for categorically needy (CN) medical assistance when they are:

(a) Receiving temporary assistance for needy families (TANF) cash benefits;

(b) Receiving Tribal TANF;

(c) Receiving cash diversion assistance, except SFA relatable families, described in chapter 388-222 WAC;

~~((e))~~ (d) Eligible for TANF cash benefits but choose not to receive; or

~~((d))~~ (e) Not eligible for or receiving TANF cash assistance, but meet the eligibility criteria for aid to families with dependent children (AFDC) in effect on July 16, 1996 except that:

(i) Earned income is treated as described in WAC 388-450-0210; and

(ii) Resources are treated as described in WAC 388-470-0005 for applicants and ~~((WAC 388-470-0050 and))~~ 388-470-0026 for recipients.

(2) An adult cannot receive family medical unless the household includes a child who is eligible for:

(a) Family medical;

(b) SSI; or

(c) Children's Medicaid.

(3) A person is eligible for CN family medical coverage when the person is not eligible for or receiving cash benefits solely because the person:

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(a) Received sixty months of TANF cash benefits or is a member of an assistance unit which has received sixty months of TANF cash benefits;

(b) Failed to meet the school attendance requirement in chapter 388-400 WAC;

(c) Is an unmarried minor parent who is not in a department-approved living situation;

(d) Is a parent or caretaker relative who fails to notify the department within five days of the date the child leaves the home and the child's absence will exceed ninety days;

(e) Is a fleeing felon or fleeing to avoid prosecution for a felony charge, or is a probation and parole violator;

(f) Was convicted of a drug related felony;

(g) Was convicted of receiving benefits unlawfully;

(h) Was convicted of misrepresenting residence to obtain assistance in two or more states;

(i) Has gross earnings exceeding the TANF gross income level; or

(j) Is not cooperating with WorkFirst requirements.

~~((3))~~ (4) An adult must cooperate with the division of child support in the identification, use, and collection of medical support from responsible third parties, unless the person meets the medical exemption criteria described in WAC 388-505-0540 or the medical good cause criteria described in chapter 388-422 WAC.

~~((4))~~ (5) Except for a client described in WAC 388-505-0210 (4)(c)(i) and (ii), a person who is an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for CN or MN medical coverage.

#### WSR 05-13-171

#### PROPOSED RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 21, 2005, 4:15 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 05-07-130.

Title of Rule and Other Identifying Information: WAC 388-412-0025 How do I get my benefits?

Hearing Location(s): Blake Office Park East (behind Goodyear Courtesy Tire), Rose Room, 4500 10th Avenue S.E., Lacey, WA, on July 26, 2005, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 27, 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., July 26, 2005.

Assistance for Persons with Disabilities: Contact Stephanie Schiller, DSHS Rules Consultant, by July 22, 2005, 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 is being

changed to simplify language and replace an incorrect Department of Revenue phone number.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 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: Mark Neal, 1009 College S.E., Lacey, WA 98504, (360) 725-4605.

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."

June 16, 2005

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 03-22-038, filed 10/28/03, effective 12/1/03)

**WAC 388-412-0025 How do I get my benefits?** (1) Your cash benefits are sent to you by either:

(a) Electronic benefit transfer (EBT) ~~((electronic benefits))~~ card, which is a direct deposit into a DSHS account that you access with a debit card called the Washington EBT Quest card;

(b) Electronic funds transfer (EFT), which is a direct deposit into your own bank account;

(c) A check to a payee who is not approved for direct deposit; or

~~((b))~~ (d) A check to you if you get:

(i) Diversion cash assistance (DCA) that cannot be paid directly to a vendor;

(ii) Additional requirements for emergent needs (AREN) that cannot be paid directly to a vendor;

(iii) Ongoing additional requirements (OAR) that cannot be paid directly to a vendor;

(iv) Clothing and personal incidentals (CPI) payments; or

(v) State supplemental payment (SSP) and you do not receive your benefit through EFT.

(2) You use a Quest debit card to access your benefits in your EBT account. You get a personal identification number (PIN) that you must enter when using this card.

(3) Your Basic Food benefits are deposited into your EBT account ~~((under time frames))~~ on the day of the month defined in WAC 388-412-0020.

(4) We establish an EBT account for each AU that receives their benefits by EBT.

(5) ~~We cancel your cash and Basic Food ((are canceled)) benefits when you do not use your EBT ((benefits)) account for three hundred sixty-five days.~~

(a) ~~((We cannot replace)) Basic Food benefits that were canceled because ((they were not used)) you did not use them for three hundred sixty-five days cannot be replaced.~~

(b) Cash benefits that were canceled because you did not use them for three hundred sixty-five days may be replaced. You have two years to contact the department of revenue in order to replace your cash benefits. You can contact department of revenue at ~~((1-800-435-2429)) 1-888-328-9271~~. After that time, you must contact the state treasurer to claim any canceled funds.

(6) You must use your cash and Basic Food benefits from your EBT account. We do not convert cash or Basic Food benefits to checks.

**WSR 05-13-182  
PROPOSED RULES  
OFFICE OF**

**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2004-08—Filed June 22, 2005, 8:33 a.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 04-22-050.

Title of Rule and Other Identifying Information: Chapter 284-66 WAC, Medicare supplement insurance.

Hearing Location(s): Insurance Commissioner's Office, Room TR 120, 5000 Capitol Boulevard, Tumwater, WA 98501, on July 28, 2005, at 9:00 a.m.

Date of Intended Adoption: August 1, 2005.

Submit Written Comments to: Kacy Scott, P.O. Box 40255, Olympia, WA 98504-0255, e-mail Kacys@oic.wa.gov, fax (360) 725-7041, by July 26, 2005.

Assistance for Persons with Disabilities: Contact Lori Villaflores by July 26, 2005, TDD (360) 586-0241 or (360) 725-7087.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** Changes to the Medicare supplement insurance rules are necessary to assure compliance with the standards prescribed by the Medicare Modernization Act (MMA). These proposed regulations are consistent with the amendments to the NAIC Medicare Supplement Insurance Minimum Standards Model Act that were adopted as a result of the MMA.

A new section outlining interim rate and form filing requirements was added to assist carriers in filing any rate and form changes that are the result of the federal requirements.

**Reasons Supporting Proposal:** The Centers for Medicare and Medicaid Services (CMS) requires states to implement the updated NAIC model amendments by September 8, 2005. The MMA authorized the United States Department of Health and Human Services (DHHS) to impose its own regu-

latory scheme for Medicaid plans in the event that states do not comply with the provisions.

Statutory Authority for Adoption: RCW 48.02.060 and 48.66.165.

Statute Being Implemented: Chapter 48.66 RCW.

Rule is necessary because of federal law, Medicare Prescription Drug, Improvement, and Modernization Act of 2003, P.L. 108-173.

Name of Proponent: Mike Kreidler, Insurance Commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Janis LaFlash, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7040; Implementation: Beth Berendt, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: Carol Sureau, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The small business economic impact statement is not required because the amendments to chapter 284-66 WAC are being proposed solely for the purpose of conforming Washington's Medicare Supplement regulations to the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

A cost-benefit analysis is not required under RCW 34.05.328. The proposed amendments duplicate the federal regulation without material change.

June 21, 2005

Mike Kreidler

Insurance Commissioner

**AMENDATORY SECTION** (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-010 Purpose.** The purpose of this chapter is to ~~((effectuate the provisions of RCW 48.20.450, 48.20.460 and 48.20.470, 48.30.010, 48.44.020, 48.44.050, 48.44.070, 48.46.030, 48.46.130, 48.46.200, and to))~~ supplement the requirements of chapter 48.66 RCW, the Medicare Supplemental Health Insurance Act; to assure the orderly implementation and conversion of Medicare supplement insurance benefits and premiums due to changes in the federal Medicare program; to provide for the reasonable simplification and standardization of the coverage, terms, and benefits of Medicare supplement insurance policies and certificates, and to eliminate policy provisions ~~((which))~~ that may duplicate Medicare benefits as the federal Medicare program changes; to facilitate public understanding and comparison of ~~((such))~~ policies and to eliminate provisions contained in ~~((such))~~ policies ~~((which))~~ that may be misleading or confusing; to establish minimum standards for Medicare supplement insurance, an "outline of coverage" and other disclosure requirements; to prohibit the use of certain provisions in Medicare supplemental insurance policies; to define and prohibit certain acts and practices as unfair methods of competition or unfair or deceptive acts or practices; and to establish loss ratio requirements, policy reserves, filing and reporting procedures.

**AMENDATORY SECTION** (Amending Matter No. R 96-2, filed 4/11/96, effective 5/12/96)

**WAC 284-66-020 Applicability and scope.** (1) Subject to subsection (2) of this section, except as provided by federal law, chapter 48.66 RCW, or as otherwise specifically provided by this chapter, this chapter ~~((shall apply))~~ applies to every group and individual policy of disability insurance and to every subscriber contract of an issuer (other than a policy issued ~~((pursuant to))~~ under a contract ~~((under))~~ provided for in section 1876 of the Social Security Act [42 U.S.C. section 1395 et seq.] or an issued policy under a demonstration project specified in 42 U.S.C. section 1395ss (g)(1), ~~((which))~~ that relates its benefits to Medicare, or ~~((which))~~ is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible for Medicare. All such policies or contracts are referred to in this chapter as "Medicare supplemental insurance" or "Medicare supplement insurance policy" or "Medicare supplement coverage."

(2)(a) Medicare supplement insurance policies delivered ~~((prior to))~~ before January 1, 1989, ~~((which))~~ that are renewable solely at the option of the insured by the timely payment of premium ~~((shall be))~~ are subject to the provisions of this chapter except with respect to WAC 284-66-060, 284-66-200, 284-66-210, 284-66-310, and 284-66-350. To the extent that the provisions of this chapter do not apply to ~~((such))~~ these policies, chapter 284-55 WAC ~~((shall apply))~~ applies.

(b) Medicare supplement insurance policies delivered between January 1, 1989, and December 31, 1989, ~~((and which))~~ that are renewable solely at the option of the insured by the timely payment of premium ~~((shall be))~~ are governed by this chapter except with respect to the requirements of WAC 284-66-210 and 284-66-350.

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

**AMENDATORY SECTION** (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-030 Definitions.** For purposes of this chapter:

(1) "Applicant" means:

(a) In the case of an individual Medicare supplement insurance policy, the person who seeks to contract for insurance benefits; and

(b) In the case of a group Medicare supplement insurance policy, the proposed certificate holder.

(2) "Certificate" means any certificate delivered or issued for delivery in this state under a group Medicare supplement insurance policy regardless of the situs of the group master policy.

(3) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

(4) "Issuer" includes insurance companies, fraternal benefit societies, health care service contractors, health maintenance organizations, and any other entity delivering or issuing for delivery Medicare supplement policies or certificates.

(5) "Direct response issuer" means an issuer who, as to a particular transaction, is transacting insurance directly with a

potential insured without solicitation by, or the intervention of, a licensed insurance agent.

(6) "Disability insurance" is insurance against bodily injury, disablement or death by accident, against disablement resulting from sickness, and every insurance ~~((appertaining thereto))~~ relating to disability insurance. For purposes of this chapter, disability insurance ~~((shall))~~ includes policies or contracts offered by any issuer.

(7) "Health care expense costs," for purposes of WAC 284-66-200(4), means expenses of a health maintenance organization or health care service contractor associated with the delivery of health care services ~~((which expenses))~~ that are analogous to incurred losses of insurers. ~~((Such expenses shall not include home office and overhead costs, advertising costs, commissions and other acquisition costs, taxes, capital costs, administrative costs, and "claims" processing costs.))~~

(8) "Policy" includes agreements or contracts issued by any issuer.

(9) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer.

(10) "Premium" means all sums charged, received, or deposited as consideration for a Medicare supplement insurance policy or the continuance thereof. An assessment or a membership, contract, survey, inspection, service, or other similar fee or charge made by the issuer in consideration for ~~((such))~~ the policy is deemed part of the premium. "Earned premium" ~~((shall))~~ means the "premium" applicable to an accounting period whether received before, during or after ~~((such))~~ that period.

(11) "Replacement" means any transaction ~~((in which))~~ where new Medicare supplement coverage is to be purchased, and it is known or should be known to the proposing agent or other representative of the issuer, or to the proposing issuer if there is no agent, that by reason of ~~((such))~~ the transaction, existing Medicare supplement coverage has been or is to be lapsed, surrendered or otherwise terminated.

(12) "Secretary" means the Secretary of the United States Department of Health and Human Services.

**AMENDATORY SECTION** (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-040 Policy definitions and terms.** No policy or certificate may be advertised, solicited, issued for delivery in this state ~~((after July 1, 1992,))~~ as a Medicare supplement insurance policy or certificate unless ~~((such))~~ the policy or certificate contains definitions or terms ~~((which))~~ that conform to the requirements of this section.

(1) "Accident," "accidental injury," or "accidental means" ~~((shall))~~ must be defined to employ "result" language and ~~((shall))~~ may not include words ~~((which))~~ that establish an accidental means test or use words such as "external, violent, visible wounds" or similar words or description or characterization.

(a) The definition ~~((shall))~~ may not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person ~~((which))~~ that is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(b) ~~((Such))~~ The definition may provide that injuries ~~((shall))~~ do not include those injuries for which benefits are provided under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

(2) "Benefit period" or "Medicare benefit period" may not be defined more restrictively than as defined in the Medicare program.

(3) "Convalescent nursing home," "extended care facility," or "skilled nursing facility" ~~((shall))~~ may not be defined more restrictively than as defined in the Medicare program.

~~((3))~~ (4) "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Health Care Organizations, but not more restrictively than as defined in the Medicare program.

~~((4))~~ (5) "Medicare" ~~((shall))~~ must be defined in the policy and certificate ~~((-Medicare may be defined))~~ as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as then constituted or later amended," ~~((or "Title I, Part I of Public Law 89-97, as enacted by the Eighty-ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.~~

~~((5))~~ (6) "Medicare eligible expenses" means expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare.

(7) "Physician" ~~((shall))~~ may not be defined more restrictively than as defined in the Medicare program.

~~((6))~~ (8) "Sickness" ~~((shall))~~ may not be defined to be more restrictive than the following: "Sickness means illness or disease of an insured person ~~((which))~~ that first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law.

#### AMENDATORY SECTION (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-050 Policy provisions.** (1) No policy may be advertised, solicited, or issued for delivery in this state as a Medicare supplement insurance policy unless ~~((such policy))~~ it meets or exceeds the requirements ~~((for such policies))~~ imposed by chapter 48.66 RCW.

(2) ~~((No))~~ A Medicare supplement policy or certificate in force in this state ~~((shall))~~ may not contain benefits ~~((which))~~ that duplicate benefits provided by Medicare.

(3) Except for permitted preexisting condition clauses as described in WAC 284-66-063 (1)(a) no policy or certificate may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if ~~((such))~~ the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

(4) The terms "Medicare supplement," "Medicare wrap-around," "Medigap," or words of similar import ~~((shall))~~ may not be used to describe an insurance policy unless ~~((such))~~ the

policy is issued in compliance with chapter 48.66 RCW and this chapter.

(5) Subject to WAC 284-66-063 (1)(c), a Medicare supplement policy with benefits for outpatient prescription drugs in existence before January 1, 2006, must be renewed for current policyholders who do not enroll in Part D at the option of the policyholder.

(6) A Medicare supplement policy with benefits for outpatient prescription drugs may not be issued after December 31, 2005.

(7) After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless:

(a) The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan; and

(b) Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable.

#### AMENDATORY SECTION (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-060 Minimum benefit standards.** The requirements of this section apply to Medicare supplement policies and certificates issued or issued for delivery in this state during the period beginning January 1, 1990, and ending June 30, 1992, as well as all guaranteed renewable Medicare supplement policies delivered to residents of this state during 1989 ~~((and which))~~ that were ~~((enformed))~~ modified to meet the minimum benefit standards of this section ~~((pursuant to))~~ under the Medicare Catastrophic Coverage Act. Minimum standards for "standardized" policies and certificates are provided ~~((at))~~ in WAC 284-66-063. ~~((Effective July 1, 1992, only policies meeting the standards of WAC 284-66-063 may be advertised, solicited, or issued for delivery in this state. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards:))~~

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(3) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional three hundred sixty-five days;

(5) Coverage under Medicare Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regula-

tions) unless replaced in accordance with federal regulations or already paid for under Part B;

(6) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible;

(7) Coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

**AMENDATORY SECTION** (Amending Matter No. R 96-2, filed 4/11/96, effective 5/12/96)

**WAC 284-66-063 Benefit standards for policies or certificates issued or delivered (~~on or~~) after (~~July 1~~) June 30, 1992.** (~~Only Medicare supplement policies or certificates meeting the requirements of this chapter may be delivered or issued for delivery in this state on or after July 1, 1992. After that date,~~) No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards.

(1) General standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(a) A Medicare supplement policy or certificate (~~shall~~) may not exclude or limit benefits for losses incurred more than three months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within three months before the effective date of coverage.

(b) (~~No~~) A Medicare supplement policy or certificate (~~shall~~) may not provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(c) Each Medicare supplement policy (~~shall~~) must be guaranteed renewable and:

(i) The issuer (~~shall~~) may not cancel or nonrenew the policy solely on the ground of health status of the individual; and

(ii) The issuer (~~shall~~) may not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(iii) If the Medicare supplement policy is terminated by the group policy holder and is not replaced as provided under (c)(v) of this subsection, the issuer (~~shall~~) must offer certificateholders an individual Medicare supplement policy (~~which~~) that (at the option of the certificateholder) provides for continuation of the benefits contained in the group policy, or provides for (~~such~~) benefits (~~as~~) that otherwise meet(~~s~~) the requirements of this subsection.

(iv) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates

membership in the group, the issuer (~~shall~~) must offer the certificateholder the conversion opportunity described in (c)(iii) of this subsection, or at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(v) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy (~~shall~~) must offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy (~~shall~~) may not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(d) Termination of a Medicare supplement policy or certificate (~~shall~~) must be without prejudice to any continuous loss (~~which commenced~~) that began while the policy was in force, but the extension of benefits beyond the period (~~during which~~) that the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss.

(e) If a Medicare supplement policy or certificate eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug Improvement and Modernization Act of 2003, the modified policy or certificate is deemed to satisfy the guaranteed renewal requirements of this section.

(f)(i) A Medicare supplement policy or certificate (~~shall~~) must provide that benefits and premiums under the policy or certificate (~~shall~~) be suspended at the request of the policyholder or certificateholder for the period (not to exceed twenty-four months) (~~in which~~) that the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of (~~such~~) the policy or certificate within ninety days after the date the individual becomes entitled to (~~such~~) the assistance.

(ii) If (~~such~~) the suspension occurs and if the policyholder or certificateholder loses entitlement to (~~such~~) medical assistance, (~~such~~) the policy or certificate (~~shall~~) must be automatically reinstated (~~(f)effective as of the date of termination of (such) the entitlement(-as of the termination of such entitlement)~~) if the policyholder or certificateholder provides notice of loss of (~~such~~) the entitlement within ninety days after the date of (~~such~~) the loss and pays the premium attributable to the period(~~(-effective as of the date of termination of such entitlement)~~).

(iii) Each Medicare supplement policy must provide that benefits and premiums under the policy will be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy must be automatically reinstated (effective as of the date of loss of coverage within ninety days after the date of the loss).

(g) Reinstitution of ~~((such))~~ the coverages;  
~~((A-))~~ (i) May not provide for any waiting period with respect to treatment of preexisting conditions;

~~((B-))~~ (ii) Must provide for resumption of coverage ~~((which))~~ that is substantially equivalent to coverage in effect before the date of ~~((such))~~ the suspension~~((, and))~~. If the suspended Medicare Supplement policy or certificate provided coverage for outpatient prescription drugs, reinstatement of the policy for Medicare Part D enrollees must be without coverage for outpatient prescription drugs and must otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and

~~((C-))~~ (iii) Must provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

(2) Standards for basic ("core") benefits common to ~~((all))~~ benefit plans A-J. Every issuer ~~((shall))~~ must make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic "core" package, but not in ~~((the thereof))~~ place of the basic "core" package.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first day through the ninetieth day in any Medicare benefit period;

(b) Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(c) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of one hundred percent of the Medicare Part A eligible expenses for hospitalization paid at the ~~((diagnostic-related group (DRG) day-outlier-per diem))~~ applicable prospective payment system (PPS) rate or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Coverage under Medicare Parts A and B for the reasonable cost of the first three pints of blood (or equivalent quantities of packaged red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(e) Coverage for the coinsurance amount, or in the case of hospital; outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;

(3) Standards for additional benefits. The following additional benefits ~~((shall))~~ must be included in Medicare supplement benefit plans "B" through "J" only as provided by WAC 284-66-066.

(a) Medicare Part A deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(b) Skilled nursing facility care: Coverage for the actual billed charges up to the coinsurance amount from the twenty-first day through the one hundredth day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A;

(c) Medicare Part B deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(d) Eighty percent of the Medicare Part B excess charges: Coverage for eighty percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(e) One hundred percent of the Medicare Part B excess charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(f) Basic outpatient prescription drug benefit: Coverage for fifty percent of outpatient prescription drug charges, after a two hundred fifty dollar calendar year deductible, to a maximum of one thousand two hundred fifty dollars in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may not be included for sale or issuance in a Medicare supplement policy after December 31, 2005.

(g) Extended outpatient prescription drug benefit: Coverage for fifty percent of outpatient prescription drug charges, after a two hundred fifty dollar calendar year deductible to a maximum of three thousand dollars in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may not be included for sale or issuance in a Medicare supplement policy after December 31, 2005.

(h) Medically necessary emergency care in a foreign country: Coverage to the extent not covered by Medicare for eighty percent of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, ~~((which care))~~ that would have been covered by Medicare if provided in the United States and ~~((which care))~~ that began during the first sixty consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars, and a lifetime maximum benefit of fifty thousand dollars. For purposes of this benefit, "emergency care" ~~((shall))~~ means care needed immediately because of an injury or an illness of sudden and unexpected onset.

(i) Preventive medical care benefit: Coverage for the following preventive health services not covered by Medicare:

(i) An annual clinical preventive medical history and physical examination that may include tests and services from ~~((+))~~(ii) of this subsection and patient education to address preventive health care measures.

(ii) ~~((Any one or a combination of the following))~~ Preventive screening tests or preventive services, the selection and frequency ~~((of which))~~ that is ~~((considered))~~ determined to be medically appropriate ~~((+))~~

(A) ~~Fecal occult blood test and/or digital rectal examination;~~

(B) ~~Mammogram;~~

(C) ~~Dipstick urinalysis for hematuria, bacteriuria, and proteinuria;~~

(D) ~~Pure tone (air only) hearing screening test, administered or ordered by a physician;~~

(E) ~~Serum cholesterol screening (every five years);~~

(F) ~~Thyroid function test;~~

(G) ~~Diabetes screening.~~

(iii) ~~Influenza vaccine administered at any appropriate time during the year and Tetanus and Diphtheria booster (every ten years).~~

(iv) ~~Any other tests or preventive measures determined appropriate)) by the attending physician.~~

Reimbursement ((shall)) must be for the actual charges up to one hundred percent of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in *American Medical Association Current Procedural Terminology (AMA CPT)* codes, to a maximum of one hundred twenty dollars annually under this benefit. This benefit ((shall)) may not include payment for any procedure covered by Medicare.

(j) At-home recovery benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery.

(i) For purposes of this benefit, the following definitions ((shall)) apply:

(A) "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(B) "Care provider" means a duly qualified or licensed home health aide/homemaker, personal care aide, or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(C) "Home" ((shall)) means any place used by the insured as a place of residence, provided that ((sueh)) the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility ((shall)) is not ((be)) considered the insured's place of residence.

(D) "At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive four hours in a twenty-four hour period of services provided by a care provider is one visit.

(ii) Coverage requirements and limitations.

(A) At-home recovery services provided must be primarily services ((which)) that assist in activities of daily living.

(B) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(C) Coverage is limited to:

(I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits ((shall)) may not exceed the number of Medicare approved

home health care visits under a Medicare approved home care plan of treatment.

(II) The actual charges for each visit up to a maximum reimbursement of forty dollars per visit.

(III) One thousand six hundred dollars per calendar year.

(IV) Seven visits in any one week.

(V) Care furnished on a visiting basis in the insured's home.

(VI) Services provided by a care provider as defined in this section.

(VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded.

(VIII) At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight weeks after the service date of the last Medicare approved home health care visit.

(iii) Coverage is excluded for: Home care visits paid for by Medicare or other government programs; and care provided by family members, unpaid volunteers, or providers who are not care providers.

~~((k) New or innovative benefits: An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. Such new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies.)) (3) Standardized Medicare supplement benefit plan "K" must consist of the following:~~

(a) Coverage of one hundred percent of the Part A hospital coinsurance amount for each day used from the sixty-first through the ninetieth day in any Medicare benefit period;

(b) Coverage of one hundred percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the ninety-first through the one hundred fiftieth day in any Medicare benefit period;

(c) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five days. The provider must accept the issuer's payment as payment in full and may not bill the insured for any balance;

(d) Medicare Part A deductible: Coverage for fifty percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in (j) of this subsection;

(e) Skilled nursing facility care: Coverage for fifty percent of the coinsurance amount for each day used from the twenty-first day through the one hundredth day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in (j) of this subsection;

(f) Hospice care: Coverage for fifty percent of cost sharing for all Part A Medicare eligible expenses and respite care

until the out-of-pocket limitation is met as described in (j) of this subsection:

(g) Coverage for fifty percent, under Medicare Part A or B, of the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulation) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in (j) of this subsection;

(h) Except for coverage provided in (i) of this subsection, coverage for fifty percent of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in (j) of this subsection;

(i) Coverage of one hundred percent of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and

(j) Coverage of one hundred percent of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of four thousand dollars in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services.

(4) Standardized Medicare supplement benefit plan "L" must consist of the following:

(a) The benefits described in subsection (3)(a),(b),(c) and (i) of this section;

(b) The benefit described in subsection (3)(d),(e),(f) and (h) of this section but substituting seventy-five percent for fifty percent; and

(c) The benefit described in subsection (3)(j) of this section but substituting two thousand dollars for four thousand dollars.

**AMENDATORY SECTION** (Amending Order R 92-7, filed 8/19/92, effective 9/19/92)

**WAC 284-66-066 Standard Medicare supplement benefit plans.** (1) An issuer ~~((shall))~~ must make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic "core" benefits, as defined in WAC 284-66-063(2) of this regulation.

(2) No groups, packages, or combinations of Medicare supplement benefits other than those listed in this section ~~((shall))~~ may be offered for sale in this state, except as ~~((may be))~~ permitted in WAC ~~((284-66-063(3)(k)))~~ 284-66-066(7) and in WAC 284-66-073.

(3) Benefit plans ~~((shall))~~ must be uniform in structure, language, designation, and format to the standard benefit plans "A" through ~~(("J"))~~ "L" listed in this subsection and conform to the definitions in WAC 284-66-030 and 284-66-040. Each benefit ~~((shall))~~ must be structured ~~((in accordance with))~~ according to the format provided in WAC 284-66-063(2) ~~((and 284-66-063(3)))~~, (3) or (4) and list the benefits in the order shown in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement, and overall content of benefit.

(4) An issuer may use, in addition to the benefit plan designations required in subsection (3) of this section, other designations to the extent permitted by law.

(5) Make-up of benefit plans:

(a) Standardized Medicare supplement benefit plan "A" ~~((shall))~~ must be limited to only the basic ("core") benefits common to all benefit plans, as defined ~~((at))~~ in WAC 284-66-063(2).

(b) Standardized Medicare supplement benefit plan "B" ~~((shall include))~~ consists of only the following: The core benefit as defined ~~((at))~~ in WAC 284-66-063(2), plus the Medicare Part A deductible as defined ~~((at))~~ in WAC 284-66-063 (3)(a).

(c) Standardized Medicare supplement benefit plan "C" ~~((shall include))~~ consists of only the following: The core benefit as defined ~~((at))~~ in WAC 284-66-063(2), plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined ~~((at))~~ in WAC 284-66-063 (3)(a), (b), (c), and (h), respectively.

(d) Standardized Medicare supplement plan "D" ~~((shall include))~~ consists of only the following: The core benefit, as defined ~~((at))~~ in WAC 284-66-063(2), plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and the at-home recovery benefit as defined ~~((at))~~ in WAC 284-66-063 (3)(a), (b), (h), and (j), respectively.

(e) Standardized Medicare supplement benefit plan "E" ~~((shall include))~~ consists of only the following: The core benefit as defined ~~((at))~~ in WAC 284-66-063(2), plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country and preventive medical care as defined ~~((at))~~ in WAC 284-66-063 (3)(a), (b), (h), and (i), respectively.

(f) Standardized Medicare supplement benefit plan "F" ~~((shall include))~~ consists of only the following: The core benefit as defined ~~((at))~~ in WAC 284-66-063(2), plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, one hundred percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined ~~((at))~~ in WAC 284-66-063 (3)(a), (b), (c), (e), and (h), respectively.

(g) Standardized Medicare supplement benefit high deductible plan "F" consists of only the following: One hundred percent of covered expenses following the payment of the annual high deductible plan "F" deductible. The covered expenses include the core benefit as defined in WAC 284-66-063(2), plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, one hundred percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in WAC 284-66-063 (3)(a), (b), (c), (e) and (h) respectively. The annual high deductible plan "F" deductible must consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "F" policy, and must be in addition to any other specific benefit deductibles. The annual high deductible plan "F" deductible is one thousand seven hundred thirty dollars for 2005, and is based on the calendar year. The deductible will be adjusted annually by the secretary to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars.



~~((h))~~ Standardized Medicare supplement benefit plan "G" ~~((shall include))~~ consists of only the following: The core benefit as defined at WAC 284-66-063(2), plus the Medicare Part A deductible, skilled nursing facility care, eighty percent of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined ~~((at))~~ in WAC 284-66-063 (3)(a), (b), (d), (h), and (j), respectively.

~~((h))~~ ~~((i))~~ Standardized Medicare supplement benefit plan "H" ~~((shall include))~~ consists of only the following: The core benefit as defined ~~((at))~~ in WAC 284-66-063(2), plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit, and medically necessary emergency care in a foreign country as defined ~~((at))~~ in WAC 284-66-063 (3)(a), (b), (f), and (h), respectively. The outpatient prescription drug benefit may not be included in a Medicare supplement policy sold after December 31, 2005.

~~((h))~~ ~~((j))~~ Standardized Medicare supplement benefit plan "I" ~~((shall include))~~ consists of only the following: The core benefit as defined ~~((at))~~ in WAC 284-66-063(2), plus the Medicare Part A deductible, skilled nursing facility care, one hundred percent of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country, and at-home recovery benefit as defined ~~((at))~~ in WAC 284-66-063 (3)(a), (b), (e), (f), (h), and (j), respectively. The outpatient prescription drug benefit may not be included in a Medicare supplement policy sold after December 31, 2005.

~~((h))~~ ~~((k))~~ Standardized Medicare supplement benefit plan "J" ~~((shall include))~~ consists of only the following: The core benefit as defined ~~((at))~~ in WAC 284-66-063(2), plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care, and at-home recovery benefit as defined ~~((at))~~ in WAC 284-66-063 (3)(a), (b), (c), (e), (g), (h), (i), and (j), respectively. The outpatient prescription drug benefit may not be included in a Medicare supplement policy sold after December 31, 2005.

(l) Standardized Medicare supplement benefit high deductible plan "J" consists of only the following: One hundred percent of covered expenses following the payment of the annual high deductible plan "J" deductible. The covered expenses include the core benefit as defined in WAC 284-66-063(2), plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventative medical care benefit and at-home recovery benefit as defined in WAC 284-66-063 (3)(a), (b), (c), (e), (g), (h), (i) and (j) respectively. The annual high deductible plan "J" deductible must consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "J" policy, and must be in addition to any other specific benefit deductibles. The annual deductible is one thousand seven hundred thirty dollars for 2005, and is based on the calendar year. The deductible will be adjusted annually by the secretary to reflect the change in the Consumer Price Index for all urban

consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars. The outpatient prescription drug benefit may not be included in a Medicare supplement policy sold after December 31, 2005.

(6) Make-up of two Medicare supplement plans mandated by The Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA):

(a) Standardized Medicare supplement benefit plan "K" consists of only those benefits described in WAC 284-66-063(3).

(b) Standardized Medicare supplement benefit plan "L" consists of only those benefits described in WAC 284-66-063(4).

(7) New or innovative benefits: An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies. After December 31, 2005, the innovative benefits may not include an outpatient prescription drug benefit.

AMENDATORY SECTION (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

WAC 284-66-073 Medicare SELECT policies and certificates. (1)(a) This section ~~((shall apply))~~ applies to Medicare SELECT policies and certificates, as defined in this section.

(b) No policy or certificate may be advertised as a Medicare SELECT policy or certificate unless it meets the requirements of this section.

(2) For the purposes of this section:

(a) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare SELECT issuer or its network providers.

(b) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare SELECT policy or certificate with the administration, claims practices, or provision of services concerning a Medicare SELECT issuer or its network providers.

(c) "Medicare SELECT issuer" means an issuer offering, or seeking to offer, a Medicare SELECT policy or certificate.

(d) "Medicare SELECT policy" or "Medicare SELECT certificate" means respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(e) "Network provider" means a provider of health care, or a group of providers of health care, ~~((which))~~ that has entered into a written agreement with the issuer to provide benefits insured under a Medicare SELECT policy.

(f) "Restricted network provision" means any provision ~~((which))~~ that conditions the payment of benefits, in whole or in part, on the use of network providers.

(g) "Service area" means the geographic area approved by the commissioner ~~((within which))~~ where an issuer is authorized to offer a Medicare SELECT policy.

(3) The commissioner may authorize an issuer to offer a Medicare SELECT policy or certificate, ~~((pursuant to))~~ under this section and section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the commissioner finds that the issuer has satisfied all of the requirements of this regulation.

(4) A Medicare SELECT issuer ~~((shall))~~ may not issue a Medicare SELECT policy or certificate in this state until its plan of operation has been approved by the commissioner.

(5) A Medicare SELECT issuer ~~((shall))~~ must file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation ~~((shall))~~ must contain at least the following information:

(a) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(i) ~~((Such))~~ The services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care ~~((shall))~~ must reflect usual practice in the local area. Geographic availability ~~((shall))~~ must reflect the usual travel times within the community.

(ii) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(A) To deliver adequately all services that are subject to a restricted network provision; or

(B) To make appropriate referrals.

(iii) There are written agreements with network providers describing specific responsibilities.

(iv) Emergency care is available twenty-four hours per day and seven days per week.

(v) In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting ~~((such))~~ the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare SELECT policy or certificate. This paragraph ~~((shall))~~ does not apply to supplemental charges or coinsurance amounts as stated in the Medicare SELECT policy or certificate.

(b) A statement or map providing a clear description of the service area.

(c) A description of the grievance procedure to be ~~((utilized))~~ used.

(d) A description of the quality assurance program, including:

(i) The formal organizational structure;

(ii) The written criteria for selection, retention, and removal of network providers; and

(iii) The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(e) A list and description, by specialty, of the network providers.

(f) Copies of the written information proposed to be used by the issuer to comply with subsection (9) of this section.

(g) Any other information requested by the commissioner.

(6)(a) A Medicare SELECT issuer ~~((shall))~~ must file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner ~~((prior to))~~ before implementing ~~((such))~~ the changes. ~~((Such))~~ The changes ~~((shall))~~ will be considered approved by the commissioner after thirty days unless specifically disapproved.

(b) An updated list of network providers ~~((shall))~~ must be filed with the commissioner at least quarterly.

(7) A Medicare SELECT policy or certificate ~~((shall))~~ may not restrict payment for covered services provided by nonnetwork providers if:

(a) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury, or a condition; and

(b) It is not reasonable to obtain ~~((such))~~ the services through a network provider.

(8) A Medicare SELECT policy or certificate ~~((shall))~~ must provide payment for full coverage under the policy for covered services that are not available through network providers.

(9) A Medicare SELECT issuer ~~((shall))~~ must make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare SELECT policy or certificate to each applicant. This disclosure ~~((shall))~~ must include at least the following:

(a) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare SELECT policy or certificate with:

(i) Other Medicare supplement policies or certificates offered by the issuer; and

(ii) Other Medicare SELECT policies or certificates.

(b) A description (including address, phone number, and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals, and other providers. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L.

(c) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are ~~((utilized))~~ used.

(d) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(e) A description of limitations on referrals to restricted network providers and to other providers.

(f) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(g) A description of the Medicare SELECT issuer's quality assurance program and grievance procedure.

(10) ~~((Prior to))~~ Before the sale of a Medicare SELECT policy or certificate, a Medicare SELECT issuer ~~((shall))~~ must obtain from the applicant a signed and dated form stating that the applicant has received the information provided ~~((pursuant to))~~ under subsection (9) of this section and that the applicant understands the restrictions of the Medicare SELECT policy or certificate.

(11) A Medicare SELECT issuer ~~((shall))~~ must have and use procedures for hearing complaints and resolving written

grievances from the subscribers. ~~((Such))~~ The procedures ~~((shall))~~ must be aimed at mutual agreement for settlement and may include arbitration procedures.

(a) The grievance procedure ~~((shall))~~ must be described in the policy and certificates and in the outline of coverage.

(b) At the time the policy or certificate is issued, the issuer ~~((shall))~~ must provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(c) Grievances ~~((shall))~~ must be considered in a timely manner and ~~((shall))~~ must be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(d) If a grievance is found to be valid, corrective action ~~((shall))~~ must be taken promptly.

(e) All concerned parties ~~((shall))~~ must be notified about the results of a grievance.

(f) The issuer ~~((shall))~~ must report no later than each March 31st to the commissioner regarding its grievance procedure. The report ~~((shall))~~ must be in a format prescribed by the commissioner and ~~((shall))~~ must contain the number of grievances filed in the past year and a summary of the subject, nature, and resolution of ~~((such))~~ the grievances.

(12) At the time of initial purchase, a Medicare SELECT issuer ~~((shall))~~ must make available to each applicant for a Medicare SELECT policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

(13)(a) At the request of an individual insured under a Medicare SELECT policy or certificate, a Medicare SELECT issuer ~~((shall))~~ must make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer ~~((which))~~ that has comparable or lesser benefits and ~~((which))~~ does not contain a restricted network provision. The issuer ~~((shall))~~ must make ~~((such))~~ the policies or certificates available without requiring evidence of insurability after the Medicare supplement policy or certificate has been in force for ~~((six))~~ three months.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare SELECT policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, ~~((coverage for prescription drugs,))~~ coverage for at-home recovery services, or coverage for Part B excess charges.

(14) Medicare SELECT policies and certificates ~~((shall))~~ must provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare SELECT policies and certificates issued ~~((pursuant to))~~ under this section should be discontinued due to either the failure of the Medicare SELECT program to be reauthorized under law or its substantial amendment.

(a) Each Medicare SELECT issuer ~~((shall))~~ must make available to each individual insured under a Medicare SELECT policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer ~~((which))~~ that has comparable or lesser benefits and ~~((which))~~ does not contain a restricted network provision.

The issuer ~~((shall))~~ must make ~~((such))~~ the policies and certificates available without requiring evidence of insurability.

(b) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare SELECT policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, ~~((coverage for prescription drugs,))~~ coverage for at-home recovery services, or coverage for Part B excess charges.

(15) A Medicare SELECT issuer ~~((shall))~~ must comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare SELECT program.

AMENDATORY SECTION (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-080 Outline of coverage required.** (1) Issuers ~~((shall))~~ must provide an outline of coverage to all applicants at the time an application is presented to the prospective applicant and, except for direct response policies and certificates, ~~((shall))~~ must obtain an acknowledgement of receipt of ~~((such))~~ the outline from the applicant.

(2) The "outline of coverage," ~~((shall))~~ must be completed in substantially the form set forth in WAC 284-66-092. The form of outline of coverage ~~((shall))~~ must be filed with the commissioner ~~((prior to use))~~ before being used in this state.

(3) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis ~~((which))~~ that would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate must accompany ~~((such))~~ the policy or certificate when it is delivered and contain the following statement, in no less than twelve point type, immediately above the company name: "NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(4) The outline of coverage provided to applicants ~~((pursuant to))~~ forth in this section consists of four parts: A cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage ~~((shall))~~ must be in the language and format prescribed in WAC 284-66-092 in no less than twelve point type. All plans ~~((A-J shall))~~ A-L must be shown on the cover page, and the plan(s) that are offered by the issuer ~~((shall))~~ must be prominently identified. Premium information for plans that are offered ~~((shall))~~ must be shown on the cover page or immediately following the cover page and ~~((shall))~~ must be prominently displayed. The premium and mode ~~((shall))~~ must be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant ~~((shall))~~ must be illustrated.

(5) Where inappropriate terms are used, such as "insurance," "policy," or "insurance company," a fraternal benefit society, health care service contractor, or health maintenance

PROPOSED

organization ((shaH)) must substitute appropriate terminology.

**AMENDATORY SECTION** (Amending Order R 92-7, filed 8/19/92, effective 9/19/92)

**WAC 284-66-092 Form of "outline of coverage." (1) Cover page.**

[COMPANY NAME]

Outline of Medicare Supplement Coverage-Cover Page:  
Benefit Plan(s) \_\_\_\_\_ [insert letter(s) of plan(s) being offered]

**See Outlines of Coverage sections for details about ALL plans**

~~((Medicare supplement insurance can be sold in only ten standard plans. This))~~ These charts show((s)) the benefits included in each of the standard Medicare supplement plans. Every company must make available Plan "A". Some plans may not be available in your state.

~~((BASIC BENEFITS- Included in All Plans.))~~ **Basic Benefits for Plans A-J**  
Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.  
Medical Expenses: Part B coinsurance (generally 20% of Medicare-approved expenses) or copayments for hospital outpatient services.  
Blood: First three pints of blood each year.

A	B	C	D	E	F/F*	G	H	I	J
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible			Part B Deductible				Part B Deductible
					Part B Excess (100%)	Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-Home Recovery			At-Home Recovery		At-Home Recovery	At-Home Recovery
							((Basic Drugs (\$1,250 Limit))	Basic Drugs (\$1,250 Limit)	Extended-Drugs (3,000 Limit))
				Preventive Care <u>NOT covered by Medicare</u>					Preventive Care <u>NOT covered by Medicare</u>

\*Plans F and J also have an option called a high deductible plan F and a high deductible plan J. These high deductible plans pay the same benefits as plans F and J after one has paid a calendar year [\$ ] deductible. Benefits from high deductible plans F and J will not begin until out-of-pocket expenses exceed [\$ ]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare deductibles for Part A and Part B, but do not include the plan's separate foreign travel emergency deductible.

[Company Name] does not offer the [high deductible plan F] [high deductible plan J] [high deductible plan F or J].

[COMPANY NAME]

Outline of Medicare Supplement Coverage-Cover Page 2

Basic Benefits for plans K and L include similar services as plans A-J, but cost-sharing for the basic benefits is at different levels.

PROPOSED

J	K**	L**
<u>Basic Benefits</u>	<u>100% of Part A Hospitalization Coinsurance plus coverage for 365 Days after Medicare Benefits End</u> <u>50% Hospice cost-sharing</u> <u>50% of Medicare-eligible expenses for the first three pints of blood</u> <u>50% Part B Coinsurance, except 100% Coinsurance for Part B Preventative Services</u>	<u>100% of Part A Hospitalization Coinsurance plus coverage for 365 Days after Medicare Benefits End</u> <u>75% Hospice cost-sharing</u> <u>75% of Medicare-eligible expenses for the first three pints of blood</u> <u>75% Part B Coinsurance, except 100% Coinsurance for Part B Preventative Services</u>
<u>Skilled Nursing Coinsurance</u>	<u>50% Skilled Nursing Facility Coinsurance</u>	<u>75% Skilled Nursing Facility Coinsurance</u>
<u>Part A Deductible</u>	<u>50% Part A Deductible</u>	<u>75% Part A Deductible</u>
<u>Part B Deductible</u>		
<u>Part B Excess (100%)</u>		
<u>Foreign Travel Emergency</u>		
<u>At-Home Recovery</u>		
<u>Preventative Care NOT covered by Medicare</u>		
	<u>\$[ ] Out-of-Pocket Annual Limit***</u>	<u>\$[ ] Out-of-Pocket Annual Limit***</u>

PROPOSED

**\*\*Plan K and L provide for different cost-sharing for items and services A-I.**

**Once you reach the annual limit, the plan pays 100% of the Medicare copayments, coinsurance, and deductibles for the rest of calendar year. The out-of-pocket annual limit does NOT include charges from your provider that exceed Medicare-approved amounts, called "Excess Charges." You will be responsible for paying excess charges.**

**\*\*\*The out-of-pocket annual limit will increase each year for inflation.**

**See Outlines of Coverage for details and exceptions.**

(2) Disclosure page(s):

**PREMIUM INFORMATION [Boldface Type]**

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this state.

**DISCLOSURES [Boldface Type]**

Use this outline to compare benefits and premiums among policies.

**READ YOUR POLICY VERY CAREFULLY [Boldface Type]**

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

**RIGHT TO RETURN POLICY [Boldface Type]**

If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the policy back to us within thirty days after you receive it, we will

treat the policy as if it had never been issued and return all of your payments.

**POLICY REPLACEMENT [Boldface Type]**

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

**NOTICE [Boldface Type]**

This policy may not fully cover all of your medical costs.

[for agents:]

Neither [insert company's name] nor its agents are connected with Medicare.

[for direct response:]

[insert company's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security office or consult ("~~The Medicare Handbook~~") Medicare and You for more details.

**COMPLETE ANSWERS ARE VERY IMPORTANT [Boldface Type]**

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

[Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use

additional benefit plan designations on these charts ((pursuant to)) as noted in WAC 284-66-066(4).]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner.]

(3) Charts displaying the feature of each benefit plan offered by the issuer:

**PLAN A  
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD**

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies  First 60 days 61st thru 90th day 91st day and after: - - - While using 60 lifetime reserve days - - - Once lifetime reserve days are used:  - - - Additional 365 days - - - Beyond the additional 365 days	All but \$((f652)) [ ] All but \$((f163)) [ ] a day  All but \$((f326)) [ ] a day  \$0 \$0	\$0 \$((f163)) [ ] a day  \$((f326)) [ ] a day  100% of Medicare eligible expenses \$0	\$((f652)) [ ] (Part A deductible) \$0  \$0  \$0** All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after	All approved amounts All but ((f81.50)) \$[ ]/day \$0	\$0 \$0 \$0	\$0 Up to ((f81.50)) \$[ ] a day All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

**\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PROPOSED

PLAN A  
 MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed ((~~\$100~~)) \$[ ] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First (( <del>\$100</del> )) \$[ ] of Medicare approved amounts* Remainder of Medicare approved amounts Part B excess charges (Above Medicare approved amounts)	\$0  Generally 80%  \$0	\$0  Generally 20%  \$0	(( <del>\$100</del> )) \$[ ] (Part B deductible)  \$0  All costs
<b>BLOOD</b> First 3 pints Next (( <del>\$100</del> )) \$[ ] of Medicare approved amounts* Remainder of Medicare approved amounts	\$0 \$0 80%	All costs \$0 20%	\$0 (( <del>\$100</del> )) \$[ ] (Part B deductible) \$0
<b>CLINICAL LABORATORY SERVICES—</b> (( <del>BLOOD</del> )) TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PLAN A

PARTS A & B

<b>HOME HEALTH CARE</b> <b>MEDICARE APPROVED SERVICES</b> --- Medically necessary skilled care services and medical supplies --- Durable medical equipment First (( <del>\$100</del> )) \$[ ] of Medicare approved amounts* Remainder of Medicare approved amounts	100%  \$0 80%	\$0  \$0 20%	\$0  (( <del>\$100</del> )) \$[ ] (Part B deductible) \$0
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PLAN B

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			

PROPOSED

PROPOSED

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
First 60 days	All but (( <del>652</del> )) \$[ ]	(( <del>652</del> )) \$[ ] (Part A deductible)	\$0
61st thru 90th day	All but (( <del>163</del> )) \$[ ] a day	(( <del>163</del> )) \$[ ] a day	\$0
91st day and after: - - - While using 60 lifetime reserve days	All but (( <del>326</del> )) \$[ ] a day	(( <del>326</del> )) \$[ ] a day	\$0
- - - Once lifetime reserve days are used:  - - - Additional 365 days	\$0	100% of Medicare eligible expenses	\$0**
- - - Beyond the additional 365 days	\$0	\$0	All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but (( <del>81.50</del> )) \$[ ]/day	\$0	Up to (( <del>81.50</del> )) \$[ ] a day
101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

**\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**PLAN B  
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR**

\*Once you have been billed ((~~100~~)) \$[ ] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First (( <del>100</del> )) \$[ ] of Medicare approved amounts*	\$0	\$0	(( <del>100</del> )) \$[ ] (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	\$0



SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
Part B excess charges (Above Medicare approved amounts)	\$0	\$0	All costs
<b>BLOOD</b> First 3 pints	\$0	All costs	\$0
Next ((\$100)) \$[ ] of Medicare approved amounts*	\$0	\$0	((\$100)) \$[ ] (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES— ((BLOOD)) TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

PROPOSED

**PLAN B**  
PARTS A & B

<b>HOME HEALTH CARE</b> MEDICARE APPROVED SERVICES --- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--- Durable medical equipment First ((\$100)) \$[ ] of Medicare approved amounts*	\$0	\$0	((\$100)) \$[ ] (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	\$0

**PLAN C**  
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but ((\$652)) \$[ ]	((\$652)) \$[ ] (Part A deductible)	\$0
61st thru 90th day	All but ((\$163)) \$[ ] a day	((\$163)) \$[ ] a day	\$0
91st day and after: --- While using 60 lifetime reserve days	All but ((\$326)) \$[ ] a day	((\$326)) \$[ ] a day	\$0
--- Once lifetime reserve days are used: --- Additional 365 days	\$0	100% of Medicare eligible expenses	\$0**
--- Beyond the additional 365 days	\$0	\$0	All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0

PROPOSED

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
21st thru 100th day 101st day and after	All but (( <del>81-50</del> )) \$[ ]/day \$0	Up to (( <del>81-50</del> )) \$[ ] a day \$0	\$0 All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

**\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**PLAN C**  
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed ((~~100~~)) \$[ ] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First (( <del>100</del> )) \$[ ] of Medicare approved amounts* Remainder of Medicare approved amounts Part B excess charges (Above Medicare approved amounts)	\$0 Generally 80%	(( <del>100</del> )) \$[ ] (Part B deductible) Generally 20%	\$0 \$0 All costs
<b>BLOOD</b> First 3 pints Next (( <del>100</del> )) \$[ ] of Medicare approved amounts* Remainder of Medicare approved amounts	\$0 \$0 80%	All costs (( <del>100</del> )) \$[ ] (Part B deductible) 20%	\$0 \$0 \$0
<b>CLINICAL LABORATORY SERVICES—</b> (( <del>BLOOD</del> )) TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

**PLAN C**  
PARTS A & B

<b>HOME HEALTH CARE</b> MEDICARE APPROVED SERVICES --- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
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--- Durable medical equipment First ((\$100)) \$[ ] of Medicare approved amounts*	\$0	(((\$100)) \$[ ] (Part B deductible)	\$0
Remainder of Medicare approved amounts	80%	20%	\$0

PLAN C (continued)  
OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>FOREIGN TRAVEL - NOT COVERED BY MEDICARE</b> Medically necessary emergency care ser- vices beginning during the first 60 days of each trip outside the USA First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

PLAN D  
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days	All but ((\$652)) \$[ ]	(((\$652)) \$[ ] (Part A deductible)	\$0
61st thru 90th day	All but ((\$163)) \$[ ] a day	(((\$163)) \$[ ] a day	\$0
91st day and after: --- While using 60 lifetime reserve days	All but ((\$326)) \$[ ] a day	(((\$326)) \$[ ] a day	\$0
--- Once lifetime reserve days are used:  --- Additional 365 days	\$0	100% of Medicare eligible expenses	\$0**
--- Beyond the additional 365 days	\$0	\$0	All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's require- ments, including having been in a hos- pital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days	All approved amounts All but ((\$81.50)) \$[ ]/day	\$0 Up to ((\$81.50)) \$[ ] a day	\$0
21st thru 100th day	\$0	\$0	\$0
101st day and after	\$0	\$0	All costs

PROPOSED

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>BLOOD</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b>			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

**\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**PLAN D  
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR**

\*Once you have been billed ((~~\$100~~)) \$[ ] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,</b>			
First (( <del>\$100</del> )) \$[ ] of Medicare approved amounts*	\$0	\$0	(( <del>\$100</del> )) \$[ ] (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	\$0
Part B excess charges (Above Medicare approved amounts)	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	All costs	\$0
Next (( <del>\$100</del> )) \$[ ] of Medicare approved amounts*	\$0	\$0	(( <del>\$100</del> )) \$[ ] (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES—((<del>BLOOD</del>)) TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

**PLAN D  
PARTS A & B**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE MEDICARE APPROVED SERVICES</b>			
- - - Medically necessary skilled care services and medical supplies	100%	\$0	\$0
- - - Durable medical equipment	\$0	\$0	(( <del>\$100</del> )) E \$[ ] (Part B deductible)

PROPOSED

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
First ((\$100)) \$[ ] of Medicare approved amounts* Remainder of Medicare approved amounts	80%	20%	\$0
<b>AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE</b> Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
--- Benefit for each visit	\$0	Actual charges to \$40 a visit	Balance
--- Number of visits covered (must be received within 8 weeks of last Medicare approved visit)	\$0	Up to the number of Medicare approved visits, not to exceed 7 each week	
--- Calendar year maximum	\$0	\$1,600	

OTHER BENEFITS - NOT COVERED BY MEDICARE

<b>FOREIGN TRAVEL - NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

PLAN E  
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days	All but ((\$652)) \$[ ] All but ((\$163)) \$[ ] a day	(((\$652)) \$[ ] (Part A deductible)	\$0
61st thru 90th day		(((\$163)) \$[ ] a day	\$0
91st day and after: --- While using 60 lifetime reserve days --- Once lifetime reserve days are used:	All but ((\$326)) \$[ ] a day	(((\$326)) \$[ ] a day	\$0
--- Additional 365 days	\$0	100% of Medicare eligible expenses	\$0**
--- Beyond the additional 365 days	\$0	\$0	All costs

PROPOSED

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but ((\$81.50)) \$[ ]/day	Up to ((\$81.50)) \$[ ] a day	\$0
101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respire care	\$0	Balance

**\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**PLAN E**  
**MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR**

\*Once you have been billed ((\$100)) \$[ ] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First ((\$100)) \$[ ] of Medicare approved amounts*	\$0	\$0	(((\$100)) \$[ ] (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	\$0
Part B excess charges (Above Medicare approved amounts)	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	All costs	\$0
Next ((\$100)) \$[ ] of Medicare approved amounts*	\$0	\$0	(((\$100)) \$[ ] (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES—</b> <del>((BLOOD))</del> TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

**PLANE**

**PARTS A & B**

<b>HOME HEALTH CARE MEDICARE APPROVED SERVICES</b>			
--- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--- Durable medical equipment First ((\$100)) \$[ ] of Medicare approved amounts*	\$0	\$0	((\$100)) \$[ ] (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	\$0

**PLANE (continued)  
OTHER BENEFITS - NOT COVERED BY MEDICARE**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>FOREIGN TRAVEL - NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
<b>***PREVENTIVE MEDICARE CARE BENEFIT - NOT COVERED BY MEDICARE</b> <del>Some annual physical and preventive tests and services ((such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education,)) administered or ordered by your doctor when not covered by Medicare</del> First \$120 each calendar year	\$0	\$120	\$0
Additional charges	\$0	\$0	All costs

\*\*\*Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare*.

**[PLAN F] [HIGH DEDUCTIBLE PLAN F]  
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD**

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.  
[\*\*This high deductible plan pays the same benefits as Plan F after one has paid a calendar year \$[ ] deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are \$[ ]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.]

PROPOSED

PROPOSED

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[ ] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO \$[ ] DEDUCTIBLE,**] YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscella- neous services and supplies First 60 days	All but ((\$652)) \$[ ]	(((\$652)) \$[ ] (Part A deductible)	\$0
61st thru 90th day	All but ((\$163)) \$[ ] a day	(((\$163)) \$[ ] a day	\$0
91st day and after: - - - While using 60 lifetime reserve days	All but ((\$326)) \$[ ] a day	(((\$326)) \$[ ] a day	\$0
- - - Once lifetime reserve days are used:  - - - Additional 365 days	\$0	100% of Medicare eligible expenses	\$0***
- - - Beyond the addi- tional 365 days	\$0	\$0	All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including hav- ing been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but ((\$81.50)) \$[ ]/day	Up to ((\$81.50)) \$[ ] a day	\$0
101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b> Available as long as your doc- tor certifies you are termi- nally ill and you elect to receive these services	All but very limited coinsur- ance for outpatient drugs and inpatient respite care	\$0	Balance

**\*\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

[PLAN F] [HIGH DEDUCTIBLE PLAN F]

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed ((\$100)) \$[ ] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

\*\*This high deductible plan pays the same benefits as plan F after one has paid a calendar year \$[ ] deductible. Benefits from the high deductible plan F will not begin until out-of-pocket expenses are \$[ ]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.



PROPOSED

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[ ] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO \$[ ] DEDUCTIBLE,**] YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First ((\$100)) \$[ ] of Medicare approved amounts* Remainder of Medicare approved amounts Part B excess charges (Above Medicare approved amounts)	\$0  Generally 80%  \$0	((\$100)) \$[ ] (Part B deductible)  Generally 20%  100%	\$0  \$0  \$0
<b>BLOOD</b> First 3 pints Next ((\$100)) \$[ ] of Medicare approved amounts* Remainder of Medicare approved amounts	\$0 \$0 80%	All costs ((\$100)) \$[ ] (Part B deductible)  20%	\$0 \$0 \$0
<b>CLINICAL LABORATORY SERVICES—</b> ((BLOOD)) TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

**[PLAN F] [HIGH DEDUCTIBLE PLAN F]  
PARTS A & B**

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[ ] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO \$[ ] DEDUCTIBLE,**] YOU PAY
<b>HOME HEALTH CARE</b> <b>MEDICARE APPROVED SERVICES</b> --- Medically necessary skilled care services and medical supplies --- Durable medical equipment First ((\$100)) \$[ ] of Medicare approved amounts* Remainder of Medicare approved amounts	100%  \$0  80%	\$0  ((\$100)) \$[ ] (Part B deductible)  20%	\$0  \$0  \$0

PLAN F (continued)  
OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[ ] DEDUCTIBLE, **] PLAN PAYS	[IN ADDITION TO \$[ ] DEDUCTIBLE, **] YOU PAY
<b>FOREIGN TRAVEL - NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

PLAN G  
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days			
61st thru 90th day	All but ((\$652)) \$[ ]	(((\$652)) \$[ ] (Part A deductible)	\$0
91st day and after: --- While using 60 lifetime reserve days	All but ((\$163)) \$[ ] a day	(((\$163)) \$[ ] a day	\$0
--- Once lifetime reserve days are used:  --- Additional 365 days	All but ((\$326)) \$[ ] a day	(((\$326)) \$[ ] a day	\$0
--- Beyond the additional 365 days	\$0	100% of Medicare eligible expenses	\$0**
	\$0	\$0	All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but ((\$81.50)) \$[ ]/day	Up to ((\$81.50)) \$[ ] a day	\$0
101st day and after	\$0	\$0	All costs
<b>BLOOD</b> First 3 pints	\$0	3 pints	\$0

PROPOSED

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

**\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN G (continued)

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed ((\$100)) \$[ ] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First ((\$100)) \$[ ] of Medicare approved amounts* Remainder of Medicare approved amounts Part B excess charges (Above Medicare approved amounts)	\$0 Generally 80% \$0	\$0 Generally 20% 80%	(((\$100)) \$[ ] (Part B deductible) \$0 20%
<b>BLOOD</b> First 3 pints Next ((\$100)) \$[ ] of Medicare approved amounts* Remainder of Medicare approved amounts	\$0 \$0 80%	All costs \$0 20%	\$0 (((\$100)) \$[ ] (Part B deductible) \$0
<b>CLINICAL LABORATORY SERVICES—</b> <del>((BLOOD))</del> TESTS FOR DIAGNOSTIC SERVICES	100%	\$0	\$0

PLAN G (continued)

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE</b> MEDICARE APPROVED SERVICES --- Medically necessary skilled care services and medical supplies --- Durable medical equipment First ((\$100)) \$[ ] of Medicare approved amounts* Remainder of Medicare approved amounts	100% \$0 80%	\$0 \$0 20%	\$0 (((\$100)) \$[ ] (Part B deductible) \$0

PROPOSED

PROPOSED

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE</b> Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
--- Benefit for each visit	\$0	Actual charges to \$40 a visit	Balance
--- Number of visits covered (must be received within 8 weeks of last Medicare approved visit)	\$0	Up to the number of Medicare approved visits, not to exceed 7 each week	
--- Calendar year maximum	\$0	\$1,600	

OTHER BENEFITS - NOT COVERED BY MEDICARE

<b>FOREIGN TRAVEL - NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum

PLAN H  
MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days	All but ((\$652)) \$[ ]	(((\$652)) \$[ ] (Part A deductible)	\$0
61st thru 90th day	All but ((\$163)) \$[ ] a day	(((\$163)) \$[ ] a day	\$0
91st day and after:			
--- While using 60 lifetime reserve days	All but ((\$326)) \$[ ] a day	(((\$326)) \$[ ] a day	\$0
--- Once lifetime reserve days are used:			
--- Additional 365 days	\$0	100% of Medicare eligible expenses	\$0**
--- Beyond the additional 365 days	\$0	\$0	All costs

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but ((\$81.50)) \$[ ]/day	Up to ((\$81.50)) \$[ ] a day	\$0
101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respice care	\$0	Balance

PROPOSED

**\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**PLAN H  
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR**

\*Once you have been billed ((\$100)) \$[ ] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,</b>			
First ((\$100)) \$[ ] of Medicare approved amounts*	\$0	\$0	(((\$100)) \$[ ] (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	\$0
Part B excess charges (Above Medicare approved amounts)	\$0	100%	All costs
<b>BLOOD</b>			
First 3 pints	\$0	All costs	\$0
Next ((\$100)) \$[ ] of Medicare approved amounts*	\$0	\$0	(((\$100)) \$[ ] (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	\$0
<b>CLINICAL LABORATORY SERVICES— ((BLOOD)) TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

PLAN H

PARTS A & B

PROPOSED

<b>HOME HEALTH CARE</b>			
<b>MEDICARE APPROVED SERVICES</b>			
--- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--- Durable medical equipment			
First ((\$100)) \$[ ] of Medicare approved amounts*	\$0	\$0	(((\$100)) \$[ ] (Part B deductible))
Remainder of Medicare approved amounts	80%	20%	\$0

PLAN H (continued)

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>FOREIGN TRAVEL - NOT COVERED BY MEDICARE</b>			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of Charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
<del>((BASIC OUTPATIENT PRESCRIPTION DRUGS - NOT COVERED BY MEDICARE</del>			
First \$250 each calendar year	\$0	\$0	\$250
Next \$2,500 each calendar year	\$0	50% — \$1,250 calendar year maximum benefit	50%
Over \$2,500 each calendar year	\$0	\$0	All costs))

PLAN I

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOSPITALIZATION*</b>			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but (((\$652)) \$[ ]	(((\$652)) \$[ ] (Part A deductible))	\$0
61st thru 90th day	All but (((\$163)) \$[ ] a day	(((\$163)) \$[ ] a day	\$0
91st day and after:			
--- While using 60 lifetime reserve days	All but (((\$326)) \$[ ] a day	(((\$326)) \$[ ] a day	\$0
--- Once lifetime reserve days are used:			

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
--- Additional 365 days	\$0	100% of Medicare eligible expenses	\$0**
--- Beyond the additional 365 days	\$0	\$0	All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	\$0	\$0
21st thru 100th day	All but ((\$81.50)) \$[ ]/day	Up to ((\$81.50)) \$[ ] a day	\$0
101st day and after	\$0	\$0	All costs
<b>BLOOD</b>			
First 3 pints	\$0	3 pints	\$0
Additional amounts	100%	\$0	\$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

PROPOSED

**\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

**PLAN I  
MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR**

\*Once you have been billed ((\$100)) \$[ ] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First ((\$100)) \$[ ] of Medicare approved amounts*	\$0	\$0	(((\$100)) \$[ ] (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	\$0
Part B excess charges (Above Medicare approved amounts)	\$0	100%	\$0
<b>BLOOD</b>			
First 3 pints	\$0	All costs	\$0
Next ((\$100)) \$[ ] of Medicare approved amounts*	\$0	\$0	(((\$100)) \$[ ] (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	\$0

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>CLINICAL LABORATORY SERVICES—((BLOOD)) TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

PLAN I (continued)  
PARTS A & B

<b>HOME HEALTH CARE</b>			
<b>MEDICARE APPROVED SERVICES</b>			
--- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--- Durable medical equipment			
First ((\$100)) \$[ ] of Medicare approved amounts*	\$0	\$0	(((\$100)) \$[ ] (Part B deductible))
Remainder of Medicare approved amounts	80%	20%	\$0
<b>AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE</b>			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
--- Benefit for each visit	\$0	Actual charges to \$40 a visit	Balance
--- Number of visits covered (must be received within 8 weeks of last Medicare approved visit)	\$0	Up to the number of Medicare approved visits, not to exceed 7 each week	
--- Calendar year maximum	\$0	\$1,600	

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>FOREIGN TRAVEL - NOT COVERED BY MEDICARE</b>			
Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges*	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
<b>((BASIC OUTPATIENT PRESCRIPTION DRUGS— NOT COVERED BY MEDICARE</b>			
First \$250 each calendar year	\$0	\$0	\$250
Next \$2,500 each calendar year	\$0	50%—\$1,250 calendar year maximum benefit	50%
Over \$2,500 each calendar year	\$0	\$0	All costs))

PROPOSED



[PLAN J] [HIGH DEDUCTIBLE PLAN J]  
 MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

\*\*This high deductible plan pays the same benefits as plan J after one has paid a calendar year \$[ ] deductible. Benefits from high deductible plan J will not begin until out-of-pocket expenses are \$[ ]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Parts A and B, but does not include the plan's separate foreign travel emergency deductible.

PROPOSED

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[ ] DEDUCTIBLE, **] PLAN PAYS	[IN ADDITION TO \$[ ] DEDUCTIBLE, **] YOU PAY
<b>HOSPITALIZATION*</b> Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: --- While using 60 lifetime reserve days --- Once lifetime reserve days are used: --- Additional 365 days --- Beyond the additional 365 days	All but ((\${652})) \$[ ] All but ((\${163})) \$[ ] a day All but ((\${326})) \$[ ] a day \$0 \$0	((\${652})) \$[ ] (Part A deductible) ((\${163})) \$[ ] a day ((\${326})) \$[ ] a day 100% of Medicare eligible expenses \$0	\$0 \$0 \$0 \$0*** All costs
<b>SKILLED NURSING FACILITY CARE*</b> You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after	All approved amounts All but ((\${81.50})) \$[ ]/day \$0	\$0 Up to ((\${81.50})) \$[ ] a day \$0	\$0 \$0 All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	3 pints \$0	\$0 \$0
<b>HOSPICE CARE</b> Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	\$0	Balance

**\*\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

[PLAN J] [HIGH DEDUCTIBLE PLAN J]  
 MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

\*Once you have been billed (((\$100)) \$[ ] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

[\*\*This high deductible plan pays the same benefits as plan J after one has paid a calendar year \$[ ] deductible. Benefits from high deductible plan J will not begin until out-of-pocket expenses are \$[ ]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and B, but does not include the plan's separate foreign travel emergency deductible]

PROPOSED

SERVICES	MEDICARE PAYS	[AFTER YOU PAY \$[ ] DEDUCTIBLE, **] PLAN PAYS	[IN ADDITION TO \$[ ] DEDUCTIBLE, **] YOU PAY
<b>MEDICAL EXPENSES -</b> IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First (((\$100)) \$[ ] of Medicare approved amounts* Remainder of Medicare approved amounts Part B excess charges (Above Medicare approved amounts)	\$0 Generally 80% \$0	(((\$100)) \$[ ] (Part B deductible) Generally 20% 100%	\$0 \$0 \$0
<b>BLOOD</b> First 3 pints Next (((\$100)) \$[ ] of Medicare approved amounts* Remainder of Medicare approved amounts	\$0 \$0 80%	All costs (((\$100)) \$[ ] (Part B deductible) 20%	\$0 \$0 \$0
<b>CLINICAL LABORATORY SERVICES—((BLOOD)) TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

[PLAN J] [HIGH DEDUCTIBLE PLAN J] (continued)

PARTS A & B

SERVICE	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE</b> MEDICARE APPROVED SERVICES --- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--- Durable medical equipment First (((\$100)) \$[ ] of Medicare approved amounts* Remainder of Medicare approved amounts	\$0 80%	(((\$100)) \$[ ] (Part B deductible) 20%	\$0 \$0

PROPOSED

SERVICE	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE</b> Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
--- Benefit for each visit	\$0	Actual charges to \$40 a visit	Balance
--- Number of visits covered (must be received within 8 weeks of last Medicare approved visit)	\$0	Up to the number of Medicare approved visits, not to exceed 7 each week	
--- Calendar year maximum	\$0	\$1,600	

**[PLAN J] (HIGH DEDUCTIBLE PLAN J)**  
OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>FOREIGN TRAVEL - NOT COVERED BY MEDICARE</b> Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First \$250 each calendar year	\$0	\$0	\$250
Remainder of charges	\$0	80% to a lifetime maximum benefit of \$50,000	20% and amounts over the \$50,000 lifetime maximum
<del>(((EXTENDED OUTPATIENT PRESCRIPTION DRUGS - NOT COVERED BY MEDICARE</del>			
First \$250 each calendar year	\$0	\$0	\$250
Next \$6,000 each calendar year	\$0	50% - \$3,000 calendar year maximum benefit	50%
Over \$6,000 each calendar year	\$0	\$0	All costs))
<b>***PREVENTIVE MEDICAL CARE BENEFIT - NOT COVERED BY MEDICARE</b> Some annual physical and preventive tests and services ((such as: Fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education,)) administered or ordered by your doctor when not covered by Medicare			
First \$120 each calendar year	\$0	\$120	\$0
Additional charges	\$0	\$0	All costs

\*\*\*Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare*.

PLAN K

\*You will pay half the cost-sharing of some covered services until you reach the annual out-of-pocket limit of \$[ ] each calendar year. The amounts that count toward your annual limit are noted with diamonds (◆) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare copayment and coinsurance for the rest of the calendar year. However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

\*\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
<b>HOSPITALIZATION*</b>			
<u>Semiprivate room and board, general nursing and miscellaneous services and supplies</u>			
<u>First 60 days</u>	<u>All but \$[ ]</u>	<u>\$[ ] (50% of Part A deductible)</u>	<u>\$[ ] (50% of Part A deductible)◆</u>
<u>61st thru 90th day</u>	<u>All but \$[ ] a day</u>	<u>\$[ ] a day</u>	<u>\$0</u>
<u>91st day and after:</u>			
<u>--- While using 60 lifetime reserve days</u>	<u>All but \$[ ] a day</u>	<u>\$[ ] a day</u>	<u>\$0</u>
<u>--- Once lifetime reserve days are used:</u>			
<u>--- Additional 365 days</u>	<u>\$0</u>	<u>100% of Medicare eligible expenses</u>	<u>\$0***</u>
<u>--- Beyond the additional 365 days</u>	<u>\$0</u>	<u>\$0</u>	<u>All costs</u>
<b>SKILLED NURSING FACILITY CARE*</b>			
<u>You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital</u>			
<u>First 20 days</u>	<u>All approved amounts</u>	<u>\$0</u>	<u>\$0</u>
<u>21st thru 100th day</u>	<u>All but \$[ ]/day</u>	<u>Up to \$[ ] a day</u>	<u>Up to \$[ ] a day◆</u>
<u>101st day and after</u>	<u>\$0</u>	<u>\$0</u>	<u>All costs</u>
<b>BLOOD</b>			
<u>First 3 pints</u>	<u>\$0</u>	<u>50%</u>	<u>50%◆</u>
<u>Additional amounts</u>	<u>100%</u>	<u>\$0</u>	<u>\$0</u>
<b>HOSPICE CARE</b>			
<u>Available as long as your doctor certifies you are terminally ill and you elect to receive these services</u>			
	<u>Generally, most Medicare eligible expenses for outpatient drugs and inpatient respite care</u>	<u>50% of coinsurance or copayments</u>	<u>50% of coinsurance or copayments◆</u>

**\*\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PROPOSED

**PLAN K**  
**MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR**

**\*\*\*Once you have been billed \$[ ] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
<b>MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,</b> First \$[ ] of Medicare approved amounts****	\$0	\$0	\$[ ] (Part B deductible)****◆
<b>Preventative Benefits for Medicare covered services</b> Remainder of Medicare approved amounts	Generally 75% or more of Medicare approved amounts  Generally 80%	Remainder of Medicare approved amounts  Generally 10%	All costs above Medicare approved amounts  Generally 10%◆ All costs (and they do not count toward annual out-of-pocket limit of \$[ ])*
<b>Part B excess charges (Above Medicare approved amounts)</b>	\$0	\$0	\$[ ] (Part B deductible)****◆
<b>BLOOD</b> First 3 pints Next \$[ ] of Medicare approved amounts**** Remainder of Medicare approved amounts	\$0 \$0 Generally 80%	50% \$0 Generally 10%	50%◆ \$[ ] (Part B deductible)****◆ Generally 10%◆
<b>CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES</b>	100%	\$0	\$0

**\*This plan limits your annual out-of-pocket payments for Medicare-approved amounts to \$[4000] per year. However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

**PLAN K (continued)**  
**PARTS A & B**

SERVICE	MEDICARE PAYS	PLAN PAYS	YOU PAY*
<b>HOME HEALTH CARE</b> <b>MEDICARE APPROVED SERVICES</b> --- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--- Durable medical equipment First \$[ ] of Medicare approved amounts*****	\$0	\$0	\$[ ] (Part B deductible)◆
Remainder of Medicare approved amounts	80%	10%	10%◆

**\*\*\*\*\*Medicare benefits are subject to change. Please consult the latest Guide to Health Insurance for People with Medicare.**

**PROPOSED**

PLAN L

**\*You will pay half the cost-sharing of some covered services until you reach the annual out-of-pocket limit of \$[ ] each calendar year. The amounts that count toward your annual limit are noted with diamonds (◆) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare copayment and coinsurance for the rest of the calendar year. However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

**MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD**

**\*\*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
<b>HOSPITALIZATION***</b> <u>Semiprivate room and board, general nursing and miscellaneous services and supplies</u> First 60 days 61st thru 90th day 91st day and after: - - - While using 60 lifetime reserve days - - - Once lifetime reserve days are used:  - - - Additional 365 days - - - Beyond the additional 365 days	All but \$[ ] All but \$[ ] a day  All but \$[ ] a day  \$0 \$0	\$[ ] (75% of Part A deductible) \$[ ] a day  \$[ ] a day  100% of Medicare eligible expenses \$0	\$[ ] (25% of Part A deductible)◆ \$0  \$0  \$0*** All costs
<b>SKILLED NURSING FACILITY CARE*</b> <u>You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital</u> First 20 days 21st thru 100th day 101st day and after	All approved amounts All but \$[ ]/day \$0	\$0 Up to \$[ ] a day \$0	\$0 Up to \$[ ] a day◆ All costs
<b>BLOOD</b> First 3 pints Additional amounts	\$0 100%	75% \$0	25%◆ \$0
<b>HOSPICE CARE</b> <u>Available as long as your doctor certifies you are terminally ill and you elect to receive these services</u>	<u>Generally, most Medicare eligible expenses for outpatient drugs and inpatient respite care</u>	75% of coinsurance or copayments	75% of coinsurance or copayments◆

**\*\*\*NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN L

**MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR**

**\*Once you have been billed \$[ ] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.**

PROPOSED

PROPOSED

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY *
<b>MEDICAL EXPENSES -</b> <u>IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment.</u> <u>First \$1 of Medicare approved amounts***</u>	\$0	\$0	\$1 (Part B deductible)**** All costs above Medicare approved amounts
<u>Preventative Benefits for Medicare covered services</u> <u>Remainder of Medicare approved amounts</u>	Generally 75% or more of Medicare approved amounts  Generally 80%	Remainder of Medicare approved amounts  Generally 15%	Generally 5% All costs (and they do not count toward annual out-of-pocket limit of \$1)*
<u>Part B excess charges (Above Medicare approved amounts)</u>	\$0	\$0	
<b>BLOOD</b> <u>First 3 pints</u> <u>Next \$1 of Medicare approved amounts****</u> <u>Remainder of Medicare approved amounts</u>	\$0 \$0 Generally 80%	75% \$0 Generally 15%	25% \$1 (Part B deductible)**** Generally 5%
<b>CLINICAL LABORATORY SERVICES—</b> <u>TESTS FOR DIAGNOSTIC SERVICES</u>	100%	\$0	\$0

\*This plan limits your annual out-of-pocket payments for Medicare-approved amounts to \$1 per year. However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.

PLAN L (continued)  
PARTS A & B

SERVICE	MEDICARE PAYS	PLAN PAYS	YOU PAY
<b>HOME HEALTH CARE MEDICARE APPROVED SERVICES</b> --- Medically necessary skilled care services and medical supplies	100%	\$0	\$0
--- Durable medical equipment <u>First \$1 of Medicare approved amounts****</u> <u>Remainder of Medicare approved amounts</u>	\$0 80%	\$0 15%	\$1 (Part B deductible) 5%

\*\*\*\*Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare*.

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

**AMENDATORY SECTION** (Amending Matter No. R 96-2, filed 4/11/96, effective 5/12/96)

**WAC 284-66-110 Buyer's guide.** (1) Issuers of disability insurance policies or certificates that provide hospital or medical expense coverage on an expense incurred or indemnity

basis to persons eligible for Medicare must provide to all such applicants the pamphlet "Guide to Health Insurance for People with Medicare," developed jointly by the National Association of Insurance Commissioners and ((Health Care Financing Administration)) the Centers for Medicare and Medicaid Services, (CMS), or any reproduction or official

revision of that pamphlet. The guide ~~((shall))~~ must be printed in a style and with a type character that is easily read by an average person eligible for Medicare supplement insurance and in no case may the type size be smaller than 12-point type. (Specimen copies may be obtained from the Superintendent of Documents, United States Government Printing Office, Washington, D.C.)

(2) Delivery of the guide ~~((shall))~~ must be made whether or not ~~((such))~~ the policies or certificates are advertised, solicited, or issued as Medicare supplement insurance policies or certificates.

(3) Except in the case of a direct response issuers, delivery of the guide ~~((shall))~~ must be made to the applicant at the time of application and acknowledgement of receipt of the guide ~~((shall))~~ must be obtained by the issuer. Direct response issuers ~~((shall))~~ must deliver the guide to the applicant upon request but not later than at the time the policy is delivered.

(4) The guide ~~((shall))~~ must be reproduced in a form that is substantially identical in language, format, type size, type proportional spacing, bold character, and line spacing to the guide developed jointly by the National Association of Insurance Commissioners and ~~((the Health Care Financing Administration))~~ CMS.

**AMENDATORY SECTION** (Amending Matter No. R 96-2, filed 4/11/96, effective 5/12/96)

**WAC 284-66-120 Notice regarding policies ~~((which))~~ that are not Medicare supplement policies.** Any disability insurance policy or certificate (other than a Medicare supplement policy or certificate or a policy issued ~~((pursuant))~~ according to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 et seq.), disability income protection policy or other policy identified in RCW 48.66.020(1), whether issued on an individual or group basis, ~~((which policy))~~ that purports to provide coverage to residents of this state eligible for Medicare, ~~((shall))~~ must notify policyholders or certificate holders that the policy is not a Medicare supplement insurance policy or certificate. The notice ~~((shall))~~ must be printed or attached to the first page of the outline of coverage or equivalent disclosure form, and ~~((shall))~~ must be delivered to the policyholder or certificate holder. If no outline of coverage is delivered, the notice ~~((shall))~~ must be attached to the first page of the policy or certificate delivered to insureds. ~~((Such))~~ The notice ~~((shall))~~ must be in no less than twelve point type and ~~((shall))~~ contain the following language: "This (policy, certificate or subscriber contract) is not a Medicare supplement (policy, certificate or subscriber contract). If you are eligible for Medicare, review the "Guide to Health Insurance for People with Medicare" available from the company."

**AMENDATORY SECTION** (Amending Matter No. R 96-2, filed 4/11/96, effective 5/12/96)

**WAC 284-66-130 Requirements for application forms and replacement of Medicare supplement insurance coverage.** (1) Application forms ~~((shall))~~ must include the following questions designed to elicit information as to whether, as of the date of the application, the applicant cur-

rently has another Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance or other disability policy or certificate in force or whether a Medicare supplement insurance policy or certificate is intended to replace any other policy or certificate of a health care service contractor, health maintenance organization, disability insurer, or fraternal benefit society presently in force. A supplementary application or other form to be signed by the applicant and agent containing ~~((such))~~ the questions and statements, may be used: ~~((Provided, however, That where))~~ If the coverage is sold without an agent, the supplementary application ~~((shall))~~ must be signed by the applicant.

[Statements]

(1) You do not need more than one Medicare supplement policy.

(2) If you purchase this policy, you may want to evaluate your existing health coverage and decide if you need multiple coverages.

(3) If you are sixty-five or older, you may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

(4) If, after purchasing this policy, you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended if requested during your entitlement to benefits under Medicaid for twenty-four months. You must request this suspension within ninety days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within ninety days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(5) If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health benefit plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstated if requested within 90 days of losing your employer or union-based group health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstated policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension.

(6) Counseling services may be available in your state to provide advice concerning your purchase of Medicare sup-



plement insurance and concerning medical assistance through the state Medicaid program, including benefits as a "Qualified Medicare Beneficiary" (QMB) and a "Specified Low-Income Medicare Beneficiary" (SLMB).

[Questions]

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application. PLEASE ANSWER ALL QUESTIONS.

[Please mark Yes or No below with an "X"]

To the best of your knowledge.

(1) (Do you have another Medicare supplement policy or certificate in force?)

(a) If so, with which company?

(b) If so, do you intend to replace your current Medicare supplemental policy with this policy or certificate?

(2) Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?

(a) If so, with which company?

(b) What kind of policy?

(3) Are you covered for medical assistance through the state Medicaid program:

(a) As a "Specified Low-Income Medicare Beneficiary" (SLMB)?

(b) As a "Qualified Medicare Beneficiary" (QMB)?

(c) For other Medicaid medical benefits?) (a) Did you turn age 65 in the last 6 months?

Yes  No

(b) Did you enroll in Medicare Part B in the last 6 months?

Yes  No

(c) If yes, what is the effective date?

(2) Are you covered for medical assistance through the state Medicaid program?

[NOTE TO APPLICANT: If you are participating in a "Spend- Down Program" and have not met your "Share of Cost," please answer NO to this question.]

Yes  No

If yes,

(a) Will Medicaid pay your premiums for this Medicare supplement policy?

Yes  No

(b) Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?

Yes  No

(3)(a) If you had coverage from any Medicare plan other than original Medicare within the past 63 days (for example, a Medicare Advantage plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

START //

END //

(b) If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?

Yes  No

(c) Was this your first time in this type of Medicare plan?

Yes  No

(d) Did you drop a Medicare supplement policy to enroll in the Medicare plan?

Yes  No

(4)(a) Do you have another Medicare supplement policy in force?

Yes  No

(b) If so, with what company and what plan do you have [optional for Direct Mailers]?

Yes  No

(c) If so, do you intend to replace your current Medicare supplement policy with this policy?

Yes  No

(5) Have you had coverage under any other health insurance within the past 63 days? (For example, an employer, union or individual plan.)

Yes  No

(a) If so, with what company and what kind of policy?

\_\_\_\_\_  
\_\_\_\_\_

(b) What are your dates of coverage under the other policy?

START //

END //

(If you are still covered under the other policy, leave "END" blank.)

\_\_\_\_\_  
\_\_\_\_\_

(2) Agents ((shall)) must list any other medical or health insurance policies sold to the applicant.

(a) List policies sold ((which)) that are still in force.

(b) List policies sold in the past five years ((which)) that are no longer in force.

(3) In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, ((shall)) must be returned to the applicant by the insurer upon delivery of the policy.

PROPOSED

PROPOSED

(4) Upon determining that a sale will involve replacement of Medicare Supplement Coverage, an issuer, other than a direct response issuer, or its agent, ~~((shall))~~ **must** furnish the applicant, ~~((prior to issuance or delivery of))~~ **before issuing or delivering** the Medicare supplement insurance policy or certificate, a notice regarding replacement of Medicare supplement insurance coverage. One copy of ~~((such))~~ **the** notice, signed by the applicant and the agent (except where the coverage is sold without an agent), ~~((shall))~~ **must** be provided to the applicant and an additional signed copy ~~((shall))~~ **must** be ~~((retained))~~ **kept** by the issuer. A direct response issuer ~~((shall))~~ **must** deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement insurance coverage.

(5) The notice required by subsection (4) of this section for an issuer, ~~((shall))~~ **must** be provided in substantially the form set forth in WAC 284-66-142 in no smaller than twelve point type, and ~~((shall))~~ **must** be filed with the commissioner ~~((prior to use))~~ **before being used** in this state.

(6) The notice required by subsection (4) of this section for a direct response insurer ~~((shall))~~ **must** be in substantially the form set forth in WAC 284-66-142 and ~~((shall))~~ **must** be filed with the commissioner ~~((prior to use))~~ **before being used** in this state.

(7) A true copy of the application for a Medicare supplement insurance policy issued by a health maintenance organization or health care service contractor for delivery to a resident of this state must be attached to or otherwise physically made a part of the policy when issued and delivered.

(8) Where inappropriate terms are used, such as "insurance," "policy," or "insurance company," a fraternal benefit society, health care service contractor or health maintenance organization may substitute appropriate terminology.

(9) Paragraphs 1 and 2 of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

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

**AMENDATORY SECTION** (Amending Matter No. R 96-2, filed 4/11/96, effective 5/12/96)

**WAC 284-66-135 Disclosure statements to be used with policies that are not Medicare supplement policies.** Applications for the purchase of disability or other medical insurance policies or certificates, that are provided to persons eligible for Medicare, ~~((shall))~~ **must** disclose the extent to which the policy duplicates Medicare. The disclosure ~~((shall))~~ **must** be in the form provided by this section. The applicable disclosure statement ~~((shall))~~ **must** be provided as a part of, or together with, the application for the policy or certificate.

(1) **Instructions for use of the disclosure statements for health insurance policies sold to Medicare beneficiaries that duplicate Medicare.**

(a) ~~((Federal law, P.L. 103-432,))~~ **Section 1882 (d) of the federal Social Security Act [42 U.S.C. 1395ss]** prohibits the sale of a disability or other health insurance policy (the term "policy" or "policies" includes certificates and contracts of all

issuers) that duplicate Medicare benefits unless it will pay benefits without regard to other disability or other health coverage and it includes the prescribed disclosure statement on or together with the application.

(b) All types of disability or other health insurance policies that duplicate Medicare ~~((shall))~~ **must** include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary substantially from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).

(c) **State and federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement.**

(d) Property/casualty and life insurance policies are not considered disability or other health insurance.

(e) Disability income policies are not considered to provide benefits that duplicate Medicare.

**Long-term care insurance policies that coordinate with Medicare and other health insurance are not considered to provide benefits that duplicate Medicare.**

(g) The federal law does not preempt state laws that are more stringent than the federal requirements.

~~((g))~~ (h) The federal law does not preempt existing state form filing requirements.

**(2) Disclosure statement to be used for policies that provide benefits for expenses incurred for accidental injury only.**

**IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS**

#### **This is not Medicare Supplement Insurance**

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

#### **This insurance duplicates Medicare benefits when it pays:**

- hospital or medical expenses up to the maximum stated in the policy

#### **Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- outpatient prescription drugs if you are enrolled in Medicare Part D
- other approved items and services

**Before You Buy This Insurance**

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health*

Insurance for People with Medicare, available from the insurance company.

- ✓ For help in understanding your health insurance, contact your state insurance department or state ((senior)) health insurance ((counseling)) assistance program [SHIP].

(3) Disclosure statement to be used with policies that provide benefits for specified limited services.

IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

**This is not Medicare Supplement Insurance**

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when:**

- any of the services covered by the policy are also covered by Medicare

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- outpatient prescription drugs if you are enrolled in Medicare Part D
- other approved items and services

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state ((senior)) health insurance ((counseling)) assistance program [SHIP].

(4) Disclosure statement to be used with policies that reimburse expenses incurred for specified disease(s) or other specified impairment(s). This includes expense incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions.

IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

**This is not Medicare Supplement Insurance**

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when it pays:**

- hospital or medical expenses up to the maximum stated in the policy

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physical services
- hospice
- outpatient prescription drugs if you are enrolled in Medicare Part D
- other approved items and services

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state ((senior)) health insurance ((counseling)) assistance program [SHIP].

(5) Disclosure statement to be used with policies that pay fixed dollar amounts for specified diseases or other specified impairments. This includes cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy.

IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

**This is not Medicare Supplement Insurance**

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- hospice
- outpatient prescription drugs if you are enrolled in Medicare Part D
- other approved items and services

PROPOSED

Before You Buy This Insurance

- √ Check the coverage in **all** health insurance policies you already have.
- √ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- √ For help in understanding your health insurance, contact your state insurance department or state ((~~senior~~)) health insurance ((~~counseling~~)) assistance program [SHIP].

**(6) Disclosure statement to be used with indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.**

IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

**This is not Medicare Supplement Insurance**

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when:**

- any expenses or service covered by the policy are also covered by Medicare

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- outpatient prescription drugs if you are enrolled in Medicare Part D]
- hospice
- other approved items & services

Before You Buy This Insurance

- √ Check the coverage in **all** health insurance policies you already have.
- √ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- √ For help in understanding your health insurance, contact your state insurance department or state ((~~senior~~)) health insurance ((~~counseling~~)) assistance program [SHIP].

**(7) Disclosure statement to be used with policies that provide benefits for both expenses incurred and fixed indemnity basis.**

IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

**This is not Medicare Supplement Insurance**

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**This insurance duplicates Medicare benefits when:**

- any expenses or service covered by the policy are also covered by Medicare; or
- it pays the fixed dollar amount stated in the policy and Medicare covers the same event

**Medicare generally pays for most or all of these expenses.**

**Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:**

- hospitalization
- physician services
- outpatient prescription drugs if you are enrolled in Medicare Part D]
- hospice care
- other approved items & services

Before You Buy This Insurance

- √ Check the coverage in **all** health insurance policies you already have.
- √ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- √ For help in understanding your health insurance, contact your state insurance department or state ((~~senior~~)) health insurance ((~~counseling~~)) assistance program [SHIP].

**(8) Disclosure statement to be used with long-term care policies providing both nursing home and noninstitutional coverage.**

IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

**This is not Medicare Supplement Insurance**

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

- This is long term care insurance that provides benefits for covered nursing home and home care services.
- In some situations Medicare pays for short periods of skilled nursing home care, limited home health services and hospice care.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

**Neither Medicare nor Medicare Supplement insurance provides benefits for most long-term care expenses.**

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Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about long term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state ~~((senior))~~ health insurance ~~((counseling))~~ assistance program [SHIP].

(9) Disclosure statement to be used with policies providing nursing home benefits only.

IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

- This insurance provides benefits primarily for covered nursing home services.
- In some situations Medicare pays for short periods of skilled nursing home care and hospice care.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most nursing home expenses.

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about long term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state ~~((senior))~~ health insurance ~~((counseling))~~ assistance program [SHIP].

(10) Disclosure statement to be used with policies providing home care benefits only.

IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations.

- This insurance provides benefits primarily for covered home care services.

- In some situations, Medicare will cover some health related services in your home and hospice care which may also be covered by this insurance.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most services in your home.

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about long term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
- ✓ For help in understanding your health insurance, contact your state insurance department or state ~~((senior))~~ health insurance ~~((counseling))~~ assistance program [SHIP].

(11) Disclosure statement to be used with other health insurance policies not specifically identified in the previous statements.

IMPORTANT NOTICE TO PERSONS ON MEDICARE  
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- the benefits stated in the policy and coverage for the same event is provided by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- outpatient prescription drugs if you are enrolled in Medicare Part D
- hospice
- other approved items and services

Before You Buy This Insurance

- ✓ Check the coverage in all health insurance policies you already have.
- ✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

√ For help in understanding your health insurance, contact your state insurance department or state ((senior)) health insurance ((counseling)) assistance program [SHIP].

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

**AMENDATORY SECTION** (Amending Matter No. R 96-2, filed 4/11/96, effective 5/12/96)

**WAC 284-66-142 Form of replacement notice.**

**NOTICE TO APPLICANT REGARDING REPLACEMENT OF MEDICARE SUPPLEMENT INSURANCE OR MEDICARE ADVANTAGE**

[Insurance company's name and address]

SAVE THIS NOTICE! IT MAY BE IMPORTANT TO YOU IN THE FUTURE.

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement or Medicare Advantage insurance and replace it with a policy to be issued by [Company name] Insurance Company. Your new policy will provide thirty days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. If, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision, you should terminate your present Medicare supplement or Medicare Advantage coverage. You should evaluate the need for other disability coverage you have that may duplicate this policy.

**STATEMENT TO APPLICANT BY ISSUER, AGENT [BROKER OR OTHER REPRESENTATIVE]:**

I have reviewed your current medical or health insurance coverage. To the best of my knowledge, this Medicare supplement policy will not duplicate your existing Medicare supplement or, if applicable, Medicare Advantage coverage because you intend to terminate your existing Medicare supplement coverage or leave your Medicare Advantage plan. The replacement policy is being purchased for the following reason(s) (check one):

- Additional benefits.
- No change in benefits, but lower premiums.
- Fewer benefits and lower premiums.
- My plan has outpatient prescription drug coverage and I am enrolling in Part D.
- Disenrollment from a Medicare Advantage plan. Please explain reason for disenrollment. [optional only for Direct Mailers]

Other. (please specify)

1. NOTE: If the issuer of the Medicare supplement policy being applied for does not, or is otherwise prohibited from imposing preexisting condition limitations, please skip to statement 2 below. If you have had your current Medicare supplement policy less than ((six)) ~~three~~ months, health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) to the extent such time was spent (depleted) under original policy.
3. If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

.....  
(Signature of Agent, Broker, or Other Representative)\*

[Typed Name and Address of Issuer, Agent or Broker]

.....  
(Applicant's Signature)

.....  
(Date)

\*Signature not required for direct response sales.

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

**AMENDATORY SECTION** (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-160 Adjustment notice to conform existing Medicare supplement policies to changes in Medicare.** As soon as practicable, but no later than thirty days ((prior to)) before the effective date of any Medicare benefit changes, every insurer providing Medicare supple-

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ment insurance coverage to a resident of this state ~~((shall))~~ must notify its insureds of modifications it has made to Medicare supplement policies. The adjustment notice is intended to be informational only and for the sole purpose of informing policyholders and certificate holders about changes in Medicare benefits, indexed deductible and copayment provisions, premium adjustments, and the like. The form of an adjustment notice provided to residents of this state ~~((shall))~~ must be filed with the commissioner ~~((prior to use))~~ before being used.

(1) The notice ~~((shall))~~ must include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement insurance policy.

(2) The notice ~~((shall))~~ must inform each covered person of the approximate date when premium adjustments due to changes in Medicare benefits will be made.

(3) The notice of benefit modifications and any premium changes ~~((shall))~~ must be furnished in outline form and in clear and simple terms so as to facilitate comprehension.

(4) The notice ~~((shall))~~ must not contain or be accompanied by any solicitation.

(5) Issuers must comply with any notice requirements of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

AMENDATORY SECTION (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-170 Prohibition against preexisting conditions, waiting periods, elimination periods, and probationary periods in replacement policies or certificates.**

(1) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer ~~((shall))~~ must waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent ~~((such))~~ the time was spent under the original policy.

(2) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate ~~((which))~~ that has been in effect for at least ~~((six))~~ three months, the replacing policy ~~((shall))~~ may not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods.

AMENDATORY SECTION (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-200 Standards for loss ratios.** The following standards apply to policies issued or delivered ~~((prior to))~~ before July 1, 1992, unless ~~((such))~~ the policies are approved under the standards of WAC 284-66-063 and 284-66-203. Medicare supplement insurance policies ~~((shall))~~ must return to policyholders in the form of aggregated benefits under ~~((such))~~ the policy, for the entire period for which rates are computed to provide coverage, loss ratios not less than those ~~((set forth))~~ in this section. ~~((Such))~~ The loss ratios ~~((shall))~~ must be on the basis of incurred claims losses and earned premiums for such period ~~((in accordance with))~~ according to accepted actuarial principles. The loss ratio stan-

dards of this section are more stringent and more appropriate than those imposed by RCW 48.66.100, and are necessary for the protection of the public interest.

(1) Where coverage is provided on a service rather than reimbursement basis, ~~((such))~~ the loss ratios ~~((shall))~~ must be on the basis of incurred health care expenses and earned premiums for ~~((such))~~ the period.

(2) All filings of rates and rating schedules ~~((shall))~~ must demonstrate that actual and expected losses in relation to premiums comply with the requirements of this chapter and are not excessive, inadequate or unfairly discriminatory.

(3) Every insurer providing Medicare supplement policies in this state ~~((shall))~~ must annually file its rates, rating schedules, and supporting documentation including ratios of incurred losses to earned premiums demonstrating that it is in compliance with the applicable loss ratio standards and that the rating period for ~~((which))~~ the policy is ~~((rated is))~~ reasonable ~~((in accordance with))~~ according to accepted actuarial principles and experience. If the initial rating period for ~~((which))~~ the policy is ~~((initially rated is))~~ more than one year, ratios of incurred losses to earned premiums ~~((shall))~~ must be filed by number of years of policy duration. Supporting documentation ~~((shall))~~ must include the amounts of unearned premium reserve, policy reserves, and claim reserves and liabilities, both nationally and for this state. This annual filing is in addition to filings made by insurers to establish initial rates or request rate adjustments required by WAC 284-66-240.

(4) Incurred losses ~~((shall))~~ must include claims paid and the change in claim reserves and liabilities. Incurred losses ~~((shall))~~ may not include policy reserves, home office or field overhead, acquisition and selling costs, taxes or other expenses, contributions to surplus, profit, or claims processing costs. Where coverage is provided by a health care service contractor or health maintenance organization, health care expense costs may not include home office and overhead costs, advertising costs, commissions and other acquisition costs, taxes, capital costs, administrative costs, and claims processing costs.

(5) The following criteria will be used to determine whether policy forms are in compliance with the loss ratio standards of this section:

(a) For the most recent year, the ratio of the incurred losses to earned premiums is greater than or equal to the applicable percentages contained in this section; and

(b) The expected losses in relation to premiums over the entire rating period ~~((for which the policy is rated))~~ complies with the requirements of this section, relying on the judgment of the pricing actuary and acceptable to the commissioner; and

~~((For issue age level premium rated policies, an expected loss ratio for the third policy year, which is greater than or equal to the applicable percentage, shall be demonstrated for policies or certificates in force fewer than three years. For community rated policies the applicable percentage shall be demonstrated for the three most recent accounting periods. The applicable percentage shall be as defined in subsection (6) or (7) of this section.~~

(d)) For purposes of rate making and rate adjustments, similar policy forms ~~((shall))~~ must be grouped together

according to the rules set forth in WAC 284-60-040. All Medicare supplement policies of an issuer issued for delivery between January 1, 1989, and July 1, 1992, are considered "similar policy forms" except those forms specifically approved under the standards of WAC 284-66-063 and 284-66-203.

~~((e))~~ (d) The commissioner may consider additional criteria including, but not limited to:

(i) Equitable treatment of policyholders; and

(ii) The amount of policy reserves as defined for the insurer's statutory annual statement.

(6) Medicare supplement insurance policies issued by authorized disability insurers and fraternal benefit societies ~~((shall be))~~ are expected to return to a policyholder in the form of aggregated loss ratios under the policy, at least sixty-five percent of the earned premiums in the case of individual policies, and seventy-five percent in the case of group policies.

(7) The minimum anticipated loss ratio requirement ~~((s))~~ for health maintenance organizations and health care service contractors ~~((shall be))~~ is seventy percent for individual forms and eighty percent for group contract forms. The minimum anticipated loss ratios are deemed to be met if the health care expense costs of the health maintenance organization or health care service contractor are seventy percent or more of the earned premium charged individual subscribers, or eighty percent or more of the earned premium charged subscribers covered under a group contract.

**AMENDATORY SECTION** (Amending Matter No. R 96-2, filed 4/11/96, effective 5/12/96)

**WAC 284-66-203 Loss ratio and rating standards and refund or credit of premium.** (1) Loss ratio and rating standards. For policies issued on or after July 1, 1992, and those policies specifically approved by the commissioner under WAC 284-66-063 ~~((prior to))~~ before July 1, 1992:

(a) A Medicare supplement policy form or certificate form must be rated on an issue-age level premium basis or community rated basis, as described ~~((at))~~ in WAC 284-66-243 ~~((6), in order to meet the standards of WAC 284-66-340))~~ (7).

(b) A Medicare supplement policy form or certificate form ~~((shall))~~ may not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

(i) At least seventy-five percent of the aggregate amount of premiums earned in the case of group policies; or

(ii) At least sixty-five percent of the aggregate amount of premiums earned in the case of individual policies, calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization or health care service contractor on a service rather than reimbursement basis and earned premiums for ~~((such))~~ the period ~~((and in accordance with)),~~ according to accepted actuarial principles and practices.

(c) All filing of rates and rating schedules ~~((shall))~~ must demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions ~~((shall))~~ must also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(d) For purposes of applying subsection (1)(b) of this section and WAC 284-66-243 (3)(c) only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

(e) For policies issued ~~((prior to))~~ before April 28, 1996, expected claims in relation to premiums ~~((shall))~~ must meet:

(i) The originally filed anticipated loss ratio when combined with the actual experience since inception;

(ii) The appropriate loss ratio requirement from WAC 284-66-203 (1)(b)(i) and (ii) when combined with actual experience beginning with April 28, 1996, to date; and

(iii) The appropriate loss ratio requirement from WAC 284-66-203 (1)(b)(i) and (ii) over the entire future period for which the rates are computed to provide coverage.

(iv) In meeting the tests in (e)(i), (ii), and (iii) of this subsection, and for purposes of attaining credibility, with the prior written approval of the commissioner, an issuer may combine experience under policy forms ~~((which))~~ that provide substantially similar coverage. Once a combined form is adopted, the issuer may not separate the experience, except with the prior written approval of the commissioner.

(2) Refund or credit calculation.

(a) An issuer ~~((shall))~~ must collect and file with the commissioner by May 31 of each year the data contained in the reporting form contained in WAC 284-66-232 for each type in a standard Medicare supplement benefit plan.

(b) If on the basis of the experience as reported, the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3) in year three or later, then a refund or credit calculation is required. The refund calculation ~~((shall))~~ must be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year ~~((shall))~~ must be excluded. This subsection applies only to annual experience reporting. Any revision of premium rates must be filed with and approved by the commissioner ~~((in accordance with))~~ according to WAC 284-66-243.

(c) For policies or certificates issued ~~((prior to))~~ before July 1, 1992, the issuer ~~((shall))~~ must make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after the effective date of this section. The first ~~((such))~~ report ~~((shall be))~~ is due by May 31, 1998.

(d) A refund or credit ~~((shall))~~ may be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. ~~((Such))~~ The refund ~~((shall))~~ must include interest from the end of the calendar year to the date of the



refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event ~~((shall))~~ may it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due ~~((shall))~~ must be made by September 30 following the experience year ~~((upon which))~~ that is the basis for the refund or credit ~~((is based))~~.

(3) Annual filing of premium rates.

On or before May 31 of each calendar year, an issuer of standardized Medicare supplement policies and certificates issued ~~((in accordance with))~~ according to WAC 284-66-063, ~~((shall))~~ must file its rates, rating schedule, and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the commissioner on the form provided at subsection (6) of this section. The supporting documentation ~~((shall))~~ must also demonstrate ~~((in accordance with))~~ according to actuarial standards of practice using reasonable assumptions, that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. ~~((Such))~~ The demonstration ~~((shall))~~ must exclude active life reserves. An expected third-year loss ratio ~~((which))~~ that is greater than or equal to the applicable percentage ~~((shall))~~ must be demonstrated for policies or certificates in force less than three years.

(4) As soon as practicable, but ~~((prior to))~~ before the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state ~~((shall))~~ must file with the commissioner, ~~((in accordance with))~~ according to the applicable filing procedures of this state:

(a)(i) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. ~~((Such))~~ The supporting documents as necessary to justify the adjustment ~~((shall))~~ must accompany the filing.

(ii) An issuer ~~((shall))~~ must make ~~((such))~~ any premium adjustments as are necessary to produce an expected loss

ratio under ~~((such))~~ the policy or certificate ~~((as will conform))~~ to comply with minimum loss ratio standards for Medicare supplement policies and ~~((which))~~ that are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for ~~((such))~~ the Medicare supplement policies or certificates. No premium adjustment ~~((which))~~ that would modify the loss ratio experience under the policy other than the adjustments described ~~((herein shall))~~ in this section may be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(iii) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds, or premium credits deemed necessary to achieve the loss ratio required by this section.

(b) Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. ~~((Such))~~ The riders, endorsements, or policy forms ~~((shall))~~ must provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

(5) Public hearings.

(a) The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for policy form or certificate form if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for ~~((such))~~ the reporting period. Public notice of ~~((such))~~ the hearing ~~((shall))~~ must be furnished in a manner deemed appropriate by the commissioner.

(b) This section does not in any way restrict a commissioner's statutory authority to approve or disapprove rates.

(6) Annual Medicare supplement insurance reporting form:

<b>Annual Filing of Premium Rates and Experience</b> <b>To be filed on or before May 31 of each calendar year</b>		
Experience from January 1 to December 31, of ___(year)___ reported by duration for all business from inception to December 31, <del>((49))</del> <u>20</u> ____.		
Company Name _____		
Address _____		
NAIC Group Code _____	NAIC Company Code _____	CIC Code _____
Plan _____	Type _____	Form No. _____
Premium Rates [Attach schedule]		
Insurance is [check one]      Group _____      or, Individual _____		

PROPOSED

PROPOSED

Washington Experience. [Show all experience for the reported calendar year (separately for each duration).]

Policy <u>Duration</u>	Incurred <u>Losses</u>	Earned <u>Premiums</u>	Loss <u>Ratio</u>	Claim <u>Reserves</u>
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I hereby certify that I have supervised the preparation of this experience exhibit, that all durational information has been furnished, and to the best of my knowledge, the data is accurate and is in compliance with RCW 48.66.150 and WAC 284-66-203.

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name and Title of Officer

\_\_\_\_\_  
Prepared by

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Phone Number

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

**AMENDATORY SECTION** (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-210 Policy reserves required.** This section ~~((shall apply))~~ applies to every group and individual policy of an issuer ~~((which))~~ that relates its benefits to Medicare. The term "policy reserve" is intended to apply to all types and forms of insurance equally, whether they are called policies, contracts, or certificates. For all forms ~~((which))~~ that are issued on a level premium basis, policy reserves will be required. The policy reserve is in addition to claim reserves and premium reserves. The definition of the date of incurral must be the same for both claim reserves and policy reserves. Policy reserves ~~((shall))~~ must be based upon the following minimum standards:

(1) Morbidity should be based upon a reasonable expectation of future claim costs for the benefits being provided. At time of policy issue this would be the morbidity assumptions used to price the contract. For later durations the morbidity should reflect the experience ~~((which))~~ that emerges including the effects of inflation and utilization. All morbidity assumptions must be reasonable in the view of the commissioner.

(2) The interest rate used may not exceed the maximum rate permitted by statute in the valuation of life insurance issued on the same date as the Medicare supplement policy.

(3) Termination rates ~~((shall))~~ must be on the same basis as the mortality table permitted by statute in the valuation of life insurance issued on the same date as the Medicare supplement policy or on another basis satisfactory to the commissioner.

(4) The minimum reserve is that calculated on the one-year full preliminary term method. This method produces a terminal reserve of zero at the first policy anniversary. The preliminary term method may be applied only in relation to the date of issue of a policy. Reserve adjustments introduced later as a result of rate increases, revisions in assumptions, or for other reasons, are to be applied immediately as of the effective date of adoption of the adjusted basis. ~~((Such))~~ The adjustments ~~((shall))~~ must be determined as follows:

(a) Present value of future payments of claim costs for benefits, determined using revised assumptions based on anticipated experience;

(b) Less the present value of future net premiums, determined using revised assumptions based on anticipated experience;

(c) Less the liability for contract reserves at the valuation date.

(5) Negative reserves on any benefit may be offset against positive reserves for other benefits in the same policy or contract, but the total policy reserve with respect to all benefits combined may not be less than zero.

(6) The minimum policy reserve ~~((shall))~~ must include a reasonable margin for the risk of adverse selection.

**AMENDATORY SECTION** (Amending Order R 92-7, filed 8/19/92, effective 9/19/92)

**WAC 284-66-220 Medicare supplement refund calculation form required.** The form provided in WAC 284-66-232 ~~((shall))~~ must be filed with the commissioner annually ~~((not later than))~~ by May 31st of each calendar year beginning May 31, 1993. The form is to be filed in addition to the NAIC experience exhibit and not in lieu thereof.

**AMENDATORY SECTION** (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-240 Filing requirements and premium adjustments.** (1) ~~((Unless such forms meet the standards of WAC 284-66-063 and 284-66-203,))~~ All policy forms issued or delivered on or after January 1, 1990, and before July 1, 1992, as well as any future rate adjustments ~~((thereto, shall))~~ to such forms, must demonstrate compliance with the loss ratio requirements of WAC 284-66-200 and policy reserve requirements of WAC 284-66-210, unless the forms meet the standards of WAC 284-66-063 and 284-66-203. All filings of rate adjustments ~~((shall))~~ must be accompanied by the proposed rate schedule and an actuarial memorandum completed and signed by a qualified actuary as defined in WAC 284-05-060. In addition to the actuarial memorandum, the following supporting documentation must be submitted to demonstrate

to the satisfaction of the commissioner that rates are not excessive, inadequate, or unfairly discriminatory and otherwise comply with the requirements of this chapter. If any of the items listed below are inappropriate due to the pricing methodology (~~utilized~~) used by the pricing actuary, the commissioner may waive the requirements upon request of the issuer.

(a) Filings of issue age level premium rates (~~shall~~) must be accompanied by the following:

(i) Anticipated loss ratios stated on a policy year basis for the period for which the policy is rated. Filings of future rate adjustments must contain the actual policy year loss ratios experienced since inception;

(ii) Anticipated total termination rates on a policy year basis for the period for which the policy is rated. The termination rates should be stated as a percentage and the source of the mortality assumption must be specified. Filings of future rate adjustments must include the actual total termination rates stated on a policy year basis since inception;

(iii) Expense assumptions including fixed and percentage expenses for acquisition and maintenance costs;

(iv) Schedule of total compensation payable to agents and other producers as a percentage of premium, if any;

(v) Specimen copy of the compensation agreements or contracts between the issuer and its agents, brokers, general agents, or others whose compensation is based in whole or in part on the sale of Medicare supplement insurance policies, (~~such~~) the agreements demonstrating compliance with WAC 284-66-350 (where appropriate);

(vi) Other data necessary in the reasonable opinion of the commissioner to substantiate the filing.

(b) Filings of community rated forms (~~shall~~) must be accompanied by the following:

(i) Anticipated loss ratio for the accounting period for which the policy is rated. The duration of the accounting period must be stated in the filing, established based on the judgment of the pricing actuary, and must be reasonable in the opinion of the commissioner. Filings for rate adjustment must demonstrate that the actual loss ratios experienced during the three most recent accounting periods, on an aggregated basis, have been equal to or greater than the loss ratios required by WAC 284-66-200.

(ii) Expense assumptions including fixed and percentage expenses for acquisition and maintenance costs;

(iii) Schedule of total compensation payable to agents and other producers as a percentage of premium, if any;

(iv) Specimen copy of the compensation agreements or contracts between the insurer and its agents, brokers, general agents, or others whose compensation is based in whole or in part on the sale of Medicare supplement insurance policies, (~~such~~) the agreements demonstrating compliance with WAC 284-66-350 (where appropriate);

(v) Other data necessary in the reasonable opinion of the commissioner to substantiate the filing.

(2) Every issuer (~~shall~~) must make (~~such~~) premium adjustments (~~as~~) that are necessary to produce an expected loss ratio under (~~such~~) the policy (~~as~~) that will conform with the minimum loss ratio standards of WAC 284-66-200.

(3) No premium adjustment (~~which~~) that would modify the loss ratio experience under the policy, other than the

adjustments described in this section, may be made with respect to a policy at any time other than upon its renewal or anniversary date.

(4) Premium refunds or premium credits (~~shall~~) must be made to the premium payer no later than upon renewal if a credit is given, or within sixty days of the renewal or anniversary date if a refund is provided.

(5) For purposes of rate making and requests for rate increases, all individual Medicare supplement policy forms of an issuer are considered "similar policy forms" including forms no longer being marketed.

AMENDATORY SECTION (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-243 Filing and approval of policies and certificates and premium rates.** (1) An issuer (~~shall~~) may not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the commissioner (~~in accordance with~~) according to the filing requirements and procedures prescribed by the commissioner.

(2) An issuer must file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the commissioner in the state that the policy or certificate was issued.

(3) An issuer (~~shall~~) may not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the commissioner (~~in accordance with~~) according to the filing requirements and procedures prescribed by the commissioner.

~~(3)~~ (4)(a) Except as provided in (b) of this subsection, an issuer (~~shall~~) may not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(b) An issuer may offer, with the approval of the commissioner, up to four additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one for each of the following cases:

(i) The inclusion of new or innovative benefits;

(ii) The addition of either direct response or agent marketing methods;

(iii) The addition of either guaranteed issue or underwritten coverage;

(iv) The offering of coverage to individuals eligible for Medicare by reason of disability. The form number for products offered to enrollees who are eligible by reason of disability must be distinct from the form number used for a corresponding standardized plan offered to an enrollee eligible for Medicare by reason of age.

(c) For the purposes of this section, a "type" means an individual policy, a group policy, an individual Medicare SELECT policy, or a group Medicare SELECT policy.

~~(4)~~ (5)(a) Except as provided in (a)(i) of this subsection, an issuer (~~shall~~) must continue to make available for purchase any policy form or certificate form issued after the effective date of this regulation that has been approved by the

commissioner. A policy form or certificate form ~~((shall))~~ is not ~~((be))~~ considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve months.

(i) An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty days ~~((prior to))~~ before discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer ~~((shall))~~ may no longer offer for sale the policy form or certificate form in this state.

(ii) An issuer that discontinues the availability of a policy form or certificate form ~~((pursuant to))~~ under (a)(i) of this subsection, ~~((shall))~~ may not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(b) The sale or other transfer of Medicare supplement business to another issuer ~~((shall be))~~ is considered a discontinuance for the purposes of this subsection.

(c) A change in the rating structure or methodology ~~((shall be))~~ is considered a discontinuance under (a) of this subsection, unless the issuer complies with the following requirements:

(i) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in ~~((which))~~ that the revised rating methodology and resultant rates differ from the existing rating methodology and resultant rates.

(ii) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential ~~((which))~~ that is in the public interest.

~~((5))~~ (6)(a) Except as provided in (b) of this subsection, the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan ~~((shall))~~ must be combined for purposes of the refund or credit calculation prescribed in WAC 284-66-203.

(b) Forms assumed under an assumption reinsurance agreement ~~((shall))~~ may not be combined with the experience of other forms for purposes of the refund or credit calculation.

~~((6))~~ (7) An issuer may set rates only on a community rated basis or on an issue-age level premium basis for policies issued prior to January 1, 1996, and may set rates only on a community rated basis for policies issued after December 31, 1995.

(a) For policies issued prior to January 1, 1996, community rated premiums ((shall)) must be equal for all individual policyholders or certificateholders under a standardized Medicare supplement benefit form. Such premiums may not vary by age or sex. For policies issued after December 31, 1995, community rated premiums must be set according to RCW 48.66.045(3).

(b) Issue-age level premiums must be calculated for the lifetime of the insured. This will result in a level premium if the effects of inflation are ignored.

~~((7))~~ (8) All filings of policy or certificate forms ~~((shall))~~ must be accompanied by the proposed application form, outline of coverage form, proposed rate schedule, and an actuarial memorandum completed, signed and dated by a qualified actuary as defined in WAC 284-05-060. In addition to the actuarial memorandum, the following supporting documentation must be submitted to demonstrate to the satisfaction of the commissioner that rates are not excessive, inadequate, or unfairly discriminatory and otherwise comply with the requirements of this chapter:

(a) Anticipated loss ratios stated on a calendar year basis by duration for the period for which the policy is rated. Filings of future rate adjustments must contain the actual calendar year loss ratios experienced since inception, both before and after the refund required, if any and the actual loss ratios in comparison to the expected loss ratios stated in the initial rate filing on a calendar year basis by duration if applicable;

(b) Anticipated total termination rates on a calendar year basis by duration for the period for which the policy is rated. The termination rates should be stated as a percentage and the source of the mortality assumption must be specified. Filings of future rate adjustments must include the actual total termination rates stated on a calendar year basis since inception;

(c) Expense assumptions including fixed and percentage expenses for acquisition and maintenance costs;

(d) Schedule of total compensation payable to agents and other producers as a percentage of premium, if any;

(e) A complete specimen copy of the compensation agreements or contracts between the issuer and its agents, brokers, general agents, as well as the contracts between general agents and agents or others whose compensation is based in whole or in part on the sale of Medicare supplement insurance policies. ~~((Sueh))~~ The agreements ~~((shall))~~ must demonstrate compliance with WAC 284-66-350 (where appropriate);

(f) Other data necessary in the reasonable opinion of the commissioner to substantiate the filing.

#### NEW SECTION

**WAC 284-66-247 Interim rate and form filing requirements for standardized plans H, I and J and pre-standardized plans that include outpatient prescription drug benefits.** The requirements of this section are in addition to all Medicare Supplement rate and form filing requirements set forth in this chapter.

(1) Form filings.

(a) To comply with the requirements of WAC 284-66-243(2), issuers are encouraged to use a generic rider or amendment that is bracketed for the purpose of identifying the modified policy forms. Riders or amendments may be used only for policies or certificates issued prior to January 1, 2006, and must be accompanied by a complete listing of the form numbers for all affected policies or certificates.

(b) After December 31, 2005, plans H, I, and J may not be issued to new enrollees using a rider or amendment to

delete the outpatient prescription drug benefit. After that date, issuers must:

(i) Offer only new plans that are otherwise identical to their currently approved plans H, I, and J, with the outpatient prescription drug benefit removed. The new plans must incorporate all endorsements that have been previously approved by the commissioner.

(ii) Identify the new plan using the same form number as the currently approved corresponding plan, adding a unique identifier to the form number that distinguishes it from the plan with outpatient drug benefits.

(iii) Certify that the new plan, including any previously approved endorsements, is identical to the currently approved plan in all respects except for the deletion of the prescription drug benefit. The certification must be signed by an officer of the company.

(2) Rate filings.

(a) An issuer must submit revised rates for all policies or certificates that are modified using a rider or amendment to remove outpatient prescription drug coverage. The rates must be accompanied by an actuarial memorandum signed by a qualified actuary as defined in WAC 284-05-060 and include no less than the following information:

(i) The form number of the rider or amendment being used to modify the policy or certificate along with form number of the applicable policy or certificate.

(ii) If the modification applies to a prestandardized plan, a detailed description of the deleted prescription benefits.

(iii) A description and calculation of how the rate modification was determined including the general description and source of each assumption used.

(iv) A separate rate page listing the current rate charged for the underlying plan, the rate adjustment for the deleted outpatient drug benefit, and the final rate.

(b) An issuer must submit rates for standardized plans H, I, and J that will be issued after December 31, 2005. The rates must be consistent with the rates filed for the corresponding plans H, I and J that have been modified by rider or amendment to remove the outpatient prescription drug benefit and include all the current requirements for Medicare supplement rate filings noted in this chapter.

**AMENDATORY SECTION** (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-250 Filing requirements for out-of-state group policies.** Every issuer providing group Medicare supplement insurance benefits to a resident of this state ~~((shall))~~ **must** file with the commissioner, within thirty days of its use in this state, a copy of the master policy and any certificate used in this state, ~~((in accordance with))~~ **according to** the filing requirements and procedures ~~((applicable))~~ **that apply** to Medicare supplement policies issued in this state.

**AMENDATORY SECTION** (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-260 Riders and endorsements.** (1) Effective January 1, 1990, subject to RCW 48.66.050(2), and except for riders or endorsements issued ~~((in accordance with))~~ **according to** subsection (2) of this section, no rider,

endorsement, waiver, or any other means of modifying contractual benefits may be used by an issuer to exclude, limit, or reduce the coverage or benefits of a Medicare supplement insurance policy or certificate issued to a resident of this state. Only riders or endorsements ~~((which))~~ **that** increase benefits or coverage may be used in this state.

(2) Effective January 1, 1990, except for riders or endorsements issued to bring a policy into compliance with changes to the minimum benefit standards or other contractual benefits required by this chapter or as ~~((hereafter))~~ amended:

(a) An amendment to a Medicare supplement insurance policy or certificate ~~((which))~~ **that** increases the premium must be requested or accepted by the policyholder in writing; and

(b) Where separate additional premium is charged for a rider, endorsement or other amendment to the contractual benefits of a Medicare supplement insurance policy or certificate, the premium charged ~~((shall))~~ **must** be set forth in the policy.

**AMENDATORY SECTION** (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-270 Standards for claims payment: Compliance with Omnibus Budget Reconciliation Act of 1987.** (1) An issuer ~~((shall))~~ **must** comply with Section 1882 (c)(3) of the Social Security Act (as enacted by Section 4081 (b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA'87), P.L. 100-203) by:

(a) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(b) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(c) Paying the participating physician or supplier directly;

(d) Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number, and a central mailing address to which notices from a Medicare carrier may be sent;

(e) Paying user fees for claim notices that are transmitted electronically or otherwise; and

(f) Providing to the Secretary of Health and Human Services, at least annually, a central mailing address ~~((to which))~~ **that** all claims may be sent by Medicare carriers.

(2) Compliance with the requirements set forth in subsection (1) of this section ~~((shall))~~ **must** be certified on the Medicare supplement insurance experience reporting form.

**AMENDATORY SECTION** (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-300 Requirements for advertising.** (1) At least thirty days ~~((prior to))~~ **before** use in this state, every issuer who provides Medicare supplement insurance coverage to a resident of this state ~~((shall))~~ **must** provide the commissioner with a copy of any Medicare supplement advertisement (as advertisement is defined in WAC 284-50-030)

intended for use in this state whether through written, radio, or television medium. In the case of radio or television advertising, an audio cassette or VHS cassette (~~shall~~) must be supplied on request of the commissioner.

(2) Advertising (~~shall~~) must comply with the standards of the Washington disability advertising regulation (WAC 284-50-010 through 284-50-230), and (~~shall set forth~~) must identify the name in full of the issuer and the location of its home office or principal office in the United States (if an alien issuer).

AMENDATORY SECTION (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-310 Attained age rating prohibited.** (~~With respect to Medicare supplement insurance policies and certificates initially sold to residents of this state on or after January 1, 1989,)~~ The commissioner has found and (~~hereby~~) defines it to be an unfair act or practice and an unfair method of competition, and a prohibited practice, for any issuer, directly or indirectly, to use the increasing age of an insured, subscriber, or participant as the basis for increasing premiums or prepayment charges with respect to Medicare supplement insurance. Accordingly, the rating practice commonly referred to as "attained age rating" is prohibited.

AMENDATORY SECTION (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-320 Reporting of multiple policies.** (1) On or before March 1st of each year, an issuer (~~shall~~) must report to the commissioner the following information for every individual resident of this state for which the issuer has in force more than one Medicare supplement policy or certificate on a form approved by the commissioner, substantially in the form provided in WAC 284-66-323:

- (a) Policy and certificate number; and
- (b) Date of issuance.

(2) The items set forth above must be grouped by individual policyholder.

AMENDATORY SECTION (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-330 Standards for marketing.** (1) Every issuer marketing Medicare supplement insurance coverage in this state, directly or through its producers, (~~shall~~) must:

(a) Establish marketing procedures to assure that any comparison of policies or certificates by its agents or other producers will be fair and accurate.

(b) Establish marketing procedures to assure excessive insurance is not sold or issued.

(c) Display prominently by type, stamp or other appropriate means, on the first page of the policy or certificate the following:

"NOTICE TO BUYER: THIS (POLICY, CONTRACT OR CERTIFICATE) MAY NOT COVER ALL OF YOUR MEDICAL EXPENSES."

(d) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for

Medicare supplement insurance already has disability insurance and the types and amounts of any such insurance.

(e) Establish auditable procedures for verifying compliance with this section.

(2) In addition to the acts and practices prohibited in chapter 48.30 RCW, chapters 284-30 and 284-50 WAC, and this chapter, the commissioner has found and hereby defines the following to be unfair acts or practices and unfair methods of competition, and prohibited practices for any issuer, or their respective agents either directly or indirectly:

(a) Twisting. Making misrepresentations or misleading comparisons of any insurance policies or issuers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, (~~retain~~) keep, or convert any insurance policy.

(b) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat whether explicit or implied, or otherwise applying undue pressure to coerce the purchase of, or recommend the purchase of, insurance.

(c) Cold lead advertising. Making use directly or indirectly of any method of marketing (~~which~~) that fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

AMENDATORY SECTION (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-340 Appropriateness of recommended purchase and excessive insurance.** (1) In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent (~~shall~~) must make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

(2) Any sale of a Medicare supplement (~~coverage which~~) policy or certificate that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

(3) An issuer may not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage.

AMENDATORY SECTION (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

**WAC 284-66-350 Permitted compensation arrangements.** (1)(a) The commissioner has found and hereby defines it to be an unfair act or practice and an unfair method of competition, and a prohibited practice, for any issuer, directly or indirectly, to provide commission to an agent or other representative for the solicitation, sale, servicing, or renewal of a Medicare supplement policy or certificate (~~which~~) that is delivered or issued for delivery to a resident within this state unless the commission is identical as to percentage of premium for every policy year as long as the coverage under the policy or certificate remains in force with premiums being paid, or waived by the issuer, for (~~such~~) the coverage.

## WSR 05-13-186

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed June 22, 2005, 8:45 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 04-01-199.

Title of Rule and Other Identifying Information: WAC 246-808-135 Licensure by endorsement, this rule outlines the requirements for licensure by endorsement as a chiropractor when coming to Washington state from another jurisdiction.

Hearing Location(s): Department of Health, Point Plaza East, 310 Israel Road S.E., Tumwater, WA 98501, on September 8, 2005, at 9:30 a.m.

Date of Intended Adoption: September 8, 2005.

Submit Written Comments to: Karen Kelley, P.O. Box 47869, Olympia, WA 98504-7869, e-mail <http://www3.doh.wa.gov/policyreview>, fax (360) 236-4918, by August 5, 2005.

Assistance for Persons with Disabilities: Contact Karen Kelley by August 25, 2005, TTY 711 or (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendment will streamline the credentialing process by removing unnecessary barriers to licensed chiropractors who are in good standing in other jurisdictions. Specifically, the proposal will reduce the amount of time and cost for chiropractors from other jurisdictions to apply for a license by endorsement. The rule amendment removes the requirement for taking the National Board of Chiropractic Examiners Special Purpose Examination for Chiropractors (SPEC) that are credentialed in another jurisdiction. Elimination of the SPEC requirement will save applicants with a license in another jurisdiction time and over \$825.00. The proposed rule change identifies that a minimum passing score of 95% is required on the written Washington state jurisprudence examination. Under this proposed change, the SPEC will no longer be a requirement of licensure by endorsement for candidates from other jurisdictions who are in good standing. This will save applicants time and over \$825.00.

The proposed rule change identifies the minimum passing score of 95% on the written state jurisprudence examination. This minimum passing score is the current standard. Placing the score in rule will clarify the rules.

Reasons Supporting Proposal: The current rule creates an unnecessary barrier to licensure for qualified chiropractors. Amending the rule will eliminate the barrier, saving applicants significant time and money.

Statutory Authority for Adoption: RCW 18.25.0171.

Statute Being Implemented: RCW 18.25.040.

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

Name of Proponent: Chiropractic Quality Assurance Commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Karen Kelley, PPE, P.O. Box 47869, Olympia, WA 98504-7869, (360) 236-4856.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business eco-

(b) Each commission payment must be made by the issuer no later than sixty days following the date on which the applicable premiums, ~~((upon which the commission is calculated))~~ that are the basis of the commission calculation, were paid. Each ~~((such))~~ payment must be paid to either the producing agent who originally sold the policy or to a successor agent designated by the issuer to replace the producing agent, or shared between them on some basis. The distribution of the commission payments ~~((shall))~~ must be designated by the issuer in its various agents' commission agreements and it may not terminate, reduce or ~~((retain))~~ keep the commission payment as long as the policy or certificate remains in force with premiums being paid, or waived by the issuer, for the coverage thereunder.

(c) Where an issuer provides a portion of the total commission for the solicitation, sale, servicing, or renewal of a Medicare supplement policy or certificate to a general agent, sales manager, district representative or other supervisor who has marketing responsibilities (other than a producing or successor agent), while such portion of total commissions continues to be paid it ~~((shall))~~ must be identical as to percentage of premium for every policy year as long as coverage under the policy or certificate remains in force with premiums being paid, or waived by the issuer, for ~~((such))~~ the coverage.

(2) For purposes of this section, "commission" includes pecuniary or nonpecuniary remuneration of any kind relating to the solicitation, sale, servicing, or renewal of the policy or certificate, including but not limited to bonuses, gifts, prizes, advances on commissions, awards and finders fees.

(3) This section ~~((shall))~~ does not apply to salaried employees of an issuer who have marketing responsibilities if the salaried employee is not compensated, directly or indirectly, on any basis dependent upon the sale of insurance being made, including but not limited to considerations of the number of applications submitted, the amount or types of insurance, or premium volume.

**AMENDATORY SECTION** (Amending Order R 92-1, filed 2/25/92, effective 3/27/92)

WAC 284-66-400 Chapter not exclusive. Nothing contained in this chapter ~~((shall))~~ may be construed to limit the authority of the commissioner to regulate Medicare supplement insurance policies or certificates under other sections of Title 48 RCW.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 284-66-077

Open enrollment.

PROPOSED

conomic impact statement is not necessary under chapter 19.85 RCW. This rule does not impose additional costs on individuals who must comply with the rule. Rule amendments remove licensing barriers for applicants currently licensed in another jurisdiction that will save time, and over \$825.00 per applicant.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Karen Kelley, Chiropractic Quality Assurance Commission, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4856, fax (360) 236-4918, e-mail karen.kelley@doh.wa.gov.

June 3, 2005  
Karen Kelley  
Program Manager

**AMENDATORY SECTION** (Amending WSR 00-17-180, filed 8/23/00, effective 9/23/00)

**WAC 246-808-135 Licensure by endorsement.** RCW 18.25.040 authorizes the commission to grant licensure for endorsement to individuals to practice chiropractic under the laws of any other state, territory of the United States, the District of Columbia, Puerto Rico, or province of Canada, if the commission determines an applicant has qualifications that are substantially equivalent to the requirements in this section.

An applicant may apply for licensure by endorsement by submitting to the commission:

(1) A completed application on forms provided by the department;

(2) A fee as specified in WAC 246-808-990; and

(3) Evidence, satisfactory to the commission that the applicant, at the time of application under this section:

(a) ~~((That the license))~~ Is licensed to practice chiropractic in another jurisdiction including, but not limited to, another state, a territory of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a province in Canada;

(b) ~~((That the))~~ Has credentials and qualifications that are substantially equivalent to ((the)) Washington state's requirements ((of the state of Washington)) for licensure by examination ((at the time of application under this section));

(c) ~~((That the jurisdiction in which the applicant is licensed grants similar recognition to licensees in the state of Washington;~~

(d) ~~That the applicant))~~ Has been engaged in the full-time practice of chiropractic, or has taught general clinical chiropractic subjects at an accredited school of chiropractic ~~(, as set forth in WAC 246-808-040, in a jurisdiction described in subsection (3)(a) of this section for at least three of the five years immediately preceding application under this section));~~

~~((e) That the applicant))~~ (d) Has not been convicted of a crime, if ~~((such))~~ the crime would be grounds for the ~~((refusal))~~ denial, suspension, or revocation of a license to practice chiropractic in ~~((this))~~ the state ~~((if committed in the state))~~ of Washington;

~~((f) That the applicant's))~~ (e) Has a license to practice chiropractic that is not ((, at the time of application under this section;)) suspended ~~((or)),~~ revoked, or otherwise condi-

tioned or restricted, in any jurisdiction, ~~((based on grounds))~~ which would be grounds for the ~~((refusal))~~ denial, suspension or revocation of a license to practice chiropractic in ~~((this))~~ the state of Washington; and

~~((g))~~ (f) Of passing an open book written jurisprudence examination ((and National Board of Chiropractic Examiners Special Purpose Examination for Chiropractors (SPEC))) with a minimum passing score of ninety-five percent.

WSR 05-13-187  
PROPOSED RULES  
DEPARTMENT OF HEALTH  
[Filed June 22, 2005, 8:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 03-05-020.

Title of Rule and Other Identifying Information: WAC 246-924-354 Maintenance and retention of records for psychologists.

Hearing Location(s): Department of Health, 310 Israel Road, Room #153, Tumwater, WA 98501, on July 29, 2005, at 9:30 a.m.

Date of Intended Adoption: July 29, 2005.

Submit Written Comments to: Janice K. Boden, Program Manager, Department of Health, P.O. Box 47869, Olympia, WA 98504-7869, e-mail www3.doh.wa.gov/policyreview/, fax (360) 236-4909, by July 15, 2005.

Assistance for Persons with Disabilities: Contact Janice K. Boden at (360) 236-4912, by July 15, 2005, TTY (800) 833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal amends WAC 246-924-354 Maintenance and retention of records, by establishing minimum retention periods for client records and requiring psychologists to establish an office policy identifying how client records will be maintained in the event that the psychologist is no longer practicing.

The anticipated effects of this change are that clients' psychological records will be retained for an adequate period of time and each psychologist will have a plan in place to protect those records and allow appropriate access to them after the psychologist is no longer practicing.

Reasons Supporting Proposal: This rule will help psychologists manage client records in a way that ensures adequate retention and client access.

Statutory Authority for Adoption: RCW 18.83.050, 18.130.050.

Statute Being Implemented: RCW 18.130.050.

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

Name of Proponent: Washington State Examining Board of Psychology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Janice K. Boden, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-4912.

A small business economic impact statement has been prepared under chapter 19.85 RCW.



PROPOSED

**Small Business Economic Impact Statement**

**1. Briefly Describe the Proposed Rule:** The proposed rule amendment seeks to protect the public by setting standards for licensed psychologists concerning client records retention and access. Specifically, the proposal:

- Clarifies wording.
- Requires all records be retained for a minimum of eight years following the last professional contact with the client(s).
- Within this eight-year period all records must be maintained securely with proper limited access and in accordance with any other applicable state or federal laws.
- In the case of minors under the age of eighteen, the records must be retained until the client reaches the age of twenty-two or for eight years, whichever is longer.
- Requires the psychologist rendering services to have a written policy to ensure the maintenance and confidentiality of the client records in the event of retirement, discontinuation of practice or employment, discontinuation of practice in Washington, or inability to maintain practice or employment (e.g., illness or death of the psychologist).

- This written policy must be made available to the board, upon written request, within sixty days.
- The written policy shall specify:
  - A qualified person(s) or, if appropriate, hospital, clinic or other health care facility, to make necessary clinically relevant referrals if the psychologist is unable to do so.
  - A plan for fulfilling record requests described under this subsection.
  - That the subsequent record holder maintain records in accordance with any other applicable state or federal laws or rules.
  - In the case of psychological or neuropsychological evaluations, tests or assessments, the psychologist may exercise clinical judgment in determining whether or not to retain specific records beyond the minimum retention period specified in the rule.

**2. Is a Small Business Economic Impact Statement (SBEIS) Required for this Rule?** Yes. An SBEIS is required because the rule imposes more than minor costs on the industry.

**3. Which Industries are Affected by this Rule?** In preparing this SBEIS, the Department of Health identified the following SIC codes based on input from stakeholders:

**Table 1**

Description	No. of Units	No. of Employees	Avg. Employees < 50	Avg. Employees Top 10%	Threshold (\$)
Skilled nursing care facilities	281	26,407	15	116	195.64
Psychiatric hospitals	6	3,177		147	NA
Colleges and universities	124	43,952	7	1,274	66.1
Individual and family services	1,261	29,061	9	181	66.1
Social services, nec	372	3,400	5	61	66.1

**4. What are the Costs of Complying with this Rule for Small Businesses (Those with Fifty or Fewer Employees) and for the Largest 10% of Businesses Affected?**

**1. Retention and maintenance of records (WAC 246-924-354 (2) and (3)):** The proposed rule amendment does not add additional costs for retaining records. Practitioners are already creating and maintaining records. Some of the records are stored electronically and some are stored in file cabinets or storage boxes. There are no costs associated with the proposed requirement of maintaining records for a minimum of eight years. Practitioners are already creating records for clients; therefore, this rule does not add an additional cost. Many practitioners are currently retaining records for longer than eight years; those individuals may actually see a reduction in costs under the new rule.

The benefits associated from the proposed rule amendment include the clarification of the duration psychologists must retain and maintain client records and possible savings for psychologists that retain and maintain records longer than eight years. Currently, psychology records are maintained for a duration of time that is at the discretion of the psychologist. This time can vary significantly depending on factors such as specialty area of practice and number of clients. The

common standard among practitioners is ten years. However, numerous practitioners retain and maintain records for a much longer period. Few practitioners retain records for less than five years.

**2. Creation of the written policy (WAC 246-924-354(3)):** The cost associated with development of a written policy is minimal and can be easily absorbed by the practitioner. The proposed rule amendment provides the framework for the policy language which can then be easily modified by the practitioner into their individual policy. The Department of Health assumes that a psychologist can generate the policy in one hour. The average psychologist in Washington earns \$140 per hour. The total cost to generate the policy is \$140.

Associated benefits of the proposed rule amendment ensures the maintenance and confidentiality of the client records in the event of retirement, discontinuation of practice or employment, discontinuation of practice in the state of Washington, or inability to maintain practice or employment. Currently, no such written policy is required to maintain psychology records. The board wanted to allow each psychologist the flexibility to create records management practices that make sense to that individual. There are several other statutes and regulations such as chapter 70.02 RCW, Health

Care Information Act, and Health Insurance Portability and Accountability Act (HIPAA) that the psychologist must abide by concerning confidentiality, electronic transmission, and maintenance of client records. The proposed rule amendment is not intended to be all inclusive of these requirements.

3. *The written policy must be made available to the board, upon written request, within sixty days:* The cost associated with providing a copy of the written policy is minimal: Salary and benefits for clerical staff processing time, photo copying cost for one or two pages, cost of envelope and postage. The benefit of providing the policy to the board is to increase likelihood of compliance and to give the board the authority to request the policy if the board receives a complaint about a practitioner. The benefit of the proposed rule amendment outweighs the minimal cost.

5. **Does the Rule Impose a Disproportionate Impact on Small Businesses?** Assuming each licensed psychologist is responsible for the retention and maintenance of his/her client records, the proposed changes to the rule do not impose a disproportionate impact on small businesses. The cost is the same for psychologists in both small and large businesses.

However, the possibility of a disproportionate impact on small businesses may exist. This is based on the assumption that large businesses provide record retention facilities free of charge for their psychologists. Psychologists that are employed at federal, state, or local agencies are practicing in settings that are exempt from various state regulations regarding individual practitioners. The agency is responsible for the records.

Psychologists that work in a clinic setting may maintain client records individually or collectively depending upon factors such as employee/employer relationships, articles of incorporation, or individual agreements within the clinic.

6. **How are Small Businesses Involved in the Development of this Rule?** Approximately two-thirds of the practitioners are practicing in settings that the Department of Health considers small businesses. All licensed psychologists were informed through newsletters and meeting minutes. Their comments were requested during the comment period. Phone call inquiries were addressed as received.

A copy of the statement may be obtained by contacting Janice K. Boden, Department of Health, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4912, fax (360) 236-4909, e-mail janice.boden@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Janice K. Boden, Department of Health, P.O. Box 47869, Olympia, WA 98504-7869, phone (360) 236-4912, fax (360) 236-4909, e-mail janice.boden@doh.wa.gov.

April 15, 2005  
Janice K. Boden  
Program Manager

**AMENDATORY SECTION** (Amending Order 337B, filed 3/10/93, effective 4/10/93)

**WAC 246-924-354 Maintenance and retention of records.** (1) ~~((The))~~ A psychologist ~~((rendering))~~ who renders professional services to a client or clients, or ~~((render-~~

~~ing)) renders~~ services billed to a third party payor, shall document services except as provided in (g) of this subsection. ~~((That))~~ The documentation ((shall)) must include:

- (a) The presenting problem(s), purpose, or diagnosis;
- (b) The fee arrangement;
- (c) The date and service provided;
- (d) A copy of all tests and evaluative reports prepared;
- (e) Notation and results of formal consults including information obtained from other persons or agencies through a release of information;
- (f) Progress notes reflecting on-going treatment and current status; and

(g) If a client requests that no treatment records be kept and the psychologist agrees to the request, the client's request must be in writing and ((only)) retained with the following ((must-be-retained)) information:

- (i) Identity of the recipient of the services;
- (ii) Service dates and fees;
- (iii) Description of services;
- (iv) ~~((Written request that no records be kept.~~

~~2))~~ The psychologist shall not agree to the request if maintaining records is required by other state or federal law.

(2) All records must be retained for at least eight years following the last professional contact with the client(s). In the case of minors under the age of eighteen, the records must be retained until the client reaches the age of twenty-two or for eight years, whichever is longer.

All records must be securely maintained with appropriate limited access in accordance with any other applicable state or federal laws.

(3) The psychologist rendering services must have a written policy to ensure the maintenance and confidentiality of the client records in the event of retirement, discontinuation of practice or employment, discontinuation of practice in the state of Washington, or inability to maintain practice or employment (e.g., illness or death of the psychologist).

This written policy must be made available to the board, upon written request, within sixty days. The written policy shall:

(a) Designate a qualified person(s) or, if appropriate, hospital, clinic or other health care facility, to make necessary clinically relevant referrals if the psychologist is unable to do so;

(b) Detail a plan for fulfilling record requests described under this subsection; and

(c) Require the subsequent record holder to maintain records in accordance with any other applicable state or federal laws or rules.

(4) In the case of psychological or neuropsychological evaluations, tests or assessments, the psychologist may exercise clinical judgment in determining whether or not to retain specific records beyond the minimum retention period specified in subsection (2) of this section.

(5) After the minimum records retention period is met for a client record, the psychologist may elect to dispose of the record. If the record is disposed of, it shall be done in a secure and confidential manner. Proper disposal means paper is shredded; electronic media is deleted, erased, or reformatted; and other readable forms of media is defaced or rendered unusable or unreadable.

**WSR 05-13-192**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
 [Filed June 22, 2005, 10:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-10-104.

Title of Rule and Other Identifying Information: Amend WAC 232-28-285 2005-2006 Pilot cougar hunting seasons with the aid of dogs.

Hearing Location(s): Mirabeau Park Hotel, North 1100 Sullivan Road, Spokane Valley, WA 99037, (509) 924-9000, on August 5-6, 2005, at 8:00 a.m.

Date of Intended Adoption: August 5, 2005.

Submit Written Comments to: Attn: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2612, by Monday, July 18, 2005.

Assistance for Persons with Disabilities: Contact Susan Yeager by August 1, 2005, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Establishes a pilot cougar season with the aid of dogs in Chelan, Okanogan, Ferry, Stevens, and Pend Oreille counties for the 2005-06 winter. Under the rule, an anticipated 102 cougar will be harvested within four hunt zones. Notable changes from the 2004-05 pilot cougar season includes: (1) Certifying hunters own dogs via an affidavit, (2) making sure the permit hunter accompanies dog handlers when dogs are released and pursue cougar, and (3) adding a second drawing for pursuit-only permits if a hunt zone quota is reached.

Reasons Supporting Proposal: Enhance public safety and provide a more effective cougar management program.

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: Washington Fish and Wildlife Commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Natural Resources Building, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2932.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules regulate recreational hunters and do not directly regulate small business.

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

June 21, 2005

Evan Jacoby  
 Rules Coordinator

AMENDATORY SECTION (Amending Order 04-284, filed 10/14/04, effective 11/14/04)

WAC 232-28-285 ((2004-2005)) 2005-2006 Pilot cougar hunting seasons with the aid of dogs. As used in this section and in the context of pilot cougar hunting seasons, the following definitions apply:

"Accompany" means the dog handler and permit hunter must be in the physical presence of each other at the time dogs are released from a leash or unrestrained.

"Pursue" or "pursuit" means dogs that are not on a leash or restrained, are in the act of tracking a cougar. Transporting dogs in a motorized vehicle or walking a dog on a leash is not a pursuit.

"Dog owner" means a person that owns and hunts with dogs that are capable of detecting, tracking and treeing a cougar.

"Quota" means the targeted harvest goal. The actual harvest level may exceed the quota.

"Kill permit" allows a hunter to pursue or kill cougar.

"Pursuit permit" allows a hunter to pursue cougar.

(1) The pilot cougar-hunting season will allow use of dogs to hunt cougar. The hunts will consist of pursuit-or-kill seasons and pursuit-only seasons, and are allowed only in Chelan, Okanogan, Ferry, Stevens, and Pend Oreille counties.

(2) Pursuit-or-kill seasons:

Cougar may be pursued or killed with the aid of dogs from December 1, ((2004)) 2005, until the female zone quota has been killed, the total zone quota has been killed, or March 31, ((2005)) 2006, whichever occurs first; EXCEPT GMUs 101 and 204 where cougar may be pursued or killed from January 1, ((2005)) 2006, until the female zone quota has been killed, the total zone quota has been killed, or March 31, ((2005)) 2006, whichever occurs first.

(3) Pursuit-only seasons:

(a) If a zone quota is killed prior to March 31, ((2005)) 2006, cougar may be pursued with dogs in all or portions of that zone until March 31, ((2005)) 2006. Hunters may only pursue cougars in designated pursuit only areas identified on their ((hound)) kill or pursuit-only permit. Hunters may not kill cougar during pursuit-only seasons.

(b) ((Only hunters)) Hunters selected for the pursuit-or-kill season (accompanied by up to three of their identified handlers) may participate in a pursuit-only season. ((Hunters may not kill cougar during pursuit-only seasons.)) Permit hunters that harvest a cougar under a kill permit may continue to pursue cougars until March 31. If a zone quota is killed, the department will also issue pursuit-only permit to hunters drawn at random from the unselected pool of applicants. The director will identify the number of pursuit-only hunters selected.

(4) Hunt areas and kill quotas:

Cougar seasons will be based on a quota system, where permit hunters using dogs may hunt and kill cougar until the allotted numbers of cougar have been killed from each hunt zone or March 31, ((2005)) 2006, whichever occurs first.

(a) Kill quotas start September 1 and will include all cougar killed during seasons with and without the aid of dogs, including cougar seasons under this section, cougar seasons without the aid of dogs authorized under WAC 232-28-272,

PROPOSED

depredation permits, landowner kill permits, and WDFW depredation authority.

(b) Individual problem cougar will continue to be killed on an as-needed basis utilizing depredation permits, land-

owner kill permits, and WDFW depredation authority even if these kills result in exceeding a zone quota.

PROPOSED

CMU	Hunt Choice	Hunt Zone	Area Description	<b>((DRAFT)) QUOTA</b>	
				Total	Female
East Cascades North	9001	Okanogan	Those portions of GMUs 203, 209, 215, 218, 233, 224, 231, 239, and 242 within Okanogan County	28	11
	9002	Chelan	Those portions of GMUs 243, 244, 245, 246, 247, 249, 250, and 251 within Chelan County	10	4
Northeastern	9003	Ferry-Okanogan	GMUs 101, 204	26	10
	9004	Stevens-Pend Oreille	Those portions of GMUs 105, 108, 111, 113, 117, 121 within Stevens and Pend Oreille counties	38	15

**(5) Quota hotline:**

Permit hunters participating in a pursuit-or-kill season must call the toll free cougar quota hotline within twenty-four hours prior to each day hunting cougar to determine if the zone quota has been killed and the zone is closed. Hunters who hunt more than one consecutive day must call the quota hotline once daily to determine if the zone quota is killed. Hunters who harvest a cougar with the aid of dogs must notify the department within twenty-four hours of kill (excluding legal state holidays) and provide the hunter's name, date and location of kill, and sex of animal. The raw pelt of a cougar, with proof of sex naturally attached, must be sealed by an authorized department employee within five days of the notification of kill. Any person who takes a cougar must present the cougar skull in such a manner that teeth and biological samples can be extracted to an authorized department employee at the time of sealing.

**((Permit)) Kill or pursuit-only permit eligibility:**

**(a) To apply for a kill or pursuit-only permit under this section, individuals just sign an affidavit provided by the department, certifying under penalty of false swearing under RCW 9A.72.040 that they are a dog owner. The affidavit must be mailed to WDFW by the date and time identified by the director. Individuals not registered as a dog owner will not be issued a permit.**

**((a)) (b) To apply for a kill or pursuit-only permit under this section, individuals must purchase a cougar permit application and submit the application in compliance with WAC 232-28-291 by a date and time identified by the director.**

**((b)) (c) To be eligible for a permit, the participant must be a Washington resident ((dog hunter as defined in WAC 232-12-243,)) who at the time of application for a permit possesses a valid big game license with cougar as a species option. The permit holder must use dogs while participating in a cougar hunt under this section.**

**((c)) (d) A permit will not be issued to any person who has been convicted of unlawful use of dogs under RCW 77.15.245 within the five-year period prior to December 1,**

2004. Any person issued a permit and who is subsequently convicted of any wildlife offense while participating in a pursuit-or-kill or pursuit-only season, or who violates any condition of the permit, will have the permit revoked and will be ineligible to participate in the remainder of the three-year pilot program.

**(7) Permit issuance procedure:**

**(a) The number of kill permits for a pursuit-or-kill season with the aid of dogs may be established by the director, but will not exceed two times the total cougar quota for each hunt zone.**

**(b) The department will issue ((hound)) kill or pursuit-only permits to the persons whose applications are drawn at random. Individuals selected will be notified by telephone or mail. Individuals selected must ((contact)) return the signed affidavit to the department's wildlife program in Olympia ((and accept the hound permit)) within fifteen days of being notified. Failure to ((contact)) return the completed affidavit to the department will result in forfeit of the permit. ((Permits)) Kill and pursuit-only permits may not be sold or re-assigned.**

**(c) If a female zone quota or total zone quota is not killed in a hunt zone by ((February 1)) January 15 (or sooner as identified by the director), then the department will issue ((hound)) kill permits to additional hunters. Hunters will be drawn at random from the unselected pool of applicants and must be a resident of one of the five counties.**

**(8) Qualifications for participation and requirements:**

In addition to the provisions applicable to all cougar hunters:

**(a) Successful applicants must complete a ((hound permit)) training program prior to participating in a pursuit-or-kill season or pursuit-only season with the aid of dogs.**

**(b) Participants must have their ((hound)) permit issued by the department in ((the person's)) their possession while hunting cougar.**

**(c) Individuals selected for a ((hound)) kill permit may kill and possess two cougar per permit and only the permittee**

may kill the cougar(s). However, a ~~((hound))~~ kill permit holder may not kill a second cougar in a hunt zone until ~~((February 1))~~ January 15 (or sooner as identified by the director).

(d) Individuals selected for a cougar ~~((pursuit or))~~ kill or pursuit-only permit ~~((season with the aid of dogs))~~ may ~~((identify up to five hound))~~ use dog handlers. However, no more than three ~~((of the five))~~ handlers may accompany the permittee while hunting or pursuing cougar. ~~((The names of the five hound handlers must be provided to the department prior to their participation in the hunt. These names will be listed on the ((hound)) kill or pursuit-only permit. Hound handlers not identified on the permit are not allowed to participate.))~~ Dog handlers may not pursue cougar when the permit hunter is not present at the time the dogs are released from a leash or unrestrained. Dog handlers must have a dog handler identification card, issued by the department, in their possession while participating in a pursuit-or-kill season or pursuit-only season.

(e) ~~((Hound))~~ Dog handlers must be a Washington resident and possess a valid hunting license.

(f) It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens.

(g) Participants must have a vehicle placard issued by the department. The vehicle placard must be placed in the permittee's and ~~((hound))~~ dog handler's vehicles and be visible from outside the vehicles at all times while hunting or pursuing cougar.

(h) ~~((Participants))~~ Kill and pursuit-only permit hunters are required to maintain and return to the department ~~((upon request,))~~ a pilot cougar hunting season logbook. At the end of each day hunting cougar, the permit hunters must record their hunting activities, including that of their dog handlers, in their logbook. If requested by department staff, permit hunters must provide the logbook for inspection. Logbooks must be mailed to the department at WDFW-Pilot Cougar Hunt, 600 Capitol Way North, Olympia, WA 98501-1091 by April 10, 2006. A violation of this requirement under this subsection is punishable as an infraction under RCW 77.15.160.

(9) The permit belongs to the state of Washington. The permit holder may be required to return to or turn over to the department the permit when, in the judgment of the department, the permit holder violates any conditions of the permit, violates trespass laws while acting under this permit, or violates any other criminal law or hunting regulation of the state while acting under this permit. If the permit holder is required to return to or turn over to the department the permit, the permit holder may request an appeal of that action in accordance with chapter 34.05 RCW. Appeal request shall be filed in writing and returned within twenty days of the date of action and be addressed to WDFW Legal Services Office, 600 Capitol Way North, Olympia, Washington 98501-1091.

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

WSR 05-13-193  
PROPOSED RULES  
DEPARTMENT OF  
FISH AND WILDLIFE  
[Filed June 22, 2005, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-10-104.

Title of Rule and Other Identifying Information: WAC 232-28-299 Mandatory report of hunting activity, 232-12-421 Hunt or possess big game without an access permit, 232-12-422 Hunt or possess a wild animal or wild bird without an access permit, and 232-12-423 Public hunting and access agreements defined.

Hearing Location(s): Mairabeau Park Hotel, North 1100 Sullivan Road, Spokane Valley, WA 99037, (509) 924-9000, on August 5-6, 2005, at 8:00 a.m.

Date of Intended Adoption: August 5, 2005.

Submit Written Comments to: Attn: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2612, by Monday, July 18, 2005.

Assistance for Persons with Disabilities: Contact Susan Yeager by August 1, 2005, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 232-28-299, amends the rule to create a \$10 penalty for failure to report hunting activity for deer, elk, bear, and turkey by the 31st of January. It also eliminates the requirement to report prior to receiving a license. The penalty must be paid instead of providing the late harvest report.

WAC 232-12-421, this proposal establishes a new rule, which makes hunting or possessing big game taken on private lands under agreement with the department without an access permit punishable as a gross misdemeanor or class C felony as appropriate.

WAC 232-12-422, this proposal establishes a new rule, which makes hunting or possessing a wild animal or wild bird taken on private lands under agreement with the department without an access permit punishable as a misdemeanor.

WAC 232-12-423, this proposal establishes a new rule that defines "public hunting" for the purpose of paying damage claims and defines department access programs.

Reasons Supporting Proposal: WAC 232-28-299, reporting compliance has declined each year since the requirement was established four years ago. Accurate harvest information is necessary for developing hunting season recommendations and determining the effect of regulations on these game species.

WAC 232-12-421, this rule raises the level of penalty for trespass for the purpose of big game hunting on those private lands under agreement with the department.

WAC 232-12-422, this rule provides greater clarity of violation of access permit requirements than simple trespass or failure to obey posted signs.

WAC 232-12-423, this rule clarifies what constitutes public hunting for the purpose of claiming damage and allows the department to craft [draft] hunting opportunities that will help alleviate or reduce crop damage.

PROPOSED

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: Washington Fish and Wildlife Commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Natural Resources Building, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2932.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules regulate recreational hunters and do not directly regulate small business.

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

June 21, 2005

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 02-129, filed 7/8/02, effective 8/8/02)

**WAC 232-28-299 Mandatory report of hunting activity.** (1) All hunters purchasing a hunting license must report their hunting activity for deer, elk, bear, or turkey.

(a) Hunters must report hunting activity, for each tag acquired, by January 31.

(b) Reports must be made using the department's designated automated telephone hunter reporting system (toll free) or internet hunter reporting system.

(c) Any hunter not reporting, for each tag acquired, by January 31 will be in noncompliance of reporting requirements.

(d) Compliance will be credited for each species for which a transport tag is acquired.

(2) As an incentive for prompt reporting, all successful hunters who report harvest within 10 days of killing an animal and unsuccessful hunters who report by midnight January 10 or within 10 days after the last day of their permit hunt will be entered into a drawing for special deer and elk incentive permits. To be eligible for the drawing, hunters must report their hunting activity for each transport tag acquired.

~~((Special incentive permits for 2002.~~

~~(a) There will be two (2) any elk special incentive permits for western Washington and two (2) for eastern Washington for use in any area open to general or permit hunting seasons except private lands wildlife management areas and GMUs 157, 162, 166, and 485.~~

~~(b) There will be five (5) statewide any deer special incentive permits, for use in any area open to general or permit hunting seasons except private lands wildlife management areas and GMUs 157 and 485.~~

~~(c) Open season: The deer or elk special incentive permit hunter must use archery equipment during archery seasons, muzzleloader equipment during muzzleloader seasons, and any legal weapon at other times if there are no firearm restrictions.~~

~~(d) The dates for the hunts will be September 1 to December 31, 2002.~~

~~(e) Hunters awarded the special incentive permit will be required to send the appropriate license fee to the department of fish and wildlife headquarters in Olympia. The department will issue the license and transport tag and send it to the special incentive permit winner.~~

~~(f) Bag limit: One additional deer or elk.)~~

(3) ~~((Beginning with license year 2002 and there after, hunters))~~ Hunters who have not reported hunting activity by January 31 for ~~((the))~~ deer, elk, bear, or turkey tags acquired the previous year will be required to ~~((complete a hunting report for those species))~~ pay a \$10 penalty before a new license ~~((for))~~ that ~~((species))~~ includes deer, elk, bear, or turkey tags will be issued. A hunter may only be penalized a maximum of \$10 during a license year.

#### NEW SECTION

**WAC 232-12-421 Hunt or possess big game without an access permit.** (1) It is unlawful to hunt for big game or possess big game taken on property under an access agreement between the landowner or land manager and the department, unless the hunter possesses a valid access permit provided on a standard form by the department, and issued to the hunter by the landowner, land manager, or the department in addition to all other required hunting licenses and permits.

(2) Each big game animal possessed in violation of this section shall be treated as a separate offense under RCW 77.15.030.

(3) Violation of this section is punishable under RCW 77.15.410, unlawful recreational hunting of big game in the second degree, unless the hunting for or possession of big game constitutes unlawful recreational hunting of big game in the first degree.

#### NEW SECTION

**WAC 232-12-422 Hunt or possess a wild animal or wild bird without an access permit.** (1) It is unlawful to hunt for a wild animal except big game or wild bird or possess any wild animal except big game or wild bird taken on property under an access agreement between the landowner or land manager and the department, unless the hunter possesses a valid access permit provided on a standard form by the department, and issued to the hunter by the landowner, land manager, or the department in addition to all other required hunting licenses and permits.

(2) Violation of this section is punishable under RCWs 77.15.400 or 77.15.430.

#### NEW SECTION

**WAC 232-12-423 Public hunting defined and access agreements** "Public hunting" generally means that land is open to hunting for all licensed hunters.

(1) For the purpose of defining the term "public hunting" for payment of crop damage in RCW 77.36.060, "public hunting" has been allowed by the landowner when:

(a) The landowner opens the property on which the damage is claimed under RCW 77.36.040, for general access to all licensed hunters; or

(b) The landowner had entered into and complied with an Access Agreement with the department covering the land(s) on which the damage is claimed under RCW 77.36.-040, for the hunting season prior to the occurrence of the damage.

(2) Access Agreements shall require that:

(a) The land is open to general access to all licensed hunters; or

(b) The landowner allows the department to select the hunters who are authorized to access the land; or

(c) The landowner and the department share selection of the hunters authorized to hunt on the landowner's land consistent with applicable commission policy or rule.

**WSR 05-13-197**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
 [Filed June 22, 2005, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-10-104.

Title of Rule and Other Identifying Information: Adopting WAC 232-28-429 2005-06 Migratory waterfowl seasons and regulations and repealing WAC 232-28-428 2004-05 Migratory waterfowl seasons and regulations.

Hearing Location(s): Mirabeau Park Hotel, North 1100 Sullivan Road, Spokane Valley, WA 99037, (509) 924-9000, on August 5-6, 2005, at 8:00 a.m.

Date of Intended Adoption: August 5, 2005.

Submit Written Comments to: Attn: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2612, by Monday, July 18, 2005.

Assistance for Persons with Disabilities: Contact Susan Yeager by August 1, 2005, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Purpose of the proposal is to adopt WAC 232-28-429 2005-06 Migratory waterfowl seasons and regulations. The WAC specifies legal season dates, bag limits, and open areas to hunt waterfowl for the 2005-06 hunting season.

Reasons Supporting Proposal: Waterfowl seasons and regulations are developed based on cooperative management programs among states of the Pacific Flyway and the United States Fish and Wildlife Services, considering population status and other biological parameters. The rule establishes waterfowl seasons and regulations to provide recreational opportunity, control waterfowl damage, and conserve the waterfowl resources of Washington.

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: Washington Fish and Wildlife Commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Brittell, Natural Resources Building, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2932.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules regulate recreational hunters and do not directly regulate small business.

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

June 22, 2005

Evan Jacoby

Rules Coordinator

**NEW SECTION**

**WAC 232-28-429 2005-06 Migratory waterfowl seasons and regulations.**

**DUCKS**

Statewide

Oct. 15-19, 2005 and Oct. 22, 2005 - Jan. 29, 2006.

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 17-18, 2005.

Daily bag limit: 7 ducks, to include not more than 2 hen mallard, 1 pintail, 4 scaup, 1 canvasback, 2 redhead, 1 harlequin, 4 scoter, and 4 long-tailed duck.

Possession limit: 14 ducks, to include not more than 4 hen mallard, 2 pintail, 8 scaup, 2 canvasback, 4 redhead, 1 harlequin, 8 scoter, and 8 long-tailed duck.

Season limit: 1 harlequin

**WRITTEN AUTHORIZATION REQUIRED TO HUNT SEA DUCKS.**

All persons hunting sea ducks (harlequin, scoter, long-tailed duck) in Western Washington are required to obtain a written authorization and harvest report from the Washington department of fish and wildlife. Hunters must fill out an application (available at Washington department of fish and wildlife, Olympia and regional offices). Application forms must be delivered to a department office no later than September 25 or postmarked on or before September 25 in order for applicants to be mailed a 2005-06 authorization before the season starts. Immediately after taking a sea duck into possession, hunters must record in ink the information required on the harvest report. Return of the harvest report is mandatory. By February 15, 2006, hunters must return the harvest report to the Washington department of fish and wildlife, or report harvest information on the department's internet reporting system. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2006-07 sea duck season.

**COOT (Mudhen)**

Same areas, dates (including youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 25 coots.

Possession limit: 25 coots.

**COMMON SNIPE**

Same areas, dates (except youth hunting weekend), and shooting hours as the general duck season.

Daily bag limit: 8 snipe.

Possession limit: 16 snipe.

**GEESE (except Brant and Aleutian geese)**

Special youth hunting weekend open only to hunters 15 years of age or under (must be accompanied by an adult at least 18 years old who is not hunting): Sept. 17-18, 2005, statewide except Western Washington Goose Management Areas 2A and 2B.

Daily bag limit: 4 Canada geese.

Possession limit: 8 Canada geese.

**Western Washington Goose Seasons****Goose Management Area 1**

Island, Skagit, Snohomish counties.

Oct. 15, 2005 - Jan. 8, 2006 for snow, Ross', or blue geese.

Oct. 15-27, 2005 and Nov. 5, 2005 - Jan. 29, 2006 for other geese (except Brant and Aleutian geese).

Daily bag limit: 4 geese

Possession limit: 8 geese

**WRITTEN AUTHORIZATION REQUIRED TO HUNT SNOW GEESE.**

All persons hunting snow geese in this season are required to obtain a written authorization and harvest report from the Washington department of fish and wildlife. Hunters who held a 2004-05 authorization and returned the harvest report prior to the deadline will be mailed a 2005-06 authorization in early October. Hunters who did not possess a 2004-05 authorization must fill out an application (available at Washington department of fish and wildlife, Olympia and regional offices). Application forms must be delivered to a department office no later than September 25 or postmarked on or before September 25 in order for applicants to be mailed a 2005-06 authorization before the season starts. No applications will be accepted after October 31, 2005. Immediately after taking a snow goose into possession, hunters must record in ink the information required on the harvest report. Return of the harvest report is mandatory. By February 15, 2006, hunters must return the harvest report to the Washington department of fish and wildlife, or report harvest information on the department's internet reporting system. Hunters failing to comply with reporting requirements will be ineligible to participate in the 2006-07 snow goose season.

**Goose Management Area 2A**

Cowlitz and Wahkiakum counties, and that part of Clark County north of the Washougal River.

Open in all areas except Ridgefield NWR from 8:00 a.m. to 4:00 p.m. Saturdays, Sundays, and Wednesdays only, Nov. 12-27, 2005 and Dec. 7, 2005 - Jan. 29, 2006, except closed Dec. 25, 2005 and Jan. 1, 2006. Ridgefield NWR open from 8:00 a.m. to 4:00 p.m. Tuesdays, Thursdays, and Saturdays only, Nov. 15-26, 2005 and Dec. 8, 2005 - Jan. 21, 2006, except closed Nov. 24, 2005.

**Goose Management Area 2B**

Pacific and Grays Harbor counties.

Open from 8:00 a.m. to 4:00 p.m., Saturdays and Wednesdays only, Oct. 15, 2005 - Jan. 14, 2006.

Bag limits for Goose Management Areas 2A and 2B:

Daily bag limit: 4 geese, to include not more than 1 dusky Canada goose and 2 cackling geese

Possession limit: 8 geese, to include not more than 1 dusky Canada goose and 2 cackling geese

Season limit: 1 dusky Canada goose.

A dusky Canada goose is defined as a dark-breasted (as shown in the Munsell color chart 10 YR, 5 or less) Canada goose with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

**Special Provisions for Goose Management Areas 2A and 2B:**

The Canada goose season for Goose Management Areas 2A and 2B will be closed early if dusky Canada goose harvests exceed area quotas which collectively total 80 geese. The fish and wildlife commission has authorized the director to implement emergency area closures in accordance with the following quotas: A total of 80 duskys, to be distributed 10 for Zone 1 (Ridgefield NWR); 25 for Zone 2 (Cowlitz County south of the Kalama River); 20 for Zone 3 (Clark County except Ridgefield NWR); 10 for Zone 4 (Cowlitz County north of the Kalama River and Wahkiakum County); 10 for Zone 5 (Pacific County); and 5 for Zone 6 (Grays Harbor County). Quotas may be shifted to other zones during the season to optimize use of the statewide quota and minimize depredation.

Hunting is only permitted by written authorization from the Washington department of fish and wildlife. Hunters who maintained a valid 2004-05 written authorization will be mailed a 2005-06 authorization card prior to the 2005-06 season. New hunters and those who did not maintain a valid 2004-05 authorization must review goose identification training materials and score a minimum of 80% on a goose identification test to receive written authorization. Hunters who fail a test must wait 28 days before retesting, and will not be issued a reciprocal authorization until that time. Information on training materials and testing dates/locations is available at the Olympia and regional offices.



With written authorization, hunters will receive a harvest report. Hunters must carry the authorization card and harvest report while hunting. Immediately after taking a Canada goose (dusky, lesser/Taverner, cackling, or other subspecies) into possession, hunters must record in ink the information required on the harvest report. Hunters must go directly to the nearest check station and have geese tagged when leaving a hunt site, before 6:00 p.m. If a hunter takes the season bag limit of one dusky Canada goose or does not comply with requirements listed above regarding checking of birds and recording harvest on the harvest report, written authorization will be invalidated and the hunter will not be able to hunt Canada geese in Goose Management Areas 2A and 2B for the remainder of the season and the special late Canada goose season. It is unlawful to fail to comply with all provisions listed above for Goose Management Areas 2A and 2B.

#### **Special Late Canada Goose Season for Goose Management Area 2A:**

Open to Washington department of fish and wildlife advanced hunter education (AHE) program graduates and youth hunters (15 years of age or under, who are accompanied by an AHE hunter) possessing a valid 2005-06 southwest Washington Canada goose hunting authorization, in areas with goose damage in Goose Management Area 2A on the following days, from 7:00 a.m. to 4:00 p.m.:

Saturdays and Wednesdays only, Feb. 4 - Mar. 8, 2006.

Daily bag limit: 4 Canada geese, to include not more than 1 dusky Canada goose and 2 cackling geese.

Possession limit: 8 Canada geese, to include not more than 1 dusky Canada goose and 2 cackling geese.

Season limit: 1 dusky Canada goose.

A dusky Canada goose is defined as a dark-breasted Canada goose (as shown in the Munsell color chart 10 YR, 5 or less) with a culmen (bill) length of 40-50 mm. A cackling goose is defined as a goose with a culmen (bill) length of 32 mm or less.

Hunters qualifying for the season will be placed on a list for participation in this hunt. Washington department of fish and wildlife will assist landowners with contacting qualified hunters to participate in damage control hunts on specific lands incurring goose damage. Participation in this hunt will depend on the level of damage experienced by landowners. The special late Canada goose season will be closed by emergency action if the harvest of dusky Canada geese exceeds 85 for the regular and late seasons. All provisions listed above for Goose Management Area 2A regarding written authorization, harvest reporting, and checking requirements also apply to the special late season; except hunters must confirm their participation at least 24 hours in advance by calling the goose hunting hotline (listed on hunting authorization), and hunters must check out by 5:00 p.m. on each hunt day regardless of success. It is unlawful to fail to comply with all provisions listed above for the special late season in Goose Management Area 2A.

#### **Goose Management Area 3**

Includes all parts of Western Washington not included in Goose Management Areas 1, 2A, and 2B.

Oct. 15-27, 2005 and Nov. 5, 2005 - Jan. 29, 2006.

Daily bag limit: 4 geese

Possession limit: 8 geese

#### **Eastern Washington Goose Seasons**

##### **Goose Management Area 4**

Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla counties.

Oct. 15-17, 2005, and Saturdays, Sundays, and Wednesdays only during Oct. 22, 2005 - Jan. 22, 2006; Nov. 11, 24, and 25, 2005; Dec. 26, 27, 29, and 30, 2005; and every day Jan. 23-29, 2006.

##### **Goose Management Area 5**

Includes all parts of Eastern Washington not included in Goose Management Area 4.

Oct. 15-17, 2005, every day from Oct. 22, 2005 - Jan. 29, 2006.

Bag limits for all Eastern Washington Goose Management Areas:

Daily bag limit: 4 geese

Possession limit: 8 geese

#### **BRANT**

Open in Skagit and Pacific counties only on the following dates:

Jan. 21, 22, 24, 26, 28, 2006.

If the 2005-06 preseason brant population in Skagit County is below 6,000 (as determined by the early January survey), the brant season in Skagit County will be canceled.

#### **WRITTEN AUTHORIZATION REQUIRED:**

All hunters participating in this season are required to obtain a written authorization and harvest report from the Washington department of fish and wildlife. Hunters who held a 2004-05 authorization and reported harvest prior to the deadline will be mailed a 2005-06 authorization in November. Hunters who did not possess a 2004-05 authorization must fill out an application (available at Washington department of fish and wildlife regional offices). Application forms must be delivered to a department office no later than 5:00 p.m. on November 8, or postmarked on or before November 8, after which applicants will be mailed a 2005-06 authorization. Late applications will not be accepted. Immediately after taking a brant into possession, hunters must record in ink the information required on the harvest report. Return of the harvest report is mandatory. By February 15, 2006, hunters must return the harvest report to the Washington department of fish and wildlife, or report harvest information on the department's internet reporting system. Hunters failing to

comply with reporting requirements will be ineligible to participate in the 2006-07 brant season.

Bag limits for Skagit and Pacific counties:

Daily bag limit: 2 brant.

Possession limit: 4 brant.

#### ALEUTIAN GEESE AND SWANS

Season closed statewide.

#### FALCONRY SEASONS

##### DUCKS, COOTS, AND SNIPE (Falconry)

(Bag limits include geese and mourning doves.)

Oct. 15-19, 2005 and Oct. 22, 2005 - Jan. 29, 2006 statewide.

Daily bag limit: 3, straight or mixed bag with geese and mourning doves during established seasons.

Possession limit: 6, straight or mixed bag with geese and mourning doves during established seasons.

##### GEESE (Falconry)

(Bag limits include ducks, coot, snipe, and mourning doves.)

Goose Management Area 1: Oct. 15, 2005 - Jan. 8, 2006.

Goose Management Area 2A: Saturdays, Sundays, and Wednesdays only, Nov. 12-27, 2005 and Dec. 7, 2005 - Jan. 29, 2006, except closed Dec. 25, 2005 and Jan. 1, 2006; and Feb. 4 - Mar. 8, 2006.

Goose Management Area 2B: Wednesdays and Saturdays only, Oct. 15, 2005 - Jan. 14, 2006.

Goose Management Areas 3, 4, and 5: Oct. 15-17, 2005 and Nov. 5, 2005 - Jan. 29, 2006.

Daily bag limit for all areas: 3 geese (except brant and Aleutian geese), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

Possession limit for all areas: 6 geese (except brant and Aleutian geese), straight or mixed bag with ducks, coots, snipe, and mourning doves during established seasons.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-428

2004-05 Migratory waterfowl seasons and regulations

WSR 05-13-198  
PROPOSED RULES  
DEPARTMENT OF  
FISH AND WILDLIFE  
[Filed June 22, 2005, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 05-10-104.

Title of Rule and Other Identifying Information: WAC 232-12-068 Nontoxic shot requirements, 232-16-050 Byron Game Reserve, and 232-16-740 Columbia, Snake, and Yakima River waterfowl, coot, and snipe closures.

Hearing Location(s): Mirabeau Park Hotel, North 1100 Sullivan Road, Spokane Valley, WA 99037, (509) 924-9000, on August 5-6, 2005, at 8:00 a.m.

Date of Intended Adoption: August 5, 2005.

Submit Written Comments to: Attn: Wildlife Program Commission Meeting Public Comments, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Wildthing@dfw.wa.gov, fax (360) 902-2612, by Monday, July 18, 2005.

Assistance for Persons with Disabilities: Contact Susan Yeager by August 1, 2005, TTY (360) 902-2207 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal will amend three rules to update boundary information and allowable nontoxic shot types, without significant changes to existing rules.

Reasons Supporting Proposal: These changes are needed to provide better ability to enforce existing regulations regarding closure and reserve boundaries, and conform to federal rules regarding the use of nontoxic shot.

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: Washington Fish and Wildlife Commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Dave Britnell, Natural Resources Building, Olympia, (360) 902-2504; and Enforcement: Bruce Bjork, Natural Resources Building, Olympia, (360) 902-2932.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules regulate recreational hunters and do not directly regulate small business.

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

June 22, 2005

Evan Jacoby

Rules Coordinator

AMENDATORY SECTION (Amending Order 03-165, filed 7/29/03, effective 8/29/03)

WAC 232-12-068 Nontoxic shot requirements. It is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading) other than nontoxic shot when hunting for waterfowl, coot, or snipe. Nontoxic shot includes steel shot, bismuth-tin shot (97 parts bismuth: 3 parts tin with <1 percent residual lead), tungsten-iron shot (2 types - 40 parts tungsten: 60 parts iron with <1 percent residual lead, and 22 parts tungsten: 78 parts iron with <1 percent residual lead), tungsten-polymer shot (95.5 parts tungsten: 4.5 parts nylon 6 or 11 with <1 percent residual lead), tungsten-matrix shot

(95.9 parts tungsten: 4.1 parts polymer with <1 percent residual lead), tungsten-iron-nickel-tin shot (65% tungsten: 10.4% iron: 2.8% nickel: 21.8% tin, with <1 percent residual lead), ~~((ø))~~ tungsten-nickel-iron shot ~~((50))~~ 20-70% tungsten: ((35)) 10-40% nickel: ((15)) 10-70% iron with <1 percent residual lead, tungsten-tin-bismuth shot (49-71% tungsten, 29-51% tin, 0.5-6.5% bismuth with <1 percent residual lead), and tungsten-bronze shot (51.1% tungsten, 44.4% copper, 3.9% tin, 0.6% iron with <1 percent residual lead). The director may adopt additional nontoxic shot types consistent with federal regulations.

It is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading) other than nontoxic shot in the following areas:

- Bridgeport Bar segment of the Well's Wildlife Area
- Cowlitz Wildlife Area
- Lake Terrell Wildlife Area (including Tennant Lake and other segments)
- Shillapoo Wildlife Area
- Skagit Wildlife Area (all segments)
- Snoqualmie Wildlife Area (all segments)
- Sunnyside Wildlife Area
- The Driscoll Island, Hegdahl, and Kline Parcel segments of the Sinlahekin Wildlife Area
- Vancouver Lake Wildlife Area

It is unlawful to possess shot (either in shotshells or as loose shot for muzzleloading) other than nontoxic shot when hunting for game birds or game animals in the following areas:

- Chehalis River pheasant release site
- Dungeness Recreation Area
- Hunter Farms pheasant release site
- Raymond Airport pheasant release site
- Two Rivers and Wallula Units of the U.S. Fish and Wildlife Service's McNary National Wildlife Refuge
- ~~((AH))~~ All Whidbey Island ~~((Seaplane Base, OLF Coupeville, and Bayview))~~ pheasant release sites~~((-))~~

**AMENDATORY SECTION** (Amending Order, filed 7/29/64; Resolution 168, filed 3/21/60)

**WAC 232-16-050 Byron Game Reserve.** That part of the Byron Ponds segment of the Sunnyside ~~((Game Range))~~ Wildlife Area (department of ~~((game))~~ fish and wildlife lands) east of the Mabton Pressure Pipeline, legally described as ~~((that part of))~~ the W.1/2 of Section 12 that is north of U.S. Highway No. 410 ~~((and the SW1/4 of the NE1/4 and))~~ except for the NE1/4 of the SE1/4 of the SW1/4; the ((N-1/2)) NW1/4 of the NW1/4 of the SE1/4 of Section 12; ((and)) that part of Section 11 east of the Mabton pressure pipeline and north of U.S. Highway No. 410; and that part of Section 2 that is east of said pipeline; all of the above sections being in Twp. 8N., R.23E.W.M.

**AMENDATORY SECTION** (Amending Order 04-207, filed 8/11/04, effective 9/11/04)

**WAC 232-16-740 Columbia, Snake, and Yakima River waterfowl, coot, and snipe closures.** It shall be unlawful to hunt migratory waterfowl, coot and jacksnipe on or within the following described areas:

Section 1. Waters and land below the mean high water mark of Bachelor Island Slough of the Columbia River in Clark County. Bachelor Island Slough is further defined as those waters starting at the south end of the slough at its confluence with the Columbia river, running north along the eastern shore of Bachelor Island to the confluence with Lake River.

Section 2. Klickitat County - the Columbia River and those lands lying within one-quarter mile of the Columbia River upstream from the railroad bridge at Wishram to the grain elevator at Roosevelt.

Section 3. The Columbia River between the mouth of Glade Creek (river channel marker 57) and the old town site of Paterson (river channel marker 67), except the hunting of waterfowl, coot, and snipe is permitted from the main shoreline of the Columbia River in this area.

Section 4. The Columbia River and those lands lying within one-quarter mile of the Columbia River between the old Hanford townsite (Wooden Tower) powerline crossing in Section ~~((30))~~ 24, T13N, ~~((R28E))~~ R27E, to Vernita Bridge (Highway 24).

Section 5. The Columbia River between the public boat launch at Sunland Estates (Wanapum Pool) and a point perpendicular in Kittitas County; upstream to the posted marker 200 yards north of Quilomene Bay and a point perpendicular in Grant County, including islands.

Section 6. The Snake River and those lands within one-quarter mile of the Snake River, between the U.S. Highway 12 bridge near Burbank, upstream to a line running between shoreline navigation ~~((markers 4 and 5 at Levey and Charbonneau Recreation Areas))~~ marker 4 and Levey Park Recreation Area and the Corps of Engineers windmill at Charbonneau Habitat Management Unit.

Section 7. The Yakima River and those lands lying within one-fourth mile of the Yakima River from the Sunnyside-Mabton Road bridge downstream to the Euclid Road bridge (4 miles).

Section 8. The Yakima River and those lands lying within one-fourth mile of the Yakima River from the Grant Avenue bridge (steel bridge) north of Prosser downstream 2-1/2 miles, to the powerline.



**WSR 05-13-099**  
**EXPEDITED RULES**  
**DEPARTMENT OF LICENSING**

[Filed June 16, 2005, 8:36 a.m.]

Title of Rule and Other Identifying Information: Chapter 308-56A WAC, Certificates of title—Motor vehicles, etc., to include WAC 308-56A-090 Disclosure of individual vehicle owner information.

**NOTICE**

**THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Dale R. Brown, Department of Licensing, 1125 Washington Street S.E., P.O. Box 2957, Olympia, WA 98507-2957, AND RECEIVED BY August 24, 2005.**

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** Current rules allow disclosure of addresses in certain instances (example: If the requestor is a business or government agency using the address for a legitimate business purpose). The proposal is to add language to subsection (2)(e) and to add a new subsection (3) that restricts the use of a residence address when disclosure is requested.

SB 5321 restricts us from giving out the residence address if we have an alternate address on the vehicle record.

The anticipated effect of this change will be to limit the disclosure of residence addresses when two addresses are recorded on the record. Both addresses will be provided to courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority, and only for use in the normal course of conducting their business.

This proposal fully implements, without further interpretation, SB 5321 of the 2005 legislative session, limiting the use of residence addresses.

Statutory Authority for Adoption: RCW 46.16.010.

Statute Being Implemented: RCW 46.12.370 and 46.12.380.

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

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Katherine Iyall Vasquez, 1125 Washington Street S.E., Olympia, (360) 902-3718.

June 15, 2005

Liz Luce

Director

**AMENDATORY SECTION** (Amending WSR 02-01-123, filed 12/19/01, effective 1/19/02)

**WAC 308-56A-090 Disclosure of individual vehicle owner information.** (1) **What vehicle record owner information is protected from disclosure?** Vehicle information

protected from disclosure is the same as under chapters 42.17 and 46.12 RCW which includes:

- (a) Name and address information;
- (b) Social Security numbers;
- (c) Medical or disability information; and
- (d) Telephone numbers.

(2) **Who may receive disclosure of individual vehicle owner names and addresses?**

(a) Government agencies that require use of name and address information in their normal course of business;

(b) Any business entity that requires use of name and address information in their normal course of business in accordance with these rules;

(c) Vehicle manufacturers who require vehicle ownership information for recall of their product;

(d) Individuals that provide proof of personal identification:

- (i) For vehicles currently registered in their name; or
- (ii) For vehicles they can provide a bill of sale or acceptable documents indicating that they purchased the vehicle.

(e) Please see subsection (3) of this section for additional restrictions.

Business and government entities requesting disclosure of individual vehicle owner names and addresses must enter into a disclosure agreement with the department.

**(3) When both a mailing and residence address are recorded on the vehicle record, which address will be disclosed? Where both a mailing address and residence address are recorded on the vehicle record and are different, only the mailing address will be disclosed. Both addresses will be disclosed in response to requests from courts, law enforcement agencies, or government entities with enforcement, investigative, or taxing authority and only for use in the normal course of conducting their business.**

**(4) What documentation does the department require to disclose vehicle owner name(s) and address(es)?** The department requires:

(a) A signed and notarized vehicle/vessel record disclosure request application form provided by the department and completed by the applicant indicating the specific purpose for which the information will be used; and

(b) A disclosure agreement with the department as required by RCW 46.12.380.

(c) Acceptable business entity verification; or

(d) A contract with the department.

**((4)) (5) What is acceptable business verification?** For purposes of this section acceptable business verification includes:

(a) If the requester is a licensed Washington business, a copy of its current master business license;

(b) If the requester is a business that is not required to be licensed in this state, its federal employer identification number/federal tax number (or Uniform Business Identifier) on official letterhead with a notarized signature of the owner or an authorized representative;

(c) If an attorney, a copy of the current bar card; or

(d) If a private investigator, a copy of the current private investigator's license.

**((5)) (6) Does a business need to supply a new form and copy of the business license each time vehicle infor-**

**mation is requested?** Yes, each time a request is made for vehicle information a new form and copy of the business license is needed, unless a contract exists between the business and the department.

~~((6))~~ **(7) If a business entity has entered into a contract or agreement with the department, is a separate request for each inquiry required?** No. If a business entity has entered into a signed contract between the business and the department, a separate request for each inquiry is not required.

~~((7))~~ **(8) Are businesses allowed individual owner information on vehicle records?** Yes, if a business requires individual owner information to conduct its regular business and qualifies under RCW 46.12.380 and 18 U.S.C. 27.21 (commonly known as Driver Privacy Protection Act), it may receive individual vehicle owner information.

~~((8))~~ **(9) Who may release the vehicle owner name and address information?**

(a) The public disclosure unit of the vehicle services division of the department of licensing; or

(b) Agents and subagents, but only when disclosing information for purposes described in subsection (2)(d) of this section.

~~((9))~~ **(10) When may the department disclose the individual name(s) and address(es) of vehicle owners?** Notwithstanding the provisions of chapter 42.17 RCW, the department may disclose names and addresses of vehicle owners when:

(a) The requesting party is a business entity that requests the information for use in their normal course of business;

(b) The request is in writing, signed by the person requesting disclosure, contains the full legal name and address of the requesting party and/or their business, and specifies the purpose for which the information will be used; and

(c) The requesting party enters into a disclosure agreement with the department in which the party:

(i) Agrees they will use the information only for the purpose stated in the request for the information; and

(ii) Will not use, or facilitate the use of the information for the purpose of making any unsolicited business contact with a person named in the disclosed information.

~~((10))~~ **(11) What does the term "unsolicited business contact" mean?** The term "unsolicited business contact" means a contact that is intended to result in or promote the sale of any goods or services to a person named in the disclosure information. The term does not apply to situations where the requesting party and such person have been involved in a business transaction prior to the date of the disclosure request and where the request is made in connection with the transaction.

~~((11))~~ **(12) Is the department required to notify the vehicle owner when ownership information is disclosed?** When the department grants a request from an attorney or private investigator for information under this section, the department will provide notice to the vehicle owner that the request has been granted. The notice will provide the name and address of the requesting party. Additionally, if a contract holder releases owner information to a private investigator or attorney, they must notify the vehicle owner that a

request has been granted, and include the name and address of the requesting party.

~~((12))~~ **(13) How long will the department retain the request for disclosure of vehicle owner information?** The department will retain the request for disclosure for three years.

~~((13))~~ **(14) Who is responsible for assuring that the information is used appropriately?** Any person, business, entity or association that receives vehicle owner information under this section is responsible for assuring that the information received is not used for a purpose contrary to the agreement between the person, business, entity or association and the department.

## WSR 05-13-113

### EXPEDITED RULES

### DEPARTMENT OF ECOLOGY

[Order 05-11—Filed June 17, 2005, 4:17 p.m.]

Title of Rule and Other Identifying Information: WAC 173-175-755 Periodic inspection fees and 173-175-765 Fee schedule.

### NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jerry Thielen, Agency Rules Coordinator, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, AND RECEIVED BY August 23, 2005.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2005 legislature passed ESHB 2309. This bill requires ecology to modify some fees the Ecology Dam Safety Office charges for periodic safety inspections of dams less than twenty years old. Ecology must amend WAC 173-175-755 and 173-175-765 so they do not conflict with law. The proposed rule creates a sliding fee scale the agency charges for periodic safety inspections of dams, based upon the age of the dam. The fee for dam inspections will be eliminated for projects less than ten years old. The fee for dams between eleven and twenty years old will be \$250 per year, plus an annual fiscal growth factor, for both high and significant hazard dams. Dams more than twenty years old will pay the existing fees of \$688 for high hazard dams or \$250 for significant hazard dams.

Reasons Supporting Proposal: Legislative action requires changes in the rules that set the scale for fees charged for dam inspections. We are merely changing the rule to not contradict the law.

Statutory Authority for Adoption: RCW 43.21A.064, 43.21A.080, 86.16.061, and 90.03.350.

Statute Being Implemented: RCW 90.03.470 and chapter 412, Laws of 2005.

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, Implementation and Enforcement: Doug Johnson, 300 Desmond Drive, Lacey, WA, (360) 407-6623.

June 13, 2005  
Polly Zehm  
Deputy Director

**AMENDATORY SECTION** (Amending Order 03-08, filed 8/4/04, effective 9/4/04)

**WAC 173-175-755 Periodic inspection fees.** The department is required by RCW 90.03.470(8) to collect in advance a fee based on the actual cost, including the expense incident thereto, of the inspection of any dam to insure safety to life and property. Fee amounts contained in this section represent the department's true estimate of the cost of performing periodic dam safety inspections as described in WAC 173-175-705, and reflect the department's commitment to fully recover all eligible expenses.

**AMENDATORY SECTION** (Amending Order 03-08, filed 8/4/04, effective 9/4/04)

**WAC 173-175-765 Periodic inspection fee schedule.**

(1) The inspection fee amounts are based on the downstream hazard classification of the dam, as determined by the department, and incorporate the fiscal growth factor calculated under chapter 43.135 RCW. The inspection fees for each five-year inspection are prorated on an annual basis.

(a) Equation 1 below is used to calculate the annual inspection fees.

$$\text{Annual Inspection Fee} = (\text{COST}_{\text{FGF}}) + (\text{Cycle}) \text{ Equation 1}$$

Where:

(i) Cycle = number of years between inspections, with five years being the minimum.

(ii) FGF = an annual fiscal growth factor expressed as a percentage, as determined under chapter 43.135 RCW.

(iii)  $\text{COST}_{\text{FGF}}$  = cost of inspection in dollars including a fiscal growth factor. The cost is obtained by multiplying the inspection cost in the preceding year by the current year's fiscal growth factor as follows:

$$\text{COST}_{\text{FGF}} = \text{Previous year's cost} \times [1 + (\text{FGF})] \text{ Equation 2}$$

(b) For implementation of the fiscal growth factor, the base year for dam inspection fees will be fiscal year 2004, ending June 30, 2004. In the base year, the FGF will be zero.

(c) The cost for an inspection by the department in the base year will be as follows:

(i) \$3440.00 for dams with high downstream hazard classifications, with a prorated annual fee of \$688.00 for a five-year inspection cycle.

(ii) \$2500.00 for dams with significant downstream hazard classifications, with a prorated annual fee of \$500.00 if a

five-year inspection cycle is implemented, or \$250.00 if a ten-year inspection cycle is implemented.

(2) **Exceptions to periodic inspection fee schedule.**

(a) For any hydraulic works less than ten years old, that the department examined and approved the construction plans and specifications as to its safety when required under RCW 90.03.350, there shall be no fee charged; or

(b) For any hydraulic works more than ten years old, but less than twenty years old, that the department examined and approved the construction plans and specifications as to its safety when required under RCW 90.03.350, the fee charged shall equal the fee for a significant hazard dam.

(3) **Inspection fee for impoundments with multiple dams.** For reservoirs or impoundments with a main dam and one or more saddle dams, a single annual inspection fee will be charged for the facility. The dam with the highest downstream hazard rating will be used for fee computation.

~~((3))~~ (4) **Inspection fee for multicell impoundments.** For multicell impoundments, such as wastewater lagoons, where two or more cells are located side-by-side or share a common embankment, a single annual inspection fee will be charged for the facility. The cell with the highest downstream hazard classification will be used for fee computation.

~~((4))~~ (5) **Inspection fee for nonroutine inspections.** For nonroutine inspections as described in WAC 173-175-725, no fees will be charged to the dam owner.

~~((5))~~ (6) **Inspection fee for inspections at public request.** For inspections done at public request, as described in WAC 173-175-735, no fees will be charged to the dam owner.

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

**WSR 05-13-153**  
**EXPEDITED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed June 21, 2005, 1:33 p.m.]

Title of Rule and Other Identifying Information: Safety standards for ship repairing, shipbuilding, and shipbreaking, chapter 296-304 WAC.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Carmen Moore, Rule Coordinator, Department of Labor and Industries, P.O. Box 44001, Olympia, WA 98504-4001, AND RECEIVED BY August 22, 2005.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Occupational Safety and Health Administration (OSHA) has added a section to their shipyard rule which lines out requirements for fire protection. We are adding the same requirements to our rule so that we are as-effective-as OSHA.

Reasons Supporting Proposal: We are required by law to make our rules are as-effective-as the federal standards.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

Rule is necessary because of federal law, 29 C.F.R. Part 1915.

Name of Proponent: Department of Labor and Industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, (360) 902-5530; Implementation and Enforcement: Michael Wood, Tumwater, (360) 902-5495.

June 21, 2005

Gary Weeks

Director

**AMENDATORY SECTION** (Amending WSR 03-04-099, filed 2/4/03, effective 8/1/03)

**WAC 296-304-01001 Definitions. "Alarm"** - A signal or message from a person or device that indicates that there is a fire, medical emergency, or other situation that requires emergency response or evacuation. At some shipyards, this may be called an "incident" or a "call for service."

**"Alarm system"** - A system that warns employees at the worksite of danger.

**"Anchorage"** - A secure point to attach lifelines, lanyards, or deceleration devices.

**"Body belt"** - A strap with means to both secure it around the waist and to attach it to a lanyard, lifeline, or deceleration device. Body belts may be used only in fall restraint or positioning device systems and may not be used for fall arrest. Body belts must be at least one and five-eighths inches (4.13 cm) wide.

**"Body harness"** - Straps to secure around an employee so that fall arrest forces are distributed over at least the thighs, shoulders, chest and pelvis with means to attach it to other components of a personal fall arrest system.

**"Class II standpipe system"** - A one and one-half inch (3.8 cm) hose system which provides a means for the control or extinguishment of incipient stage fires.

~~("Cold work")~~ **"Cold work"** - Work that does not involve riveting, welding, burning, or other fire-producing or spark-producing operations.

**"Contract employer"** - An employer, such as a painter, joiner, carpenter, or scaffolding subcontractor, who performs work under contract to the host employer or to another employer under contract to the host employer at the host employer's worksite. This excludes employers who provide incidental services that do not influence shipyard employment (such as mail delivery or office supply services).

**"Competent person"** - A person who can recognize and evaluate employee exposure to hazardous substances or to

other unsafe conditions and can specify the necessary protection and precautions necessary to ensure the safety of employees as required by these standards.

**"Confined space"** - A small compartment with limited access such as a double bottom tank, cofferdam, or other small, confined space that can readily create or aggravate a hazardous exposure.

**"Connector"** - A device used to connect parts of a personal fall arrest system or parts of a positioning device system together. It may be:

- An independent component of the system (such as a carabiner); or

- An integral component of part of the system (such as a buckle or D-ring sewn into a body belt or body harness or a snaphook spliced or sewn to a lanyard or self-retracting lanyard).

**"Dangerous atmosphere"** - An atmosphere that may expose employees to the risk of death, incapacitation, injury, acute illness, or impairment of ability to self-rescue (i.e., escape unaided from a confined or enclosed space).

**"Deceleration device"** - A mechanism, such as a rope grab, rip stitch lanyard, specially woven lanyard, tearing or deforming lanyard, or automatic self-retracting lifeline/lanyard, that serves to dissipate a substantial amount of energy during a fall arrest, or to limit the energy imposed on an employee during fall arrest.

**"Deceleration distance"** - The additional vertical distance a falling employee travels, excluding lifeline elongation and free fall distance, before stopping, from the point at which the deceleration device begins to operate. It is measured from the location of an employee's body belt or body harness attachment point at the moment of activation (at the onset of fall arrest forces) of the deceleration device during a fall, to the location of that attachment point after the employee comes to a full stop.

**"Designated area"** - An area established for hot work after an inspection that is free of fire hazards.

**"Director"** - The director of the department of labor and industries or a designated representative.

**"Drop test"** - A method utilizing gauges to ensure the integrity of an oxygen fuel gas burning system. The method requires that the burning torch is installed to one end of the oxygen and fuel gas lines and then the gauges are attached to the other end of the hoses. The manifold or cylinder supply valve is opened and the system is pressurized. The manifold or cylinder supply valve is then closed and the gauges are watched for at least sixty seconds. Any drop in pressure indicates a leak.

**"Emergency operations"** - Activities performed by fire response organizations that are related to: Rescue, fire suppression, emergency medical care, and special operations or activities that include responding to the scene of an incident and all activities performed at that scene.

**"Employee"** - Any person engaged in ship repairing, ship building, or ship breaking or related employment as defined in these standards.

**"Employer"** - An employer with employees who are employed, in whole or in part, in ship repair, ship building and ship breaking, or related employment as defined in these standards.



**"Enclosed space"** - A space, other than a confined space, that is enclosed by bulkheads and overhead. It includes cargo holds, tanks, quarters, and machinery and boiler spaces.

**"Equivalent"** - Alternative designs, materials, or methods to protect against a hazard which the employer can demonstrate will provide an equal or greater degree of safety for employees than the method or item specified in the standard.

**"Fire hazard"** - A condition or material that may start or contribute to the spread of fire.

**"Fire protection"** - Methods of providing fire prevention, response, detection, control, extinguishment, and engineering.

**"Fire response"** - The activity taken by the employer at the time of an emergency incident involving a fire at the worksite, including fire suppression activities carried out by internal or external resources or a combination of both, or total or partial employee evacuation of the area exposed to the fire.

**"Fire response employee"** - A shipyard employee who carries out the duties and responsibilities of shipyard fire fighting in accordance with the fire safety plan.

**"Fire response organization"** - An organized group knowledgeable, trained, and skilled in shipyard fire fighting operations that responds to shipyard fire emergencies, including: Fire brigades, shipyard fire departments, private or contractual fire departments, and municipal fire departments.

**"Fire suppression"** - The activities involved in controlling and extinguishing fires.

**"Fire watch"** - The activity of observing and responding to the fire hazards associated with hot work in shipyard employment and the employees designated to do so.

**"Fixed extinguishing system"** - A permanently installed fire protection system that either extinguishes or controls fire occurring in the space it protects.

**"Flammable liquid"** - Any liquid having a flashpoint below 100°F (37.8°C), except any mixture having components with flashpoints of 100°F (37.8°C) or higher, the total of which make up ninety-nine percent or more of the total volume of the mixture.

**"Free fall"** - To fall before a personal fall arrest system begins to apply force to arrest the fall.

**"Free fall distance"** - The vertical displacement of the fall arrest attachment point on the employee's body harness between onset of the fall and just before the system begins to apply force to arrest the fall. This distance excludes deceleration distance, and lifeline/lanyard elongation, but includes any deceleration device slide distance or self-retracting lifeline/lanyard extension before the device operates and fall arrest forces occur.

**"Gangway"** - A ramp-like or stair-like means to board or leave a vessel including accommodation ladders, gangplanks and brows.

**"Hazardous substance"** - A substance likely to cause injury because it is explosive, flammable, poisonous, corrosive, oxidizing, irritant, or otherwise harmful.

**"Hose systems"** - Fire protection systems consisting of a water supply, approved fire hose, and a means to control the flow of water at the output end of the hose.

**"Host employer"** - An employer who is in charge of coordinating work or who hires other employers to perform work at a multiemployer workplace.

**(("Hot-work")) "Hot work"** - Riveting, welding, burning or other fire or spark producing operations.

**"Incident management system"** - A system that defines the roles and responsibilities to be assumed by personnel and the operating procedures to be used in the management and direction of emergency operations; the system is also referred to as an "incident command system (ICS)."

**"Incipient stage fire"** - A fire, in the initial or beginning stage, which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.

**"Inerting"** - The displacement of the atmosphere in a permit space by noncombustible gas (such as nitrogen) to such an extent that the resulting atmosphere is noncombustible. This procedure produces an IDLH oxygen-deficient atmosphere.

**"Interior structural fire fighting operations"** - The physical activity of fire response, rescue, or both involving a fire beyond the incipient stage inside of buildings, enclosed structures, vessels, and vessel sections.

**"Lanyard"** - A flexible line of rope, wire rope, or strap which generally has a connector at each end for connecting the body belt or body harness to a deceleration device, lifeline, or anchorage.

**"Lifeline"** - A component consisting of a flexible line to connect to an anchorage at one end to hang vertically (vertical lifeline), or to connect to anchorages at both ends to stretch horizontally (horizontal lifeline), and which serves as a means for connecting other components of a personal fall arrest system to the anchorage.

**"Lower levels"** - Those areas or surfaces to which an employee can fall. Such areas or surfaces include but are not limited to ground levels, floors, ramps, tanks, materials, water, excavations, pits, vessels, structures, or portions thereof.

**"Multiemployer workplace"** - A workplace where there is a host employer and at least one contract employer.

**"Personal alert safety system (PASS)"** - A device that sounds a loud signal if the wearer becomes immobilized or is motionless for thirty seconds or more.

**"Personal fall arrest system"** - A system used to arrest an employee in a fall from a working level. It consists of an anchorage, connectors, body harness and may include a lanyard, a deceleration device, a lifeline, or a suitable combination.

**"Physical isolation"** - The elimination of a fire hazard by removing the hazard from the work area (at least thirty-five feet for combustibles), by covering or shielding the hazard with a fire-resistant material, or physically preventing the hazard from entering the work area.

**"Physically isolated"** - Positive isolation of the supply from the distribution piping of a fixed extinguishing system. Examples of ways to physically isolate include: Removing a spool piece and installing a blank flange; providing a double block and bleed valve system; or completely disconnecting

valves and piping from all cylinders or other pressure vessels containing extinguishing agents.

**"Portable unfired pressure vessel"** - A pressure container or vessel used aboard ship, other than the ship's equipment, containing liquids or gases under pressure. This does not include pressure vessels built to Department of Transportation regulations under 49 CFR Part 78, Subparts C and H.

**"Positioning device system"** - A body belt or body harness system rigged to allow an employee to be supported at an elevated vertical surface, such as a wall or window, and to be able to work with both hands free while leaning.

**"Powder actuated fastening tool"** - A tool or machine that drives a stud, pin, or fastener by means of an explosive charge.

**"Protected space"** - Any space into which a fixed extinguishing system can discharge.

**"Proximity fire fighting"** - Specialized fire fighting operations that require specialized thermal protection and may include the activities of rescue, fire suppression, and property conservation at incidents involving fires producing very high levels of conductive, convective, and radiant heat such as aircraft fires, bulk flammable gas fires, and bulk flammable liquid fires. Proximity fire fighting operations usually are exterior operations but may be combined with structural fire fighting operations. Proximity fire fighting is not entry fire fighting.

**"Qualified instructor"** - A person with specific knowledge, training, and experience in fire response or fire watch activities to cover the material found in WAC 296-304-01019 (2) or (3).

**"Qualified person"** - A person who has successfully demonstrated the ability to solve or resolve problems related to the subject matter and work by possessing a recognized degree or certificate of professional standing or by extensive knowledge, training, and experience.

**"Related employment"** - Any employment related to or performed in conjunction with ship repairing, ship building or ship breaking work, including, but not limited to, inspecting, testing, and serving as a watchman.

**"Rescue"** - Locating endangered persons at an emergency incident, removing those persons from danger, treating the injured, and transporting the injured to an appropriate health care facility.

**"Restraint (tether) line"** - A line from an anchorage, or between anchorages, to which the employee is secured so as to prevent the employee from walking or falling off an elevated work surface.

Note: A restraint line is not necessarily designed to withstand forces resulting from a fall.

**"Rope grab"** - A deceleration device that travels on a lifeline and automatically, by friction, engages the lifeline and locks to arrest the fall of an employee. A rope grab usually uses the principle of inertial locking, cam/level locking or both.

**"Shall" or "must"** - Mandatory.

**"Ship breaking"** - Breaking down a vessel's structure to scrap the vessel, including the removal of gear, equipment or any component part of a vessel.

**"Ship building"** - Construction of a vessel, including the installation of machinery and equipment.

**"Ship repairing"** - Repair of a vessel including, but not limited to, alterations, conversions, installations, cleaning, painting, and maintenance.

**"Shipyard fire fighting"** - The activity of rescue, fire suppression, and property conservation involving buildings, enclosed structures, vehicles, vessels, aircraft, or similar properties involved in a fire or emergency situation.

**"Small hose system"** - A system of hoses ranging in diameter from 5/8" (1.6 cm) up to 1 1/2" (3.8 cm) which is for the use of employees and which provides a means for the control and extinguishment of incipient stage fires.

**"Standpipe"** - A fixed fire protection system consisting of piping and hose connections used to supply water to approved hose lines or sprinkler systems. The hose may or may not be connected to the system.

**"Vessel"** - Every watercraft for use as a means of transportation on water, including special purpose floating structures not primarily designed for or used as a means of transportation on water.

**AMENDATORY SECTION** (Amending WSR 95-04-006, filed 1/18/95, effective 3/10/95)

**WAC 296-304-01005 ((Competent person)) Fire protection in shipyards, (((1) Application. This section applies to shipyard employment.**

(2) Designation:

(a) One or more competent persons shall be designated by the employer in accordance with the applicable requirements of this section, unless the requirements of WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, and WAC 296-304-080 through 296-304-08011, are always carried out by a marine chemist.

Exception: The employer may designate any person who meets the applicable portions of the criteria set forth in subsection (3) of this section as a competent person who is limited to performing testing to the following situations:

(i) Repair work on small craft in boat yards where only combustible gas indicator tests are required for fuel tank leaks or when using flammable paints below decks;

(ii) Building of wooden vessels where only knowledge of the precautions to be taken when using flammable paints is required;

(iii) The breaking of vessels where there is no fuel oil or other flammable hazard; and

(iv) Tests and inspections performed to comply with WAC 296-304-03007 (2)(h) and 296-304-03009 (1)(e).

(b) The employer shall maintain either a roster of designated competent persons or a statement that a marine chemist will perform the tests or inspections which require a competent person:

(c) The employer shall make the roster of designated persons or the statement available to employees, the employee's representative, or the director upon request.

(d) The roster shall contain, as a minimum, the following:

(i) The employer's name;

(ii) The designated competent person's name(s); and

(iii) The date the employee was trained as a competent person.

(3) **Criteria.** The employer shall ensure that each designated competent person has the following skills and knowledge:

(a) Ability to understand and carry out written or oral information or instructions left by marine chemist, Coast Guard authorized persons and certified industrial hygienists;

(b) Knowledge of WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, and WAC 296-304-080 through 296-304-08011;

(c) Knowledge of the structure, location, and designation of spaces where work is done;

(d) Ability to calibrate and use testing equipment including but not limited to, oxygen indicators, combustible gas indicators, carbon monoxide indicators, and carbon dioxide indicators, and to interpret accurately the test results of that equipment;

(e) Ability to perform all required tests and inspections which are or may be performed by a competent person as set forth in WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, and WAC 296-304-080 through 296-304-08011;

(f) Ability to inspect, test, and evaluate spaces to determine the need for further testing by a marine chemist or a certified industrial hygienist; and

(g) Ability to maintain records required by this section.

(4) **Recordkeeping.**

(a) When tests and inspections are performed by a competent person, marine chemist, or certified industrial hygienist as required by any provisions of WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, or WAC 296-304-080 through 296-304-08011, the employer shall ensure that the person performing the test and inspection records the location, time, date, location of inspected spaces, and the operations performed, as well as the test results and any instructions.

(b) The employer shall ensure that the records are posted in the immediate vicinity of the affected operations while work in the spaces is in progress. The records shall be kept on file for a period of at least three months from the completion date of the specific job for which they were generated.

(c) The employer shall ensure that the records are available for inspection by the director, and employees and their representatives.)) (1) **Purpose.** The purpose of this section is to require employers to protect all employees from fire hazards in shipyard employment, including employees engaged in fire response activities.

(2) **Scope.** This section covers employers with employees engaged in shipyard employment aboard vessels and vessel sections, and on land-side operations regardless of geographic location.

(3) **Employee participation.** The employer must provide ways for employees or employee representatives, or both to participate in developing and periodically reviewing programs and policies adopted to comply with this section.

(4) **Multiemployer worksites.**

(a) **Host employer responsibilities.** The host employer's responsibilities are to:

(i) Inform all employers at the worksite about the content of the fire safety plan including hazards, controls, fire safety and health rules, and emergency procedures;

(ii) Make sure the safety and health responsibilities for fire protection are assigned as appropriate to other employers at the worksite; and

(iii) If there is more than one host employer, each host employer must communicate relevant information about fire-related hazards to other host employers. When a vessel owner or operator (temporarily) becomes a host shipyard employer by directing the work of ships' crews on repair or modification of the vessel or by hiring other contractors directly, the vessel owner or operator must also comply with these provisions for host employers.

(b) **Contract employer responsibilities.** The contract employer's responsibilities are to:

(i) Make sure that the host employer knows about the fire-related hazards associated with the contract employer's work and what the contract employer is doing to address them; and

(ii) Advise the host employer of any previously unidentified fire-related hazards that the contract employer identifies at the worksite.

## NEW SECTION

**WAC 296-304-01007 Fire safety plan.** (1) **Employer responsibilities.** The employer must develop and implement a written fire safety plan that covers all the actions that employers and employees must take to ensure employee safety in the event of a fire. (See Appendix A to this section for a model fire safety plan.)

(2) **Plan elements.** The employer must include the following information in the fire safety plan:

(a) Identification of the significant fire hazards;

(b) Procedures for recognizing and reporting unsafe conditions;

(c) Alarm procedures;

(d) Procedures for notifying employees of a fire emergency;

(e) Procedures for notifying fire response organizations of a fire emergency;

(f) Procedures for evacuation;

(g) Procedures to account for all employees after an evacuation; and

(h) Names, job titles, or departments for individuals who can be contacted for further information about the plan.

(3) **Reviewing the plan with employees.** The employer must review the plan with each employee at the following times:

(a) Within ninety days of (effective date of this rule), for employees who are currently working;

(b) Upon initial assignment for new employees; and

(c) When the actions the employee must take under the plan change because of a change in duties or a change in the plan.

(4) **Additional employer requirements.** The employer also must:

(a) Keep the plan accessible to employees, employee representatives, and WISHA;

(b) Review and update the plan whenever necessary, but at least annually;

(c) Document that affected employees have been informed about the plan as required by this subsection; and

(d) Ensure any outside fire response organization that the employer expects to respond to fires at the employer's work-site has been given a copy of the current plan.

(5) **Contract employers.** Contract employers in shipyard employment must have a fire safety plan for their employees, and this plan must comply with the host employer's fire safety plan.

#### NEW SECTION

#### **WAC 296-304-01009 Precautions for hot work. (1) General requirements.**

(a) **Designated areas.** The employer may designate areas for hot work in sites such as vessels, vessel sections, fabricating shops, and subassembly areas that are free of fire hazards.

##### **(b) Nondesignated areas.**

(i) Before authorizing hot work in a nondesignated area, the employer must visually inspect the area where hot work is to be performed, including adjacent spaces, to ensure the area is free of fire hazards, unless a marine chemist's certificate or shipyard competent person's log is used for authorization.

(ii) The employer shall authorize employees to perform hot work only in areas that are free of fire hazards, or that have been controlled by physical isolation, fire watches, or other positive means.

**Note:** The requirements of (b) of this subsection apply to all hot work operations in shipyard employment except those covered by WAC 296-304-02007.

##### **(2) Specific requirements.**

(a) **Maintaining fire hazard-free conditions.** The employer must keep all hot work areas free of new hazards that may cause or contribute to the spread of fire. Unexpected energizing and energy release are covered by WAC 296-304-120. Exposure to toxic and hazardous substances is covered in chapter 296-841 WAC, Respiratory hazards; chapter 296-802 WAC, Employee medical and exposure records; and WAC 296-800-170, Employer chemical hazard communication—Introduction.

(b) **Fuel gas and oxygen supply lines and torches.** The employer must make sure that:

(i) No unattended fuel gas and oxygen hose lines or torches are in confined spaces;

(ii) No unattended charged fuel gas and oxygen hose lines or torches are in enclosed spaces for more than fifteen minutes;

(iii) All fuel gas and oxygen hose lines are disconnected at the supply manifold at the end of each shift; and

(iv) All disconnected fuel gas and oxygen hose lines are rolled back to the supply manifold or to open air to disconnect the torch; or extended fuel gas and oxygen hose lines are not reconnected at the supply manifold unless the lines are given a positive means of identification when they were first connected and the lines are tested using a drop test or other

positive means to ensure the integrity of fuel gas and oxygen burning system.

#### NEW SECTION

**WAC 296-304-01011 Fire watches. (1) Written fire watch policy.** The employer must create and keep current a written policy that specifies the following requirements for employees performing fire watch in the workplace:

(a) The training employees must be given (WAC 296-304-01019(3) contains detailed fire watch training requirements);

(b) The duties employees are to perform;

(c) The equipment employees must be given; and

(d) The personal protective equipment (PPE) that must be made available and worn as required by WAC 296-304-090.

(2) **Posting fire watches.** The employer must post a fire watch if during hot work any of the following conditions are present:

(a) Slag, weld splatter, or sparks might pass through an opening and cause a fire;

(b) Fire-resistant guards or curtains are not used to prevent ignition of combustible materials on or near decks, bulkheads, partitions, or overheads;

(c) Combustible material closer than thirty-five feet (10.7 m) to the hot work in either the horizontal or vertical direction cannot be removed, protected with flame-proof covers, or otherwise shielded with metal or fire-resistant guards or curtains;

(d) The hot work is carried out on or near insulation, combustible coatings, or sandwich-type construction that cannot be shielded, cut back, or removed, or in a space within a sandwich-type construction that cannot be inerted;

(e) Combustible materials adjacent to the opposite sides of bulkheads, decks, overheads, metal partitions, or sandwich-type construction may be ignited by conduction or radiation;

(f) The hot work is close enough to cause ignition through heat radiation or conduction on the following:

(i) Insulated pipes, bulkheads, decks, partitions, or overheads; or

(ii) Combustible materials and/or coatings;

(g) The work is close enough to unprotected combustible pipe or cable runs to cause ignition; or

(h) A marine chemist, a Coast Guard-authorized person, or a shipyard competent person, as defined in WAC 296-304-020, requires that a fire watch be posted.

##### **(3) Assigning employees to fire watch duty.**

(a) The employer must not assign other duties to a fire watch while the hot work is in progress.

(b) Employers must ensure that employees assigned to fire watch duty:

(i) Have a clear view of and immediate access to all areas included in the fire watch;

(ii) Are able to communicate with workers exposed to hot work;

(iii) Are authorized to stop work if necessary and restore safe conditions within the hot work area;

(iv) Remain in the hot work area for at least thirty minutes after completion of the hot work, unless the employer or its representative surveys the exposed area and makes a determination that there is no further fire hazard;

(v) Are trained to detect fires that occur in areas exposed to the hot work;

(vi) Attempt to extinguish any incipient stage fires in the hot work area that are within the capability of available equipment and within the fire watch's training qualifications, as defined in WAC 296-304-01019;

(vii) Alert employees of any fire beyond the incipient stage; and

(viii) If unable to extinguish fire in the areas exposed to the hot work, activate the alarm.

(c) The employer must ensure that employees assigned to fire watch are physically capable of performing these duties.

## NEW SECTION

**WAC 296-304-01013 Fire response. (1) Employer responsibilities.** The employer must:

(a) Decide what type of response will be provided and who will provide it; and

(b) Create, maintain, and update a written policy that:

(i) Describes the internal and outside fire response organizations that the employer will use; and

(ii) Defines what evacuation procedures employees must follow, if the employer chooses to require a total or partial evacuation of the worksite at the time of a fire.

(2) **Required written policy information.**

(a) **Internal fire response.** If an internal fire response is to be used, the employer must include the following information in the employer's written policy:

(i) The basic structure of the fire response organization;

(ii) The number of trained fire response employees;

(iii) The fire response functions that may need to be carried out;

(iv) The minimum number of fire response employees necessary, the number and types of apparatuses, and a description of the fire suppression operations established by written standard operating procedures for each type of fire response at the employer's facility;

(v) The type, amount, and frequency of training that must be given to fire response employees; and

(vi) The procedures for using protective clothing and equipment.

(b) **Outside fire response.** If an outside fire response organization is used, the employer must include the following information in the written policy:

(i) The types of fire suppression incidents to which the fire response organization is expected to respond at the employer's facility or worksite;

(ii) The liaisons between the employer and the outside fire response organizations; and

(iii) A plan for fire response functions that:

(A) Addresses procedures for obtaining assistance from the outside fire response organization;

(B) Familiarizes the outside fire response organization with the layout of the employer's facility or worksite, includ-

ing access routes to controlled areas, and site-specific operations, occupancies, vessels or vessel sections, and hazards; and

(C) Sets forth how hose and coupling connection threads are to be made compatible and includes where the adapter couplings are kept; or

(D) States that the employer will not allow the use of incompatible hose connections.

(c) **A combination of internal and outside fire response.** If a combination of internal and outside fire response is to be used, the employer must include the following information, in addition to the requirements in (a) and (b) of this subsection, in the written policy:

(i) The basic organizational structure of the combined fire response;

(ii) The number of combined trained fire responders;

(iii) The fire response functions that may need to be carried out;

(iv) The minimum number of fire response employees necessary, the number and types of apparatuses, and a description of the fire suppression operations established by written standard operating procedures for each particular type of fire response at the worksite; and

(v) The type, amount, and frequency of joint training with outside fire response organizations if given to fire response employees.

(d) **Employee evacuation.** The employer must include the following information in the employer's written policy:

(i) Emergency escape procedures;

(ii) Procedures to be followed by employees who may remain longer at the worksite to perform critical shipyard employment operations during the evacuation;

(iii) Procedures to account for all employees after emergency evacuation is completed;

(iv) The preferred means of reporting fires and other emergencies; and

(v) Names or job titles of the employees or departments to be contacted for further information or explanation of duties.

(e) **Rescue and emergency response.** The employer must include the following information in the employer's written policy:

(i) A description of the emergency rescue procedures; and

(ii) Names or job titles of the employees who are assigned to perform them.

(3) **Medical requirements for shipyard fire response employees.** The employer must ensure that:

(a) All fire response employees receive medical examinations to assure that they are physically and medically fit for the duties they are expected to perform;

(b) Fire response employees, who are required to wear respirators in performing their duties, meet the medical requirements of WAC 296-304-09007;

(c) Each fire response employee has an annual medical examination; and

(d) The medical records of fire response employees are kept in accordance with chapter 296-802 WAC, Employee medical and exposure records.

**(4) Organization of internal fire response functions.** The employer must:

(a) Organize fire response functions to ensure enough resources to conduct emergency operations safely;

(b) Establish lines of authority and assign responsibilities to ensure that the components of the internal fire response are accomplished;

(c) Set up an incident management system to coordinate and direct fire response functions, including:

- (i) Specific fire emergency responsibilities;
- (ii) Accountability for all fire response employees participating in an emergency operation; and
- (iii) Resources offered by outside organizations; and
- (d) Provide the information required in this subsection to the outside fire response organization to be used.

**(5) Personal protective clothing and equipment for fire response employees.**

(a) **General requirements.** The employer must:

(i) Supply to all fire response employees, at no cost, the appropriate personal protective clothing and equipment they may need to perform expected duties; and

(ii) Ensure that fire response employees wear the appropriate personal protective clothing and use the equipment, when necessary, to protect them from hazardous exposures.

(b) **Thermal stability and flame resistance.** The employer must:

(i) Ensure that each fire response employee exposed to the hazards of flame does not wear clothing that could increase the extent of injury that could be sustained; and

(ii) Prohibit wearing clothing made from acetate, nylon, or polyester, either alone or in blends, unless it can be shown that:

(A) The fabric will withstand the flammability hazard that may be encountered; or

(B) The clothing will be worn in such a way to eliminate the flammability hazard that may be encountered.

(c) **Respiratory protection.** The employer must:

(i) Provide self-contained breathing apparatus (SCBA) to all fire response employees involved in an emergency operation in an atmosphere that is immediately dangerous to life or health (IDLH), potentially IDLH, or unknown;

(ii) Provide SCBA to fire response employees performing emergency operations during hazardous chemical emergencies that will expose them to known hazardous chemicals in vapor form or to unknown chemicals;

(iii) Provide fire response employees who perform or support emergency operations that will expose them to hazardous chemicals in liquid form either:

(A) SCBA; or

(B) Respiratory protective devices certified by the National Institute for Occupational Safety and Health (NIOSH) under 42 CFR Part 84 as suitable for the specific chemical environment;

(iv) Ensure that additional outside air supplies used in conjunction with SCBA result in positive pressure systems that are certified by NIOSH under 42 CFR Part 84;

(v) Provide only SCBA that meet the requirements of NFPA 1981-1997 Standard on Open-Circuit Self-Contained Breathing Apparatus for the Fire Service (incorporated by reference, see WAC 296-304-01003); and

(vi) Ensure that the respiratory protection program and all respiratory protection equipment comply with chapter 296-842 WAC, Respiratory protection.

(d) **Interior structural firefighting operations.** The employer must:

(i) Supply at no cost to all fire response employees exposed to the hazards of shipyard fire response, a helmet, gloves, footwear, and protective hoods, and either a protective coat and trousers or a protective coverall; and

(ii) Ensure that this equipment meets the applicable recommendations in NFPA 1971-2000 Standard on Protective Ensemble for Structural Fire Fighting (incorporated by reference, see WAC 296-304-01003).

(e) **Proximity fire fighting operations.** The employer must provide, at no cost, to all fire response employees who are exposed to the hazards of proximity fire fighting, appropriate protective proximity clothing that meets the applicable recommendations in NFPA 1976-2000 Standard on Protective Ensemble for Proximity Fire Fighting (incorporated by reference, see WAC 296-304-01003).

(f) **Personal alert safety system (PASS) devices.** The employer must:

(i) Provide each fire response employee involved in fire fighting operations with a PASS device; and

(ii) Ensure that each PASS device meets the recommendations in NFPA 1982-1998 Standard on Personal Alert Safety Systems (PASS) (incorporated by reference, see WAC 296-304-01003).

(g) **Life safety ropes, body harnesses, and hardware.** The employer must ensure that:

(i) All life safety ropes, body harnesses, and hardware used by fire response employees for emergency operations meet the applicable recommendations in NFPA 1983-2001, Standard on Fire Service Life Safety Rope and System Components (incorporated by reference, see WAC 296-304-01003);

(ii) Fire response employees use only Class I body harnesses to attach to ladders and aerial devices; and

(iii) Fire response employees use only Class II and Class III body harnesses for fall arrest and rappelling operations.

(6) **Equipment maintenance.**

(a) **Personal protective equipment.** The employer must inspect and maintain personal protective equipment used to protect fire response employees to ensure that it provides the intended protection.

(b) **Fire response equipment.** The employer must:

(i) Keep fire response equipment in a state of readiness;

(ii) Standardize all fire hose coupling and connection threads throughout the facility and on vessels and vessel sections by providing the same type of hose coupling and connection threads for hoses of the same or similar diameter; and

(iii) Ensure that either all fire hoses and coupling connection threads are the same within a facility or vessel or vessel section as those used by the outside fire response organization, or supply suitable adapter couplings if such an organization is expected to use the fire response equipment within a facility or vessel or vessel section.

**NEW SECTION**

**WAC 296-304-01015 Hazards of fixed extinguishing systems on board vessels and vessel sections.** (1) **Employer responsibilities.** The employer must comply with the provisions of this section whenever employees are exposed to fixed extinguishing systems that could create a dangerous atmosphere when activated in vessels and vessel sections, regardless of geographic location.

(2) **Requirements for automatic and manual systems.** Before any work is done in a space equipped with fixed extinguishing systems, the employer must either:

(a) Physically isolate the systems or use other positive means to prevent the systems' discharge; or

(b) Ensure employees are trained to recognize:

(i) Systems' discharge and evacuation alarms and the appropriate escape routes; and

(ii) Hazards associated with the extinguishing systems and agents including the dangers of disturbing system components and equipment such as piping, cables, linkages, detection devices, activation devices, and alarm devices.

(3) **Sea and dock trials.** During trials, the employer must ensure that all systems shall remain operational.

(4) **Doors and hatches.** The employer must:

(a) Take protective measures to ensure that all doors, hatches, scuttles, and other exit openings remain working and accessible for escape in the event the systems are activated; and

(b) Ensure that all inward opening doors, hatches, scuttles, and other potential barriers to safe exit are removed, locked open, braced, or otherwise secured so that they remain open and accessible for escape if the systems' activation could result in a positive pressure in the protected spaces sufficient to impede escape.

(5) **Testing the system.**

(a) When testing a fixed extinguishing system involves a total discharge of extinguishing medium into a space, the employer must evacuate all employees from the space and assure that no employees remain in the space during the discharge. The employer must retest the atmosphere in accordance with WAC 296-304-02003 to ensure that the oxygen levels are safe for employees to enter.

(b) When testing a fixed extinguishing system does not involve a total discharge of the system's extinguishing medium, the employer must make sure that the system's extinguishing medium is physically isolated and that all employees not directly involved in the testing are evacuated from the protected space.

(6) **Conducting system maintenance.** Before conducting maintenance on a fixed extinguishing system, the employer must ensure that the system is physically isolated.

(7) **Using fixed manual extinguishing systems for fire protection.** If fixed manual extinguishing systems are used to provide fire protection for spaces in which the employees are working, the employer must ensure that:

(a) Only authorized employees are allowed to activate the system;

(b) Authorized employees are trained to operate and activate the systems; and

(c) All employees are evacuated from the protected spaces, and accounted for, before the fixed manual extinguishing system is activated.

**NEW SECTION**

**WAC 296-304-01017 Land-side fire protection systems.** (1) **Employer responsibilities.** The employer must ensure all fixed and portable fire protection systems needed to meet WISHA standards for employee safety or employee protection from fire hazards in land-side facilities, including, but not limited to, buildings, structures, and equipment, meet the requirements of this section.

(2) **Portable fire extinguishers and hose systems.**

(a) The employer must select, install, inspect, maintain, and test all portable fire extinguishers according to NFPA 10-1998 Standard for Portable Fire Extinguishers (incorporated by reference, see WAC 296-304-01003).

(b) The employer is permitted to use Class II or Class III hose systems, in accordance with NFPA 10-1998, as portable fire extinguishers if the employer selects, installs, inspects, maintains, and tests those systems according to the specific recommendations in NFPA 14-2000 Standard for the Installation of Standpipe, Private Hydrant, and Hose Systems (incorporated by reference, see WAC 296-304-01003).

(3) **General requirements for fixed extinguishing systems.** The employer must:

(a) Ensure that any fixed extinguishing system component or extinguishing agent is approved by an OSHA nationally recognized testing laboratory for use on the specific hazards the employer expects it to control or extinguish;

(b) Notify employees and take the necessary precautions to ensure employees are safe from fire if for any reason a fire extinguishing system stops working, until the system is working again;

(c) Ensure all repairs to fire extinguishing systems and equipment are done by a qualified technician or mechanic;

(d) Provide and ensure employees use proper personal protective equipment when entering discharge areas in which the atmosphere remains hazardous to employee safety or health, or provide safeguards to prevent employees from entering those areas. See WAC 296-304-02003 for additional requirements applicable to safe entry into spaces containing dangerous atmospheres;

(e) Post hazard warning or caution signs at both the entrance to and inside of areas protected by fixed extinguishing systems that use extinguishing agents in concentrations known to be hazardous to employee safety or health; and

(f) Select, install, inspect, maintain, and test all automatic fire detection systems and emergency alarms according to NFPA 72-1999 National Fire Alarm Code (incorporated by reference, see WAC 296-304-01003).

(4) **Fixed extinguishing systems.** The employer must select, install, maintain, inspect, and test all fixed systems required by WISHA as follows:

(a) Standpipe and hose systems according to NFPA 14-2000 Standard for the Installation of Standpipe, Private Hydrant, and Hose Systems (incorporated by reference, see WAC 296-304-01003);

(b) Automatic sprinkler systems according to NFPA 25-2002 Standard for the Inspection, Testing, and Maintenance of Water-based Fire Protection Systems, and either NFPA 13-1999 Standard for the Installation of Sprinkler Systems or NFPA 750-2000 Standard on Water Mist Fire Protection Systems (incorporated by reference, see WAC 296-304-01003);

(c) Fixed extinguishing systems that use water or foam as the extinguishing agent according to NFPA 15-2001 Standard for Water Spray Fixed Systems for Fire Protection; NFPA 11-1998 Standard for Low-Expansion Foam; and NFPA 11A-1999 Standard for Medium- and High-Expansion Foam Systems (incorporated by reference, see WAC 296-304-01003);

(d) Fixed extinguishing systems using dry chemical as the extinguishing agent according to NFPA 17-2002 Standard for Dry Chemical Extinguishing Systems (incorporated by reference, see WAC 296-304-01003); and

(e) Fixed extinguishing systems using gas as the extinguishing agent according to NFPA 12-2000 Standard on Carbon Dioxide Extinguishing Systems; NFPA 12A-1997 Standard on Halon 1301 Fire Extinguishing Systems; and NFPA 2001-2000 Standard on Clean Agent Fire Extinguishing Systems (incorporated by reference, see WAC 296-304-01003).

#### NEW SECTION

**WAC 296-304-01019 Training.** (1) The employer must train employees in the applicable requirements of this section:

(a) Within ninety days of (**effective date of this rule**), for employees currently working;

(b) Upon initial assignment for new employees; and

(c) When necessary to maintain proficiency for employees previously trained.

(2) **Employee training.** The employer must ensure that all employees are trained on:

(a) The emergency alarm signals, including system discharge alarms and employee evacuation alarms; and

(b) The primary and secondary evacuation routes that employees must use in the event of a fire in the workplace. While all vessels and vessel sections must have a primary evacuation route, a secondary evacuation route is not required when impracticable.

(3) **Additional training requirements for employees expected to fight incipient stage fires.** The employer must ensure that employees expected to fight incipient stage fires are trained on the following:

(a) The general principles of using fire extinguishers or hose lines, the hazards involved with incipient fire fighting, and the procedures used to reduce these hazards;

(b) The hazards associated with fixed and portable fire protection systems that employees may use or to which they may be exposed during discharge of those systems; and

(c) The activation and operation of fixed and portable fire protection systems that the employer expects employees to use in the workplace.

(4) **Additional training requirements for shipyard employees designated for fire response.** The employer must:

(a) Have a written training policy stating that fire response employees must be trained and capable of carrying out their duties and responsibilities at all times;

(b) Keep written standard operating procedures that address anticipated emergency operations and update these procedures as necessary;

(c) Review fire response employee training programs and hands-on sessions before they are used in fire response training to make sure that fire response employees are protected from hazards associated with fire response training;

(d) Provide training for fire response employees that ensures they are capable of carrying out their duties and responsibilities under the employer's standard operating procedures;

(e) Train new fire response employees before they engage in emergency operations;

(f) At least quarterly, provide training on the written operating procedures to fire response employees who are expected to fight fires;

(g) Use qualified instructors to conduct the training;

(h) Conduct any training that involves live fire response exercises in accordance with NFPA 1403-2002 Standard on Live Fire Training Evolutions (incorporated by reference, see WAC 296-304-01003);

(i) Conduct semiannual drills according to the employer's written procedures for fire response employees that cover site-specific operations, occupancies, buildings, vessels and vessel sections, and fire-related hazards; and

(j) Prohibit the use of smoke generating devices that create a dangerous atmosphere in training exercises.

(5) **Additional training requirements for fire watch duty.**

(a) The employer must ensure that each fire watch is trained by an instructor with adequate fire watch knowledge and experience to cover the items as follows:

(i) Before being assigned to fire watch duty;

(ii) Whenever there is a change in operations that presents a new or different hazard;

(iii) Whenever the employer has reason to believe that the fire watch's knowledge, skills, or understanding of the training previously provided is inadequate; and

(iv) Annually.

(b) The employer must ensure that each employee who stands fire watch duty is trained in:

(i) The basics of fire behavior, the different classes of fire and of extinguishing agents, the stages of fire, and methods for extinguishing fires;

(ii) Extinguishing live fire scenarios whenever allowed by local and federal law;

(iii) The recognition of the adverse health effects that may be caused by exposure to fire;

(iv) The physical characteristics of the hot work area;

(v) The hazards associated with fire watch duties;

(vi) The personal protective equipment (PPE) needed to perform fire watch duties safely;

(vii) The use of PPE;

(viii) The selection and use of any fire extinguishers and fire hoses likely to be used by a fire watch in the work area;

(ix) The location and use of barriers;



- (x) The means of communication designated by the employer for fire watches;
  - (xi) When and how to start fire alarm procedures; and
  - (xii) The employer's evacuation plan.
- (c) The employer must ensure that each fire watch is trained to alert others to exit the space whenever:
- (i) The fire watch perceives an unsafe condition;
  - (ii) The fire watch perceives that a worker performing hot work is in danger;
  - (iii) The employer or a representative of the employer orders an evacuation; or
  - (iv) An evacuation signal, such as an alarm, is activated.
- (6) **Records.** The employer must keep records that demonstrate that employees have been trained as required by subsections (1) through (5) of this section.

(a) The employer must ensure that the records include the employee's name; the trainer's name; the type of training; and the date(s) on which the training took place.

(b) The employer must keep each training record for one year from the time it was made or until it is replaced with a new training record, whichever is shorter, and make it available for inspection and copying by WISHA on request.

#### NEW SECTION

**WAC 296-304-01021 Competent person.** (1) **Application.** This section applies to shipyard employment.

(2) **Designation.**

(a) One or more competent persons shall be designated by the employer in accordance with the applicable requirements of this section, unless the requirements of WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, and WAC 296-304-080 through 296-304-08011, are always carried out by a marine chemist.

**Exception:** The employer may designate any person who meets the applicable portions of the criteria set forth in subsection (3) of this section as a competent person who is limited to performing testing to the following situations:

- (i) Repair work on small craft in boat yards where only combustible gas indicator tests are required for fuel tank leaks or when using flammable paints below decks;
- (ii) Building of wooden vessels where only knowledge of the precautions to be taken when using flammable paints is required;
- (iii) The breaking of vessels where there is no fuel oil or other flammable hazard; and
- (iv) Tests and inspections performed to comply with WAC 296-304-03007 (2)(h) and 296-304-03009 (1)(e).

(b) The employer shall maintain either a roster of designated competent persons or a statement that a marine chemist will perform the tests or inspections which require a competent person.

(c) The employer shall make the roster of designated persons or the statement available to employees, the employee's representative, or the director upon request.

(d) The roster shall contain, as a minimum, the following:

- (i) The employer's name;
- (ii) The designated competent person's name(s); and
- (iii) The date the employee was trained as a competent person.

(3) **Criteria.** The employer shall ensure that each designated competent person has the following skills and knowledge:

(a) Ability to understand and carry out written or oral information or instructions left by marine chemists, Coast Guard-authorized persons and certified industrial hygienists;

(b) Knowledge of WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, and WAC 296-304-080 through 296-304-08011;

(c) Knowledge of the structure, location, and designation of spaces where work is done;

(d) Ability to calibrate and use testing equipment including, but not limited to, oxygen indicators, combustible gas indicators, carbon monoxide indicators, and carbon dioxide indicators, and to interpret accurately the test results of that equipment;

(e) Ability to perform all required tests and inspections which are or may be performed by a competent person as set forth in WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, and WAC 296-304-080 through 296-304-08011;

(f) Ability to inspect, test, and evaluate spaces to determine the need for further testing by a marine chemist or a certified industrial hygienist; and

(g) Ability to maintain records required by this section.

(4) **Recordkeeping.**

(a) When tests and inspections are performed by a competent person, marine chemist, or certified industrial hygienist as required by any provisions of WAC 296-304-020 through 296-304-02011, WAC 296-304-030 through 296-304-03009, WAC 296-304-040 through 296-304-04013, or WAC 296-304-080 through 296-304-08011, the employer shall ensure that the person performing the test and inspection records the location, time, date, location of inspected spaces, and the operations performed, as well as the test results and any instructions.

(b) The employer shall ensure that the records are posted in the immediate vicinity of the affected operations while work in the spaces is in progress. The records shall be kept on file for a period of at least three months from the completion date of the specific job for which they were generated.

(c) The employer shall ensure that the records are available for inspection by the director, and employees and their representatives.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-304-04003 Fire prevention.

**WSR 05-13-163**  
**EXPEDITED RULES**  
**DEPARTMENT OF REVENUE**

[Filed June 21, 2005, 3:40 p.m.]

Title of Rule and Other Identifying Information: WAC 458-20-270 Telephone program excise tax rates, this rule determines the rates for the taxes imposed on switched access lines pursuant to RCW 43.20A.725 and 80.36.430.

**NOTICE**

**THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gilbert Brewer, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, fax (360) 586-5543, e-mail gilb@dor.wa.gov, AND RECEIVED BY August 22, 2005.**

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-20-270 is being adopted by emergency rule because it must take effect by July 1, 2005. This proposal would adopt a permanent rule that would determine the tax rates for the fiscal year. No change in the actual tax rates is being proposed.

Reasons Supporting Proposal: Under RCW 43.20A.725 and 80.36.430, the department is required to annually determine the tax rates imposed on switched access lines to fund the telephone relay service program and the Washington telephone assistance program. Each tax rate is determined by dividing the respective program budgets by the number of switched access lines reported to the department in the prior calendar year. The department retains no discretion in the determination of these tax rates, the amount of which is explicitly dictated by the statutory formulas and inputs provided to the department.

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

Statute Being Implemented: RCW 43.20A.725 and 80.36.430.

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

Name of Proponent: 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: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6125; and Enforcement: Janis P. Bianchi, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 570-6131.

June 21, 2005

Alan R. Lynn

Rules Coordinator

**NEW SECTION**

**WAC 458-20-270 Telephone program excise tax rates.** RCW 82.72.020 requires the department of revenue (department) to collect certain telephone program excise taxes. Those taxes include the tax on switched access lines imposed by RCW 43.20A.725 (telephone relay service—TRS) and 80.36.430 (Washington telephone assistance program—WTAP). Pursuant to those statutes, the department must annually determine the rate of each respective tax according to the statutory formulas.

For the period July 1, 2005, through June 30, 2006, the monthly telephone program excise tax rates are as follows:

TRS	10 cents per switched access line
WTAP	14 cents per switched access line

**EXPEDITED**

**WSR 05-11-054**  
**PERMANENT RULES**  
**COLUMBIA RIVER**  
**GORGE COMMISSION**

[Filed May 16, 2005, 1:27 p.m., effective July 1, 2005]

**Effective Date of Rule:** July 1, 2005.

**Purpose:** The purpose of this rule is to implement the management plan for the Columbia River Gorge national scenic area that the Gorge Commission adopted revisions to on April 27, 2004. The land use ordinance will be effective in any gorge county that does not have an effective land use ordinance implementing the management plan. The substantive standards are identical to the substantive standards in the management plan as revised. The procedural requirements for issuing land use decisions are similar to those contained in the current land use ordinance (Commission Rule 350-80). This rule will replace Commission Rule 350-80 in its entirety; however, Commission Rule 350-80 will not be repealed at this time.

**Statutory Authority for Adoption:** RCW 43.97.015.

**Other Authority:** ORS 196.150 and 16 U.S.C. 544e(c) and 544f(1).

Adopted under notice filed as WSR 05-02-059 on January 4, 2005.

**Changes Other than Editing from Proposed to Adopted Version:** Commission Rule 350-81-032(3) was changed to require the commission to set an application fee (the draft provided the executive director would set the fee). Several editing changes were made, which are available at the commission's office.

**Number of Sections Adopted in Order to Comply with Federal Statute:** New 100, Amended 0, Repealed 0; **Federal Rules or Standards:** New 0, Amended 0, Repealed 0; or **Recently Enacted State Statutes:** New 0, Amended 0, Repealed 0.

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

**Number of Sections Adopted on the Agency's Own Initiative:** New 100, Amended 0, Repealed 0.

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

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

**Date Adopted:** March 8, 2005.

May 13, 2005

Nancy A. Andring  
Rules Coordinator

**Columbia River Gorge Commission**

**Chapter 350**  
**Division 81**

**Land Use Ordinance**  
**July 1, 2005**

**Purposes and Applicability**

**350-81-010. Purposes and Applicability**

The purpose of this Land Use Ordinance is to implement the Management Plan for the Columbia River Gorge National Scenic Area with revisions adopted on April 27, 2004 and concurred with on August 3, 2004, and as subsequently amended.

**350-81-012. Affected Area**

Commission Rule 350-81 shall apply to all lands within the Columbia River Gorge National Scenic Area as designated by the Columbia River Gorge National Scenic Area Act, for which a county does not implement a land use ordinance consistent with the Management Plan.

Commission Rule 350-81 becomes effective on July 1, 2005.

Those portions of Commission Rule 350-81 pertaining to the General Management Area shall no longer be effective in a county that has adopted and put into effect a land use ordinance which has been found to be consistent by the Columbia River Gorge Commission.

Those portions of Commission Rule 350-81 pertaining to the Special Management Area shall no longer be effective in a county that has adopted and put into effect a land use ordinance which has been found to be consistent by the Columbia River Gorge Commission and concurred with by the Secretary of Agriculture.

**350-81-014. Maps**

The Land Use Designation, Landscape Settings, and Recreation Intensity Classes maps adopted by the Columbia River Gorge Commission as part of the Management Plan for the Columbia River Gorge National Scenic Area are hereby incorporated by reference into this land use ordinance.

**350-81-016. Review and Approval Required**

No building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged, including those proposed by state or federal agencies, in the Columbia River Gorge National Scenic Area except for the uses listed in Commission Rule 350-81, when considered under the applicable procedural and substantive guidelines of this Rule.

**350-81-018. Uniform Application of Management Plan**

(1) The Management Plan shall be applied consistent with and in the spirit of the National Scenic Area Act.

(2) The Gorge Commission, Forest Service, and counties should strive to apply Management Plan provisions uniformly throughout the National Scenic Area, except when a county has adopted a more restrictive provision.

(3) In applying provisions of the Management Plan, the Gorge Commission and Forest Service may consider, but shall not be constrained by, county interpretations, state interpretation and application of state law and administrative reg-

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ulations, or judicial decisions that do not directly involve the Management Plan.

## Definitions

### 350-81-020. Definitions

As used in Commission Rule 350-81, unless otherwise noted, the following words and their derivations shall have the following meanings:

- (1) **Accepted agricultural practice:** A mode of operation that is common to farms or ranches of similar nature, necessary for the operation of such farms or ranches to obtain a profit in money and customarily utilized in conjunction with agricultural use.
- (2) **Accessory structure/building:** A structure or detached building whose use is incidental and subordinate to that of the main use of the property, and that is located on the same parcel as the main building or use. The term "detached" means that the main building and accessory building do not share a common wall. An accessory building connected to the main building by a breezeway is a detached building.
- (3) **Active wildlife site:** A wildlife site that has been used within the past 5 years by a sensitive wildlife species.
- (4) **Addition:** An extension or increase in the area or height of an existing building.
- (5) **Agency official:** The federal, state, or local agency head or designee who has authority over a proposed project.
- (6) **Agricultural specialist (SMA):** A person such as a county extension agent with a demonstrated knowledge of farming operations, and a demonstrated ability to interpret and recommend methods to implement regulations pertaining to agriculture. Such abilities are usually obtained through a combination of higher education and experience.
- (7) **Agricultural structure/building:** A structure or building located on a farm or ranch and used in the operation for the storage, repair, and maintenance of farm equipment and supplies or for the raising and/or storage of crops and livestock. These include, but are not limited to: barns, silos, workshops, equipment sheds, greenhouses, wind machines (orchards), processing facilities, storage bins and structures.
- (8) **Agricultural use:** The current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting, and selling crops; or by the feeding, breeding, management, and sale of, or production of, livestock, poultry, fur-bearing animals or honeybees; or for dairying and the sale of dairy products; or any other agricultural or horticultural use, including Christmas trees. Current employment of land for agricultural use includes:
  - (a) The operation or use of farmland subject to any agriculture-related government program.
  - (b) Land lying fallow for 1 year as a normal and regular requirement of good agricultural husbandry.
  - (c) Land planted in orchards or other perennials prior to maturity.
  - (d) Land under buildings supporting accepted agricultural practices.
 Agricultural use does not include livestock feedlots.
- (9) **Anadromous fish:** Species of fish that migrate upstream to freshwater after spending part of their life in the ocean (saltwater).
- (10) **Anaerobic:** A condition in which molecular oxygen is absent (or effectively so) from the environment.
- (11) **Aquaculture:** The cultivation, maintenance, and harvesting of aquatic species.
- (12) **Aquatic area:** The water area of a stream, pond, or lake measured at the ordinary high water mark.
- (13) **Archaeological resources:** See cultural resource.
- (14) **Archival research:** Research in primary documents that is likely to yield information regarding human occupation of the area in question, including but not limited to deed, census, cartographic, and judicial records.
- (15) **Bed and breakfast inn:** An establishment located in a structure designed as a single-family dwelling where more than two rooms but fewer than six rooms are rented on a daily basis. Bed and breakfast inns are clearly incidental to the use of a structure as a single-family dwelling and are owner occupied and operated. Bed and breakfast inns operate as transient accommodations, not as rooming or boarding houses.
- (16) **Best management practices:** Conservation techniques and management measures that (1) control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxins, and sediment; (2) minimize adverse affects to groundwater and surface-water flow and circulation patterns; and (3) maintain the chemical, biological, and physical characteristics of wetlands, ponds, streams, and riparian areas.
- (17) **Biodiversity (SMA):** A diversity of biological organisms at the genetic, species, ecosystem, and landscape levels.
- (18) **Boat landing:** Cleared area or developed structure used to facilitate launching or retrieving watercraft.
- (19) **Buffer zone:** An area adjacent to a wetland, stream, pond, or other sensitive area that is established and managed to protect sensitive natural resources from human disturbance. In instances that involve a wetland, stream, or pond, the buffer zone includes all or a portion of the riparian area.
- (20) **Building:** Any structure used or intended for supporting or sheltering any use or occupancy. Buildings have a roof supported by columns or walls. They include, but are not limited to, dwellings, garages, barns, sheds and shop buildings.
- (21) **Camping or recreational vehicle:** A vacation trailer, camper, self-propelled vehicle, or structure equipped with wheels for highway use that is intended for recreational purposes, but not for residential purposes, and is equipped with plumbing, sink, or toilet. A camping or recreational vehicle shall be considered a dwelling unit if it is connected to a sewer system (including septic tank), water, and electrical lines or is occupied on the same parcel for more than 60 days in any consecutive 12-month period.
- (22) **Campsite:** Single camping unit, that usually consists of a cleared, level area for a tent, and may include a parking spur, fire ring, table, and other amenities.
- (23) **Capability:** The ability of land to produce forest or agricultural products due to characteristics of the land itself, such as soil, slope, exposure, or other natural factors.
- (24) **Canopy closure (SMA):** For forest practices, the percentage measuring the degree to which one layer of a tree

canopy blocks sunlight or obscures the sky as measured from below.

(25) **Cascadian architecture (SMA):** Architectural style using native rock work, large timber, and steeply pitched roofs in a rustic manner.

(26) **Catastrophic situations (SMA):** Forces such as fire, insect and disease infestations, and earth movements.

(27) **Childcare center:** A facility providing daycare to three or more children, but not including:

(a) The provision of care that is primarily educational, unless provided to a preschool child for more than 4 hours a day.

(b) The provision of care that is primarily supervised training in a specific subject, including but not limited to dancing, gymnastics, drama, music or religion.

(c) The provision of short-term care related to or associated with group athletic or social activities.

(d) The provision of daycare in the provider's home in the family living quarters for less than 13 children.

(28) **Columbia River Gorge National Scenic Area Graphic Signing System:** Sign design standards developed for the Scenic Area for public signs in and adjacent to public road rights-of-way.

(29) **Commercial development/use:** Any facility or use of land or water whose function is primarily retail buying or selling of goods or services or both. This does not include fruit or produce stands.

(30) **Commercial forest products:** These include timber for lumber, pulp, and firewood for commercial purposes.

(31) **Commercial recreation:** Any private (non-governmental) recreational activity or facility on privately owned land, excluding nonprofit facilities. This does not include operation of a public recreation facility by a private vendor.

(32) **Community facility:** Basic utilities and services necessary to support public service needs, including but not limited to water and power utilities, sanitation facilities, public microwave stations and communication facilities, schools, roads and highways. This does not include sanitary landfills.

(33) **Consulting parties (cultural resources):** Organizations or individuals who submit substantive written comments to a local government in a timely manner because they are concerned with the effects of a proposed use on cultural resources.

(34) **Contiguous land:** Parcels or other lands that are under the same ownership and have a common boundary, regardless of whether or not portions of the parcels have separate tax lot numbers, lie in different counties, lie in different sections or government lots, lie in different land use or zoning designations, or are separated by public or private roads. Contiguous land does not include parcels that meet only at a single point.

(35) **Counties:** The six counties within the Scenic Area: Hood River, Multnomah, and Wasco in Oregon, and Clark, Skamania, and Klickitat in Washington.

(36) **Created opening (SMA):** A created forest opening with less than 40 percent average canopy closure of overstory trees and less than 60 percent average canopy closure of understory trees averaging less than 5 inches diameter at breast height for coniferous forests and less than 25 percent

total canopy cover for oak woodlands. This definition does not include agricultural fields.

(37) **Creation (wetlands):** A human activity that converts an upland into a wetland. This definition presumes that the area to be converted has not been a wetland in recent times (100 to 200 years).

(38) **Cultivation:** Any activity that prepares land for raising crops by turning, breaking, or loosening the soil. Cultivation includes plowing, harrowing, leveling, and tilling.

(39) **Cultural resource:** Evidence of human occupation or activity that is important in the history, architecture, archaeology or culture of a community or region. Cultural resources include, but are not limited to, the following:

(a) **Archaeological resources.** Physical evidence or ruins of human occupation or activity that are located on or below the surface of the ground and are at least 50 years old.

Archaeological resources include, but are not limited to, the remains of houses, villages, camp and fishing sites, and cave shelters; rock art such as petroglyphs and pictographs; artifacts such as arrowheads, utensils, tools, fragments of tools and utensils, obsidian flakes or other material byproducts from tool and utensil-making activities; and graves, human remains, and associated artifacts.

(b) **Historic buildings and structures.** Standing or above-ground buildings and structures that are at least 50 years old.

Historic buildings and structures include, but are not limited to, log cabins, barns, canals, flumes, pipelines, highways, and tunnels.

(c) **Traditional cultural properties.** Locations, buildings, structures, and objects that are associated with cultural beliefs, customs, or practices of a living community that are rooted in that community's history and are important in maintaining the continuing cultural identity of the community.

Traditional cultural properties include, but are not limited to, a location associated with the traditional beliefs of a Native American group about its origins or its cultural history; a location where a community has traditionally carried out artistic or other cultural practices important in maintaining its historical identity; and a location where Native American religious practitioners have historically gone, and go today, to perform ceremonial activities. Objects may include petroglyphs, pictographs, rock cairns or other rock structures, trees, and rock outcrops.

(40) **Cumulative effects:** The combined effects of two or more activities. The effects may be related to the number of individual activities, or to the number of repeated activities on the same piece of ground. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time.

(41) **Cut:** An area where soil or earth is excavated or removed in conjunction with development activities.

(42) **Dedicated site:** An area actively devoted to the current use and as delineated on the site plan.

(43) **Deer and elk winter range:** Areas normally used, or capable of being used, by deer and elk from December through April.

(44) **Destruction of wetlands:** Loss of the wetlands or any of its component parts, including the filling, draining, or other adverse effect to the sustainable functioning of the wetland.

(45) **Developed recreation:** Recreational opportunities characterized by high-density use on specific sites and requiring facilities installation. Density of use, amount of site development, and type of recreation site can vary widely across the spectrum of recreation activities.

(46) **Developed road prism (SMA):** The area of the ground associated with a particular road and containing the road surface, ditch, shoulder, retaining walls, or other developed features. Does not include the natural appearing portions of cut and fill slopes.

(47) **Development:** Any land division or structure, including but not limited to new construction of buildings and structures, and mining, dredging, filling, grading, paving, and excavation.

(48) **Diameter at breast height (dbh):** The diameter of a tree as measured at breast height.

(49) **Duplex:** A building containing two dwelling units and designed for occupancy by two families.

(50) **Dwelling, single-family:** A detached building containing one dwelling unit and designed for occupancy by one family only.

(51) **Dwelling unit:** A single unit designed for occupancy by one family and having not more than one cooking area or kitchen.

(52) **Earth materials:** Any rock, natural soil or any combination thereof. Earth materials do not include non-earth or processed materials, including, but not limited to, construction debris (e.g., concrete, asphalt, wood), organic waste (e.g., cull fruit, food waste) and industrial byproducts (e.g., slag, wood waste).

(53) **Effect on treaty rights:** To bring about a change in, to influence, to modify, or to have a consequence to Indian treaty or treaty-related rights in the Treaties of 1855 with the Nez Perce, Umatilla, Warm Springs and Yakima tribes executed between the individual Indian tribes and the Congress of the United States and as adjudicated by the Federal courts.

(54) **Emergency/disaster:** A sudden unexpected occurrence, either the result of human or natural forces, necessitating immediate action to prevent or mitigate significant loss or damage to life, health, property, essential public services, or the environment.

(55) **Emergency/disaster response:** Actions involving any development (such as new structures, grading, or excavation) or vegetation removal that must be taken immediately in response to an emergency/disaster event (as defined above). Emergency/disaster response actions not involving any structural development or ground-disturbance (such as use of emergency transport vehicles, communications activities or traffic control measures) are not included in this definition and are not affected by these provisions.

(56) **Endemic:** Plant and animal species that are found only in the vicinity of the Columbia River Gorge area.

(57) **Enhancement (natural resources):** A human activity that increases one or more functions of an existing wetland, stream, lake, riparian area, or other sensitive area. Enhancement is generally limited to a wetland, stream, lake, riparian area, or other sensitive area that is degraded. Enhancing an area that is in good or excellent condition may reduce biological diversity and eliminate other natural functions and may not be desirable.

(58) **Ephemeral streams (SMA):** streams that contain flowing water only during, and for a short duration after, precipitation events.

(59) **Ethnography:** The descriptive and analytic study of the culture of particular groups. An ethnographer seeks to understand a group through interviews with its members and often through living in and observing it.

(60) **Existing use or structure:** Any use or structure that was legally established. "Legally established" means: (1) the landowner or developer obtained applicable land use and building permits and complied with land use regulations and other laws that were in effect at the time the use or structure was established, or that were in effect at the time the landowner or developer corrected an improperly established use or structure; (2) the use or structure was initially operated or constructed according to those applicable permits, land use regulations and other laws, or has been operated or constructed according to permits obtained to correct an improperly established use or structure; and (3) any changes to the original use or structure must comply with all applicable permit requirements, land use regulations and other laws that were in effect at the time the change was established.

(61) **Exploration, development (extraction and excavation), and production of mineral resources:** Includes all or any part of the process of surface, underground, or submerged mining of mineral resources. Minerals include soil, coal, clay, stone, sand, gravel, metallic ore, oil and gases and any other material or substance excavated for commercial, industrial or construction use. For the Management Plan, this definition includes all exploration and mining, regardless of area disturbed or volume mined. Production of mineral resources means the use of portable crushing, onsite stockpiling, washing, milling, screening, or sorting equipment or other similar methods of initial treatment of a mineral resource to transport to another site for use or further processing. Secondary processing such as concrete or asphalt batch plants are considered industrial uses.

(62) **Fill:** The placement, deposition, or stockpiling of sand, sediment, or other earth materials to create new uplands or create an elevation above the existing surface.

(63) **Finished grade:** The final elevation of the ground level of a property after construction is completed.

(64) **Fire break:** A break in ground cover fuels, adjacent to and surrounding buildings.

(65) **Footprint:** The area that falls directly beneath and shares the same perimeter as a structure.

(66) **Forbs:** Broad-leaved herbs, in contrast to ferns, fern allies, and grasses and grasslike plants.

(67) **Foreground (SMA):** One-half mile on either side of a traveled road or trail.

(68) **Forest health (SMA):** A measure of the robustness of forest ecosystems. Forests are deemed healthy when they have capacity across the landscape for renewal, for the maintenance of wildlife habitats, for recovery from a wide range of disturbances, and for retention of their resilience.

(69) **Forest practice (SMA):** Any activity conducted on or directly pertaining to forested land and relating to forest ecosystem management including but not limited to growing, thinning, or removing live or dead forest tree or shrub species, road and trail construction, reforestation, fertilizing,

brush control, prevention of wildfire, and suppression of diseases and insects. The removal of hazardous trees is excluded. Uses that include establishment, management or harvest of Christmas trees, nursery stock, or fiber producing tree species requiring intensive cultivation (irrigation, fertilization, etc.) and a harvest rotation of 12 years or less are considered agricultural uses.

(70) **Forest practice (GMA):** Those activities related to the growing and harvesting of forest tree species, as defined by the Oregon Forest Practices Act or the Washington Forest Practices Act.

(71) **Forest products:** Commodities produced from a forest, including, but not limited to, timber products, boughs, mushrooms, pine cones, and huckleberries.

(72) **Forest stand structure (SMA):** The number, types and spacing of tree species, tree sizes, and canopy layers contained in a stand of trees.

(73) **Forest use:** The growing, propagation, and harvesting of forest tree species and other forest products.

(74) **Fully screened:** A description of the relative visibility of a structure where that structure is not visible as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan).

(75) **Grade (ground level):** The average elevation of the finished ground elevation as defined by the Uniform Building Code.

(76) **Grading:** Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

(77) **Hazard tree (SMA):** A tree with a structural defect that will predictably result in whole or partial failure within 1.5 tree lengths of a road or maintained development. A defective tree is hazardous only when its failure could result in danger to people or damage to structures, vehicles, or other property.

(78) **Height of building:** The greatest vertical distance between the point of lowest finished grade adjoining any exterior wall of a building and the highest point of the roof, such as the highest coping or parapet of a flat roof, the highest deck line of a mansard roof, or the highest ridge of a hip, gable, gambrel, shed or other pitched roof.

(79) **Herbaceous:** A plant with no persistent woody stem above the ground, with characteristics of an herb.

(80) **Herbs:** Nonwoody (herbaceous) plants, including grasses and grasslike plants, forbs, ferns, fern allies, and non-woody vines. (Note: Seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(81) **Historic buildings and structures:** See cultural resource.

(82) **Historic survey:** Actions that document the form, style, integrity, and physical condition of historic buildings and structures. Historic surveys may include archival research, architectural drawings, and photographs.

(83) **Horses, boarding of:** The stabling, feeding, and grooming for a fee, or the renting of stalls for and the care of horses not belonging to the owner of the property, and related facilities, such as training arenas, corrals, and exercise tracks.

(84) **Hydric soil:** A soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions in the upper part.

(85) **In-lieu sites:** Sites acquired by the Army Corps of Engineers and transferred to the Bureau of Indian Affairs for treaty fishing, in lieu of those usual and accustomed fishing areas lost by inundation from reservoir construction. These sites were acquired under the provisions of Public Law 14 and Public Law 100-581, Section 401. Additional in-lieu sites will be provided for.

(86) **Indian tribal government:** The governing bodies of the Nez Perce Tribe (Nez Perce Tribal Executive Committee), the Confederated Tribes of the Umatilla Indian Reservation (Board of Trustees), the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribal Council), and the Confederated Tribes and Bands of the Yakama Indian Nation (Tribal Council).

(87) **Indian tribes:** The Nez Perce Tribe, the Confederated Tribes and Bands of the Yakama Indian Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes of the Umatilla Indian Reservation.

(88) **Industrial uses:** Any use of land or water primarily involved in:

(a) Assembly or manufacture of goods or products,

(b) Processing or reprocessing of raw materials, processing of recyclable materials or agricultural products not produced within a constituent farm unit,

(c) Storage or warehousing, handling or distribution of manufactured goods or products, raw materials, agricultural products, forest products, or recyclable materials for purposes other than retail sale and service, or

(d) Production of electric power for commercial purposes.

(89) **Interpretive displays:** Signs and structures that provide for the convenience, education, and enjoyment of visitors, helping visitors understand and appreciate natural and cultural resources and their relationship to them.

(90) **Key components:** The attributes that are essential to maintain the long-term use and productivity of a wildlife site. The key components vary by species and wildlife site. Examples include fledgling and perching trees, watering sites, and foraging habitat.

(91) **Key viewing areas:** Those portions of important public roads, parks, or other vantage points within the Scenic Area from which the public views Scenic Area landscapes. These include:

Historic Columbia River Highway

Crown Point

Highway I-84, including rest stops

Multnomah Falls

Washington State Route 14

Beacon Rock

Panorama Point Park

Cape Horn

Dog Mountain Trail

Cook-Underwood Road

Rowena Plateau and Nature Conservancy Viewpoint

Portland Women's Forum State Park

Bridal Veil State Park

Larch Mountain  
 Rooster Rock State Park  
 Bonneville Dam Visitor Centers  
 Columbia River  
 Washington State Route 141  
 Washington State Route 142  
 Oregon Highway 35  
 Sandy River  
 Pacific Crest Trail

SMA only:

Old Washington State Route 14 (County Road 1230)  
 Wyeth Bench Road  
 Larch Mountain Road  
 Sherrard Point on Larch Mountain

(92) **Land division:** The division or redivision of contiguous land(s) into tracts, parcels, sites or divisions, regardless of the proposed parcel or tract size or use. A land division includes, but is not limited to, short subdivisions, partitions, and subdivisions.

(93) **Landscape setting:** The combination of land use, landform, and vegetation patterns that distinguish an area in appearance and character from other portions of the Scenic Area.

(94) **Livestock feedlot:** Stockyards and commercial livestock finishing yards for cattle, sheep, swine, and fur bearers. Feedlots do not include winter pasture or winter hay-feeding grounds.

(95) **Lot line adjustment:** Relocation of one or more common boundary lines between two contiguous parcels that does not create additional parcels.

(96) **Maintenance:** Ordinary upkeep or preservation of a serviceable structure affected by wear or natural elements. Maintenance does not change the original size, scope, configuration or design of a structure.

Maintenance includes, but is not limited to, painting and refinishing, regrouting masonry, patching roofs, grading gravel roads and road shoulders, cleaning and armoring ditches and culverts, filling potholes, controlling vegetation within rights-of-way, removing trees and other roadside hazards within rights-of-way, and testing and treating utility poles.

(97) **Mitigation:** The use of any or all of the following actions:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(98) **Mosaic (SMA):** The dispersal of overstory and understory leave trees in irregularly spaced clumps of varying sizes throughout an irregularly shaped created forest opening.

(99) **Multifamily dwelling:** A dwelling constructed or modified into two or more single-family units.

(100) **Native species:** Species that naturally inhabit an area.

(101) **Natural grade:** The undisturbed elevation of the ground level of a property before any excavation or construction operations.

(102) **Natural resources:** Naturally occurring features including land, water, air, plants, animals (including fish), plant and animal habitat, and scenery.

(103) **Natural resource specialist:** A person with professional qualifications, including an academic degree or sufficient professional experience, in the subject matter the specialist is being asked to analyze or evaluate.

(104) **Natural resource-based recreation (SMA):** Recreation activities, uses, or facilities that essentially depend on the unique natural, scenic, or cultural resources found within the Scenic Area. Campgrounds, trails, boating and windsurfing facilities, swimming beaches, picnic sites, viewpoints, interpretive parks, and similar outdoor recreation facilities are considered resource-based; golf courses, tennis courts, and rental cabins are not.

(105) **Nonprofit organization:** An organization whose nonprofit status has been approved by the U.S. Internal Revenue Service.

(106) **Not visually evident (SMA):** A visual quality standard that provides for development or uses that are not visually noticeable to the casual visitor. Developments or uses shall only repeat form, line, color, and texture that are frequently found in the natural landscape, while changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not be noticeable.

(107) **Old growth (SMA):** A forest stand usually at least 180-220 years old with moderate to high canopy closure; a multi-layered, multi-species canopy dominated by large overstory trees; high incidence of large trees, some with broken tops and other indications of old and decaying wood (decadence); numerous large snags, and heavy accumulations of wood, including large logs on the ground.

(108) **Operational (SMA):** For new agricultural use, an agricultural use shall be deemed operational when the improvements and investments described in the Stewardship Plan are in place on the parcel.

(109) **Ordinary high water mark:** The mark on all streams, ponds, and lakes that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a vegetative character distinct from that of the abutting upland. In any area where the ordinary high water mark cannot be found, the line of mean high water shall substitute.

(110) **Other related major structure (SMA):** A structure related to a dwelling on a parcel in the SMA that is less than 40 acres in size, which is not incidental and subordinate to the main use of the property. A building or structure that satisfies the definition of "accessory building" is not an "other related major structure" or a "major development action."

(111) **Overstory (SMA):** For forest practices, the tall or mature trees that rise above the shorter or immature understory trees.

(112) **Parcel:**

(a) Any unit of land legally created by a short division, partition, or subdivision-that was legally recognized under all



state laws and local ordinances in effect on November 17, 1986. A unit of land that is eligible for consolidation as provided in the Management Plan shall not be considered a parcel.

(b) Any unit of land legally created and separately described by deed, sales contract, or record of survey prior to November 17, 1986, if the unit of land complied with all planning, zoning, and land division ordinances or regulations applicable at the time of creation and up through November 16, 1986.

(c) A unit of land legally created and separately described by deed or sales contract after November 17, 1986 if the unit was approved under the Final Interim Guidelines or a land use ordinance consistent with the Management Plan, or by the Forest Service Office prior to the Final Interim Guidelines.

(d) A unit of land shall not be considered a separate parcel simply because the subject tract of land:

(A) Is a unit of land solely created to establish a separate tax account;

(B) Lies in different counties;

(C) Lies in different sections or government lots;

(D) Lies in different land use or zoning designations; or

(E) Is dissected by a public or private road.

(113) **Practicable:** Able to be done, considering technology and cost.

(114) **Preexisting:** Existing prior to the adoption of the Columbia River Gorge National Scenic Area Management Plan.

(115) **Previously disturbed:** An area of land where the natural surface has been graded, excavated, paved and/or graveled.

(116) **Project area:** The geographic area or areas within which new development and uses may cause changes in the character or use of cultural resources, if any such resources exist.

(117) **Public use facility:** Recreation development(s) that meet the definition of "recreation facility" in the Management Plan and are open for use by the general public. Private clubs and other facilities limited to members or otherwise restricted in availability shall not be considered public use facilities.

(118) **Rare plant species:** Used in a generic sense to refer to various categories of sensitive plants cited in federal and state programs.

(119) **Recreation facility:** A cluster or grouping of recreational developments or improvements located in relatively close proximity to one another, and that are not separated in distance by more than 1/4 mile of land that does not contain any such developments or improvements, except for roads and/or pathways.

(120) **Reconnaissance survey:** Actions conducted to determine if archaeological resources are present in an area that would be affected by a proposed use. Reconnaissance surveys may include archival research, surface surveys, sub-surface testing, and ethnographic research.

(121) **Recreation opportunity spectrum (ROS):** A means of classifying areas in relation to the types of recreation opportunities and experiences they provide or are

appropriate for. The spectrum ranges from primitive (wilderness areas) to urban (highly modified areas).

(a) **Primitive:** Remote, inaccessible areas with a high degree of solitude and with resources essentially unmodified.

(b) **Semiprimitive:** Areas accessible only by primitive transportation routes, with low to moderately infrequent human encounters and with only subtle modifications to the natural setting.

(c) **Roaded Natural:** Roaded areas with moderately frequent human encounters and with resource modifications evident.

(d) **Rural:** Roaded areas with moderate to highly frequent human encounters and with the natural setting dominated by cultural modifications.

(e) **Suburban:** Areas representing the rural-urban interface, with urban-like roads, structures, highly frequent human encounters, and dominant resource modifications encroaching into the rural landscape.

(f) **Urban:** Highly accessible, roaded areas dominated by human encounters and human-related structures.

(122) **Recreation resources:** Areas and facilities that provide recreation opportunities and experiences. Recreation resources include semiprimitive areas with few facilities and developed sites.

(123) **Regularly maintained:** An area of land that has been previously disturbed and where periodic actions have been taken to (1) keep the area clear of vegetation (e.g., shoulders, utility yards), (2) limit the height and type of vegetation (e.g., utility rights-of-way), and/or (3) establish and retain non-native vegetation (e.g., landscaped medians, rest area grounds).

(124) **Rehabilitation (natural resources):** A human activity that returns a wetland, stream, buffer zone, or other sensitive area that was disturbed during construction of a permitted use to its natural or preconstruction condition.

(125) **Remnant old forest (SMA):** Large trees in the overstory that are well into the mature growth state (older than 180 years).

(126) **Repair:** Replacement or reconstruction of a part of a serviceable structure after damage, decay or wear. A repair returns a structure to its original and previously authorized and undamaged condition. It does not change the original size, scope, configuration or design of a structure, nor does it excavate beyond the depth of the original structure.

Repair includes, but is not limited to, reroofing a building, replacing damaged guardrails, reconstructing a rotten deck or porch, replacing a broken window or door, replacing a utility pole and associated anchors, replacing a section of broken water or sewer line, replacing a damaged or defective utility line, reconstructing a portion of a building damaged by fire or a natural event, and replacing railroad ties or rails.

(127) **Resource-based recreation:** Those recreation uses that are essentially dependent upon the natural, scenic, or cultural resources of the Scenic Area and that do not adversely affect those resources upon which they depend.

(128) **Restoration (wetlands):** A human activity that converts an area that was formerly a wetland back into a wetland. This definition presumes that the area to be restored no longer qualifies as a wetland because of past activities, alterations, or catastrophic events.

(129) **Review uses:** Proposed uses and developments that must be reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they comply with the policies and guidelines in the Management Plan.

(130) **Riparian area:** The area immediately adjacent to streams, ponds, lakes, and wetlands that directly contributes to the water quality and habitat components of the water body. This may include areas that have high water tables and soils and vegetation that exhibit characteristics of wetness, as well as upland areas immediately adjacent to the water body that directly contribute shade, nutrients, cover, or debris, or that directly enhance water quality within the water body.

(131) **Road:** The entire right-of-way of any public or private way that provides ingress to or egress from property by means of vehicles or other means or that provides travel between places by means of vehicles. "Road" includes, but is not limited to:

(a) Ways described as streets, highways, throughways, or alleys.

(b) Road-related structures that are in the right-of-way, such as tunnels, culverts, or similar structures.

(c) Structures that provide for continuity of the right-of-way, such as bridges.

(132) **Scenic Area:** The Columbia River Gorge National Scenic Area.

(133) **Scenic travel corridor:** Those portions of Interstate 84, the Historic Columbia River Highway, Oregon Highway 35, and Washington State Routes 14, 141, and 142 located in the Scenic Area and specifically designated to be managed as scenic and recreational travel routes.

(134) **Secretary:** The Secretary of Agriculture.

(135) **Sensitive plant species:** Plant species that are (1) endemic to the Columbia River Gorge and vicinity, (2) listed as endangered or threatened pursuant to federal or state endangered species acts, or (3) listed as endangered, threatened or sensitive by the Oregon or Washington Natural Heritage Program.

In the SMA, sensitive plant species also include plant species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(136) **Sensitive wildlife species:** Animal species that are (1) listed as endangered or threatened pursuant to federal or state endangered species acts, (2) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission, (3) listed as sensitive by the Oregon Fish and Wildlife Commission, or (4) considered to be of special interest to the public, limited to great blue heron, osprey, mountain goat, golden eagle, and prairie falcon.

In the SMA, sensitive wildlife species also include animal species recognized by the Regional Forester as needing special management to prevent them from being placed on federal or state endangered species lists.

(137) **Service station:** A business operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

(138) **Serviceable:** Presently useable.

(139) **Shall:** Action is mandatory.

(140) **Should:** Action is encouraged.

(141) **Shrub:** A woody plant usually greater than 3 feet but less than 20 feet tall that generally exhibits several erect, spreading, or prostrate stems and has a bushy appearance. (Note: For the Management Plan, seedlings of woody plants that are less than 3 feet tall shall be considered part of the herbaceous layer.)

(142) **Sign:** Any placard, poster, billboard, advertising structure or inscribed surface, pattern or artificial lighting, pictorial or symbolic ornament, emblematic structure, banner, fluttering apparatus, statue, model, ornamental figure, or other visually communicative or expressive device that is visible from an out-of-doors position and is used to advertise or call the public's attention to any public, business, commercial, industrial, recreational or any other activity, object for sale or lease, person or place, or to bear any kind of message. It includes any surface on which a name, text, device, signal, ornament, logotype, or advertising matters is made visible. The meaning of "sign" shall also include any sign currently in disuse, but still visible from an out-of-doors position, and any frame or support structure erected specifically to bear or uphold a sign.

(143) **Significant cultural resource (SMA):** A cultural resource that is included in, or eligible for inclusion in, the National Register of Historic Places. (The criteria for evaluating the eligibility of properties for the National Register of Historic Places appear in "National Register Criteria for Evaluation" [36 CFR 60].)

(144) **Skyline:** The line that represents the place at which a landform, such as a cliff, bluff or ridge, meets the sky, as viewed from a specified vantage point (generally a key viewing area, for the purpose of the Management Plan). In areas with thick, unbroken tree cover, the skyline is generally formed by the top of the vegetative canopy. In treeless areas or areas with more open tree cover, the skyline is generally formed by the surface of the ground.

(145) **Soil capability class:** A classification system developed by the U.S. Department of Agriculture Natural Resources Conservation Service to group soils as to their capability for agricultural use.

(146) **Special habitat area:** Wetlands, mudflats, shallow water, and riparian vegetation that have high values for waterfowl, shorebirds, raptors, songbirds, upland game, and reptiles.

(147) **Special streams:** Streams that are primary water supplies for fish hatcheries and rearing ponds.

(148) **Stand:** A group of trees possessing uniformity in regard to type, age, vigor, or size.

(149) **Story:** A single floor level of a structure, as defined by the Uniform Building Code.

(150) **Streams:** Areas where surface water produces a defined channel or bed, including bedrock channels, gravel beds, sand and silt beds, springs and defined-channel swales. The channel or bed does not have to contain water year-round. This definition is not meant to include irrigation ditches, canals, storm or surface water runoff structures, or other artificial watercourses unless they are used to convey streams naturally occurring prior to construction of such watercourses.

For the Management Plan, streams are categorized into two classes: perennial streams and intermittent streams.

Perennial stream means a stream that flows year-round during years of normal precipitation. Intermittent stream means a stream that flows only part of the year, or seasonally, during years of normal precipitation.

(151) **Structure:** That which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner. This includes, but is not limited to, buildings, walls, fences, roads, parking lots, signs, and additions/alterations to structures.

(152) **Submit:** To deliver a document (e.g., land use application, written comment) to a reviewing agency's office by personal delivery, commercial delivery, mail, fax, or E-mail. When a document must be submitted within a specified period, it must arrive at the reviewing agency's office by the close of business on the last day of the specified period.

(153) **Subsurface testing:** Any procedure that removes material from beneath the ground surface for the purpose of identifying cultural resources, such as shovel tests, posthole digger tests, and auger borings.

(154) **Suitability:** The appropriateness of land for production of agricultural or forest products or for recreation, considering its capability for production; surrounding uses and features associated with development; compatibility with scenic, cultural, natural and recreation resources; compatibility among uses; and other cultural factors, such as roads, powerlines, dwellings, and size of ownership.

(155) **Thinning (SMA):** A forest practice intended to create favorable conditions for the continued growth of trees within an existing stand of trees. A thinning becomes a forest opening in coniferous forests when the average canopy closure of the overstory layer is zero or less than 40 percent and the understory layer is less than 60 percent average canopy closure of trees averaging less than 5 inches diameter at breast height. A thinning becomes a forest opening in oak woodlands when the total average canopy closure is less than 25 percent.

(156) **Total canopy closure (SMA):** For forest practices, the percentage measuring the degree to which all layers of the tree canopy combine together to block sunlight or obscure the sky as measured from below.

(157) **Travelers accommodations:** Any establishment having rooms rented or kept for rent on a daily or weekly basis to travelers or transients for a charge or fee paid or to be paid for rental use or use of facilities.

(158) **Treatment (SMA):** For forest practices, a site-specific operation that carries out the forest management objectives for an area.

(159) **Treaty rights or other rights:** Rights reserved by the Indian tribes through the Treaties of 1855. These include the right of fishing at all usual and accustomed places, as well as the privilege of pasturing livestock and hunting and gathering on open and unclaimed lands in common with the citizens of the states.

(160) **Tributary fish habitat:** Streams that are used by anadromous or resident fish for spawning, rearing and/or migration.

(161) **Understory (SMA):** For forest practices, the shorter or immature trees below the tall or mature overstory trees.

(162) **Undertaking:** Any project, activity, program or development or change in land use that can result in changes in the character or use of a cultural resource, if any such cultural resources are located in the area of potential effects. For federal undertakings, the project, activity, or program must be under the direct or indirect jurisdiction of a federal agency or licensed or assisted by a federal agency. Undertakings include new and continuing projects, activities, or programs and any of their elements [36 CFR 800.2(o)].

(163) **Unimproved lands:** Lands that generally do not have developments such as buildings or structures.

(164) **Upland:** Any area that does not qualify as a wetland because the associated hydrologic regime is not sufficiently wet to elicit development of vegetation, soils, and/or hydrologic characteristics associated with wetlands.

(165) **Uses allowed outright:** New uses and developments that may occur without being reviewed by a county planning department, the Gorge Commission, or the Forest Service to determine if they are consistent with the Management Plan.

(166) **Utility facility:** Any structure that provides for the transmission or distribution of water, sewer, fuel, electricity, or communications.

(167) **Vested right:** The right to develop or continue to develop a use, development or structure that was reviewed and approved pursuant to this Management Plan.

(168) **Viewshed:** A landscape unit seen from a key viewing area.

(169) **Visual quality objective (VQO):** A set of visual management goals established by the Forest Service to achieve a desired visual objective. These objectives include retention (not visually evident) and partial retention (visually subordinate), and others in the Mt. Hood and Gifford Pinchot National Forest Plans.

(170) **Visually subordinate:** A description of the relative visibility of a structure or use where that structure or use does not noticeably contrast with the surrounding landscape, as viewed from a specified vantage point (generally a key viewing area, for the Management Plan). As opposed to structures that are fully screened, structures that are visually subordinate may be partially visible. They are not visually dominant in relation to their surroundings. Visually subordinate forest practices in the SMA shall repeat form, line, color, or texture common to the natural landscape, while changes in their qualities of size, amount, intensity, direction, pattern, etc., shall not dominate the natural landscape setting.

(171) **Water-dependent:** Uses that absolutely require, and cannot exist without, access or proximity to, or siting within, a water body to fulfill their basic purpose. Water-dependent uses include, but are not limited to, docks, wharfs, piers, dolphins, certain fish and wildlife structures, boat launch facilities, and marinas. Dwellings, parking lots, spoil and dump sites, roads, restaurants, trails and paths, trailer parks, resorts, and motels are not water-dependent.

(172) **Water-related:** Uses not directly dependent upon access to a water body, but whose presence facilitates public access to and enjoyment of a water body. In the GMA, water-related uses shall be limited to boardwalks, trails and paths, observation decks, and interpretative aids, such as kiosks and signs.

(173) **Wetlands:** Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. This does not include riparian areas, rivers, streams, and lakes.

(174) **Wetlands functions:** The beneficial roles that wetlands serve, including storage, conveyance, and attenuation of floodwaters and stormwaters; groundwater recharge and discharge; protection of water quality and reduction of sediment and erosion; production of waterfowl, game and nongame birds, mammals, and other living resources; protection of habitat for endangered, threatened, and sensitive species; food chain support for a broad range of wildlife and fisheries; educational, historical, and archaeological value protection; and scenic, aesthetic, and recreational amenities.

(175) **Winery:** An agricultural facility used for processing grapes into wine, including laboratories, processing areas, offices, and storage areas. A winery is distinct from a wine sales/tasting room; each of these uses must be explicitly reviewed and approved.

(176) **Wine sales/tasting room:** A facility that is accessory to a winery and used for tasting and retail sales of wine, including interior space (e.g., wine bar, sitting room) and exterior space (e.g., patio, veranda). A wine sales/tasting room shall not be used for preparing or serving meals or hosting weddings, receptions or other commercial events, unless allowed, reviewed and approved under the "Commercial Events" provisions in 350-81-108. A wine sales/tasting room is distinct from a winery; each of these uses must be explicitly reviewed and approved.

(177) **Woody plant:** A seed plant (gymnosperm or angiosperm) that develops persistent, hard, fibrous tissues.

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

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

## Applications and Procedures

### 350-81-030. Standards for Applications

**Complete Application Required:** Any proposed use, development or structure shall be reviewed according to the standards in effect on the date an applicant submitted a complete land use application. A complete application is one that the Executive Director determines meets this Land Use Ordinance's requirements for: (1) a complete application form; (2) a complete site plan; and (3) all applicable information specified in the various sections of this land use ordinance. Incomplete applications shall not be reviewed.

### 350-81-032. Application for Review and Approval

(1) Prior to initiating any use or development which requires review and approval by the Executive Director, an application shall be completed pursuant to 350-81-032.

(2) The Executive Director shall accept and review the application pursuant to 350-81-030 through 350-81-046 for consistency with the appropriate guidelines of this rule.

(3) The Commission may charge a fee for review of applications after a public hearing. The Gorge Commission shall set the fee.

(4) Standard application forms shall be available at the Commission Office, and shall be provided to county and city planning offices and the Forest Service.

(5) Applications for the review and approval of a proposed use or development shall provide the following information:

(a) The applicant's name, address and telephone number;  
(b) The land owner's name, address and telephone number (if different from applicant's);

(c) The county in which the proposed use or development would be located;

(d) The section, quarter section, township and range in which the proposed development would be located;

(e) The street address of the proposed use or development;

(f) The tax lot number(s) and size in acres of the parcel(s) involved;

(g) A description of the current land use for the parcel(s) involved and adjoining lands;

(h) A written description of the proposed use or development, including details on the height, exterior color(s), and construction materials of the proposed structures.

(i) A list of Key Viewing Areas from which the proposed use would be visible.

(j) A map of the project area. The map shall be drawn to scale. The scale of the map shall be large enough to allow the Executive Director to determine the location and extent of the proposed use or development and evaluate its effects on scenic, cultural, natural, and recreation resources. The map shall be prepared at a scale of 1 inch equals 200 feet (1:2,400), or a scale providing greater detail. If a parcel is very large, the map does not need to show the entire parcel. Rather, it can show only those portions of the parcel affected by the proposed use. The map shall include the following elements:

(A) North arrow.

(B) Map scale.

(C) Boundaries, dimensions, and size of the subject parcel.

(D) Significant terrain features or landforms.

(E) Groupings and species of trees or other vegetation on the parcel.

(F) Location and species of vegetation that would be removed or planted.

(G) Bodies of water and watercourses.

(H) Location and width of existing and proposed roads, driveways, and trails.

(I) Location and size of existing and proposed structures.

(J) Location of existing and proposed services including wells or other water supplies, sewage disposal systems, power and telephone poles and lines, and outdoor lighting.

(K) Location and depth of all proposed grading and ditching.

(k) Elevation drawings, which shall show the appearance of proposed structures and shall include natural grade, finished grade, and the geometrical exterior of at least the length and width of structures as seen from a horizontal view. Elevation drawings shall be drawn to scale.

(l) A list of names and addresses of the adjacent property owners within a distance of the subject parcel as determined in 350-81-630.

(m) Any additional information that the applicant feels will assist in the evaluation of the proposal, including but not limited to, maps, drawings, and development plans.

(n) The signature of the applicant and property owner or a statement from the property owner indicating that he is aware of the application being made on his property.

(o) The signature of the property owner on a statement that authorizes the Executive Director or the Executive Director's designee reasonable access to the site in order to evaluate the application.

(6) Applications for the following uses or developments shall include additional information as required by the appropriate guidelines in Commission Rule 350-81 or by the Executive Director:

(a) In the General Management Area, for all buildings visible from key viewing areas, pursuant to 350-81-520 (2)(n).

(b) In the General Management Area, production and/or development of mineral resources and expansion of existing quarries pursuant to 350-81-520 (1)(f), (2)(o), and (2)(bb).

(c) A grading plan that complies with the requirements of 350-81-520 (2)(aa)(A) and (B) is required for the following:

(A) In the General Management Area, all applications for structural development involving more than 100 cubic yards of grading with slopes over 10 percent shall include a grading plan;

(B) In the General Management Area, all proposed structural development on sites visible from key viewing areas and involving more than 200 cubic yards of grading, regardless of slope; and

(C) In the Special Management Area, all applications for structural development involving more than 100 cubic yards of grading with slopes greater than 10 percent (except trails) shall include a grading plan.

(d) In the General Management Area, vegetation management projects in public rights of way along Scenic Travel Corridors, pursuant to 350-81-520 (4)(d).

(e) Large-scale uses as defined by guideline 350-81-540 (1)(c)(C) shall include reconnaissance survey reports, pursuant to 350-81-540 (1)(c)(F), and (G).

(f) Proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings that are 50 years old or older, pursuant to 350-81-540 (1)(c)(H)(iii).

(g) In the General Management Area, new uses located in, or providing recreational access to the Columbia River or its fishbearing tributaries, pursuant to 350-81-084 (1)(a)(A).

(h) In the General Management Area, any review use in a wetland or within a wetland buffer zone, pursuant to 350-81-560 (1)(b).

(i) In the General Management Area, any review use in a stream, pond, lake, or within their buffer zones, pursuant to 350-81-570 (1)(b).

(j) In the General Management Area, any review use within 1000 feet of a sensitive wildlife area or site, pursuant to 350-81-580 (1)(b). Large-scale uses as defined by 350-81-580(2) shall also include field survey information, pursuant to 350-81-580 (2)(e).

(k) In the General Management Area, any review use within 1000 feet of a sensitive plant, pursuant to 350-81-590 (1)(b). Large-scale uses as defined by 350-81-590(2) shall also include field survey information, pursuant to Commission Rule 350-81-590 (2)(e).

(l) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, pursuant to 350-81-190 (1)(h), and if applicable, 350-81-190 (1)(i).

(m) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling not in conjunction with agricultural use, pursuant to Commission Rule 350-81-190 (1)(q).

(n) In the General Management Area, on lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative, pursuant to Commission Rule 350-81-190 (1)(k).

(o) In the General Management Area, on lands designated Large-Woodland, a single-family dwelling, pursuant to 350-81-270 (1)(a).

(p) In the Special Management Area, on lands designated Agriculture, Forest, or Public Recreation a single-family dwelling, pursuant to 350-81-270 (2)(j).

(q) In the Special Management Area, on lands designated Agriculture, Forest, Residential, or Public Recreation, clearing trees for new agricultural use, pursuant to 350-81-270 (2)(x).

(r) In the Special Management Area, on lands designated Agriculture, Forest, Residential, or Public Recreation, forest practices, pursuant to 350-81-270 (2)(y).

(s) In the Special Management Area, on lands designated Open Space, any new use or development, pursuant to 350-81-340(4).

(t) In the General Management Area, on lands designated Agriculture-Special, a single-family dwelling pursuant to 350-81-232 (1)(g).

(u) In the Special Management Area, on lands designated Agriculture, Forest, or Public Recreation, a single-family dwelling necessary and accessory to agricultural use, pursuant to 350-81-190 (2)(c).

(v) In the Special Management Area, on lands designated Agriculture, Forest, or Public Recreation, farm labor housing, pursuant to 350-81-190 (2)(d).

(w) In the General Management Area, on lands designated Small Woodland, a single-family dwelling pursuant to 350-81-270 (1)(b).

(x) In the General Management Area, on lands designated Commercial Forest, Large Woodland, or Small Woodland, a single-family dwelling in conjunction with agricultural use pursuant to 350-81-270 (1)(c).

(y) In the General Management Area, on lands designated Commercial Forest, Large Woodland, or Small Woodland, agricultural labor housing, pursuant to 350-81-270 (1)(o).

(z) In the General Management Area, on lands designated Agriculture-Special, new livestock grazing, new fences, livestock watering facilities, and corrals; or soil, water, and vegetation conservation activities, pursuant to 350-81-240.

(aa) In the General Management Area and Special Management Area, agricultural buildings, pursuant to 350-81-090(2).

(bb) Other uses as deemed necessary by the Executive Director.

(7) Completed application forms shall be submitted directly to the office of the Columbia River Gorge Commission.

### **350-81-034. Pre-Application Conference.**

An applicant may request a pre-application conference prior to submitting an application for development review. The purposes of the conference shall be to acquaint the applicant with the substantive and procedural requirements of Commission Rule 350-81, to discuss the principle elements of the proposed action, and to identify guidelines that create opportunities or pose constraints for the proposed action.

### **350-81-036. Acceptance of Application**

Within 14 days of the receipt of an application, the Executive Director shall review the application for completeness and if complete, shall accept the application for review.

(1) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Executive Director shall notify the applicant of all omissions and deficiencies in writing within 14 days of receipt of the application. The Executive Director shall review supplemental application materials within 14 days after receipt of the materials to determine if the application is complete.

(2) No application for a proposed use, which is explicitly prohibited by this ordinance, shall be accepted.

(a) The application shall be returned to the applicant.

(b) A letter, signed by the Executive Director, stating that the proposed use is prohibited and citing the guideline which explicitly prohibits the proposed use, shall be sent to the applicant.

(c) Issuance of this letter shall not prohibit the applicant from appealing the decision pursuant to 350-70.

### **350-81-038. Notice of Development Review**

(1) Within 7 days of the acceptance of an application, the Executive Director shall issue notice of a proposed development review. The notice shall provide the following information:

(a) The name of the applicant;

(b) The general and specific location of the subject property;

(c) A brief description of the proposed action;

(d) The deadline for rendering a decision; and

(e) The deadline for filing comments on the proposed action.

(2) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(3) The notice shall state the applicant must comply with all applicable local, state, and federal laws.

(4) The notice shall be mailed to:

(a) The Forest Service, the applicable state, the four Indian tribal governments, and the applicable county and/or city; and

(b) Owners of property within a radius of the subject parcel(s) as determined by 350-81-630; and

(c) Other agencies and interested parties which request a notice or which the Executive Director determines should be notified.

(5) The notice shall be posted at the Commission and shall be sent to the Forest Service offices, and the applicable county or city planning office(s) and libraries.

(6) For all development, notice shall be published in a newspaper of general circulation nearest to the site of the proposed action.

(7) A copy of the notice shall be filed in the records of the Commission.

### **350-81-040. Comment Period**

Interested persons shall have 21 days from the date which the notice is sent to submit written comments to the Executive Director relative to the consistency of the proposed actions with the guidelines of Commission Rule 350-81:

(1) Based on comments received and other applicable information, the Executive Director shall determine if a wildlife management plan pursuant to 350-81-580(5), or a rare plant protection and rehabilitation plan pursuant to Commission Rule 350-81-590(5) is required.

(2) For proposed uses or developments where a cultural resources survey (reconnaissance or historic) is required and where the Commission is performing the survey, the survey shall be completed by the close of the comment period. Upon receipt of the completed survey, the Executive Director shall forward the survey to the applicable State Historic Preservation Officer, and the four Indian tribal governments pursuant to 350-81-540 (1)(b) and (2)(b)(A).

(3) The State Historic Preservation Officers and the four Indian tribal governments shall have 30 days to submit comments on the cultural resources survey. Based on the survey results, comments received, and other applicable information, the Executive Director shall determine if an evaluation of significance pursuant to 350-81-540(3) is required.

### **350-81-042. Decision of the Executive Director**

(1) In making a decision on a proposed use or development the Executive Director shall:

(a) Consult with the applicant and such agencies as the Executive Director deems appropriate;

(b) Consider information submitted by the applicant and all other relevant information available;

(c) Consider all comments submitted pursuant to Commission Rule 350-81-040; and

(d) Solicit and consider the comments of the Forest Service.

(2) The Executive Director shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81.

(a) In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-81.

(b) Conditions attached to approval of a proposed development action shall be recorded in county deeds and records to ensure notice of the conditions to successors in interest. The Executive Director's decision shall include this requirement.

(3) The Executive Director shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81 within 72 days after acceptance of the application except in one or more of the following situations:

(a) The applicant consents to an extension of time.

(b) The Executive Director determines that additional information is required pursuant to Commission Rule 350-81-040.

(c) The Executive Director determines that additional information is necessary to evaluate land use issues and the impacts of the proposed use to scenic, cultural, natural, and recreation resources.

(d) Unforeseen circumstances including, but not limited to, weather, illness, etc.

(4) The Executive Director shall mail a copy of the decision to the applicant, the Forest Service, the applicable state, the four Indian tribal governments, the applicable county and/or city and each person who submitted comments under Commission Rule 350-81-040. The decision shall set forth the rights of appeal under Commission Rule 350-70.

(5) The decision of the Executive Director shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70. An applicant who chooses to proceed with an approved development during the appeal period shall assume all associated risks and liabilities.

#### **350-81-044. Expiration of Approvals**

(1) Notice Not Required: Expiration of any land use approval issued pursuant to this Management Plan shall be automatic. Failure to give notice of expiration shall not affect the expiration of a land use approval.

(2) Land Use Approvals without Structures: Any land use approval issued pursuant to this Management Plan for a use or development that does not include a structure shall expire two years after the date the land use approval was granted, unless the use or development was established according to all specifications and conditions of approval in the land use approval. For land divisions, "established" means the final deed or plat has been recorded with the county recorder or auditor.

(3) Land Use Approvals with Structures: Any land use approval issued pursuant to this Management Plan for a use or development that includes a structure shall expire as follows:

(a) When construction has not commenced within two years of the date the land use approval was granted, or

(b) When the structure has not been completed within two years of the date of commencement of construction.

(4) Commencement of Construction: As used in subsection 3(a) above, commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction shall mean actual grading of the roadway.

(5) Completion of Structure: As used in subsection 3(b) above, completion of the structure shall mean (1) completion of the exterior surface(s) of the structure and (2) compliance with all conditions of approval in the land use approval.

(6) Extension of Validity of Land Use Approvals: A request for extension of the time frames in subsections 2, 3(a) or 3(b), above, shall be submitted in writing before the applicable expiration date.

(a) A reviewing agency may grant one 12-month extension to the validity of a land use approval if it determines that events beyond the control of the applicant prevented commencement of the use or development (applicable to section 2 above) or commencement of construction (applicable to subsection 3(a) above) within the original two-year time frame.

(b) An agency may also grant one 12-month extension if it determines that events beyond the control of the applicant prevented completion of the structure (applicable to subsection 3(b) above) within the original two-year time frame.

(c) A request for extension shall state the reason why events beyond the control of the applicant warrant an extension.

(d) Approval or denial of a request for extension shall be considered an administrative decision.

(7) Vested Rights: The laws of the states of Oregon and Washington concerning vested rights shall not apply in the National Scenic Area. A person has a vested right for as long as the land use approval does not expire.

#### **350-81-046. Changes or Alterations to an Approved Action**

Any change to a development action approved by the Executive Director pursuant to this rule shall be processed as new action, except that the Executive Director may approve minor changes to findings, conclusions, and conditions of approval deemed to be consistent with the guidelines of Commission Rule 350-81 and the findings and conclusions for the original action. If the Executive Director approves a minor change, the Director shall notify all of the parties that would have standing to appeal the change, including the applicant, the Forest Service, the four Indian tribal governments, the county planning department, and anyone who submitted comments during the comment period on the original land use application. The change itself (not the original decision) would be subject to appeal under the same time frames applicable to the original decision.

### Expedited Development Review Process

#### **350-81-050. Development Eligible for Expedited Review**

(1) The following developments may be reviewed using the expedited development review process, provided they comply with the resource protection and procedural guidelines contained in this section.

(a) Except in Open Space, accessory structures between 60 and 200 square feet in area and 10 feet or less in height. Only one accessory building per parcel may be allowed under this guideline, regardless of whether the parcel already includes an accessory building(s). Additional accessory buildings shall be subject to full review. This category does not include decks, fences, outdoor lights, retaining walls, transportation facilities, or utility facilities.

(b) Additions and covered decks for existing buildings, provided the existing building is at least 500 square feet in area and the addition or covered deck is no larger than 200 square feet in area and no taller than the height of the existing building. Only one addition and one covered deck per parcel may be allowed under this guideline, regardless of whether the parcel already includes an addition or covered deck.

(c) Rail, solid or semi-solid fences accessory to existing dwellings less than or equal to 6 feet in height and less than or equal to 100 feet in length.

(d) Wire-strand fences other than those allowed outright, provided the fence complies with 350-81-580(6) if it is inside deer and elk winter range as delineated in the Gorge Commission/USDA Forest Service natural resource inventories or determined by an appropriate federal or state agency.

(e) In the General Management Area, woven-wire fences for agricultural use that would enclose 80 acres or less.

(f) Decks that are: (1) uncovered; (2) attached and accessory to existing dwellings; and (3) 500 square feet or less in area and 30 inches or less in height above existing grade.

(g) Road closure gates.

(h) Signs, other than those allowed outright.

(i) Outdoor lights.

(j) Air, weather, water and other similar research and monitoring facilities, provided the facilities are attached to existing structures or are less than or equal to 120 square feet in size and less than or equal to 12 feet in height.

(k) Lot line adjustments in the General Management Area that would not result in the potential to create additional parcels through subsequent land divisions, subject to 350-81-126(1), except all lot line adjustments for parcels designated Open Space, Public Recreation, or Commercial Recreation shall be reviewed through the full development review process.

(l) Lot line adjustments in the Special Management Area subject to 350-81-126(2).

(m) Demolition of structures that are less than 50 years old, including wells, septic tanks and fuel tanks.

(n) Decommission non-paved roads, including ripping the road surface, barriers, and revegetation.

(o) Trail reconstruction involving up to 1,000 feet of trail re-route.

(p) The following transportation facilities, provided they are not a part of larger construction or reconstruction projects (which shall be reviewed as a whole):

(A) New guardrails and guardrail ends, other than those allowed outright, and new wire-strand and woven-wire access control fences. This category does not include jersey barriers.

(B) New traffic detection devices, vehicle weighing devices, and signal boxes less than or equal to 120 square feet in size and less than or equal to 12 feet in height. This category does not include signs.

(C) Pave existing dirt and gravel roads, provided the activity does not increase the width of the road or disturb the toe of adjacent embankments, slopes or cut banks.

(D) New weather, air, traffic or other monitoring equipment attached to existing structures or that are less than or equal to 120 square feet in size and less than or equal to 12 feet in height.

(q) The following underground utility facilities:

(A) New underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided (1) no ditch for linear facilities would be more than 36 inches wide and (2) no excavation for non-linear facilities would exceed 20 cubic yards.

(r) The following aboveground and overhead utility facilities:

(A) Modify existing aboveground and overhead utility facilities or develop new aboveground and overhead utility facilities including building and equipment foundations, poles, transformers, conduit, fencing, pumps, valves, pipes, and water meters, provided the development would be less than or equal to 120 square feet in area and less than or equal to 12 feet in height.

(B) Replace existing aboveground and overhead utility facilities including building and equipment foundations, poles, transformers, conduit, fencing, pumps, valves, pipes, and water meters, provided the replacement facilities would be in the same location as and no more than 15 percent larger than the physical size of the existing facilities.

(C) New antennas and associated support structures necessary for public service on existing wireless communication poles and towers other than those allowed outright, provided the size is the minimum necessary to provide the service.

(s) Replace an existing mobile home in a mobile home space within a mobile home park, provided: (1) the mobile home to be replaced, the mobile home space and the mobile home park shall be existing, lawful uses according to the definition of *existing use or structure* and 350-81-082 (1) through (4); (2) the replacement mobile home shall be in the same location as the mobile home to be replaced; (3) the height of the replacement mobile home shall be no more than 20 percent greater than the mobile home to be replaced, and (4) the mass and footprint of the replacement mobile home shall be no more than 100 percent greater than a single-wide mobile home to be replaced or no more than 25 percent greater than a double-wide mobile home to be replaced.

(t) Retaining walls accessory to existing dwellings less than or equal to 2 feet in height and less than or equal to 100 feet in length.

(u) In the Special Management Area, wind machines for frost control in conjunction with agricultural use.



**350-81-052. Resource and Treaty Rights Protections Guidelines**

(1) Proposed developments reviewed using the expedited review process shall comply with the following resource protection guidelines:

**(a) Scenic**

(A) In the General Management Area, the scenic resource protection guidelines shall not apply to woven-wire fences for agricultural use that would enclose 80 acres or less.

(B) The colors of structures topographically visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. This guideline shall not apply to additions, which may match the color of existing buildings.

(C) Structures topographically visible from key viewing areas shall use low or non-reflective building materials, including roofing, gutters, vents, and chimneys.

(D) Outdoor lights shall be directed downward and sited, hooded, and shielded such that they are not highly visible from key viewing areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

(E) Signs shall comply with 350-81-112.

(F) Structures within one-half mile of a key viewing area and topographically visible from the key viewing area shall be sited, screened and/or designed to achieve the applicable scenic standard (e.g., visual subordination, not visually evident).

**(b) Cultural**

(A) The expedited development review process shall only be used to review proposed development that does not require a reconnaissance survey, pursuant to 350-81-540 (1)(c)(A) or historic survey, pursuant to 350-81-540 (1)(c)(B).

(B) The GMA guidelines that protect cultural resources and human remains discovered during construction [350-81-540 (6) and (7)] shall be applied as conditions of approval for all development approved under the expedited development review process.

**(c) Recreation**

(A) The development shall not detract from the use and enjoyment of established recreation sites on adjacent parcels.

**(d) Natural****(A) Wetlands, Streams, Rivers, Ponds, and Lakes**

(i) The development is outside buffer zones for wetlands, streams, rivers, ponds, and lakes. This guideline shall not apply to lot line adjustments or development located inside road, utility or railroad rights-of-way or easements that have been previously disturbed and regularly maintained.

**(B) Sensitive Wildlife and Sensitive Plants**

(i) The development meets one of the following:

(I) The development is at least 1,000 feet from known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range, and turkey habitat) and known sensitive plants; or

(II) The development does not disturb the ground or is inside road, utility or railroad rights-of-way or easements or other areas that have been previously disturbed and regularly maintained; or

(III) For sensitive wildlife, the development is within 1,000 feet of known sensitive wildlife areas or sites (excluding sensitive aquatic species, deer winter range and turkey habitat), but an appropriate federal or state wildlife agency determines (1) the sensitive wildlife area or site is not active or (2) the proposed development would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.

For sensitive plants, the development is within 1,000 feet of known sensitive plants, but the Oregon or Washington Natural Heritage Program or a person with recognized expertise in botany or plant ecology hired by the applicant has determined that the development would be at least 200 feet from the sensitive plants.

(ii) Development eligible for expedited review shall be exempt from the field survey requirements for sensitive wildlife or sensitive plants.

(2) Proposed developments reviewed using the expedited review process shall comply with the following treaty rights protection guidelines:

(a) Proposed developments shall not affect or modify any treaty or other rights of any Indian tribe.

(b) The expedited development review process shall cease and the proposed development shall be reviewed using the full development review process if an Indian tribe submits substantive written comments during the comment period that identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the proposed development.

(c) Except as provided in 2.b above, the GMA and SMA treaty rights and consultation goals, policies and guidelines in Chapter 3, Section IV of the Management Plan shall not apply to proposed developments reviewed under the expedited review process.

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

**350-81-054. Procedures for Expedited Review Process****(1) Applications**

(a) Prior to initiating any use or development which requires review and approval by the Executive Director, an application shall be completed pursuant to 350-81-054.

(b) The Executive Director shall accept and review the application pursuant to 350-81-054 for consistency with the appropriate guidelines of this rule.

(c) The Commission may charge a fee for review of applications after a public hearing. The Gorge Commission shall set the fee.

(d) Standard application forms shall be available at the Commission Office, and shall be provided to county and city planning offices for which this ordinance is effective and the Forest Service.

(e) Applications for uses eligible for expedited review shall include the information required for review uses listed in 350-81-032(5). They shall also include elevation drawings if the proposed development would be visible from a key viewing area. The drawing shall show natural grade and finished grade.

**(2) Acceptance of Application**

(a) Within 14 days of the receipt of an application, the Executive Director shall review the application for completeness, and if complete, shall accept the application for review.

(b) No application shall be accepted until all documented omissions and deficiencies have been corrected by the applicant. The Executive Director shall notify the applicant of all omissions and deficiencies in writing within 14 days of receipt of the application. The Executive Director shall review supplemental application materials within 14 days after receipt of the materials to determine if the application is complete.

**(3) Notice of Development Review**

(a) Within 7 days of the acceptance of an application, the Executive Director shall issue notice of a proposed development review. The notice shall provide the following information:

- (A) The name of the applicant;
- (B) The general and specific location of the subject property;
- (C) A brief description of the proposed action;
- (D) The deadline for rendering a decision; and
- (E) The deadline for filing comments on the proposed action.

(b) The notice shall state that the application and supporting documents are available for inspection at the Commission office during normal working hours.

(c) The notice shall state the applicant must comply with all applicable local, state, and federal laws.

(d) The notice shall be mailed to the Forest Service, the four Indian tribal governments, applicable county or city planning office(s), libraries and other agencies and interested parties that request a notice or that the Executive Director determines should be notified.

(e) A copy of the notice shall be filed in the records of the Commission.

(4) **Comment Period:** Any interested person or party shall submit written comments within 10 days from the date a notice is sent.

**(5) Written Decision**

(a) In making a decision on a proposed use or development the Executive Director shall:

- (A) Consult with the applicant and such agencies as the Executive Director deems appropriate;
- (B) Consider information submitted by the applicant and all other relevant information available;
- (C) Consider all comments submitted pursuant to 350-81-054(4); and
- (D) Solicit and consider the comments of the Forest Service.

(b) The Executive Director shall approve a proposed use or development only if it is consistent with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81.

(A) In approving a proposed development action, the Executive Director may impose conditions as necessary to ensure consistency with the guidelines of Commission Rule 350-81.

(B) Conditions attached to approval of a proposed development action shall be recorded in county deeds and records to ensure notice of the conditions to successors in interest.

The Executive Director's decision shall include this requirement.

(c) The Executive Director shall issue a decision on a proposed use or development including findings of fact and conclusions of law and any conditions to ensure consistency with the standards of section 6 and the purposes of P.L. 99-663 and Commission Rule 350-81 within 30 days after acceptance of the application.

(d) The decision of the Executive Director shall be final unless a Notice of Appeal is filed in accordance with Commission Rule 350-70. An applicant who chooses to proceed with an approved development during the appeal period shall assume all associated risks and liabilities.

**(6) Notice of Decision and Opportunity to Appeal**

(a) The Executive Director shall send a copy of a decision issued under the expedited review process to the four Indian tribal governments, the Forest Service, landowners within 200 feet of the perimeter of the subject parcel, and anyone who submitted comments pursuant to 350-81-054(4).

(b) Any person shall be allowed to appeal a decision issued under the expedited review process in accordance with Commission Rule 350-70.

(7) **Expiration of Approvals.** Approvals issued under the expedited review process shall expire in accordance with the standards for expiration of approvals for review uses (Commission Rule 350-81-044, above).

(8) **Changes or Alterations to an Approved Action.** Changes or alterations to an approval issued under the expedited review process shall be made in accordance with the standards for changes or alterations to approved actions for review uses (Commission Rule 350-81-046, above).

**Emergency/Disaster Response Actions**

**350-81-060. Emergency/Disaster Response Actions**

**(1) General Guidelines**

(a) Actions taken in response to an emergency/disaster event, as defined in Commission Rule 350-81-020(54), are allowed in all GMA/SMA land use designations, subject to the notification requirements in "Notification Requirements" (subsection 2, below).

(b) Following emergency/disaster response actions, best management practices (BMPs) to prevent sedimentation and provide erosion control shall be utilized whenever disaster response actions necessitate vegetation removal, excavation, and/or grading. BMPs may include but are not limited to: use of straw bales, slash windrows, filter fabric fences, sandbags, straw cover, jute netting, etc.

(c) Structures or development installed or erected for a temporary use (e.g. sandbags, check dams, plastic sheeting, chain link fences, debris walls, etc.) shall be removed within one year following an emergency event. If it can be demonstrated that the continued use of these devices is necessary to protect life property, public services or the environment, an extension of no more than two years may be granted by the Executive Director or the Forest Service for federal agency actions.

(d) The new exploration, development (extraction or excavation), and production of mineral resources, used for

commercial, private or public works projects, shall not be conducted as an emergency/disaster response activity.

(e) No spoils resulting from grading or excavation activities shall be deliberately deposited into a wetland, stream, pond, lake or riparian area within the National Scenic Area (NSA) as a part of an emergency/disaster response action. The only exception to this is for construction of a fire line during a wildfire, where avoiding the aquatic area or its buffer zone has been considered and determined to not be possible without further jeopardizing life or property.

#### (2) Notification Requirements

(a) Actions taken in response to an emergency/disaster event, as defined in Commission Rule 350-81-020(54), are allowed in all GMA and SMA land use designations, subject to the following notification requirements.

(A) Notification of an emergency/disaster response activity shall be submitted either within 48 hours of the commencement of a response action, or by the next business day following the start of such an action, whichever is sooner. Notification shall be submitted by the party conducting an emergency/disaster response activity or their representatives. In the case of multiple responding parties, the first party to respond shall provide the required notification, unless, upon mutual agreement of responding parties, another responder elects to assume this responsibility.

(B) Notification shall be submitted by mail, fax, telephone, e-mail or in person. If notification occurs by telephone, a hard copy of the notification shall be submitted by mail or in person within 7 days.

(C) Notification shall be furnished to the Executive Director or the Forest Service for federal agency actions.

(D) At a minimum, the following information shall be required at the time of notification:

(i) Nature of emergency/disaster event.

(ii) Description of emergency/disaster response activities and magnitude of response actions to be taken, if applicable (such as extent of earth movement, erection of structures, etc.).

(iii) Location of emergency/disaster response activities.

(iv) Estimated start and duration of emergency/disaster response activities.

(v) Contact person and phone number for the parties conducting emergency/disaster response actions.

(E) Repair and maintenance of an existing serviceable structure to its previously authorized and undamaged condition are not subject to the above referenced notification requirements.

(b) Upon notification of an emergency/disaster response action, the Executive Director, or Forest Service shall, as soon as possible:

(A) Review its natural resource inventory data and notify the contact person for the emergency/disaster response actions of all inventoried natural resource sites and their buffers, that are within or adjacent to the response area or that may be adversely affected by response activities;

(B) Notify the Oregon or Washington Department of Fish and Wildlife of all noticed emergency/disaster response actions, to provide that agency an opportunity to consult with responding agencies during the event, and;

(C) Notify the Forest Service, the Oregon Historic Preservation Office or the Office of Washington Office of Archeology and Historic Preservation, and the tribal governments of all emergency/disaster response activities. The Forest Service will review their cultural resource inventory data and notify the contact person for the emergency/disaster response action as soon as possible of all inventoried cultural resource sites, or their buffers, that are within, or adjacent to, emergency/disaster response areas.

(c) Upon notification of a response action, the Forest Service shall, as soon as possible, offer the services of a resource advisor to the agency(ies) conducting the response action. The resource advisor will provide on-site advice to minimize impacts to resources from emergency/disaster response actions.

#### (3) Post-Emergency/Disaster Response Development Review Application Requirements

(a) Within 30 days following notification, a post-emergency/disaster response application shall be submitted by the party conducting the response action to the Executive Director, or Forest Service for federal agency actions. In the case of an event with multiple responding parties, the party providing initial notification as required herein shall submit the application. An exception to this may occur if another responding party, by mutual agreement with the other respondents, elects to submit the application. Requests to extend this submittal deadline may be made in writing and shall include the reason why an extension is necessary. Extensions shall not exceed 30 days in duration and not more than two (2) extensions shall be granted.

(b) Post-emergency/disaster response applications shall only address development activities conducted during an emergency/disaster response. Applications shall specify if development placed during an emergency/disaster event is permanent or temporary. The terms "development activities" and "development" include the disposal of any spoil materials associated with an emergency/disaster response action. Applicants shall be responsible for operations under their control and that of other responders, upon mutual agreement. Responders not agreeing to have another responder address their actions shall be responsible to submit an application for those actions.

(c) Emergency/disaster response actions not involving structural development or ground disturbance with mechanized equipment are exempt from these requirements, except for those actions within 500 feet of a known cultural resource (as determined in the notification process).

(d) Applications shall include the following information:

(A) Applicant's name and address.

(B) Location of emergency/disaster response.

(C) A written description of the emergency/disaster response, including any structures erected, excavation or other grading activities, or vegetation removal.

(D) A map of the project area drawn to scale, at a scale of 1 inch = 200 feet or a scale providing greater detail. The map shall include:

(i) North arrow and scale.

(ii) Boundaries, dimensions and size of subject parcel(s).

(iii) Bodies of water, watercourses, and significant landforms.

(iv) Existing roads and structures.

(v) New structures placed and any vegetation removal, excavation or grading resulting from the response actions.

(E) An exception to the scale requirements in subsection (3)(d)(D) above may be granted for an event encompassing an area greater than one square mile. In such cases, a clear sketch map of the entire response action area shall be provided. In addition, a map of 1 inch = 200 feet or a scale providing greater detail shall be provided that shows a section of the response area exemplifying the specific actions taken.

(e) Emergency/disaster response review uses may be allowed pursuant to a process that provides at minimum the following:

(A) Notice of the application to landowners within 200 feet of the perimeter of the subject parcel, the Forest Service, Gorge Commission, four tribal governments and interested parties.

(B) A written decision with findings of fact and conclusions of law.

(C) An opportunity to request a hearing.

(4) Post-Emergency/Disaster Response Development Review

Actions taken in all land use designations within the GMA/SMA that are in response to an emergency/disaster event, as defined, shall be reviewed for compliance with the following guidelines.

(a) Scenic Resources

(A) Impacts of emergency/disaster response actions shall be evaluated to ensure that scenic resources are not adversely affected. Such actions shall be rendered visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable, except for actions located in areas exempted from visual subordination requirements in 350-81-520 (3)(k).

(B) Vegetation shall be used to screen or cover road cuts, structural development, landform alteration, and areas denuded of vegetation, as a result of emergency/disaster response actions.

(C) Areas denuded of vegetation as a result of emergency/disaster response actions shall be revegetated with native plant species, or species commonly found within the applicable landscape setting, to restore the affected areas to its pre-response condition to the greatest extent practicable. Revegetation shall occur as soon as practicable, but no later than one year after the emergency/disaster event. An exception to the one-year requirement may be granted upon demonstration of just cause, with an extension up to one year.

(D) The painting, staining or use of other materials on new structural development shall be used to ensure that the structures are non-reflective, or of low reflectivity, and visually subordinate in their landscape setting as seen from key viewing areas, unless the structure is fully screened from key viewing areas by existing topographic features.

(E) Additions to existing structures, resulting from an emergency/disaster response action, which are smaller in total height, bulk or area than the existing structures may be the same color as the existing development. Additions larger than the existing development shall be visually subordinate in their landscape setting as seen from key viewing areas to the greatest extent practicable.

(F) In the General Management Area, spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action shall comply with the following standards:

(i) The spoil materials shall either be:

(I) Removed from the NSA,

(II) Deposited at a site within the NSA permitted by an agency administering a Scenic Area land use ordinance, or

(III) (Re)contoured, to the greatest extent practicable, to retain the natural topography, or a topography which emulates that of the surrounding landscape.

(ii) The Executive Director shall decide whether an applicant removes the spoil materials [350-81-060 (4)(a)(F)(i)(I)], deposits the spoil materials [subsection (4)(a)(F)(i)(II)], or (re)contours the spoils materials [subsection (4)(a)(F)(i)(III)]. The applicant does not make this decision.

(iii) The Executive Director shall select the action in 350-81-060 (4)(a)(F)(i) that, to the greatest extent practicable, best complies with the policies and guidelines in the Management Plan that protect scenic, cultural, recreation, and natural resources.

(iv) Disposal sites created according to 350-81-060 (4)(a)(F)(i)(III) shall only be used for spoil materials associated with an emergency/disaster response action. Spoil materials from routine road maintenance activities shall not be deposited at these sites.

(G) In the Special Management Area, spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action shall comply with the following standards:

(i) The spoil materials shall either be:

(I) Removed from the NSA, or

(II) Deposited at a site within the NSA permitted by an agency administering a Scenic Area land use ordinance within two years of the emergency.

(ii) After the spoils materials are removed, the emergency disposal site shall be rehabilitated to meet the scenic standard.

(iii) All grading (i.e., recontouring) shall be completed within 30 days after the spoils materials are removed.

(iv) Sites shall be replanted using native plants found in the landscape setting or ecoregion to the maximum extent practicable.

(v) All revegetation shall take place within one (1) year of the date an applicant completes the grading.

(vi) This provision shall take effect two years after the date of Management Plan concurrence by the U.S. Secretary of Agriculture, or approval of a disposal site, which ever comes first.

(b) Cultural Resources and Treaty Rights

(A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect cultural resources. Emergency/disaster response actions shall not affect tribal treaty rights.

(B) The USDA Forest Service shall determine if a reconnaissance survey or historic survey is necessary within three days after receiving notice that a post-emergency land use application has been received by the Executive Director.

(i) Reconnaissance surveys shall be conducted by the USDA Forest Service and comply with the standards in 350-81-540 (1)(c)(D). Reconnaissance survey reports shall comply with the standards in 350-81-540 (1)(c)(G).

(ii) Historic surveys shall be conducted by the USDA Forest Service and shall describe any adverse effects to historic resources resulting from an emergency/disaster response action. Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. Such surveys shall also include original photographs, if available, and maps, and should use archival research, blueprints, and drawings as necessary.

(C) Following the submittal of a post-emergency land use application, in addition to other public notice requirements that may exist, the tribal governments shall be notified by the Executive Director when (1) a reconnaissance survey is required or (2) cultural resources exist in the project area. Notices shall include a site plan. Tribal governments shall have 15 calendar days from the date a notice is sent to submit written comments. Written comments should describe the nature and extent of any cultural resources that exist in the project area or treaty rights that exist in the project area and how they have been affected, and identify individuals with specific knowledge about them.

(D) When written comments are submitted in compliance with 350-81-060 (4)(b)(C) above, the project applicant shall offer to meet within five calendar days with the interested persons. The five day consultation period may be extended upon agreement between the project applicant and the interested persons. A report shall be prepared by the Executive Director following the consultation meeting. Consultation meetings and reports shall comply with the standards in 350-81-540 (2)(a), and 084 (1)(b)(A) and (B).

(E) If cultural resources are discovered within the area disturbed by emergency response actions, the project applicant shall have a qualified professional conduct a survey to gather enough information to evaluate the significance of the cultural resources and what effects the action had on such resources. The survey and evaluation shall be documented in a report that generally follows the standards in 350-81-540 (1)(c)(G) and 350-81-540 (3)(a).

(F) A mitigation plan shall be prepared by the project applicant if the affected cultural resources are significant. The mitigation plan shall be prepared according to the information, consultation, and report guidelines in 350-81-540 (5)(a).

(G) The Executive Director shall submit a copy of all reconnaissance and historic survey reports and treaty rights protection plans to the SHPO and the tribal governments. Survey reports shall include measures to mitigate adverse effects to cultural resources resulting from emergency/disaster response actions. The SHPO and tribal governments shall have 15 calendar days from the date a survey report is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the final decision.

(H) The Executive Director shall make a final decision on whether the emergency/disaster response actions are consistent with the applicable cultural resource goals, policies, and guidelines. If the final decision contradicts the com-

ments submitted by the SHPO, or those submitted by a tribal government regarding treaty rights, the Executive Director shall justify how the opposing conclusion was reached.

(I) The cultural resource protection process may conclude when it has been determined that tribal treaty rights have not been affected and one of the following conditions exists:

(i) The emergency/disaster response action does not require a reconnaissance or historic survey, or a reconnaissance survey demonstrates that no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 15 calendar days of the date that a notice was mailed.

(ii) The emergency/disaster response action avoided cultural resources that exist in the project area.

(iii) Adequate mitigation measures to affected cultural resources have been developed and will be implemented.

(iv) A historic survey demonstrates that emergency/disaster response actions, and associated development, had no effect on historic buildings or structures because:

(I) The SHPO concluded that the historic buildings or structures are clearly not eligible, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or

(II) The emergency/disaster response actions did not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for Rehabilitation* [U.S. Department of the Interior 1990] and *The Secretary of the Interior's Standards for Historic Preservation Projects* [U.S. Department of the Interior 1983].

(c) Natural Resources

(A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect natural resources.

(B) Buffer zones for wetlands, streams, ponds, riparian areas, sensitive wildlife sites or areas, and sites containing rare plants, shall be the same as those established in 350-81-560 through 600.

(C) Wetlands, Streams, Ponds, Lakes, Riparian Areas

(i) Emergency/disaster response actions occurring within a buffer zone of wetlands, streams, pond, lakes or riparian areas shall be reviewed by the Oregon or Washington Department of Fish and Wildlife. These areas are also referred to in this section as aquatic areas. State biologists will help determine if emergency/disaster response actions have affected or have a potential to affect these aquatic areas or their bigger zones. State biologists shall respond within 15 days of the date the application is mailed.

(ii) When emergency/disaster response activities occur within wetlands, streams, ponds, lakes, riparian areas, or the buffer zones of these areas, the applicant shall demonstrate the following:

(I) All reasonable measures have been applied to ensure that the response actions have resulted in the minimum feasible alteration or destruction of the functions, existing con-

tours, vegetation, fish and wildlife resources, and hydrology of wetlands, streams, ponds, lakes or riparian areas.

(II) Areas disturbed by response activities and associated development will be rehabilitated to the maximum extent practicable.

(iii) Impacts to wetlands, streams, ponds, lakes and riparian areas, and their buffers will be offset through mitigation and restoration to the greatest extent practicable. Mitigation and restoration efforts shall use native vegetation, and restore natural functions, contours, vegetation patterns, hydrology and fish and wildlife resources to the maximum extent practicable.

(iv) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response actions had minor effects on the aquatic area or its buffer zone that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state biologist, or a Forest Service natural resource advisor (as available) in consultation with the state biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final order and the aquatic area protection process may conclude.

(v) Unless addressed through subsection (4)(c)(C)(iv) above, mitigation and restoration efforts shall be delineated in a Rehabilitation Plan. Rehabilitation Plans shall satisfy the standards in 350-81-570 (8)(a) and (b). Rehabilitation plans shall also satisfy the following:

(I) Plans shall include a plan view and cross-sectional drawing at a scale that adequately depicts site rehabilitation efforts. Plans will illustrate final site topographic contours that emulate the surrounding natural landscape.

(II) Planting plans shall be included that specify native plant species to be used, specimen quantities and plant locations.

(III) The project applicant shall be responsible for the successful rehabilitation of all areas disturbed by emergency/disaster response activities.

#### (D) Wildlife Habitat

(i) Emergency/disaster response actions occurring within 1,000 feet of a sensitive wildlife area or site, shall be reviewed by the Oregon or Washington Department of Fish and Wildlife. State wildlife biologists will help determine if emergency/disaster response actions have affected or have a potential to affect a sensitive wildlife area or site.

(ii) Site plans for emergency/disaster response sites shall be submitted by the Executive Director to the Oregon or Washington Department of Fish and Wildlife for review as prescribed in 350-81-580 (4)(a) and (b). The wildlife agency shall respond within 15 days of the date the application is mailed.

(iii) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines (1) the sensitive wildlife area or site was not active, or (2) the emergency/disaster response did not compromise the integrity of the wildlife area or site or occurred at a time when wildlife species are not sensitive to disturbance.

(iv) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response activities had minor effects on the wildlife area or site that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. The state wildlife biologist, or a Forest Service natural resource advisor (as available) in consultation with the state wildlife biologist, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision and the wildlife protection process may conclude.

(v) If the Executive Director, in consultation with the state wildlife agency, determines that the emergency/disaster response activities had adverse effect on a sensitive wildlife area or site, the project applicant shall prepare a Wildlife Management Plan. Wildlife Management Plans shall comply with standards in 350-81-580(5). Upon completion of the Wildlife Management Plan, the Executive Director shall:

(I) Submit a copy of the Wildlife Management Plan to the state wildlife agency for review. The state wildlife agency will have 15 days from the date that a plan is mailed to submit written comments to the Executive Director;

(II) Record any written comments submitted by the state wildlife agency in its development review order. Based on these comments, the Executive Director shall make a final decision on whether the proposed use would be consistent with the wildlife policies and guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Executive Director shall justify how the opposing conclusion was reached.

(III) Require the project applicant to revise the Wildlife Management Plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

#### (E) Deer and Elk Winter Range

(i) Any fencing permanently erected within deer and elk winter range, as a result of an emergency/disaster response, shall comply with the standards in 350-81-580(6).

#### (F) Rare Plants

(i) Emergency/disaster response actions occurring within 1,000 feet of a sensitive plant, shall be reviewed by the Oregon or Washington Natural Heritage Program. State heritage staff will help determine if emergency/disaster response actions have occurred within the buffer zone of a rare plant.

(ii) Site plans for emergency/disaster response sites shall be submitted to the Oregon or Washington Natural Heritage Program by the Executive Director. State natural heritage staff will, within 15 days from the date the application is mailed, identify the location of the affected plants and delineate a 200 foot buffer zone on the applicant's site plan.

(iii) The rare plant protection process may conclude if the Executive Director, in consultation with the state natural heritage program, determines that emergency/disaster response activities occurred outside of a rare plan buffer zone.

(iv) If the Executive Director, in consultation with the state natural heritage program, determines that the emergency/disaster response activities had minor effects on rare

plants or the rare plant buffer zone, a letter shall be sent to the project applicant that describes the effects and measure that need to be taken to eliminate them. The state natural heritage staff, or a Forest Service natural resources advisor (as available) in consultation with the state natural heritage staff, shall visit the site in order to make this determination. If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision order and the rare plant protection process may conclude.

(v) If emergency/disaster response activities occurred within a rare plant buffer zone that had adverse effects on rare plants or their buffer zone, the project applicant shall prepare a protection and rehabilitation plan, that meets the standards in 350-81-590(5).

(vi) The Executive Director shall submit a copy of all protection and rehabilitation plans to the state heritage program for review. The state natural heritage program will have 15 days from the date the protection and rehabilitation plan is mailed to submit written comments to the Executive Director.

The Executive Director shall record any written comments submitted by the state natural heritage program in its development review order. Based on these comments, the Executive Director shall make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the state natural heritage program, the Executive Director shall justify how the opposing conclusion was reached.

(vii) The Executive Director shall require the project applicant to revise the protection and rehabilitation plan as necessary to ensure that the proposed use would not adversely affect a rare plant site.

**(d) Recreational Resources**

(A) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect recreational resources.

(B) Mitigation measures shall be implemented to mitigate any adverse effects on existing recreation resources caused by emergency/disaster response activities to the maximum extent practicable.

**(5) Post-Emergency Construction**

(a) The following review uses are allowed in all land use designations in accordance with 350-81-030 through 046, 350-81-070 through 126 (as applicable), and 350-81-520 through 620.

(A) Placement of structures necessary for continued public safety and the protection of private property and essential public services damaged during an emergency/disaster event. This includes replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use applications shall be submitted within 12 months following an emergency/disaster event.

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

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

## General Policies and Guidelines

### 350-81-070. Exempt Land Uses and Activities

(1) These policies repeat and respond to direction in Section 17 of the Scenic Area Act that the Management Plan not affect certain uses that take place in the Scenic Area.

(a) The Gorge Commission and Forest Service shall, in the Management Plan and in the implementation actions, protect treaty and other rights of Indian tribes. Nothing plan may interfere with the exercise of those rights.

(b) Lands held in trust by the Secretary of the Interior for Indian tribes or for individual members of Indian tribes, and lands acquired by the U.S. Army Corps of Engineers and administered by the Secretary of the Interior for the benefit of Indian tribes or of individual members of Indian tribes, shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act. This exemption shall extend to lands selected by the U.S. Army Corps of Engineers as "in lieu" fishing sites pursuant to Public Law 100-581 before or after the effective date of the Management Plan. For those "in lieu" sites chosen after the effective date of the Management Plan, the exemption shall commence upon selection by the U.S. Army Corps of Engineers.

(c) Rights to surface or ground water shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act.

(d) Water transportation activities on the Columbia River or its tributaries shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act. The term "activities" includes those facilities necessary for navigation.

(e) The operation, maintenance, and modification of existing transmission facilities of the Bonneville Power Administration shall be exempt from regulation under the Management Plan or land use ordinances adopted by the counties or the Gorge Commission pursuant to the Scenic Area Act.

(f) Neither the Management Plan nor land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act may affect laws, rules, or regulations pertaining to hunting or fishing.

(g) Neither the Forest Service nor the Gorge Commission may establish any buffer zones or protective perimeters outside the boundaries of the Scenic Area.

(h) The operation, maintenance, and improvement of navigation facilities at Bonneville Dam pursuant to federal law, except for the offsite disposal of excavation material, shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission under the Scenic Area Act.

(i) In the GMA, the rights and responsibilities of non-federal timber landowners under the Forest Practices Acts of Washington and Oregon, or under county regulations that supersede those acts, shall be exempt from regulation under the Management Plan or land use ordinances adopted by counties or the Gorge Commission pursuant to the Scenic Area Act.

**350-81-072. Prohibited Land Uses and Activities**

(1) The following land uses and activities shall not be allowed within the Columbia River Gorge National Scenic Area:

(a) Solid waste disposal sites or sanitary landfills within the Special Management Area.

(b) New industrial development in the Scenic Area outside of the Urban Areas.

**350-81-074. Uses Allowed Outright**

(1) All Land Use Designations Except Open Space and Agriculture—Special

(a) The following uses may be allowed without review in all GMA and SMA land use designations, except GMA and SMA Open Space Agriculture—Special:

(A) In the General Management Area, agricultural uses except new cultivation. Any operation that would cultivate land that has not been cultivated, or has lain idle, for more than 5 years shall be considered new cultivation. For this guideline, cultivation and vegetation removal may be allowed in conjunction with a home garden.

(B) In the Special Management Area, agricultural uses within previously disturbed and regularly worked fields or areas.

(C) Forest practices in the General Management Area that do not violate conditions of approval for other approved uses and developments.

(D) Repair, maintenance and operation of existing structures, including, but not limited to, dwellings, agricultural structures, trails, roads, railroads, and utility facilities.

(E) Accessory structures 60 square feet or less in area and 10 feet or less in height, unless within the buffer zone of a wetland, stream, pond, lake or riparian area. This category does not include fences, outdoor lights, retaining walls, flagpoles, transportation facilities, or utility facilities.

(F) Wire-strand or woven-wire fences used for gardens, yards, livestock, and similar uses less than or equal to 500 feet in length and less than or equal to 10 feet in height that are accessory to an existing dwelling, provided woven-wire fences are brown or black if visible from key viewing areas. Height is measured from the ground to the top wire.

(G) Wire-strand fences less than or equal to 48 inches in height that are outside deer and elk winter range as delineated in the Gorge Commission/USDA Forest Service natural resource inventories or determined by an appropriate federal or state agency. Height is measured from the ground to the top wire. This category does not include fences associated with transportation facilities or utility facilities.

(H) The following transportation facilities:

(i) Replace existing safety or protective structures, including guardrails, access control fences and gates, barriers, energy attenuators, safety cables, and traffic signals and controllers, provided the replacement structures are (1) the same location and size as the existing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared accord-

ing to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(ii) Replace existing traffic detection devices, vehicle weighing devices, and signal boxes, provided the replacement structures are (1) the same location and size as the existing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(iii) New raised pavement markers, guide posts, object markers, inlay markers, and pavement markings and striping.

(iv) Permanent public regulatory, guide, and warning signs, except those excluded below, provided (1) the signs comply with the *Manual for Uniform Traffic Control Devices* and (2) the support structures and backs of all signs are dark brown with a flat, non-reflective finish. This category does not include specific service signs; destination and distance signs; variable message signs; or signs that bridge or are cantilevered over the road surface.

(v) Extensions of existing guardrails less than or equal to 50 feet in length and new guardrail ends for existing guardrails, provided the guardrails and guardrail ends are (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of materials that match the existing structure, natural wood, weathering steel (e.g., Corten), or materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(vi) New guardrails and guardrail ends, provided the structures are (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of natural wood, weathering steel (e.g., Corten), or materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors." This category does not include jersey barriers.

(vii) In the General Management Area, replace and/or expand existing culverts, provided the entity or person owning or operating the culvert shall obtain all necessary federal and state permits that protect water quality and fish and wildlife habitat before construction.

(viii) In the Special Management Area, replace and/or expand existing culverts for ephemeral streams or ditches, provided the visible ends of culverts shall be dark and non-reflective.

(ix) Resurface or overlay existing paved roads, provided the activity does not (1) increase the width of a road, (2) dis-



turb the toe of adjacent embankments, slopes or cut banks, or (3) change existing structures or add new structures.

(x) Apply dust abatement products to non-paved road surfaces.

(xi) Grade and gravel existing road shoulders, provided the activity does not (1) increase the width of a road, (2) disturb the toe of adjacent embankments, slopes or cut banks, or (3) change existing structures or add new structures.

(xii) Replace the superstructure of bridges (e.g., decks, beams) for bridges less than or equal to 30 feet in length and less than or equal to 1,000 square feet in area. This category does not include guardrails or the substructure of bridges (e.g., foundations, abutments).

(I) The following underground utility facilities:

(i) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided no excavation would extend beyond the depth and extent of the original excavation.

(ii) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided (1) no excavation would extend more than 12 inches beyond the depth and extent of the original excavation, (2) no ditch for linear facilities would be more than 24 inches wide, (3) no excavation for non-linear facilities would exceed 10 cubic yards, and (4) no recorded archaeological site is located within 500 feet of the development.

To comply with (4), the entity or person undertaking the development shall contact the Washington Office of Archaeology and Historic Preservation or the Oregon State Historic Preservation Office and obtain a letter or other document stating no recorded archaeological site is located within 500 feet of the development.

J. The following aboveground and overhead utility facilities:

(i) Replace existing aboveground and overhead utility facilities including towers, pole/tower-mounted equipment, cables and wires, anchors, pad-mounted equipment, service boxes, pumps, valves, pipes, water meters, and fire hydrants, provided the replacement facilities would have (1) the same location and size as the existing facilities and (2) the same building materials as the existing facilities, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(ii) Replace existing utility poles, provided the replacement poles are (1) located within 5 feet of the original poles, (2) no more than 5 feet taller and 6 inches wider than the original poles, and (3) constructed of natural wood, weathering

steel (e.g., Corten), materials that match the original poles, or materials that are dark brown with a flat, non-reflective finish.

(iii) New whip antennas for public service less than or equal to 8-feet in height and less than or equal to 2 inches in diameter, cables, wires, transformers, and other similar equipment, provided all such structures are on existing utility poles or towers.

K. Flagpoles that are accessory to the principal building on a parcel, provided the height of the flagpole is less than or equal to the height of the highest ridgeline or parapet of the principal building.

L. The following signs:

(i) Election signs. Removal must be accomplished within 30 days of election day.

(ii) "For sale" signs not greater than 12 square feet. Removal must be accomplished within 30 days of close of sale.

(iii) Temporary construction site identification, public service company, safety, or information signs not greater than 32 square feet. Exceptions may be granted for public highway signs necessary for public safety and consistent with the *Manual for Uniform Traffic Control Devices*. Removal must be accomplished within 30 days of project completion.

(iv) Signs posted on private property warning the public against trespassing, danger from animals, the private nature of a road, driveway or premise, or signs prohibiting or otherwise controlling fishing or hunting, provided such signs are not greater than 6 square feet in the General Management Area and 2 square feet in the Special Management Area.

(v) Temporary signs advertising civil, social, or political gatherings and activities, provided such signs do not exceed 12 square feet. Removal must be accomplished within 30 days of the close of the event.

(vi) Signs posted by governmental jurisdictions giving notice to the public. Such signs shall be no larger than that required to convey the intended message.

(vii) In the General Management Area, signs associated with the use of a building or buildings, if placed flat on the outside walls of buildings (not on roofs or marquees).

M. In the General Management Area, wind machines for frost control in conjunction with agricultural use.

(2) GMA and SMA Open Space

(a) The following uses may be allowed without review in GMA and SMA Open Space:

(A) Repair, maintenance and operation of existing structures, including, but not limited to, dwellings, agricultural structures, trails, roads, railroads, and utility facilities.

(B) The following transportation facilities:

(i) Replace existing safety or protective structures, including guardrails, access control fences and gates, barriers, energy attenuators, safety cables, and traffic signals and controllers, provided the replacement structures are (1) the same location and size as the existing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared accord-

ing to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(ii) Replace existing traffic detection devices, vehicle weighing devices, and signal boxes, provided the replacement structures are (1) the same location and size as the existing structures and (2) the same building materials as the existing structures, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(iii) New raised pavement markers, guide posts, object markers, inlay markers, and pavement markings and striping.

(iv) Permanent public regulatory, guide, and warning signs, except those excluded below, provided (1) the signs comply with the *Manual for Uniform Traffic Control Devices* and (2) the support structures and backs of all signs are dark brown with a flat, non-reflective finish. This category does not include specific service signs; destination and distance signs; variable message signs; or signs that bridge or are cantilevered over the road surface.

(v) Extensions of existing guardrails less than or equal to 50 feet in length and new guardrail ends for existing guardrails, provided the guardrails and guardrail ends are (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of materials that match the existing structure, natural wood, weathering steel (e.g., Corten), or materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(vi) New guardrails and guardrail ends, provided the structures are (1) located inside rights-of-way that have been disturbed in the past and (2) constructed of natural wood, weathering steel (e.g., Corten), or materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors." This category does not include jersey barriers.

(vii) In the General Management Area, replace and/or expand existing culverts, provided the entity or person owning or operating the culvert shall obtain all necessary federal and state permits that protect water quality and fish and wildlife habitat before construction.

(viii) In the Special Management Area, replace and/or expand existing culverts for ephemeral streams or ditches, provided the visible ends of culverts shall be dark and non-reflective.

(ix) Resurface or overlay existing paved roads, provided the activity does not (1) increase the width of a road, (2) dis-

turb the toe of adjacent embankments, slopes or cut banks, or (3) change existing structures or add new structures.

(x) Apply dust abatement products to non-paved road surfaces.

(xi) Grade and gravel existing road shoulders, provided the activity does not (1) increase the width of a road, (2) disturb the toe of adjacent embankments, slopes or cut banks, or (3) change existing structures or add new structures.

(xii) Replace the superstructure of bridges (e.g., decks, beams) for bridges less than or equal to 30 feet in length and less than or equal to 1,000 square feet in area. This category does not include guardrails or the substructure of bridges (e.g., foundations, abutments).

(C) The following underground utility facilities:

(i) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided no excavation would extend beyond the depth and extent of the original excavation.

(ii) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided (1) no excavation would extend more than 12 inches beyond the depth and extent of the original excavation, (2) no ditch for linear facilities would be more than 24 inches wide, (3) no excavation for non-linear facilities would exceed 10 cubic yards, and (4) no recorded archaeological site is located within 500 feet of the development.

To comply with (4), the entity or person undertaking the development shall contact the Washington Office of Archaeology and Historic Preservation or the Oregon State Historic Preservation Office and obtain a letter or other document stating no recorded archaeological site is located within 500 feet of the development.

(D) The following aboveground and overhead utility facilities:

(i) Replace existing aboveground and overhead utility facilities including towers, pole/tower-mounted equipment, cables and wires, anchors, pad-mounted equipment, service boxes, pumps, valves, pipes, water meters, and fire hydrants, provided the replacement facilities would have (1) the same location and size as the existing facilities and (2) the same building materials as the existing facilities, or building materials that are dark brown with a flat, non-reflective finish, or building materials consistent with the *Historic Columbia River Highway Master Plan* for the Historic Columbia River Highway or a scenic highway corridor strategy for Interstate 84 or Washington State Route 14 prepared according to the GMA policies in the section of the Scenic Resources chapter of the Management Plan titled "Scenic Travel Corridors."

(ii) Replace existing utility poles, provided the replacement poles are (1) located within 5 feet of the original poles, (2) no more than 5 feet taller and 6 inches wider than the original poles, and (3) constructed of natural wood, weathering

steel (e.g., Corten), materials that match the original poles, or materials that are dark brown with a flat, non-reflective finish.

(iii) New whip antennas for public service less than or equal to 8-feet in height and less than or equal to 2 inches in diameter, cables, wires, transformers, and other similar equipment, provided all such structures are on existing utility poles or towers.

(E) The following signs:

(i) Election signs. Removal must be accomplished within 30 days of election day.

(ii) "For sale" signs not greater than 12 square feet. Removal must be accomplished within 30 days of close of sale.

(iii) Temporary construction site identification, public service company, safety, or information signs not greater than 32 square feet. Exceptions may be granted for public highway signs necessary for public safety and consistent with the *Manual for Uniform Traffic Control Devices*. Removal must be accomplished within 30 days of project completion.

(iv) Signs posted on private property warning the public against trespassing, danger from animals, the private nature of a road, driveway or premise, or signs prohibiting or otherwise controlling fishing or hunting, provided such signs are not greater than 6 square feet.

(v) Temporary signs advertising civil, social, or political gatherings and activities, provided such signs do not exceed 12 square feet. Removal must be accomplished within 30 days of the close of the event.

(vi) Signs posted by governmental jurisdictions giving notice to the public. Such signs shall be no larger than that required to convey the intended message.

(vii) In the General Management Area, signs associated with the use of a building or buildings, if placed flat on the outside walls of buildings (not on roofs or marquees).

**350-81-076. Agricultural Buffer Zones in the General Management Area**

(1) All new buildings in the GMA shall comply with the following guidelines when proposed to be located on a parcel adjacent to lands that are designated Large-Scale or Small-Scale Agriculture and are currently used for or are suitable for agricultural use:

SETBACK GUIDELINES			
Type of Buffer (Size in Feet)			
Type of Agriculture	Open or Fenced	Natural or Created Vegetation Barrier	8-foot Berm or Terrain Barrier
Orchards	250	100	75
Row crops/ Vegetables	300	100	75
Livestock grazing Pasture, haying	100	15	20
Grains	200	75	50
Berries, vineyards	150	50	30
Other	100	50	30

(2) Earth berms may be used to satisfy, in part, the setback guidelines. The berm shall be a minimum of 8 feet in height, and contoured at 3:1 slopes to look natural. Shrubs, trees, and/or grasses shall be employed on the berm to control erosion and achieve a finished height of 15 feet.

(3) The planting of a continuous vegetative screen may be used to satisfy, in part, the setback guidelines. Trees shall be at least 6 feet high when planted and reach an ultimate height of at least 15 feet. The vegetation screen shall be planted along the appropriate parcel line(s), and shall be continuous.

(4) The necessary berming and/or planting shall be completed during the first phase of development and maintained in good condition.

(5) If several crops or crop rotation is involved in the adjacent operation, the greater setback shall apply.

(6) A local government may grant a variance to the buffer guidelines upon a demonstration that the variance guidelines in 350-81-078 have been satisfied.

**350-81-078. Variances**

(1) In the GMA, when setbacks or buffers specified in the guidelines for the protection of scenic, cultural, natural, recreation, agricultural, or forestry resources overlap or conflict, the setbacks or buffers may be varied upon a demonstration that both of the following conditions exist:

(a) A setback or buffer specified in Commission Rule 350-81 to protect one resource would cause the proposed use to fall within a setback or buffer specified in the plan to protect another resource.

(b) Variation from the specified setbacks or buffer would, on balance, best achieve the protection of the affected resources.

(2) In the GMA, a setback or buffer specified in the guidelines for protection of scenic, cultural, natural, recreation, agricultural, or forestry resources may be varied to allow a residence to be built on a parcel of land upon a demonstration that all of the following conditions exist:

(a) The land use designation otherwise authorizes a residence on the tract.

(b) No site exists on the tract (all contiguous parcels under the same ownership) on which a residence could practicably be placed in full compliance with the setback or buffer.

(c) The variance from the specified setback or buffer is the minimum necessary to allow the residence.

(3) In the GMA, the Executive Director may grant a variance to the setback and buffer requirements contained in 350-81-610 upon a finding that all of the following conditions exist:

(a) The proposed project is a public-use, resource-based recreation facility providing or supporting either recreational access to the Columbia River and its tributaries, or recreational opportunities associated with a scenic travel corridor.

(b) All reasonable measures to redesign the proposed project to comply with required setbacks and buffers have been explored, and application of those setbacks and buffers would prohibit a viable recreation use of the site as proposed.

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(c) Resource impacts have been mitigated to less than adverse levels through design provisions and mitigation measures.

(d) The variance is the minimum necessary to accommodate the use.

(4) In the GMA, the Executive Director may grant a variance of up to 10 percent to the guidelines of Recreation Intensity Class 4 for parking and campground units upon demonstration that all of the following conditions exist:

(a) Demand and use levels for the proposed activity(s), particularly in the area where the site is proposed, are high and expected to remain so and/or increase. Statewide Comprehensive Outdoor Recreation Plan (SCORP) data and data from Scenic Area recreation demand studies shall be relied upon to meet this criterion in the absence of current applicable studies.

(b) The proposed use is dependent on resources present at the site.

(c) Reasonable alternative sites offering similar opportunities, including those in nearby Urban Areas, have been evaluated, and it has been demonstrated that the proposed use cannot be adequately accommodated elsewhere.

(d) The proposed use is consistent with Chapter 4, Part I of the Management Plan.

(e) Through site design and/or mitigation measures, the proposed use can be implemented without adversely affecting scenic, natural, or cultural resources and adjacent land uses.

(f) Through site design and/or mitigation measures, the proposed use can be implemented without affecting treaty rights.

### **350-81-080. Applying New Less-Stringent Regulations to Development Approved Under Prior Scenic Area Regulations**

(1) A landowner may submit a land use application to alter conditions of approval for an existing use or structure approved under prior Scenic Area regulations (e.g., *Columbia River Gorge National Scenic Area Final Interim Guidelines*, original *Management Plan*), subject to the following standards:

(a) The applicant shall apply for the same development that was reviewed in the original decision.

(b) The development shall remain in its current location.

(c) The agency that currently has jurisdiction over the applicant's property shall review the application and send notice of the application to agencies and other parties entitled to receive notice under the current rules.

(d) The agency shall review the entire development to ensure that it would fully comply with all the current guidelines (i.e., land use, treaty rights, scenic resources, cultural resources, recreation resources and natural resources).

(e) The agency shall issue a new decision that supersedes the original decision.

(f) The new decision may remove or revise original conditions of approval or add new conditions of approval to ensure full compliance with all the current guidelines.

### **350-81-082. Existing Uses and Discontinued Uses**

(1) Right to Continue Existing Uses and Structures

(a) Except as otherwise provided, any existing use or structure may continue as long as it is used in the same manner and for the same purpose.

(2) Replacement of Existing Structures Not Damaged or Destroyed by Disaster

(a) Except as provided in 350-81-082(3), an existing structure may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within one year of the date the use of the original structure was discontinued. The replacement structure shall comply with the following standards:

(A) The replacement structure shall be used in the same manner and for the same purpose as the original structure.

(B) The replacement structure may have a different size and/or location than the original structure. An existing mobile home may be replaced with a framed residence and an existing framed residence may be replaced with a mobile home.

(C) The replacement structure shall be subject to the scenic, cultural, recreation and natural resources guidelines; the treaty rights guidelines; and the land use designations guidelines involving agricultural buffer zones, approval criteria for fire protection, and approval criteria for siting of dwellings on forest land.

(D) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the one year time frame.

(3) Replacement of Existing Structures Damaged or Destroyed by Disaster

(a) An existing structure damaged or destroyed by fire, flood, landslide or other similar disaster may be replaced if a complete land use application for a replacement structure is submitted to the reviewing agency within two years of the date the original structure was damaged or destroyed. The replacement structure shall comply with the following standards:

(A) The replacement structure shall be used in the same manner and for the same purpose as the original structure. An existing mobile home may be replaced with a framed residence.

(B) The replacement structure shall be in the same location as the original structure. An exception may be granted and the replacement structure may be sited in a different location if the following conditions exist:

(i) A registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the disaster made the original building site physically unsuitable for reconstruction.

(ii) The new building site is no more visible from key viewing areas than the original building site. An exception may be granted if a registered civil engineer, registered geologist, or other qualified and licensed professional hired by the applicant demonstrates the subject parcel lacks alternative building sites physically suitable for construction that are no more visible from key viewing areas than the original building site.

(iii) The new building site complies with the cultural resources, natural resources, and treaty rights protection guidelines.

(C) The replacement structure shall be the same size and height as the original structure, provided:

(i) The footprint of the replacement structure may be up to 10 percent larger than the footprint of the original structure.

(ii) The walls of the replacement structure shall be the same height as the walls of the original structure unless a minor increase is required to comply with standards in the current jurisdictional building code.

(D) The replacement structure shall only be subject to the following scenic resources standards:

(i) The replacement structure shall comply with the scenic resources guidelines regarding color and reflectivity. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable.

(ii) Decks, verandas, balconies and other open portions of the original structure shall not be rebuilt as enclosed (walls and roof) portions of the replacement structure.

(iii) In the General Management Area, the replacement structure shall comply with the scenic resources guidelines regarding landscaping. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate) to the maximum extent practicable, provided:

(I) Except as provided in 350-81-082 (3)(a)(D)(iii)(II), the percent of the replacement structure screened by vegetation as seen from key viewing areas shall not exceed the percent of the original structure that was screened by vegetation as seen from key viewing areas. Coniferous vegetation shall be replaced with coniferous vegetation and deciduous vegetation shall be replaced with deciduous vegetation unless the applicant chooses to use all coniferous vegetation.

(II) In situations where the original structure was approved under Scenic Area regulations (e.g., Final Interim Guidelines, land use ordinance), the percent of the replacement structure screened by vegetation shall comply with any conditions of approval that required a landowner to preserve existing vegetation and/or plant and maintain new vegetation to screen the original structure as seen from key viewing areas.

(III) To help determine how much vegetation may be required under 350-81-082 (3)(a)(D)(iii)(I) and (II), land use applications shall include all available documentation (photographic or otherwise) on the amount and type of vegetation that screened the original structure from key viewing areas. At a minimum, development review decisions shall include findings that address the following:

(1) The percent of original structure facing each key viewing area that was screened by coniferous vegetation, for each key viewing area from which the structure was visible.

(2) The percent of original structure facing each key viewing area that was screened by deciduous vegetation, for each key viewing area from which the structure was visible.

(3) Elevation drawings showing the replacement structure and the amount of coniferous and deciduous vegetation that would screen the structure from key viewing areas in 10 years.

(IV) The height of any new trees shall not be required to exceed 5 feet.

(V) The time frame for achieving visual subordination shall be 10 years or less from the commencement of construction.

(iv) In the Special Management Area, the replacement structure shall comply with the scenic resources guidelines regarding landscaping. These guidelines shall be applied to achieve the applicable scenic standard (visually subordinate or not visually evident) to the maximum extent practicable, provided:

(I) The *Scenic Resources Implementation Handbook* shall be utilized to determine approvable species and minimum approvable sizes of new trees planted (based on average growth rates expected for approvable species).

(II) The height of any new trees shall not be required to exceed 5 feet.

(III) The time frame for achieving the applicable scenic standard (visually subordinate or not visually evident) shall be 10 years.

(E) The replacement structure shall be subject to 350-81-082 (2)(a)(A) and (B) if it would not comply with 350-81-082 (3)(a)(B) and (C).

(F) The original structure shall be considered discontinued if a complete land use application for a replacement structure is not submitted within the two year time frame.

#### (4) Changes to Existing Uses and Structures

(a) Except as otherwise provided, any change to an existing use or modification to the exterior of an existing structure shall be subject to review and approval pursuant to Commission Rule 350-81.

(A) Expansion of Existing Commercial and Multifamily Residential Uses: In the SMA, existing commercial and multifamily residential uses may expand as necessary for successful operation on the dedicated site, subject to guidelines to minimize adverse effects on scenic, cultural, natural, and recreation resources. Expansion beyond the dedicated site shall be prohibited.

(B) Expansion of Existing Industrial Uses in the GMA: Existing industrial uses in the GMA may expand as necessary for successful operation on the dedicated site. Expansion beyond the dedicated site shall be prohibited.

(C) Conversion of Existing Industrial Uses in the GMA: In the GMA, existing industrial uses may convert to less intensive uses. For this section, a less intensive use is a commercial, recreation, or residential use with fewer adverse effects upon scenic, cultural, natural, and recreation resources.

(D) Existing Development or Production of Mineral Resources in the GMA: In the GMA, existing development or production of mineral resources may continue unless the Gorge Commission determines that the uses adversely affect the scenic, cultural, natural, or recreation resources of the Scenic Area. These uses will be considered discontinued and subject to land use ordinances under the Management Plan if any of the following conditions exist:

(i) The mined land has been reclaimed naturally or artificially to a point where it is revegetated to 50 percent of its original cover (considering both basal and canopy) or has reverted to another beneficial use, such as grazing. Mined land shall not include terrain that was merely leveled or cleared of vegetation.

(ii) The site has not maintained a required state permit.

(iii) The site has not operated legally within 5 years before October 15, 1991.

(E) Existing Development or Production of Mineral Resources in the SMA: Uses involving the exploration, development, or production of sand, gravel, or crushed rock in the SMA may continue if both of the following conditions exist:

(i) The sand, gravel, or crushed rock is used for construction or maintenance of roads used to manage or harvest forest products in the SMA.

(ii) A determination by the Forest Service finds that the use does not adversely affect the scenic, cultural, natural, or recreation resources.

(5) Discontinuance of Existing Uses and Structures

(a) Except as provided in 350-81-082 (3)(a) and (3)(a)(F), any use or structure that is discontinued for one (1) year or more shall not be considered an existing use or structure. Proof of intent to abandon is not required to determine that an existing use or use of an existing structure has been discontinued.

(A) Multiple Uses: An existing use or structure with more than one legally established use may discontinue one of the uses without discontinuing the others.

(B) Change in Use: An existing use or structure shall become discontinued if the use or use of the structure changes.

(6) Discontinued Uses and Structures:

(a) Re-establishment or replacement of any use or structure that has been discontinued shall be subject to all applicable policies and guidelines in the Management Plan, including, but not limited to, guidelines for land use designations and scenic, cultural, recreation and natural resources.

### **350-81-084. Indian Tribal Treaty Rights and Consultation**

(1) Indian Tribal Treaty Rights and Consultation in the General Management Area

(a) Tribal Government Notice

(A) New uses located in, or providing recreation river access to, the Columbia River or its fishbearing tributaries shall include the following supplemental information:

(i) The site plan map shall show adjacent river areas at least 1/2 mile upstream and downstream from the project site, the locations at which river access is planned, and the locations of all tribal fishing sites known to the project applicant.

(ii) The site plan text shall include an assessment of the potential effects that new uses may have on Indian treaty rights. The assessment shall:

(I) Describe the type of river access and uses proposed, estimated period when the development would be used, and anticipated levels of use (people, boats, and other uses) during peak-use periods.

(II) List tribal commercial fishing seasons in the project vicinity, as established by the four treaty tribes.

(III) List tribal ceremonial fishing seasons in the project vicinity.

(IV) Based on the above factors, assess the potential effects that the proposed uses may have on Indian treaty rights.

(B) Notices shall include a treaty rights protection plan if new uses may affect Indian treaty rights. The protection plan shall specify measures that will be used to avoid effects to Indian treaty rights. These measures may include reducing the size and modifying the location or design of the proposed uses, seasonal closures, stringent onsite monitoring, information signs, and highly visible buoys or other markers delineating fishing net locations.

(C) Indian tribal governments shall have 20 calendar days from the date a notice is mailed to submit substantive written comments to the Executive Director. Indian tribal governments must identify the treaty rights that exist in the project vicinity and explain how they would be affected or modified by the new uses.

(b) Tribal Government Consultation

(A) When substantive written comments are submitted to the Executive Director in a timely manner, the project applicant shall offer to meet with the Executive Director and the Indian tribal government that submitted comments within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the Indian tribal government.

Consultation meetings should provide an opportunity for the project application and tribal representatives to identify potential conflicts and explore options to eliminate them. The project applicant must demonstrate that the proposed use would not affect or modify treaty or other rights of any Indian tribe.

(B) Any substantive comments, recommendations, or concerns expressed by Indian tribal governments during the consultation meeting shall be recorded and addressed by the project applicant in a treaty rights protection plan. The protection plan shall include measures to avoid effects to treaty and other rights of any Indian tribe.

(C) The Executive Director shall submit all protection plans to the Indian tribal governments. Indian tribal governments shall have 30 calendar days from the date a protection plan is mailed to submit written comments to the Executive Director.

(c) Conclusion of the Treaty Rights Protection Process

(A) The Executive Director shall decide whether the proposed uses would affect or modify any treaty or other rights of any Indian tribe.

The final decision shall integrate findings of fact that address any substantive comments, recommendations, or concerns expressed by Indian tribal governments. If the final decision contradicts the comments, recommendations, or concerns of Indian tribal governments, the Executive Director must justify how it reached an opposing conclusion.

(B) The treaty rights protection process may conclude if the Executive Director determines that the proposed uses would not affect or modify treaty or other rights of any Indian tribe. Uses that would affect or modify such rights shall be prohibited.

(C) A finding by the Executive Director that the proposed uses would not affect or modify treaty or other rights, or a failure of an Indian tribe to comment or consult on the proposed uses as provided in these guidelines, in no way shall be interpreted as a waiver by the Indian tribe of a claim that

such uses adversely affect or modify treaty or other tribal rights.

(2) Indian Tribal Treaty Rights and Consultation in the Special Management Area

(a) For new development and uses in the Special Management Area, the Forest Service shall determine effects on treaty rights and shall notify the Executive Director of the determination.

### **350-81-086. Buffers from Existing Recreation Sites**

If new buildings or structures may detract from the use and enjoyment of established recreation sites, an appropriate buffer shall be established between the building/structure and the parcel.

## **Uses and Structures Allowed in Various Land Use Designations**

### **350-81-090. Agricultural Buildings**

(1) The size of proposed agricultural buildings shall not exceed the size needed to serve the current agricultural use and, if applicable, the proposed agricultural use.

(2) To satisfy 350-81-090(1), applicants shall submit the following information with their land use application:

(a) A description of the size and characteristics of current agricultural use.

(b) An agricultural plan for any proposed agricultural use that specifies agricultural use (e.g., crops, livestock, products), agricultural areas and acreages (e.g., fields, pastures, enclosures), agricultural structures (e.g., irrigation systems, wind machines, storage bins) and schedules (e.g., plowing, planting, grazing).

(c) A floor plan showing intended uses of the agricultural building (e.g., space for equipment, supplies, agricultural products, livestock).

### **350-81-092. Temporary Use - Hardship Dwelling**

(1) A permit for the temporary placement of a mobile home may be granted under the following circumstances:

(a) A family hardship exists where conditions relate to the necessary care for a member of the family occupying the principal dwelling and where medical conditions relate to the infirm or aged.

(b) The hardship dwelling will use the same subsurface sewage disposal system used by the existing dwelling, if the system is adequate to accommodate the additional dwelling, unless the additional dwelling can use an existing public sanitary sewer system.

(c) The hardship dwelling is found to be consistent with the guidelines for protection of scenic, cultural, natural, and recreation resources.

(2) A permit may be issued for a 2-year period, subject to annual review for compliance with the provisions of this section and any other conditions of approval.

(3) Upon expiration of the permit or cessation of the hardship, whichever comes first, the mobile home shall be removed within 30 days.

(4) A new permit may be granted upon a finding that a family hardship continues to exist.

### **350-81-094. Sewer and Water Services**

(1) Sewer lines may be extended from an Urban Area into a rural area to serve:

(a) Areas with a documented health hazard.

(b) Recreation uses open to the public, only upon a demonstration by the local government that there is no practicable alternative to providing service to the area. In such cases, the lines shall be engineered and sized solely to serve the defined area or use. Such lines shall not be relied upon as the sole justification for revision to an Urban Area boundary.

(2) New uses authorized in Commission Rule 350-81 may hook up to existing sewer and water lines in rural areas.

### **350-81-096. Docks and Boathouses**

(1) New, private docks and boathouses serving only one family and one property shall be allowed, up to 120 square feet in size.

(2) New, private docks and boathouses serving more than one family and property shall be allowed, up to 200 square feet in size.

(3) Public docks open and available for public use shall be allowed.

(4) Boathouses may be allowed under 350-81-096 (1) and (2) only when accessory to a dwelling and associated with a navigable river or lake.

### **350-81-098. Home Occupations and Cottage Industries**

(1) Home occupations and cottage industries may be established as authorized in specified land use designations consistent with the following guidelines:

(a) A home occupation may employ only residents of the home.

(b) A cottage industry may employ up to three outside employees.

(c) No more than 25 percent of the total actual living space of the dwelling may be used for the home occupation or cottage industry.

(d) No more than 500 square feet of an accessory structure may be used for a home occupation or cottage industry.

(e) There shall be no outside, visible evidence of the home occupation or cottage industry, including outside storage.

(f) Exterior structural alterations to the residence for the home occupation or cottage industry shall not be permitted. New structures shall not be constructed for the primary purpose of housing a home occupation or cottage industry.

(g) No retail sales may occur on the premises, except incidental sales at lodging establishments authorized in this chapter.

(h) One non-animated, non-illuminated sign, not exceeding 2 square feet in area, may be permitted on the subject structure or within the yard containing the home occupation or cottage industry.

(i) Parking not associated with residential use shall be screened so it is not visible from key viewing areas.

(j) In the General Management Area, a bed and breakfast lodging establishment that is two bedrooms or less is considered a home occupation and shall meet the guidelines of 350-81-098 and 350-81-100.

(k) In the Special Management Area, a bed and breakfast lodging establishment that is two bedrooms or less is considered a home occupation and shall meet the guidelines of 350-81-098 and 350-81-100, except 350-81-100 (1)(d).

#### **350-81-100. Bed and Breakfast Inns**

(1) Bed and breakfast inns may be established as authorized in specified land use designations, consistent with the following conditions:

(a) Guests may not occupy a facility for more than 14 consecutive days.

(b) One non-animated, non-illuminated sign, not exceeding 4 square feet in area, may be permitted on the structure or within the yard containing the structure.

(c) Parking areas shall be screened so they are not visible from key viewing areas.

(d) In the SMA, bed and breakfast inns associated with residential use shall be allowed only in structures that are included in, or eligible for inclusion in, the National Register of Historic Places.

#### **350-81-102. Small-Scale Fishing Support and Fish Processing Operations**

(1) Small-scale fishing support and fish processing operations in conjunction with a family-based commercial fishing business may be allowed on parcels designated GMA Residential, GMA Small Woodland, or GMA Small-Scale Agriculture, subject to the following conditions:

(a) The operation shall comply with 350-81-084(1). In addition, if the operation will be located on land designated Small Woodland, then it shall also comply with 350-81-300, and 350-81-310.

(b) The following fishing support activities may be allowed: maintenance, repair, and storage of boats, nets, fish totes and other commercial fishing equipment that is used in the family-based commercial fishing business; and garaging of fish hauling trucks, trailers and all other related equipment that is used in the family-based commercial fishing business.

(c) The following fish processing activities may be allowed: cleaning, gutting, heading, and icing or freezing of fish that is caught by the family-based commercial fishing business. Other fish processing activities shall not be allowed, including, but not limited to, canning, smoking, salting or brining for wholesale or retail sale.

(d) The operation shall be located on a lawful parcel that is contiguous with and has direct access to the Columbia River.

(e) The subject parcel shall include a lawful dwelling, and the permanent resident of the dwelling shall participate in the fishing support and fish processing operation.

(f) The operation may only employ residents of the dwelling and up to three outside employees.

(g) No more than 25 percent of the total actual living space of the dwelling may be used for the fishing support and fish processing operation.

(h) The operation may take place in an existing or new lawful accessory building or an existing agricultural building on the subject parcel. A new building constructed for the purpose of housing a fishing support and fish processing operation shall be considered an accessory building. An existing

agricultural building shall not be expanded and a new agricultural building shall not be constructed for the purpose of housing a fishing support and fish processing operation.

(i) An accessory building used in the fishing support and fish processing operation may be allowed up to 2,500 square feet.

(j) Docks may be allowed as follows:

(A) One dock serving a parcel with an approved fishing support and fish processing operation may be allowed up to 500 square feet in size.

(B) For multiple contiguous parcels each with approved fishing support and fish processing operation, the area of the docks authorized in 350-81-102 (1)(j)(A) above may be combined into one dock, provided the total size of the dock shall not exceed 2,000 square feet.

(k) There shall be no outside visible evidence of the fishing support and fish processing operation, including storage, other than boats and docks.

(l) No retail sales may occur on the parcel.

(m) The operation shall only support and process fish caught by residents of the dwelling and up to three outside employees.

(n) Before beginning the operation, applicants shall demonstrate that they have obtained and complied with federal, state and/or local water quality and wastewater permits.

#### **350-81-104. Resource Enhancement Projects**

(1) Applications for resource enhancement projects must describe the goals and benefits of the proposed enhancement project. They must also thoroughly document the condition of the resource before and after the proposed enhancement project.

(2) In addition to other guidelines that protect scenic, cultural, recreation, and natural resources, quarry enhancement projects shall comply with the following guidelines:

(a) Application Requirements. In addition to other applicable requirements, land use applications for quarry enhancement projects shall include perspective drawings of the site as seen from key viewing areas as specified in 350-81-520 (2)(o) and a reclamation plan that provides all the applicable information specified in 350-81-520 (1)(f)(A) through (E), except: (1) the words "pre-reclamation" and "post-reclamation" should replace the words "pre-mining" and "post-mining," respectively, and (2) the appropriate state agency or local government does not have to approve the reclamation plan.

(b) Scenic Resource Standard. Quarry enhancement projects shall restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable.

(c) Natural Resource Standard. Sites shall be replanted using native plants found in the landscape setting or ecoregion to the maximum extent practicable.

(d) Time Frames. The following time frames shall apply to quarry enhancement projects:

(A) All grading (e.g., excavating, filling and re-contouring) shall be completed within one (1) year of the date an applicant begins on-the-ground work.

(B) All landscaping shall be planted within one (1) year of the date an applicant completes the grading.



(C) An applicant may request one one-year extension to the one year grading time frame if a project is unexpectedly delayed by adverse weather or emergency/disaster. Such requests shall be considered an administrative action. An applicant shall submit such a request to the reviewing agency after grading has commenced and before the one year grading time frame has expired.

(D) An applicant may also request one six-month extension to the one (1) year landscaping time frame if a project is unexpectedly delayed by adverse weather or emergency/disaster. Such requests shall be considered an administrative action. An applicant shall submit such a request to the reviewing agency after landscaping has commenced and before the one-year landscaping time frame has expired.

### **350-81-106. Disposal Sites for Spoil Materials from Public Road Maintenance Activities**

(1) Application Requirements. In addition to other applicable requirements, land use applications for disposal sites shall include the same information that applicants are required to submit for expansion of existing quarries and production and/or development of mineral resources in the GMA, including, but not limited to:

(a) A reclamation plan that provides all the applicable information specified in 350-81-520 (1)(f)(A) through (E), except: (1) the words "pre-disposal" and "post-disposal" should replace the words "pre-mining" and "post-mining" and (2) the appropriate state agency or local government does not have to approve the reclamation plan.

(b) Perspective drawings of the site as seen from key viewing areas as specified in 350-81-520 (2)(o).

(c) Cultural resource reconnaissance and historic surveys, as required by 350-81-540 (1)(c)(A) and (B), respectively. Disposal sites shall be considered a "large-scale use" according to 350-81-540 (1)(c)(C).

(d) Field surveys to identify sensitive wildlife areas or sites and sensitive plants as described in 350-81-580(2) and 350-81-590(2).

(2) Siting Standard. The proposed disposal site shall only be approved if the applicant demonstrates it is not practicable to locate the disposal site outside the Scenic Area or inside an Urban Area. At a minimum, the applicant shall submit a feasibility and suitability analysis that compares the proposed disposal site to existing or potential disposal sites located both outside the Scenic Area and inside an Urban Area.

(3) Scenic Resource Standards. Disposal sites shall comply with the same scenic resources protection standards as expansion of existing quarries and production and/or development of mineral resources in the GMA, including, but not limited to:

(a) Sites more than 3 miles from the nearest key viewing area shall be visually subordinate as seen from any key viewing area, according to 350-81-520 (2)(bb).

(A) An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed 3 years beyond the start of on-the-ground activities.

(b) Sites less than 3 miles from the nearest key viewing area shall be fully screened from any key viewing area, according to 350-81-520 (2)(cc).

(A) An interim period to achieve compliance with this requirement shall be established before approval. The period shall be based on site-specific topographic and visual conditions, but shall not exceed 1 year beyond the start of on-the-ground activities. Disposal activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

(c) Reclamation plans shall restore the site to a natural appearance that blends with and emulates surrounding landforms and vegetation patterns to the maximum extent practicable.

### **350-81-108. Commercial Events**

(1) Commercial events include weddings, receptions, parties and other small-scale gatherings that are incidental and subordinate to the primary use on a parcel.

(2) Commercial events may be allowed in the GMA except on lands designated Open Space or Commercial Forest, subject to compliance with the following conditions and the scenic, cultural, natural and recreation resources guidelines:

(a) The use must be in conjunction with a lawful winery, wine sales/tasting room, bed and breakfast inn, commercial use, or dwelling listed in the National Register of Historic Places.

(b) The owner of the subject parcel shall live on the parcel and shall operate and manage the use.

(c) A single commercial event shall host no more than 100 guests.

(d) The use shall comply with the following parking requirements:

(A) A single commercial event shall include no more than 50 vehicles for guests.

(B) All parking shall occur on the subject parcel.

(C) At least 200 square feet of parking space shall be required for each vehicle.

(D) Parking areas may be developed using paving blocks, gravel, or other pervious surfaces; asphalt, concrete and other imperious materials shall be prohibited.

(E) All parking areas shall be fully screened from key viewing areas.

(e) The owner of the subject parcel may conduct 18 single events up to one day in length per year.

(f) The owner of the subject parcel shall notify the reviewing agency and all owners of land within 500 feet of the perimeter of the subject parcel of each planned event. The notice shall be in writing and shall be mailed at least seven calendar days before an event.

(g) Tents, canopies, portable restrooms and other similar temporary structures necessary for a commercial event may be allowed, provided all such structures are erected or placed on the subject parcel no more than two days before the event and removed no more than two days after the event. Alternatively, temporary structures may remain in place for up to 90 days if they are fully screened from key viewing areas.

(h) The use may be allowed upon demonstration that the following conditions exist to protect any nearby agricultural and forest operations:

(A) The use would not force a change in or increase the cost of accepted agricultural practices on surrounding lands. [350-81-190 (1)(q)(A)]

(B) The use would be set back from any abutting parcel designated Large-Scale or Small-Scale Agriculture, as required in 350-81-076 or designated Commercial Forest Land or Large or Small Woodland, as required in 350-81-310. [350-81-190 (1)(q)(C)]

(C) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland. [350-81-190 (1)(q)(D)]

(D) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland that is within 500 feet of the perimeter of the subject parcel on which the use is proposed to be located have been notified and given at least 10 days to comment prior to a decision. [350-81-190 (1)(q)(E)]

(i) Counties may impose additional requirements to address potential impacts to surrounding neighbors. For example, they may limit noise, lighting and operating hours.

(j) Land use approvals for commercial events shall not be valid for more than two years. Landowners must reapply for the use after a land use approval expires.

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

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

### **350-81-110. Columbia River Bridge Replacement**

#### **(1) Visual Quality**

(a) A replacement Columbia River Bridge between the Hood River and Bingen/White Salmon Urban Areas shall be visually unobtrusive and harmonious with the surrounding Gorge landscape and the Columbia River. A replacement bridge shall:

(A) Utilize recessive dark natural or earth-tone colors for steel components of the bridge, a thin and open structural design that allows views through it to the extent practicable, and consistent design character and ornamental elements;

(B) Employ lighting that provides a safe and pleasant atmosphere for bicycles and pedestrians while not casting glare directly into the sky or onto the river.

#### **(2) Historic Design Elements**

(a) A replacement Columbia River Bridge between the Hood River and Bingen/White Salmon Urban Areas shall incorporate elements that reflect historic design features of Scenic Area roadways and bridges. The historic themes should be an integral component of the design of the bridge structure, incorporated from "shore to shore."

(b) A replacement bridge should include:

(A) Arches and/or other traditional structural forms in the bridge;

(B) Historic style benches, lighting, other pedestrian furnishings, and signage/graphic materials consistent with the USFS Graphic Signing System for the Scenic Area;

(C) Ornamental concrete or steel railings.

#### **(3) Recreation and Pedestrian/Bicycle Access**

(a) A replacement Columbia River Bridge between the Hood River and Bingen/White Salmon Urban Areas shall encourage and promote pedestrian and bicycle use, for recreational enjoyment and to enhance multi-modal transportation connections between the Urban Areas it connects.

(b) The bridge shall include facilities for pedestrians and bicyclists that:

(A) Are permanent;

(B) Are wide enough to safely accommodate and encourage walking, bicycling, and other uses;

(C) Meet safety standards to prevent conflicts among automobiles, trucks, pedestrians, bicyclists, and other users;

(D) Provide multiple sitting and viewing areas with significant upstream and downstream views;

(E) Are safe to approach from both the north and south ends of the bridge and provide strong multi-modal connections, both east-west and to the nearby Urban Areas.

### **350-81-112. Signs**

#### **(1) GMA Sign Provisions**

(a) Except for signs allowed without review pursuant to 350-81-074, all new signs must meet the following guidelines unless these guidelines conflict with the *Manual for Uniform Traffic Control Devices* for public safety, traffic control or highway construction signs. In such cases, the standards in the *Manual for Uniform Traffic Control Devices* shall supersede these guidelines.

(A) The support structure shall be unobtrusive and have low visual impact.

(B) Lettering colors with sufficient contrast to provide clear message communication shall be allowed. Signs shall be colored to blend with their setting to the maximum extent practicable.

(C) Backs of all signs shall be unobtrusive, nonreflective, and blend in with the setting.

(D) Spotlighting of signs may be allowed where needed for night visibility. Backlighting is not permitted for signs.

(E) Except for signs along public highways necessary for public safety, traffic control, or road construction and consistent with the *Manual for Uniform Traffic Control Devices*, the following signs are prohibited:

(i) Luminous signs or those with intermittent or flashing lights. These include neon signs, fluorescent signs, light displays, and other signs that are internally illuminated, exclusive of seasonal holiday light displays.

(ii) New billboards.

(iii) Signs with moving elements.

(iv) Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of the vehicle.

(b) Any sign that does not conform with a provision of these guidelines and has existed before their adoption is subject to the following provisions:

(A) Alteration of existing nonconforming signs shall comply with these guidelines.

(B) Any nonconforming sign used by a business must be brought into conformance concurrent with any expansion or change in use that requires a development permit.

**(2) SMA Sign Provisions**

(a) New signs shall be allowed as specified in the applicable land use designation.

(b) No sign shall be erected or placed in such a manner that it may interfere with, be confused with, or obstruct the view of any traffic sign, signal, or device.

(c) Preexisting signs are allowed to continue, provided no changes occur in size, structure, color, or message.

(d) Except for signs allowed without review pursuant to 350-81-074, all new signs shall meet the following guidelines and be consistent with the *Manual for Uniform Traffic Control Devices*:

(A) Signs shall be maintained in a neat, clean, and attractive condition.

(B) The character and composition of sign materials shall be harmonious with the landscape and/or related to and compatible with the main structure upon which the sign is attached.

(C) Signs shall be placed flat on the outside walls of buildings, not on roofs or marquees.

(D) Signs shall be unobtrusive and have low contrast with the setting.

(E) The visual impact of the support structure shall be minimized.

(F) Outdoor sign lighting shall be used for purposes of illumination only, and shall not be designed for, or used as, an advertising display, except for road safety signs.

(G) The backs of all signs shall be visually unobtrusive, nonreflective, and blend in with the setting.

(H) Internal illumination or backlighting of signs shall not be permitted except for highway construction, warning, or safety.

(e) Public signs shall meet the following standards in addition to 350-81-114 (2)(a) through (d):

(A) The Columbia River Gorge National Scenic Area Graphic Signing System provides design standards for public signs in and adjacent to public road rights-of-way. All new and replacement public signs, except those transportation regulatory, guide, and warning signs allowed outright shall conform to the guidelines in this system. Types of signs addressed include recreation site entry, interpretive, specific service signs, destination and distance signs, variable message signs, or signs that bridge or are cantilevered over the road surface.

(B) Signs located outside public road rights-of-way are encouraged to be designed in a way that is consistent with similar-purpose signs described in the Graphic Signing System.

(C) Signs posted by governmental jurisdictions giving notice to the public shall be no larger than that required to convey the intended message.

(f) Signs for public and commercial recreation facilities, home occupations, cottage industries, and commercial uses shall meet the following guidelines in addition to 350-81-112 (2)(a) through (e) and 350-81-112 (2)(h):

(A) Any sign advertising or relating to a business that is discontinued for a period of 30 consecutive days shall be presumed to be abandoned and shall be removed within 30 days thereafter, unless permitted otherwise by the jurisdictional authority.

(B) Any signs relating to or advertising for a business shall be brought into conformance with these sign guidelines before any expansion or change in use that is subject to review by the counties.

(C) Offsite and onsite directional signs on approach roads to recreational facilities may be permitted. Name and interpretive signs may be permitted onsite, but should be kept to the minimum required to achieve the purpose(s) of the facilities.

(D) Commercial recreation businesses approved in conjunction with a recreational facility may have a name sign not exceeding 16 square feet.

(E) Recreation developments may have one on-premise name sign at each principal entrance. Such signs are encouraged to be of a low profile, monument type, and shall conform to the Graphic Signing System.

(g) The following signs are prohibited:

(A) Advertising billboards.

(B) Signs that move or give the appearance of moving, except signs used for highway construction, warning, or safety.

(C) Portable or wheeled signs, or signs on parked vehicles where the sign is the primary use of the vehicle, except for signs used for highway construction, warning, or safety.

(h) Sign clutter and other negative visual effects from excessive signs along all roads and highways, and at parking lots and recreation facilities, shall be reduced.

### Land Divisions and Lot Line Adjustments

#### **350-81-120. Consolidation of Lots**

(1) A unit of land shall be consolidated with adjacent lands in the same ownership if:

(a) In Oregon, the subdivision within which the unit of land is located is undeveloped pursuant to ORS Chapter 92; or

(b) In Washington, if the unit of land is smaller than the current minimum parcel size and is located within a final plat that is older than five years from the date of filing.

(2) No portion of a consolidated plat shall be considered a separate parcel solely because an existing parcel overlays, and possibly fragments, that consolidated subdivision.

(3) Section 1 shall not be applied to consolidate two or more units of land where each unit of land is developed with a dwelling that qualifies as an existing use. One or more undeveloped units of land shall be consolidated with one or more developed units of land.

(4) To carry out this section, counties shall develop their own procedures for consolidating units of land pursuant to this provision, including amending plats, vacating plats, replatting, or other similar legal action.

#### **350-81-124. Land Divisions and Cluster Development**

(1) New land divisions in the SMA are not allowed, unless the creation of a new parcel will facilitate land acqui-

sition by the federal government to achieve the policies and guidelines in the Management Plan.

(2) Unless otherwise specified, creation of a parcel, regardless of size, or any division of land shall be subject to the guidelines in Commission Rule 350-81.

(3) At the time of creation of one or more new parcels, consolidation of access shall be considered in order to reduce adverse effects on scenic, cultural, natural and recreation resources.

(4) Where authorized in 350-81-170 through 350-81-510, a land division in the GMA may create parcels smaller than the designated minimum size and may include a bonus, as specified under 350-81-124(6) below, in order to cluster new dwellings. Approval of cluster development shall be contingent upon submission of plans specifying dwelling sites and areas of permanent, undeveloped open land. To approve a cluster development, the local government must find that clustering new dwellings will provide a siting opportunity not available through conventional parcel-by-parcel development. These opportunities include siting the new dwellings to:

(a) Be located in areas with screening vegetation or other features that reduce visibility of development as seen from key viewing areas.

(b) Avoid significant landscape features.

(c) Protect the existing character of the landscape setting.

(d) Reduce interference with movement of deer or elk in winter range.

(e) Avoid areas of known cultural resources.

(f) Consolidate road access, septic drainfields, or other development features to reduce impacts associated with grading or ground disturbance.

(g) Reduce adverse effects to riparian areas, wetlands, natural areas, rare plants, sensitive wildlife sites, or other natural resources.

(h) Increase the likelihood of agricultural or forest management on the undeveloped land left by the cluster development.

(5) In the GMA, following cluster development, there may be no further division of any resulting parcel for residential purposes until the subject parcel is included within the boundary of an Urban Area. The local government shall ensure permanent protection for open areas created by cluster development. No parcel in a cluster development may be smaller than 1 acre in a 5-acre Residential or 10-acre Residential designation or 2 acres in a Small-Scale Agriculture or Small Woodland designation.

(6) In the GMA, cluster development may create up to 25 percent more parcels than otherwise allowed by the minimum parcel size on lands designated 5-acre Residential or 10-acre Residential and up to 50 percent more on lands designated Small-Scale Agriculture or Small Woodland. Any division in a cluster development under this guideline may create at least one additional parcel.

(7) In the GMA, at least 75 percent of land subject to a cluster development shall be permanently protected as undeveloped land.

(8) In the GMA, contiguous parcels in the same ownership or in separate ownership may be consolidated and redivided to take advantage of cluster development bonuses.

### 350-81-126. Lot Line Adjustments

(1) The following guidelines shall apply to lot line adjustments in the GMA.

(a) Lot line adjustments for parcels in all land use designations except Open Space, Commercial, Public Recreation, or Commercial Recreation shall comply with the following standards:

(A) The lot line adjustment shall not result in the creation of any new parcel(s).

(B) The lot line adjustment shall not result in the potential to create a new parcel(s) or residential development in excess of the minimum density allowed by the land use designation(s) for the affected parcels.

(C) The lot line adjustment shall not allow a parcel that is equal to or larger than the minimum parcel size before the lot line adjustment to become less than the minimum parcel size after the lot line adjustment, except to allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes future land divisions and development.

(D) The lot line adjustment shall not allow a parcel that is smaller than the minimum parcel size to be reduced in size, except to accomplish one of the following purposes:

(i) Resolve boundary disputes, correct physical encroachments, provide reasonable access, or meet buffer or set back requirements, provided (1) the parcel to be enlarged would not become eligible for a subsequent land division and (2) the amount of land transferred would be the minimum necessary to resolve the issue.

(ii) Allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes future land divisions and development.

(E) The lot line adjustment shall not allow the boundary of a parcel designated Large-Scale Agriculture, Commercial Forest Land, Large Woodland or Open Space to be extended into another land use designation for the purpose of establishing a dwelling under less stringent guidelines (e.g., extending a parcel designated GMA Large-Scale Agriculture into a parcel designated Rural Center or Residential).

(F) The lot line adjustment shall not allow previously approved parcels or developments to violate conditions of approval or become out of compliance or further out of compliance with existing land use and resource protection guidelines, including, but not limited to, requirements for buffer zones and landscaping.

(G) The lot line adjustment shall not result in a parcel that cannot comply with existing land use and resource protection guidelines, including, but not limited to requirements for buffer zones and landscaping.

(b) Lot line adjustments for parcels designated Open Space shall comply with the following standards:

(A) The lot line adjustment may be allowed upon demonstration that it is necessary to facilitate efforts to protect and enhance scenic, cultural, natural, or recreation resources.

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(Note: There is no specified minimum parcel size for parcels designated Open Space.)

(B) The lot line adjustment shall comply with subsections (1)(a)(A), (E), (F), and (G), above.

(c) Lot line adjustments for parcels designated Commercial shall comply with subsections (1)(a)(A), (E), (F), and (G), above.

(d) Lot line adjustments for parcels designated Public Recreation or Commercial Recreation shall comply with the following standards:

(A) The lot line adjustment may be allowed upon demonstration that it is necessary to facilitate, enhance, or otherwise improve recreation uses on the parcel. (Note: There are no specified minimum parcel sizes for parcels designated Public Recreation or Commercial Recreation.)

(B) The lot line adjustment shall comply with subsections (1)(a)(A), (E), (F), and (G), above.

(2) The following guidelines shall apply to lot line adjustments in the SMA.

(a) The proposed lot line adjustment shall not result in the creation of any new parcel(s).

(b) A lot line adjustment shall not result in a parcel greater than or equal to 40 acres becoming less than 40 acres.

(c) A lot line adjustment shall not result in a parcel less than 40 acres becoming 40 acres or greater.

(d) A parcel that is smaller than 40 acres shall not be reduced in size, except to accomplish one of the following purposes:

(A) Resolve boundary line disputes, correct physical encroachments, provide reasonable access, or meet buffer or set back requirements, provided (1) the parcel to be enlarged would not become 40 acres or greater and (2) the amount of land transferred would be the minimum necessary to resolve the issue.

(B) Allow a public or non-profit entity to acquire land for the purpose of protecting and enhancing scenic, cultural, recreation or natural resources, provided the land to be acquired would be protected by a conservation easement or other similar property restriction that precludes residential development.

(e) The lot line adjustment shall not cause previously approved parcels or development to violate conditions of approval or become out of compliance or further out of compliance with existing land use and resource protection guidelines, including, but not limited to, requirements for buffer zones and landscaping.

(f) The lot line adjustment shall not result in a parcel that cannot comply with existing resource protection guidelines, including, but not limited to requirements for buffer zones and landscaping.

### Land Use Designations

#### 350-81-170. Agricultural Land Designations

Commission Rule 350-81-170 through 350-81-240 shall apply to those areas designated Large-Scale or Small-Scale Agriculture, SMA Agriculture, and Agriculture-Special on the Scenic Area Land Use Designation Map.

#### 350-81-180. Uses Allowed Outright—Agricultural Land

(1) The uses listed in "Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special" [350-81-074(1)] are allowed without review on lands designated Large-Scale Agriculture, Small-Scale Agriculture, or SMA Agriculture.

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

#### 350-81-182. Uses Allowed through the Expedited Development Review Process—Agricultural Land

(1) The uses listed in "Expedited Development Review Process" (350-81-050) are allowed with review through the expedited development review process on lands designated Large-Scale Agriculture, Small-Scale Agriculture, or SMA Agriculture.

#### 350-81-190. Review Uses—Agricultural Land

(1) The following uses may be allowed on lands designated Large-Scale or Small-Scale Agriculture subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(a) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(b) Agricultural structures, except buildings, in conjunction with agricultural use.

(c) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(d) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(e) and (f) below.

(e) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(f) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(g) The temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(h) On lands designated Large-Scale Agriculture, a single-family dwelling in conjunction with agricultural use, upon a demonstration that all of the following conditions exist:

(A) The subject farm or ranch (including all of its constituent parcels, contiguous or otherwise) has no other dwellings that are vacant or currently occupied by persons not directly engaged in farming or working on the subject farm or ranch and that could be used as the principal agricultural dwelling.

(B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use where the day-to-day activities of one or more residents of the agricultural dwelling will be principally directed to the agricultural use of the land. The farm or ranch must currently satisfy subsection (h)(C)(iv) below.

(C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following factors:

(i) Size of the entire farm or ranch, including all land in the same ownership.

(ii) Type(s) of agricultural uses (crops, livestock) and acreage.

(iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area.

(iv) Income capability. The farm or ranch, and all its constituent parcels, must be capable of producing at least \$40,000 in gross annual income. This determination can be made using the following formula:

$$(A)(B)(C) = I$$

where:

A = Average yield of the commodity per acre or unit of production

B = Average price of the commodity

C = Total acres suitable for production, or total units of production that can be sustained, on the subject farm or ranch

I = Income capability

(i) On lands designated Large-Scale Agriculture, a second single-family dwelling in conjunction with agricultural use when the dwelling would replace an existing dwelling that is included in, or eligible for inclusion in, the National Register of Historic Places, in accordance with the criteria listed in 350-81-540 (1)(e).

(j) On lands designated Small-Scale Agriculture, a single-family dwelling on any legally existing parcel.

(k) On lands designated Large-Scale Agriculture, a single-family dwelling for an agricultural operator's relative provided that all of the following conditions exist:

(A) The dwelling would be occupied by a relative of the agricultural operator or of the agricultural operator's spouse who will be actively engaged in the management of the farm or ranch. Relative means grandparent, grandchild, parent, child, brother or sister.

(B) The dwelling would be located on the same parcel as the dwelling of the principal operator.

(C) The operation is a commercial enterprise, as determined by an evaluation of the factors described in 350-81-190 (1)(h)(C).

(l) Construction, reconstruction, or modifications of roads not in conjunction with agriculture.

(m) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(n) Structures associated with hunting and fishing operations.

(o) Towers and fire stations for forest fire protection.

(p) Agricultural labor housing, under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use.

(B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary to the current agricultural use of the subject farm or ranch unit. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops or livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.

(q) On lands designated Large-Scale Agriculture, on a parcel that was legally created and existed prior to November 17, 1986, a single-family dwelling not in conjunction with agricultural use upon a demonstration that all of the following conditions exist:

(A) The dwelling will not force a change in or increase the cost of accepted agricultural practices on surrounding lands.

(B) The subject parcel is predominantly unsuitable for the production of farm crops and livestock, considering soils, terrain, location, and size of the parcel. Size alone shall not be used to determine whether a parcel is unsuitable for agricultural use. An analysis of suitability shall include the capability of the subject parcel to be used in conjunction with other agricultural operations in the area.

(C) The dwelling shall be set back from any abutting parcel designated Large-Scale or Small-Scale Agriculture, as required by 350-81-076, or designated Commercial Forest Land or Large or Small Woodland, as required in "Siting of Dwellings on Forest Land" (350-81-310).

(D) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject property are aware that adjacent and nearby operators are entitled to carry on accepted agriculture or forest practices on lands des-

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ignated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, Large or Small Woodland.

(E) All owners of land in areas designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland that is within 500 feet of the perimeter of the subject parcel on which the dwelling is proposed to be located have been notified and given at least 10 days to comment prior to a decision.

(r) On parcels in Small-Scale Agriculture, a land division creating parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in "Land Divisions and Cluster Development" (350-81-124). If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40, 80, or 160 acres, this provision will apply to parcels 80 acres or larger, 160 acres or larger, or 320 acres or larger, respectively.

(s) Life estates, subject to the guidelines in "Approval Criteria for Life Estates," (350-81-210).

(t) Land divisions, subject to the minimum lot sizes designated on the Land Use Designation Map.

(u) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(v) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(w) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(x) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(y) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(2) The following uses may be allowed on lands designated SMA Agriculture subject to review for compliance with the scenic, cultural, natural, and recreation resource guidelines (350-81-520 through 350-81-620). The use or development shall be sited to minimize the loss of land suitable for the production of agricultural crops or livestock.

(a) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of 350-81-270 (2)(x).

(b) Forest uses and practices, as allowed for in 350-81-270.

(c) A single-family dwelling necessary for and accessory to agricultural use upon a demonstration that all of the following conditions exist:

(A) The proposed dwelling would be the only dwelling on the subject farm or ranch, including contiguous lots/parcels.

(B) The farm or ranch upon which the dwelling will be located is currently devoted to agricultural use, where the day-to-day activities of one or more residents of the dwelling will be principally directed to the agricultural use of the land. The farm or ranch must currently satisfy C(iv) below.

(C) The farm or ranch is a commercial agricultural enterprise as determined by an evaluation of the following criteria:

(i) Size of the entire farm or ranch, including all land in the same ownership.

(ii) Type(s) of agricultural uses (crops, livestock, orchard, etc.) and acreage.

(iii) Operational requirements for the particular agricultural use that are common to other agricultural operations in the area.

(iv) Income capability. The farm or ranch, and all its contiguous parcels, must be capable of producing at least \$40,000 in gross annual income. This determination can be made using the following formula, with periodic adjustments for inflation:

$$(A)(B)(C) = I$$

where:

- A = Average yield of the commodity per acre or unit of production  
 B = Average price of the commodity  
 C = Total acres suitable for production, or total units of production that can be sustained, on the subject farm or ranch  
 I = Income capability

(D) Minimum parcel size of 40 contiguous acres.

(d) Farm labor housing on a parcel with an existing dwelling under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use, and the operation is a commercial agricultural enterprise as determined by 350-81-190 (2)(c)(C).

(B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary for the current agricultural use. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops and livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural uses employed on nearby lands devoted to agricultural use.

(e) Agricultural structures, except buildings, in conjunction with agricultural use.

(f) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(g) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in 2(h) or 2(i), below.

(h) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(i) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(j) Home occupations and cottage industries, subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(k) Bed and breakfast inns, subject to the guidelines in "Bed and Breakfast Inns" (350-81-100). The use or development shall be compatible with agricultural use. Buffer zones should be considered to protect agricultural practices from conflicting uses.

(l) Fruit stands and produce stands, upon a showing that sales will be limited to agricultural products raised on the property and other agriculture properties in the local region.

(m) Aquaculture.

(n) Exploration, development, and production of sand, gravel, and crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products on lands within the SMA.

(o) Utility facilities necessary for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Agriculture lands.

(B) The size is the minimum necessary to provide the service.

(p) Temporary asphalt/batch plant operations related to public road projects, not to exceed 6 months.

(q) Community facilities and nonprofit facilities related to agricultural resource management.

(r) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recon-touring abandoned quarries).

(s) Expansion of existing nonprofit group camps, retreats, and conference or education centers for the successful operation on the dedicated site. Expansion beyond the dedicated site is prohibited.

(t) Public recreation, commercial recreation, interpretive, and educational developments and uses, consistent with the guidelines in 350-81-620.

(u) Road and railroad construction and reconstruction.

(v) Agricultural product processing and packaging, upon demonstration that the processing will be limited to products

produced primarily on or adjacent to the property. "Primarily" means a clear majority of the product as measured by volume, weight, or value.

(w) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(x) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(y) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(z) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(aa) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-81-106).

### **350-81-200. Review Uses with Additional Approval Criteria—Large-Scale or Small-Scale Agriculture**

(1) The following uses may be allowed on lands designated Large-Scale or Small-Scale Agriculture, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620) and the "Approval Criteria for Specified Review Uses," (350-81-220) below.

(a) Utility facilities and railroads necessary for public service upon a showing that (1) there is no practicable alternative location with less adverse effect on agricultural or forest lands, and (2) the size is the minimum necessary to provide the service.

(b) Home occupations or cottage industries in existing residential or accessory structures, subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(c) Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on the subject farm and other farms in the local region.

(d) Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes grown on the subject farm or in the local region.

(e) Wine sales/tasting rooms, in conjunction with an on-site winery.

(f) Agricultural product processing and packaging, upon a showing that the processing will be limited to products grown primarily on the subject farm and sized to the subject operation.

(g) Exploration, development, and production of mineral and geothermal resources, subject to the guidelines in 350-81-520.

(h) Personal-use airstrips, including associated accessory structures such as a hangar. A personal-use airstrip is an airstrip restricted (except for aircraft emergencies) to use by the owner; invited guests on an infrequent and occasional basis; and commercial aviation activities in connection with agricultural operations. No aircraft may be based on a personal-



use airstrip other than those owned or controlled by the owner of the airstrip.

- (i) Aquaculture.
- (j) Recreation development, subject to the recreation intensity class provisions (350-81-610) and Recreation Development Plan (Management Plan, Part III, Chapter 1).
- (k) Boarding of horses.
- (l) Temporary portable asphalt/batch plants related to public road projects, not to exceed 6 months.
- (m) Bed and breakfast inns in single-family dwellings, subject to the guidelines in "Bed and Breakfast Inns" (350-81-100) and provided that the residence:
  - (A) Is included in the National Register of Historic Places, or
  - (B) In Washington, is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation, or
  - (C) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.
- (n) Nonprofit, environmental learning or research facilities.

(o) Expansion of existing school or place of worship.

(p) On parcels designated Small-Scale Agriculture, small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to the guidelines in "Small-Scale Fishing Support and Fish Processing Operations" (350-81-102).

(q) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-81-106).

#### **350-81-210. Approval Criteria for Life Estates—Large-Scale or Small-Scale Agriculture Designations**

(1) A landowner who sells or otherwise transfers real property on lands designated Large-Scale or Small-Scale Agriculture may retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not be considered a parcel as defined in the Management Plan. A second dwelling in conjunction with agricultural use may be allowed, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources and upon findings that:

- (a) The proposed dwelling is in conjunction with agricultural use, using Guideline 350-81-190 (1)(h).
- (b) Upon termination of the life estate, the original or second dwelling shall be removed.

#### **350-81-220. Approval Criteria for Specified Review Uses on Lands Designated Large-Scale or Small-Scale Agriculture**

(1) The uses identified in 350-81-200, may be allowed only if they meet both of the following criteria:

(a) The use is compatible with agricultural uses and would not force a change in or significantly increase the cost of accepted agricultural practices on nearby lands devoted to agricultural use.

(b) The use will be sited to minimize the loss of land suitable for the production of crops or livestock.

#### **350-81-230. Uses Allowed Outright for Lands Designated Agriculture-Special**

(1) The following uses may be allowed on lands designated Agriculture-Special without review:

(a) Existing livestock grazing. A livestock operation ceases to be existing when the land on which it is conducted has lain idle for more than 5 years.

(b) Repair, maintenance, and operation of existing and serviceable structures, trails, roads, railroads, and utility facilities.

(c) Low-intensity recreation uses that occur with the knowledge and permission of the landowner, including hunting, fishing, trapping, native plant study, birdwatching, photography, horseback riding, and hiking.

(d) Temporary livestock facilities, such as portable livestock pens and corrals.

(e) New fences that exclude livestock from lands that are not part of an existing livestock operation.

#### **350-81-232. Review Uses for Lands Designated Agriculture-Special**

(1) The following uses may be allowed on lands designated Agriculture-Special, subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources (350-81-520 through 350-81-620) and "Approval Criteria for Review Uses on Lands Designated Agriculture-Special" (350-81-234).

(a) New livestock grazing. Any operation that would introduce livestock to land that has not been grazed, or has laid idle, for more than 5 years shall be considered new livestock grazing.

(b) New fences, livestock watering facilities, and corrals.

(c) Soil, water, and vegetation conservation uses.

(d) Replacement or minor expansion of existing and serviceable structures within a dedicated site. Expansion shall be limited to the dedicated site.

(e) Fish and wildlife management uses, educational activities, and scientific research.

(f) Land divisions that facilitate livestock grazing or protect and enhance natural areas. No resulting parcel may be smaller than 160 acres, unless it would facilitate the protection of scenic, cultural, natural, or recreation resources.

(g) Single-family dwellings that are not in conjunction with agricultural use, if a landowner demonstrates that (1) the dwelling cannot be constructed on a portion of the parcel that is located outside of the natural area, and (2) the dwelling is sited and designed in a manner that minimizes adverse effects to the natural area. All dwellings shall meet the criteria in 350-81-190 (1)(q). The buffer guidelines for non-agricultural dwellings (350-81-076) may be waived if they would prevent the optimum siting of a dwelling.

(h) Recreation uses, subject to the provisions for recreation intensity classes (350-81-610).

**350-81-234. Approval Criteria for Review Uses on Lands Designated Agriculture-Special**

(1) A range conservation plan pursuant to 350-81-240 shall be prepared before new livestock grazing commences; new fences, livestock watering facilities, and corrals are constructed; or soil, water, and vegetation conservation activities are undertaken [350-81-232 (1)(a), (b) and (c)]. Range conservation plans are described under 350-81-240.

(2) The Executive Director shall submit all land use applications and range conservation plans to the Oregon or Washington Natural Heritage Program. The state heritage program will have 20 days from the date that an application and/or plan is mailed to submit written comments to the local government.

The Executive Director shall record and address any written comments submitted by the state heritage program in its development review order.

(3) Based on the comments from the state heritage program, the Executive Director shall make a final decision on whether the proposed use is consistent with the Agriculture—Special policies and guidelines. If the final decision contradicts the comments submitted by the state heritage program, the local government shall justify how it reached an opposing conclusion.

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

**350-81-236. Uses Prohibited on Lands Designated Agriculture-Special**

(1) Except for uses allowed outright and review uses, new uses shall be prohibited on lands designated Agriculture-Special. Prohibited uses include, but are not limited to:

(a) Cultivation, including plowing, harrowing, leveling, tilling, or any activity that prepares land for raising crops by turning, breaking up, or loosening the soil.

(b) Removal or clearing of native grasses, shrubs, and trees.

(c) Single-family dwellings and accessory structures, other than non-agricultural dwellings allowed as a review use.

(d) Barns, silos, and other agricultural buildings.

(e) Irrigation systems.

(f) Exploration, development, and production of mineral resources.

(g) Utility facilities, public use facilities, and roads.

**350-81-240. Range Conservation Plans**

(1) If a range conservation plan is required before a use is allowed, it shall be prepared by landowners in cooperation with range scientists from local conservation districts. Specialists from the Oregon or Washington Natural Heritage Program should be consulted while the plan is being prepared.

(2) Range conservation plans shall ensure that new uses do not adversely affect natural areas. They shall accomplish the following goals:

(a) Maintain native rangeland that is in excellent or good condition; enhance rangeland that is in fair or poor condition.

(b) Preserve native trees and shrubs.

(c) Reestablish native grasses in degraded areas that have been invaded by non-native plants and weeds.

(3) Range conservation plans shall include the following elements:

(a) Range inventory. This shall include existing composition, carrying capacity, and condition of rangeland; the location of rare plants and non-native weeds; and existing fences, watering ponds, and other range improvements.

(b) Rehabilitation plan. This shall include actions that will be taken to rehabilitate native rangeland that is in fair or poor condition, such as weed and soil erosion control, seeding, and prescribed burning.

(c) Livestock management plan. This shall include the grazing system that will be used, including number and size of pastures, expected livestock numbers, and grazing/deferment periods and sequence. Management plans shall project livestock movements for at least 3 years.

(d) Monitoring program. This shall track the annual progress of the conservation plan and condition of the range. Monitoring techniques shall be described, such as line transects or photographic plots.

**350-81-250. Forest Land Designations**

Commission Rule 350-81-250 through 350-81-310 shall apply to those areas designated Commercial Forest Land, Large or Small Woodland and SMA Forest on the Scenic Area Land Use Designation Map.

**350-81-260. Uses Allowed Outright—Forest Land**

(1) The uses listed in 350-81-074(1) are allowed without review on lands designated Commercial Forest Land, Large Woodland, Small Woodland, or SMA Forest.

**350-81-262. Uses Allowed through the Expedited Development Review Process—Forest Land**

(1) The uses listed in "Expedited Development Review Process" (350-81-050) are allowed with review through the expedited development review process on lands designated Commercial Forest Land, Large Woodland, Small Woodland, or SMA Forest.

**350-81-270. Review Uses—Forest Land**

(1) The following uses may be allowed on lands designated Commercial Forest Land or Large or Small Woodland, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(a) On lands designated Large Woodland, a single-family dwelling upon a demonstration that all of the following conditions exist:

(A) The dwelling will contribute substantially to the growing, propagation, and harvesting of forest tree species. The principal purpose for locating a dwelling on lands designated Large Woodland is to enable the resident to conduct efficient and effective forest management. This requirement indicates a relationship between ongoing forest management and the location of a dwelling on the subject parcel. A dwelling may not always be required for forest management.

(B) The subject parcel has been enrolled in the appropriate state's forest assessment program.

(C) A plan for management of the parcel has been approved by the Oregon Department of Forestry or the Washington Department of Natural Resources and the appropriate local government. The plan must indicate the condition and productivity of lands to be managed; the operations the owner will carry out (thinning, harvest, planting, etc.); a chronological description of when the operations will occur; estimates of yield, labor and expenses; and how the dwelling will contribute toward the successful completion of the operations.

(D) The parcel has no other dwellings that are vacant or currently occupied by persons not engaged in forestry and that could be used as the principal forest dwelling.

(E) The dwelling complies with the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(F) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.

(b) On lands designated Small Woodland, one single-family dwelling on a legally created parcel upon the parcel's enrollment in the appropriate state's forest assessment program. Upon a showing that a parcel cannot qualify, a parcel is entitled to one single-family dwelling. In either case, the location of a dwelling shall comply with the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300). A declaration shall be signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject parcel are aware that adjacent and nearby operators are entitled to carry on accepted farm or forest practices on lands designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture.

(c) One single-family dwelling if shown to be in conjunction with and substantially contributing to the current agricultural use of a farm. Guideline 350-81-190 (1)(h) shall be used to determine whether a dwelling is a farm dwelling. The siting of the dwelling shall comply with the "Approval Criteria for Fire Protection" in 350-81-300.

(d) Temporary onsite structures that are auxiliary to and used during the term of a particular forest operation. "Auxiliary" means a use or alteration of a structure or land that provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located onsite, is temporary in nature, and is not designed to remain for the forest's entire growth cycle from planting to harvesting. An auxiliary use is removed when a particular forest practice has concluded.

(e) Temporary portable facility for the primary processing of forest products grown on a parcel of land or contiguous land in the same ownership where the facility is to be located. The facility shall be removed upon completion of the harvest operation.

(f) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(g) Structures associated with hunting and fishing operations.

(h) Towers and fire stations for forest fire protection.

(i) Agricultural structures, except buildings, in conjunction with agricultural use, subject to the "Approval Criteria for Fire Protection" (350-81-300).

(j) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the "Approval Criteria for Fire Protection" (350-81-300) and the standards in "Agricultural Buildings" (350-81-090).

(k) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(l) or (1)(m) below.

(l) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300) and the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(m) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300) and the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(n) The temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092) and the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-31-300).

(o) A second single-family dwelling for a farm operator's relative, subject to 350-81-190 (1)(k) and the "Approval Cri-

teria for Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(p) Private roads serving a residence, subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(q) Recreation development, subject to the guidelines established for the recreation intensity classes (350-81-610) and the Recreation Development Plan (Management Plan, Part III, Chapter 1).

(r) Construction or reconstruction of roads or modifications not in conjunction with forest use or practices.

(s) Agricultural labor housing, under the following conditions:

(A) The proposed housing is necessary and accessory to a current agricultural use.

(B) The housing shall be seasonal, unless it is shown that an additional full-time dwelling is necessary to the current agricultural use of the subject agricultural unit. Seasonal use shall not exceed 9 months.

(C) The housing shall be located to minimize the conversion of lands capable of production of farm crops and livestock, and shall not force a significant change in or significantly increase the cost of accepted agricultural practices employed on nearby lands devoted to agricultural use.

(t) On lands designated Commercial Forest Land, a temporary mobile home in conjunction with a timber operation, upon a finding that security personnel are required to protect equipment associated with a harvest operation or to protect the subject forest land from fire. The mobile home must be removed upon completion of the subject harvest operation or the end of the fire season. The placement of the mobile home is subject to the "Approval Criteria for the Siting of Dwellings on Forest Land" (350-81-310) and "Approval Criteria for Fire Protection" (350-81-300).

(u) On parcels in Small Woodland, a land division creating parcels smaller than the designated minimum parcel size, subject to guidelines for cluster development in "Land Divisions and Cluster Development" (350-81-124). If the designated minimum parcel size is 20 acres, this provision will apply to parcels 40 acres in size or larger. Similarly, if the designated minimum parcel size is 40 or 80 acres, this provision will apply to parcels 80 acres or larger or 160 acres or larger, respectively.

(v) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(w) On lands designated Large or Small Woodland, life estates, subject to the guidelines in "Approval Criteria for Life Estates" (350-81-320).

(x) Land divisions in Small Woodland, subject to the minimum lot sizes designated on the Land Use Designation Map. Land divisions in Commercial Forest Land and Large Woodland, subject to the standards and minimum lot sizes in Policies 4 through 9 in the "Land Use Policies" in Part II, Chapter 2: Forest Land of the Management Plan.

(y) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(z) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(aa) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(bb) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(cc) Commercial events on lands designated Large Woodland or Small Woodland, subject to the guidelines in "Commercial Events" (350-81-108).

(2) The following uses may be allowed on lands designated SMA Forest subject to review for compliance with scenic, cultural, natural, and recreational resources guidelines (350-81-520 through 350-81-620). The use or development shall be sited to minimize the loss of land suitable for the production of forest products:

(a) All review uses allowed for in 350-81-190(2).

(b) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of subsection (2)(x), below.

(c) Railroad and road construction or reconstruction.

(d) Exploration, development, and production of sand, gravel, or crushed rock for the construction, maintenance, or reconstruction of roads used to manage or harvest commercial forest products in the SMA.

(e) Silvicultural nurseries.

(f) Utility facilities for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Forest Land.

(B) The size is the minimum necessary to provide the service.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(h) Fish hatcheries and aquaculture facilities.

(i) Public recreation, commercial recreation, interpretive and educational developments, and uses consistent with the provisions of 350-81-620.

(j) One single family dwelling on a parcel of 40 contiguous acres or larger if an approved forest management plan demonstrates that such a dwelling is necessary for and accessory to forest uses. The forest management plan shall demonstrate the following:

(A) The dwelling will contribute substantially to the growing, propagation, and harvesting of trees. The principal purpose for allowing a dwelling on forest lands is to enable the resident to conduct efficient and effective management. This requirement indicates a relationship between ongoing forest management and the need for a dwelling on the subject property.

(B) The subject parcel has been enrolled in the appropriate state's forest assessment program.

(C) A plan for management of the parcel has been approved by the Oregon Department of Forestry or the Wash-

ington Department of Natural Resources and the appropriate county. The plan must indicate the condition and productivity of lands to be managed; the operations the owner will carry out (thinning, harvest, planting, etc.); a chronological description of when the operations will occur; estimates of yield, labor, and expenses; and how the dwelling will contribute toward the successful management of the property.

(D) The parcel has no other dwellings that are vacant or currently occupied by persons not engaged in forest management of the subject parcel.

(E) The dwelling complies with county dwelling, siting, and state/county fire protection guidelines.

(F) A declaration has been signed by the landowner and recorded into county deeds and records specifying that the owners, successors, heirs, and assigns of the subject property are aware that adjacent and nearby operations are entitled to carry on accepted agricultural or forest practices.

(k) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (2)(l) or (2)(m), below.

(l) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel less than or equal to 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(m) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel larger than 10 acres in size are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 2,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The footprint of any individual accessory building shall not exceed 1,500 square feet.

(C) The height of any individual accessory building shall not exceed 24 feet.

(n) Home occupations and cottage industries, subject to the "Home Occupations and Cottage Industries" guidelines in 350-81-098.

(o) Temporary portable facilities for the processing of forest products.

(p) Towers and fire stations for forest fire protection.

(q) Community facilities and nonprofit facilities related to forest resource management.

(r) Expansion of existing nonprofit group camps, retreats, or conference or education centers, necessary for the successful operation of the facility on the dedicated site. Expansion beyond the dedicated site shall be prohibited.

(s) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a

family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(t) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(u) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(v) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(w) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-81-106).

(x) Clearing trees for new agricultural use with the following steps and subject to the following additional guidelines:

(A) A Stewardship Plan shall be submitted and deemed complete by the Executive Director and submitted to the Forest Service for review. (350-81-270 (2)(y)(C).

(B) Clearing trees for new agricultural use shall be limited to 15 acres.

(C) If the Stewardship Plan proves that the above guideline is detrimental to the proposed agricultural use, the final size of the clearing shall be determined by the application of 350-81-270 (2)(x)(D)(i-iv) below and subject to guideline 350-81-270 (2)(x)(I).

(D) After a 30-day public comment period, the Forest Service shall review the Stewardship Plan using the following criteria:

(i) Scenic Resource guidelines in 350-81-270 (2)(y)(D)(i) and (vii).

(ii) Applicable guidelines of 350-81-550, 350-81-600 and 350-81-620.

(iii) The Natural Resource Conservation Service (NRCS) soil unit description shall indicate that soils are suitable for the proposed agricultural use. The woodland management tables shall be used as part of the analysis of suitability for both agricultural and forest uses.

(iv) The size, shape and pattern on the landscape of the clearing for the new agricultural use shall blend with the surrounding landscape pattern either because the existing pattern includes agricultural openings or because the new agricultural opening is designed to appear natural.

(E) The Forest Service shall send the review statement to the Executive Director. The Forest Service shall state whether or not the new agricultural use should proceed including any conditions that are recommended to be required by the Executive Director.

(F) The Executive Director will accept an application for new agricultural use on forested lands after receipt of a positive review statement from the Forest Service.

(G) The forest practice portion of the new agricultural use shall not be approved by the state forestry department or Executive Director until a decision on the new agricultural use is issued by the Executive Director.

(H) The new agricultural use shall be operational within two years of the time frame described in the approved Stewardship Plan.

(I) New agricultural uses with an approved Stewardship Plan requiring more than 15 acres shall attain the final approved size sequentially. After the first 15 cleared acres is operational, each subsequent clearing shall not occur until the previous clearing is operational.

(y) Forest practices in accordance with an approved forest practices application (see 350-81-032) and subject to the additional guidelines in 350-81-270.

(A) The following information, in addition to general site plan requirements (350-81-032) shall be required:

(i) Delineate the following on a recent aerial photo or detailed map:

(I) The size, shape, and exact location of the proposed treatment area including any clumps of leave trees to remain. If more than one silvicultural prescription is to be used, code each on the photo.

(II) Other important natural features of the subject parcel such as steep areas, streams, wetlands, rock outcrops, etc.

(III) Road and structure construction and/or reconstruction location.

(IV) Location of proposed rock or aggregate sources.

(V) Major skid trails, landings, and yarding corridors.

(VI) Commercial firewood cutting areas.

(VII) Protection measures for scenic, cultural, natural, and recreation resources, such as road closures.

(ii) Describe the existing forest in terms of species, ages, sizes, landscape pattern (including how it fits into the surrounding landscape pattern) and canopy closure for all canopy layers.

(iii) Describe how the forest practice will fit into the existing landscape pattern and how it will meet scenic and natural resource standards in 350-81-270 (2)(y)(D) and 350-81-270 (2)(y)(E).

(iv) Written silvicultural prescriptions with projected post-treatment forest condition specified in terms of species, ages, sizes, landscape pattern (including how it fits into the surrounding landscape pattern) and canopy closure for all canopy layers.

(v) Road and structure construction and/or reconstruction design.

(vi) Existing and proposed rock pit development plans.

(vii) A discussion of slash disposal methods.

(viii) A reforestation plan as reviewed by the appropriate state forest practices agency.

(B) As part of the application, flag, stake or mark buffers, any trees or downed wood to be retained or removed (whichever makes the most sense), and areas for placing fill or removing material in preparation for a field visit by the reviewer.

(C) Stewardship Plan Requirements: The following information, in addition to the applicable portions of the forest practice application requirements above and general site plan requirements (350-81-032) shall be provided:

(i) Outline the long term goals, proposed operations, and future sustainability of the subject parcel.

(ii) Describe the time frame and steps planned to reach the long term goals.

(iii) For Forest Practices, describe how the proposed activities fit into the long term goals and sustainability of the parcel and/or forest health. The following shall be addressed:

(I) Describe the range of natural conditions expected in the forest in terms of tree species, structure, and landscape pattern.

(II) Describe what the resulting tree species, structure, and landscape pattern will be after the proposed activities.

(III) Give a clear explanation how a deviation from the applicable guidelines may better achieve forest health objectives

(IV) Give a clear explanation how and why the proposed activities will lead the forest towards its range of natural variability and result in reaching sustainability, resiliency to disturbances.

(iv) For clearing trees for new agricultural use, the following shall be addressed in addition to 350-81-270 (2)(y)(C)(i) and (ii) above:

(I) Submit NRCS soil unit description and map for each soil unit affected by the proposed clearing or treatment.

(II) Based on the needs of the operation, give a clear explanation as to the exact size of the clearing needed and how it will meet the natural and scenic requirements set forth in 350-81-270 (2)(x)(D)(i-iv).

(III) Describe in sufficient detail for evaluation the proposed agricultural use, the improvements needed on the parcel, time line for its establishment, and its marketability.

(IV) Show evidence that an agricultural specialist, such as the county extension agent, has examined and found the proposed agricultural use reasonable and viable.

(D) For forest practices, the following scenic resource guidelines shall apply:

(i) Forest practices shall meet the design guidelines and scenic standards for the applicable landscape setting and zone (See Required SMA Scenic Standards table in 350-81-530-2)(c).

(ii) In the western portion (to White Salmon River) of the SMA Coniferous Woodland Landscape Setting, no more than 8% of the composite KVA viewshed from which the forest practice is topographically visible shall be in created forest openings at one time. The viewshed boundaries shall be delineated by the Forest Service. The Forest Service will also help (as available) in calculating and delineating the percentage of the composite KVA viewshed which maybe created in forest openings at one time.

(iii) In the western portion (to the White Salmon River) of the SMA Gorge Walls, Canyonlands and Wildlands Landscape Setting, no more than 4% of the composite KVA viewshed from which the forest practice is topographically visible shall be in created forest openings at one time. The viewshed boundaries shall be delineated by the Forest Service. The Forest Service will also help (as available) in calculating and delineating the percentage of the composite KVA viewshed which maybe created in forest openings at one time.

(iv) For all other landscape settings, created forest openings visible at one time shall be within the desired range for the vegetation type as set forth in Natural Resources guidelines in 350-81-270 (2)(y)(E)(i) through (iii).

(v) Size, shape, and dispersal of created forest openings shall maintain the desired natural patterns in the landscape as

set forth in Natural Resources guidelines in 350-81-270 (2)(y)(E)(i) through (iii).

(vi) The maximum size of any created forest opening is set forth by the "Desired" vegetation type in the Forest Structure and Pattern Table.

(I) If the treatment is proposed to go beyond the above guideline based on forest health or ecosystem function requirements, a Stewardship Plan shall be required.

(II) If the Stewardship Plan proves that the above guideline is detrimental to either forest health or ecosystem function, the size of the created forest opening shall be within the natural range for the vegetation type as listed in the Desired Forest Structure and Pattern Table for each vegetation type, shall not mimic catastrophic fires, and shall maintain scenic standards.

(vii) Created forest openings shall not create a break or opening in the vegetation in the skyline as viewed from a key viewing area.

(E) Forest practices shall maintain the following in addition to applicable natural resources guidelines in 350-81-600.

(i) Silvicultural prescriptions shall maintain the desired natural forest stand structures (tree species, spacing, layering, and mixture of sizes) based on forest health and ecosystem function requirements. Forest tree stand structure shall meet the requirements listed in the Desired Forest Structure and Pattern Table for each vegetation type. Forest tree stand structure is defined as the general structure of the forest in each vegetation type within which is found forest openings.

(ii) Created forest openings shall be designed as mosaics not to exceed the limits defined as Desired in the Desired Forest Structure and Pattern Table unless proposed as a deviation as allowed under the scenic resource guideline in 350-81-270 (2)(y)(D)(vi).

(iii) Snag and down wood requirements shall be maintained or created as listed in the Desired Forest Structure and Pattern Table for each vegetation type.

(iv) If the treatment is proposed to deviate from the snag and down wood requirements based on forest health or ecosystem function requirements, a Stewardship Plan shall be required and shall show and prove why a deviation from the snag and down wood requirements is required.

DESIRED FOREST STRUCTURE AND PATTERN

DESIRED FOREST STRUCTURE AND PATTERN								
1	2	3		4		5	6	7
Vegetation Type#	Forest Structure (Average % total canopy closure (cc))*	Typical Forest Openings Size Disturbance caused		Percent Openings at One Time		Leave Trees  Includes all available remnant old forest	Average Down Wood  Pieces 30 ft long per acre (scattered)	Average Snags  (Conifers) No. per acre Snags are 20-40 ft in height
		Historic (Natural)	Desired	Historic (Natural)	Desired			
<b>West Conifer</b>	60-80% canopy closure  Understory layer variable (0-60% of total cc)	Variable sizes with mosaic pattern, irregular shapes  Mosaic fire 1-100 acres  Catastrophic fire over 100 acres	Retain forested character  Allow openings up to 15 acres (up to 5 acres in the foreground of KVAs)  All openings 1 acre or less on National Forest land and all Open Space LUD  Openings retain 15 - 40% canopy closure	10% (mosaic fire) up to 55% (catastrophic fire)  Intense fire return interval is 300 yrs	Not to exceed 8% for West Coniferous Woodland Landscape Setting and not to exceed 4% for Gorge Walls, Canyonlands and Wildlands Landscape Setting  Widely dispersed, variable sized mosaic of irregular shapes blending with existing openings.	Leave 15% of existing trees per acre throughout opening and in clumps.  Include 3 trees per acre of the largest size trees available	18 - 25 pieces greater than 20" dbh	10 snags at 10" - 20" dbh, and 7 snags greater than 20" dbh
<b>East Conifer</b> (Ponderosa Pine/Douglas fir)	40-80% canopy closure  Understory layer less than 25% of total cc	Few Openings due to low intensity fires. 1/4 to 2 acres	Openings less than 1 acre  Openings have 0 - 40% canopy closure  Openings widely dispersed	1 - 10%	1 - 10% (% by vegetation type)	No leave trees required	3 - 6 pieces greater than 20" dbh	5 snags at 10" - 20" dbh and 3 snags greater than 20" dbh

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<b>Ponderosa Pine/Oregon Oak</b>	25-60% canopy closure  Understory layer greater than 25% of total cc.	Most natural openings due to poor soil.  Disturbance openings few	Openings less than 1 acre  Openings have 0 - 25% canopy closure  Openings widely dispersed	1 - 10%	1 - 10%  (% by vegetation type)	No leave trees required	1 - 3 pieces greater than 20" dbh	5 snags at 10" - 20" dbh and 3 snags greater than 20" dbh  Oak snags can be counted if already dead or partially dead
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# Map available at the Forest Service National Scenic Area Office

\*Does not apply to openings.

Dbh: Diameter at Breast Height

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

**350-81-280. Review Uses with Additional Approval Criteria—Commercial Forest Land, or Large or Small Woodland Designations**

(1) The following uses may be allowed on lands designated Commercial Forest Land or Large or Small Woodland, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 and 620) and the "Approval Criteria for Specified Review Uses" (350-81-290).

(a) Utility facilities and railroads necessary for public service upon a showing that (1) there is no practicable alternative location with less adverse effect on agricultural and forest lands and on scenic, cultural, natural and recreation resources and (2) the size is the minimum necessary to provide the service.

(b) Home occupations or cottage industries in an existing residence or accessory structure, subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(c) Fruit and produce stands, upon a showing that sales will be limited to agricultural products raised on the subject farm and other farms in the local region.

(d) Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes grown on the subject farm or in the local region.

(e) Wine sales/tasting rooms, in conjunction with an on-site winery.

(f) Agricultural product processing and packaging, upon a showing that the processing will be limited to products grown primarily on the subject farm and sized to the subject operation.

(g) Exploration, development, and production of mineral and geothermal resources, subject to the guidelines in 350-81-520.

(h) Aquaculture.

(i) Boarding of horses.

(j) Temporary portable asphalt/batch plants related to public road projects, not to exceed 6 months.

(k) Expansion of existing nonprofit group camps, retreats, or conference centers.

(l) Bed and breakfast inns in single-family dwellings, subject to the guidelines in "Bed and Breakfast Inns" (350-81-100) and provided that the residence:

(A) Is included in the National Register of Historic Places, or

(B) In Washington, is listed on the Washington State Register of Historic Places maintained by the Washington Office of Archaeology and Historic Preservation, or

(C) In Oregon, is identified and protected under local landmark status as approved pursuant to Oregon state land use regulations protecting historic structures.

(m) Nonprofit, environmental learning or research facilities.

(n) On parcels designated Small Woodland, small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to the guidelines in "Small-Scale Fishing Support and Fish Processing Operations" (350-81-102).

(o) Disposal sites managed and operated by the Oregon Department of Transportation, the Washington State Department of Transportation, or a Gorge county public works department for earth materials and any intermixed vegetation generated by routine or emergency/disaster public road maintenance activities within the Scenic Area, subject to compliance with the guidelines in "Disposal Sites for Spoil Materials from Public Road Maintenance Activities" (350-81-106).

**350-81-290. Approval Criteria for Specified Review Uses on Lands Designated Commercial Forest Land or Large or Small Woodland**

(1) The uses identified under 350-81-280, may be allowed only if they meet all of the following criteria:

(a) The owners of land that is designated Commercial Forest Land, Large or Small Woodland, or Large-Scale or Small-Scale Agriculture and that lies within 500 feet of the perimeter of the subject parcel have been notified of the land use application and have been given at least 10 days to comment prior to a final decision.

(b) The use will not seriously interfere with accepted forest or agricultural practices on nearby lands devoted to resource use.

(c) The use will be sited in a way that minimizes the loss of forest or agricultural land and minimizes the chance of interference with accepted forest or agricultural practices on nearby lands.

(d) The use will not significantly increase fire hazard, fire suppression costs, or risks to fire suppression personnel and will comply with the "Approval Criteria for Fire Protection" (350-81-300).

**350-81-300. Approval Criteria for Fire Protection in GMA Forest Designations**

(1) All uses, as specified, shall comply with the following fire safety guidelines:

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(a) All buildings shall be surrounded by a maintained fuel break of 50 feet. Hazardous fuels shall be removed within the fuel break area. Irrigated or fire resistant vegetation may be planted within the fuel break. This could include green lawns and low shrubs (less than 24 inches in height). Trees should be spaced greater than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet) branches. Accumulated leaves, needles, and other dead vegetation shall be removed from beneath trees.

(b) Buildings with plumbed water systems shall install at least one standpipe a minimum of 50 feet from the structure(s).

(c) A pond, stream, tank or sump with storage of not less than 1,000 gallons, or a well or water system capable of delivering 20 gallons per minute shall be provided. If a well pump is located on-site, the electrical service shall be separate from the dwelling.

(d) Access drives shall be constructed to a minimum of 12 feet in width and not exceed a grade of 12 percent. Turn-outs shall be provided at a minimum of every 500 feet. Access drives shall be maintained to a level that is passable to fire equipment. Variances to road guidelines may be made only after consultation with the local rural fire district and the Washington Department of Natural Resources in Washington or the Oregon Department of Forestry in Oregon.

(e) Within 1 year of the occupancy of a dwelling, the local government shall conduct a review of the development to assure compliance with these guidelines.

(f) Telephone and power supply systems shall be underground whenever possible.

(g) Roofs of structures should be constructed of fire-resistant materials such as metal, fiberglass shingle or tile. Roof materials such as cedar shake and shingle should not be used.

(h) Any chimney or stovepipe on any structure for use with a woodstove or fireplace should be screened with no coarser than 1/4 inch mesh metal screen that is noncombustible and corrosion resistant and should be equipped with a spark arrestor.

(i) All structural projections such as balconies, decks and roof gables should be built with fire resistant materials equivalent to that specified in the Uniform Building Code.

(j) Attic openings, soffit vents, foundation louvers or other ventilation openings on dwellings and accessory structures should be screened with no coarser than 1/4-inch mesh metal screen that is noncombustible and corrosion resistant.

### **350-81-310. Approval Criteria for Siting of Dwellings on Forest Land in the GMA**

(1) The approval of new dwellings and accessory structures on forest lands shall comply with the following guidelines:

(a) The dwelling and structures shall be sited on the parcel so that they will have the least impact on nearby or adjoining forest operations. Dwellings shall be set back at least 200 feet from adjacent properties. Clustering or locating proposed development closer to existing development on adjacent lands may minimize impacts on nearby or adjacent forest operations.

(b) The amount of forest land used to site dwellings, structures, access roads, and service corridors shall be minimized. This can include locating new dwellings and structures as close to existing public roads as possible, thereby minimizing the length of access roads and utility corridors; or locating the dwelling, access road, and service corridors on portions of the parcel that are least or poorly suited for forestry. Areas may not be suitable for forestry because of existing nonforest uses, adjacent dwellings, or land productivity.

(c) Dwellings shall be located to minimize the risks associated with wildfire. Dwellings should be located on gentle slopes and in any case not on slopes that exceed 40 percent. Narrow canyons and draws should be avoided. Dwellings should be located to minimize the difficulty of gaining access to the structure in the case of fire. Dwellings should be located to make the access roads as short and flat as possible.

(d) A local government may grant a variance to the siting guidelines contained within this section upon a demonstration that the guidelines in "Variances from Setbacks and Buffers" (350-81-078) have been satisfied.

### **350-81-320. Approval Criteria for Life Estates in Commercial Forest Land or Small or Large Woodland**

(1) A landowner who sells or otherwise transfers real property on lands designated Commercial Forest Land or Large or Small Woodland may retain a life estate in a dwelling and a tract of land surrounding the dwelling. The life estate tract shall not be considered a parcel as defined in the Management Plan. A second dwelling unit on lands designated Commercial Forest Land or Large or Small Woodland may be allowed, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources and upon findings that:

(a) The proposed dwelling is in conjunction with agricultural use, using 350-81-190 (1)(h); or

(b) On lands designated Large Woodland, the dwelling will contribute substantially to the growing, propagation, and harvesting of forest tree species. The proposed dwelling shall comply with 350-81-270 (1)(a); or

(c) On lands designated Small Woodland, the proposed dwelling complies with 350-81-270 (1)(b); and

(d) Upon termination of the life estate, the original or second dwelling shall be removed.

### **350-81-330. Open Space Designations**

Commission Rule 350-81-330 through 350-81-340 shall apply to those areas designated GMA-Open Space and SMA-Open Space on the Scenic Area Land Use Designation Map.

### **350-81-335. Uses Allowed Outright—Open Space**

(1) The uses listed in "Uses Allowed Outright, GMA and SMA Open Space" [350-81-074(2)] are allowed without review on lands designated Open Space.

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

### **350-81-338. Uses Allowed through the Expedited Development Review Process—Open Space**

(1) The uses listed in "Expedited Development Review Process" (350-81-050) may be allowed with review through the expedited development review process on lands designated Open Space.

### **350-81-340. Review Uses—Open Space**

(1) The following uses may be allowed on all lands designated GMA-Open Space subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(a) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-81-610).

(b) Land divisions to facilitate efforts to protect and enhance scenic, cultural, natural, or recreation resources.

(c) Repair, maintenance, operation, and improvement of existing structures, trails, roads, railroads, utility facilities, and hydroelectric facilities.

(d) Removal of timber, rocks or other materials for purposes of public safety and placement of structures for public safety.

(e) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(f) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(g) Lot line adjustments, subject to compliance with the guidelines in "Lot Line Adjustments" (350-81-126).

(2) Review Uses—Specific Lands Designated Open Space

(a) The following uses may be allowed on lands designated GMA-Open Space for Gorge Walls and Canyonlands subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Livestock grazing.

(B) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(C) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a county conservation district.

(D) Harvesting of wild crops.

(E) Educational or scientific research.

(F) Continued operation of existing quarries, if they are determined to be consistent with guidelines to protect scenic, cultural, natural, and recreation resources.

(G) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(b) The following uses may be allowed on lands designated GMA-Open Space for the Mosley Lakes Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Washington Natural Heritage Program.

(B) Educational or scientific research, after consultation with the Washington Natural Heritage Program.

(C) Commercial trapping.

(D) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(c) The following uses may be allowed on lands designated GMA-Open Space for the Chenoweth Table Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-81-610), after consultation with the Oregon Natural Heritage Program.

(B) Wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Oregon Natural Heritage Program.

(C) Educational or scientific research, after consultation with the Oregon Natural Heritage Program.

(D) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(d) The following uses may be allowed on lands designated GMA-Open Space for the Squally Point Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Except in the upland dunes south of the railroad tracks, low-intensity recreation, subject to the guidelines for recreation intensity classes (350-81-610) after consultation with the Oregon Natural Heritage Program.

(B) Repair and maintenance of railroads, except measures to stabilize dunes, after consultation with the Oregon Natural Heritage Program.

(C) Except as limited by (d)(A), above, all those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(e) The following uses may be allowed on lands designated GMA-Open Space for the Klickitat River Wildlife and Natural Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-81-610), after consultation with the Washington Natural Heritage Program and Washington Department of Fish and Wildlife.

(B) Wildlife management uses conducted by federal, state, or tribal resource agencies, after consultation with the Washington Natural Heritage Program.

(C) Educational or scientific research, after consultation with the Washington Natural Heritage Program.

(D) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(f) The following uses may be allowed on lands designated GMA-Open Space for the Balch Lake Wetlands Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Livestock grazing, subject to a range conservation plan, after consultation with the Washington Department of Fish and Wildlife.

(B) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(C) Educational and scientific research, after consultation with the Washington Department of Fish and Wildlife.

(D) Low-intensity recreation, subject to the guidelines for recreation intensity classes (350-81-610) after consultation with the Washington Department of Fish and Wildlife.

(E) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(g) The following uses may be allowed on lands designated GMA-Open Space for the Mouth of Wind River Wildlife Area subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(B) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a local conservation district.

(C) Harvesting of wild crops.

(D) Educational or scientific research, after consultation with the Washington Department of Fish and Wildlife.

(E) Commercial fishing and trapping.

(F) Low-intensity recreation, subject to the guidelines for recreation intensity classes (Part I, Chapter 4: Recreation Resources), after consultation with the Washington Department of Fish and Wildlife.

(G) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(h) The following uses may be allowed on lands designated GMA-Open Space on those portions of state park ownerships not suitable for major recreation facilities subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(A) Fish and wildlife management uses conducted by federal, state, or tribal resource agencies.

(B) Soil, water, or vegetation uses performed in accordance with a conservation plan approved by a local conservation district.

(C) Harvesting of wild crops.

(D) Educational or scientific research.

(E) All those uses allowed in "All Lands Designated Open Space," [350-81-340(1)].

(3) The following new uses may be allowed on lands designated SMA-Open Space subject to review for compliance with scenic, cultural, natural, and recreational resources guidelines (350-81-520 through 350-81-620):

(a) Changes in existing uses, including reconstruction, replacement, and expansion of existing structures and transportation facilities, except for commercial forest practices.

(b) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include vegetation management and forest practices (subject to the forest practice guidelines of 350-81-270 (2)(y) for the restoration of forest health, new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(c) Low-intensity recreation uses and developments, including educational and interpretive facilities, consistent with 350-81-620.

(d) Utility facilities for public service, upon a showing that:

(A) There is no alternative location with less adverse effect on Open Space land.

(B) The size is the minimum necessary to provide the service.

(e) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks

(f) Treatment of noxious weeds shall be permitted without completion of an SMA Open Space plan when the following criteria have been met:

(A) Noxious weed infestation is new and eradication is still viable.

(B) Delayed or deferred treatment could have widespread or major adverse impacts to one or more of the following resources:

(i) Displacement of native and traditionally gathered plants;

(ii) Degradation of wildlife habitat and forage;

(iii) Degradation or loss of agricultural uses of land, such as cropland or livestock forage;

(iv) Limitation of recreational uses.

(C) For federal lands, treatment effects have been thoroughly evaluated in an environmental assessment.

(4) An Open Space plan shall be completed by the primary managing agency or landowner prior to any new land uses or development on lands designated SMA-Open Space, and shall be reviewed by the Forest Service. The Open Space plan shall include the following:

(a) Direction for resource protection, enhancement, and management.

(b) Review of existing uses to determine compatibility with Open Space values.

(c) Consultation with members of the public and with agency and resource specialists.

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

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

### **350-81-350. Residential Land Designations**

Commission Rule 350-81-350 through 350-81-390 shall apply to those areas designated Residential on the Scenic Area Land Use Designation Map.

### **350-81-360. Uses Allowed Outright—Residential Land**

(1) The uses listed in "Uses Allowed Outright, All Land Use Designations, Except Open Space And Agriculture—Special" [350-81-074(1)] are allowed without review on lands designated Residential.

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

**350-81-365. Uses Allowed through the Expedited Development Review Process—Residential Land**

(1) The uses listed in "Expedited Development Review Process" (350-81-050) are allowed with review through the expedited development review process on lands designated Residential.

**350-81-370. Review Uses—Residential Land**

(1) The following uses may be allowed on lands designated GMA-Residential, subject to compliance with the guidelines for the protection of scenic, cultural, natural, and recreation resources (350-81-520 through 350-81-620):

(a) One single-family dwelling per legally created parcel. If the subject parcel is located adjacent to lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland, the use shall comply with the buffer and notification requirements for agricultural land [350-81-076 and 350-81-190 (1)(q)(E)], or forest land [(350-81-290 (1)(a) and 350-81-310 (1)(a)]. If the subject parcel is located within a Residential designation that is adjacent to lands designated Commercial Forest Land or Large or Small Woodland, the placement of a dwelling shall also comply with the fire protection guidelines in "Approval Criteria for Fire Protection" (350-81-300).

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) The temporary use of a mobile home in the case of a family hardship, subject to guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(e) Construction or reconstruction of roads.

(f) On parcels 10 acres or larger in the 5-acre Residential designation, or 20 acres or larger in the 10-acre Residential designation, a land division creating new parcels smaller than the designated minimum parcel size, subject to the guidelines for cluster development in "Land Divisions and Cluster Development" (350-81-124).

(g) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 590).

(h) Land divisions, subject to the minimum lot sizes designated on the Land Use Designation Map.

(i) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(j) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhance-

ment Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(k) Agricultural structures, except buildings, in conjunction with agricultural use.

(l) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(m) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(n) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(o) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(p) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(2) The following uses may be allowed on lands designated SMA-Residential subject to review for compliance with scenic, cultural, natural, and recreation resources guidelines (350-81-520 through 350-81-620):

(a) One single-family dwelling per legally created lot or consolidated parcel. The placement of a dwelling shall comply with fire protection standards developed by the county, in accordance with Management Plan SMA Policy 13 in Part II, Chapter 2: Forest Land.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (2)(c) below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) New utility facilities.

(e) Fire stations.

(f) Home occupations and cottage industries subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(g) Bed and breakfast inns, subject to the guidelines in "Bed and Breakfast Inns" (350-81-100).

(h) Community parks and playgrounds.

(i) Road and railroad construction and reconstruction.

(j) Forest practices, as specified in 350-81-270(2).

(k) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(l) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(m) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(n) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(o) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(p) New cultivation or new agricultural use outside of previously disturbed and regularly worked fields or areas. Clearing trees for new agricultural use is subject to the additional requirements of 350-81-270 (2)(x).

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

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### **350-81-380. Review Uses with Additional Approval Criteria—Residential Land**

(1) The following uses may be allowed on lands designated GMA-Residential, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (350-81-520 through 350-81-620) and "Approval Criteria for Specified Review Uses," (350-81-390).

(a) Accredited childcare centers within lands designated 1-acre Residential or 2-acre Residential. A childcare center may be allowed in other Residential designations within an existing church or community building.

(b) Schools within an existing church or community building.

(c) Expansion of existing primary or middle schools on land purchased prior to June 8, 1999. For purposes of this section, existing schools means public schools that existed prior to adoption of the original Management Plan on October 15, 1991.

(d) Utility facilities and railroads.

(e) Home occupations or cottage industries in an existing residence or accessory structure, subject to the guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(f) Fire stations.

(g) Recreation development, subject to compliance with 350-81-610.

(h) Community parks and playgrounds, consistent with the standards of the National Park and Recreation Society regarding the need for such facilities.

(i) Bed and breakfast inns in single family dwellings located on lands designated 5-acre Residential or 10-acre Residential, pursuant to the guidelines in "Bed and Breakfast Inns" (350-81-100).

(j) Wineries, in conjunction with onsite viticulture, upon a showing that processing of wine is from grapes grown on the subject farm or in the local region.

(k) Wine sales/tasting rooms in conjunction with an on-site winery, under the following conditions:

(A) The use shall comply with the guidelines in "Home Occupations and Cottage Industries" (350-81-098), with the following exceptions:

(i) The use may employ an unlimited number of outside employees.

(ii) The wine sales/tasting room may include interior and/or exterior space, provided the combined interior and exterior spaces shall not exceed 1,000 square feet.

(iii) The interior space may be located in an existing building or in a new building or addition to an existing building constructed for the primary purpose of housing the wine sales/tasting room.

(iv) The exterior space may be a veranda, patio, or other similar type of structure.

(l) Small-scale fishing support and fish processing operations on parcels that are contiguous with and have direct access to the Columbia River, subject to the guidelines in "Small-Scale Fishing Support and Fish Processing Operations" (350-81-102).

### **350-81-390. Approval Criteria for Specified Review Uses on Lands Designated Residential**

(1) The uses identified in 350-81-380, may be allowed only if they meet all of the following:

(a) The proposed use will be compatible with the surrounding area. Review of compatibility shall include impacts associated with the visual character of the area; traffic generation; and noise, dust, and odors.

(b) The proposed use will not require public services other than those existing or approved for the area.

(c) If the subject parcel is located within 500 feet of lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland, new buildings associated with the proposed use comply with the buffer guidelines in "Agricultural Buffer Guidelines" (350-81-076).

(d) If the subject parcel is located within 500 feet of lands designated Commercial Forest Land or Large or Small Woodland, new buildings associated with the proposed use comply with the fire protection guidelines in "Approval Criteria for Fire Protection" (350-81-300).

### **350-81-400. Rural Center**

Commission Rule 350-81-400 through 350-81-420 shall apply to those areas designated Rural Center on the Scenic Area Land Use Designation Map.

### **350-81-410. Uses Allowed Outright—Rural Center**

(1) The uses listed in "Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special" [350-81-074(i)] are allowed without review on lands designated Rural Center and Commercial.

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

**350-81-415. Uses Allowed through the Expedited Development Review Process—Rural Center**

(1) The uses listed in "Expedited Development Review Process" (350-81-050) are allowed with review through the expedited development review process on lands designated Rural Center and Commercial.

**350-81-420. Review Uses—Rural Center**

(1) The following uses may be allowed within Rural Centers, subject to compliance with guidelines for the protection of scenic, cultural, natural, and recreation resources:

(a) One single-family dwelling per legally created parcel.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in 350-81-240 (1)(c).

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) The temporary use of a mobile home in the case of a family hardship, pursuant to guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(e) Duplexes.

(f) Fire stations.

(g) Libraries.

(h) Government buildings.

(i) Community centers and meeting halls.

(j) Schools.

(k) Accredited childcare centers.

(l) Rural service commercial and tourist commercial uses limited to 5,000 square feet of floor area per building or use.

(A) Grocery stores.

(B) Variety and hardware stores.

(C) Shops, offices, and repair shops.

(D) Personal services such as barber and beauty shops.

(E) Travelers' accommodations, bed and breakfast inns.

(F) Restaurants.

(G) Taverns and bars.

(H) Gas stations.

(I) Gift shops.

(m) Home occupations or cottage industries in an existing residence or accessory structure, subject to guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(n) Utility facilities and railroads.

(o) Recreation development, subject to compliance with 350-81-610.

(p) Places of worship.

(q) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(r) Land divisions, subject to the standards and minimum lot sizes in Policies 6 and 7 in the "Land Use Policies" in Part II, Chapter 5: Commercial Land of the Management Plan.

(s) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(t) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(u) Agricultural structures, except buildings, in conjunction with agricultural use.

(v) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(w) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(x) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(y) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

**350-81-430. Commercial Land**

Commission Rule 350-81-430 through 350-81-460 shall apply to those areas designated Commercial on the Scenic Area Land Use Designation Map.

**350-81-440. Uses Allowed Outright—Commercial Designations**

(1) The uses listed in "Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special" [350-81-074(1)] are allowed without review on lands designated Commercial.

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

**350-81-445. Uses Allowed through the Expedited Development Review Process—Commercial Designations**

(1) The uses listed in "Expedited Development Review Process" (350-81-050) are allowed with review through the expedited development review process on lands designated Commercial.

**350-81-450. Review Uses—Commercial Designations**

(1) The following uses may be allowed on lands designated Commercial, subject to compliance with the appropriate scenic, cultural, natural, and recreation resource guidelines (350-81-520 through 350-81-620) and "Approval Criteria for Specified Review Uses," (350-81-460):

(a) Travelers' accommodations, bed and breakfast inns.

(b) Restaurants.

(c) Gift shops.

(d) Home occupations or cottage industries in an existing residence or accessory structure, subject to guidelines in "Home Occupations and Cottage Industries" (350-81-098).

(e) One single-family dwelling per legally created parcel.

(f) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed as accessory buildings larger than 200 square feet in area or 10 feet in height.

(g) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel, subject to the following standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(h) Utility facilities and railroads.

(i) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(j) Lot line adjustments that would result in the potential to create additional parcels through subsequent land divisions, subject to the guidelines in "Lot Line Adjustments" (350-81-126).

(k) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(l) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(m) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(n) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

### **350-81-460. Approval Criteria for Review Uses on Lands Designated on Lands Designated Commercial**

(1) The uses identified under "Review Uses: Commercial Designations" may be allowed only if they meet the following two criteria:

(a) The proposal is limited to 5,000 square feet of floor area per building or use.

(b) The proposed use would be compatible with the surrounding area. Review for compatibility shall include impacts associated with the visual character of the area; traffic generation; and noise, dust and odors

### **350-81-470. Recreation**

Commission Rule 350-81-470 through 350-81-510 shall apply to those areas designated Public Recreation and Commercial Recreation on the Scenic Area Land Use Designation Map.

### **350-81-480. Uses Allowed Outright—Public Recreation and Commercial Recreation**

(1) The uses listed in "Uses Allowed Outright, All Land Use Designations, Except Open Space and Agriculture-Special" [350-81-074(1)] are allowed without review on lands designated Public Recreation and Commercial Recreation.

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

### **350-81-485. Uses Allowed through the Expedited Development Review Process—Public Recreation and Commercial Recreation**

(1) The uses listed in "Expedited Development Review Process" (350-81-050) are allowed with review through the expedited development review process on lands designated Public Recreation and Commercial Recreation.

### **350-81-490. Review Uses—Public Recreation and Commercial Recreation**

(1) The following uses may be allowed on lands designated GMA-Public Recreation, subject to compliance with guidelines for the protection of scenic, natural, cultural, and recreation resources (350-81-520 through 350-81-620) and compliance with 350-81-610 (5)(a) and (c) through (g), where applicable, of the "Approval Criteria for Recreation Uses" contained in the recreation intensity class guidelines (350-81-610):

(a) Publicly-owned, resource-based recreation uses, consistent with recreation intensity class guidelines (350-81-610).

(b) Commercial uses and non-resource based recreation uses that are part of an existing or approved resource-based public recreation use, consistent with the guidelines for such uses contained in this section.

(c) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(2) The following uses may be allowed on lands designated GMA Public Recreation, subject to compliance with the "Approval Criteria for Non-Recreation Uses in Public Recreation designations," (350-81-500), and (350-81-520 through 350-81-620):

(a) One single-family dwelling for each parcel legally created prior to adoption of the Management Plan. Exceptions may be considered only upon demonstration that more than one residence is necessary for management of a public park.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in Guideline 350-81-490 (2)(c).

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) Agricultural structures, except buildings, in conjunction with agricultural use.

(e) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(f) Utility transmission, transportation, communication, and public works facilities.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(h) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(i) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

(j) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(k) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).

(3) The following uses may be allowed on lands designated Commercial Recreation, subject to compliance with guidelines for the protection of scenic, natural, cultural and recreation resources (350-81-520 through 350-81-620) and compliance with 350-81-610 (5)(a) and (c) through (g) of the "Approval Criteria for Recreation Uses" guidelines (350-81-610):

(a) Commercially owned, resource-based recreation uses, consistent with recreation intensity class guidelines (350-81-610).

(b) Overnight accommodations that are part of a commercially owned, resource-based recreation use, where such resource-based recreation use occurs on the subject site or on adjacent lands that are accessed through the site, and that meet the following standards:

(A) Buildings containing individual units shall be no larger than 1,500 square feet in total floor area and no higher than 2-1/2 stories.

(B) Buildings containing more than one unit shall be no larger than 5,000 square feet in total floor area and no higher than 2-1/2 stories.

(C) The total number of individual units shall not exceed 25, unless the proposed development complies with standards for clustered accommodations in subsection (4) of this guideline.

(D) Clustered overnight travelers accommodations meeting the following standards may include up to 35 individual units:

(i) Average total floor area of all units is 1,000 square feet or less per unit.

(ii) A minimum of 50 percent of the project site is dedicated to undeveloped, open areas (not including roads or parking areas).

(iii) The facility is in an area classified for high-intensity recreation (Recreation Intensity Class 4).

(c) Commercial uses, including restaurants sized to accommodate overnight visitors and their guests, and non-resource based recreation uses that are part of an existing or approved resource-based commercial recreation use, consistent with the policies, guidelines, and conditional use criteria for such uses contained in this section.

(d) New cultivation, subject to compliance with guidelines for the protection of cultural resources (350-81-540) and natural resources (350-81-560 through 350-81-590).

(4) The following uses may be allowed on lands designated Commercial Recreation, subject to compliance with the "Approval Criteria for Non-Recreational Uses in Commercial Recreation," (350-81-510), and the guidelines for the protection of scenic, natural, cultural, and recreation resources (350-81-520 through 350-81-620):

(a) One single-family dwelling for each lot or parcel legally created prior to adoption of the Management Plan.

(b) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in Guideline 2.C below.

(c) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(d) Agricultural structures, except buildings, in conjunction with agricultural use.

(e) Agricultural buildings in conjunction with current agricultural use and, if applicable, proposed agricultural use that a landowner would initiate within one year and complete within five years, subject to the standards in "Agricultural Buildings" (350-81-090).

(f) Utility transmission, transportation, and communication facilities.

(g) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(h) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(i) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (Part II, Chapter 7: General Policies and Guidelines).

(j) Removal/demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(k) Commercial events, subject to the guidelines in "Commercial Events" (350-81-108).



(5) Land divisions may be allowed in GMA-Public Recreation, subject to compliance with 350-81-500 (1)(c), and in GMA Commercial Recreation, subject to compliance with 350-81-510 (1)(c).

(6) Lot line adjustments may be allowed in GMA Public Recreation and GMA Commercial Recreation, subject to compliance with the guidelines in "Lot Line Adjustments" (350-81-126).

(7) The following uses may be allowed on lands designated SMA-Public Recreation subject to review for compliance with scenic, cultural, natural, and recreational resources guidelines:

(a) Forest uses and practices, as allowed for in 350-81-270(2).

(b) Public trails, consistent with the provisions in 350-81-620.

(c) Public recreational facilities, consistent with the provisions in 350-81-620.

(d) Public nonprofit group camps, retreats, conference or educational centers, and interpretive facilities.

(e) One single-family dwelling on a parcel of 40 contiguous acres or larger when it meets the conditions described for Agricultural Land (350-81-190) or Forest Land (350-81-270), or when shown to be necessary for public recreation site management purposes.

(f) Accessory structures for an existing or approved dwelling that are not otherwise allowed outright, eligible for the expedited development review process, or allowed in (1)(g) below.

(g) Accessory building(s) larger than 200 square feet in area or taller than 10 feet in height for a dwelling on any legal parcel are subject to the following additional standards:

(A) The combined footprints of all accessory buildings on a single parcel shall not exceed 1,500 square feet in area. This combined size limit refers to all accessory buildings on a parcel, including buildings allowed without review, existing buildings and proposed buildings.

(B) The height of any individual accessory building shall not exceed 24 feet.

(h) Home occupation and cottage industries, as specified in "Home Occupations and Cottage Industries" (350-81-098).

(i) Resource enhancement projects for the purpose of enhancing scenic, cultural, recreation and/or natural resources, subject to the guidelines in "Resource Enhancement Projects" (350-81-104). These projects may include new structures (e.g., fish ladders, sediment barriers) and/or activities (e.g., closing and revegetating unused roads, recontouring abandoned quarries).

(j) Road and railroad construction and reconstruction.

(k) Utility facilities for public service upon a showing that:

(A) There is no alternative location with less adverse effect on Public Recreation land.

(B) The size is the minimum necessary to provide the service.

(l) Agricultural review uses, as allowed for in 350-81-190(2).

(m) On a parcel of 40 acres or greater with an existing dwelling, the temporary use of a mobile home in the case of a

family hardship, subject to the guidelines for hardship dwellings in "Temporary Use - Hardship Dwelling" (350-81-092).

(n) Additions to existing buildings greater than 200 square feet in area or greater than the height of the existing building.

(o) Demolition of structures that are 50 or more years old, including wells, septic tanks and fuel tanks.

(p) Docks and boathouses, subject to the guidelines in "Docks and Boathouses" (350-81-096).

### **350-81-500. Approval Criteria for Non-Recreation Uses in GMA-Public Recreation Designations**

(1) The uses identified in 350-81-490 (2) and (5), may be allowed if they meet the following criteria:

(a) The proposed use will not interfere with existing or approved public recreation uses on the subject property or adjacent lands. Mitigative measures used to comply with this criterion may include provision of onsite buffers, seasonal or temporary closures during peak recreation use periods, etc.

(b) The proposed use will not permanently commit the majority of the site to a non-recreational use. Careful siting and design of structures and other improvements may be used to comply with this criterion.

(c) Land divisions may be allowed upon a demonstration that the proposed land division is necessary to facilitate, enhance, or otherwise improve recreational uses on the site.

### **350-81-510. Approval Criteria for Non-Recreation Uses in GMA-Commercial Recreation Designations.**

(1) The uses identified in 350-81-490 (4) and (5), may be allowed if they meet the following criteria:

(a) The proposed use will not interfere with existing or approved commercial recreation uses on the subject property or adjacent lands. Mitigative measures used to comply with this criterion may include provision of onsite buffers, seasonal or temporary closures during peak recreation use periods, etc.

(b) The proposed use will not permanently commit the majority of the site to a non-recreational use. Careful siting and design of structure and other improvements may be used to comply with this criterion.

(c) Land divisions may be allowed upon a demonstration that the proposed land division is necessary to facilitate, enhance, or otherwise improve recreational uses on the site.

## **Resource Protection Guidelines**

### **350-81-520. General Management Area Scenic Review Criteria**

The following scenic review guidelines shall apply to all Review Uses in the General Management Area of the Columbia River Gorge National Scenic Area:

(1) All review uses:

(a) New buildings and roads shall be sited and designed to retain the existing topography and to minimize grading activities to the maximum extent practicable.

(b) New buildings shall be compatible with the general scale (height, dimensions and overall mass) of existing nearby development. Expansion of existing development

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shall comply with this guideline to the maximum extent practicable.

(c) Project applicants shall be responsible for the proper maintenance and survival of any planted vegetation required by the guidelines in this chapter.

(d) A site plan and land use application shall be submitted for all new buildings, except for buildings smaller than 60 square feet in area and less than or equal to 10 feet in height, as measured at the roof peak. The site plan and application shall include all information required in the site plan guidelines in "Review Uses" 350-81-032(5). Supplemental requirements for developments proposed on lands visible from key viewing areas are included in the key viewing areas guidelines in this chapter.

(e) For all proposed development, the determination of compatibility with the landscape setting shall be based on information submitted in the site plan.

(f) For all new production and/or development of mineral resources and expansion of existing quarries, a reclamation plan is required to restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable.

At a minimum, such reclamation plans shall include:

(A) A map of the site, at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with 10-foot contour intervals or less, showing pre-mining existing grades and post-mining final grades; locations of topsoil stockpiles for eventual reclamation use; location of catch basins or similar drainage and erosion control features employed for the duration of the use; and the location of storage, processing, and equipment areas employed for the duration of the use.

(B) Cross-sectional drawings of the site showing pre-mining and post-mining grades.

(C) Descriptions of the proposed use, in terms of estimated quantity and type of material removed, estimated duration of the use, processing activities, etc.

(D) Description of drainage/erosion control features to be employed for the duration of the use.

(E) A landscaping plan providing for revegetation consistent with the vegetation patterns of the subject landscape setting, indicating the species, number, size, and location of plantings for the final reclaimed grade, as well as a description of irrigation provisions or other measures necessary to ensure the survival of plantings.

(g) All reclamation plans for new quarries or expansion of existing quarries shall be sent to the appropriate state reclamation permitting agency for review and comment. The state agency shall have 30 calendar days from the date a reclamation plan is mailed to submit written comments on the proposal. State agency comments shall address the following:

(A) Whether the proposed mining is subject to state reclamation permit requirements;

(B) If subject to state jurisdiction, whether an application has been received for a state reclamation permit and, if so, the current status of the application; and

(C) For uses subject to state jurisdiction, any issues or concerns regarding consistency with state reclamation requirements, or any suggested modifications to comply with state reclamation requirements.

The Executive Director may request technical assistance from state agencies on reclamation plans for proposed mining not within the state agency's jurisdiction.

## (2) Key Viewing Areas

(a) The guidelines in this section shall apply to proposed developments on sites topographically visible from key viewing areas.

(b) Each development shall be visually subordinate to its setting as seen from key viewing areas.

(c) Determination of potential visual effects and compliance with visual subordination policies shall include consideration of the cumulative effects of proposed developments.

(d) The extent and type of conditions applied to a proposed development to achieve visual subordination shall be proportionate to its potential visual impacts as seen from key viewing areas.

(A) Decisions shall include written findings addressing the factors influencing potential visual impact, including but not limited to:

(i) The amount of area of the building site exposed to key viewing areas.

(ii) The degree of existing vegetation providing screening.

(iii) The distance from the building site to the key viewing areas from which it is visible.

(iv) The number of key viewing areas from which it is visible.

(v) The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).

(B) Conditions may be applied to various elements of proposed developments to ensure they are visually subordinate to their setting as seen from key viewing areas, including but not limited to:

(i) Siting (location of development on the subject property, building orientation, and other elements).

(ii) Retention of existing vegetation.

(iii) Design (color, reflectivity, size, shape, height, architectural and design details and other elements).

(iv) New landscaping.

(e) New development shall be sited to achieve visual subordination from key viewing areas, unless the siting would place such development in a buffer specified for protection of wetlands, riparian corridors, sensitive plants, or sensitive wildlife sites or would conflict with guidelines to protect cultural resources. In such situations, development shall comply with this guideline to the maximum extent practicable.

(f) New development shall be sited using existing topography and/or existing vegetation as needed to achieve visual subordination from key viewing areas.

(g) Existing tree cover screening proposed development from key viewing areas shall be retained as specified in the Landscape Settings Design Guidelines in 350-81-520(3).

(h) The silhouette of new buildings shall remain below the skyline of a bluff, cliff, or ridge as seen from key viewing areas. Variances to this guideline may be granted if application of the guideline would leave the owner without a reasonable economic use. The variance shall be the minimum necessary to allow the use and may be applied only after all rea-

sonable efforts to modify the design, building height, and site to comply with the guideline have been made.

(i) An alteration to a building built before November 17, 1986, that already protrudes above the skyline of a bluff, cliff, or ridge as seen from a key viewing area, may itself protrude above the skyline if:

(A) The altered building, through use of color, landscaping and/or other mitigation measures, contrasts less with its setting than before the alteration, and

(B) There is no practicable alternative means of altering the building without increasing the protrusion.

(j) The following guidelines shall apply to new landscaping used to screen development from key viewing areas:

(A) New landscaping (including new earth berms) shall be required only when application of all other available guidelines in 350-81-520 is not sufficient to make the development visually subordinate from key viewing areas. Alternate sites shall be considered prior to using new landscaping to achieve visual subordination. Development shall be sited to avoid the need for new landscaping wherever possible.

(B) If new landscaping is required to make a proposed development visually subordinate from key viewing areas, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to make the development visually subordinate within five years or less from the commencement of construction.

(C) Unless as specified otherwise by provisions in 350-81-520, landscaping shall be installed as soon as practicable, and prior to project completion. Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

(D) The *Scenic Resources Implementation Handbook* shall include recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in 350-81-520(3), and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).

(k) Conditions regarding new landscaping or retention of existing vegetation for new developments on lands designated GMA Forest shall meet both scenic guidelines and fuel break requirements in 350-81-300 (1)(a).

(l) Unless expressly exempted by other provisions in 350-81-520, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or in the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The *Scenic Resources Implementation Handbook* will include a recommended palette of colors.

(m) The exterior of buildings on lands seen from key viewing areas shall be composed of nonreflective materials or materials with low reflectivity, unless the structure would be fully screened from all key viewing areas by existing topographic features. The *Scenic Resources Implementation Handbook* will include a list of recommended exterior materials. These recommended materials and other materials may be deemed consistent with this guideline, including those

where the specific application meets recommended thresholds in the "Visibility and Reflectivity Matrices" in the *Implementation Handbook* (once they are created). Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure visual subordination. Recommended square footage limitations for such surfaces will be provided for guidance in the *Implementation Handbook*.

(n) In addition to the site plan requirements in "Review Uses" 350-81-520(5), applications for all buildings visible from key viewing areas shall include a description of the proposed building(s)' height, shape, color, exterior building materials, exterior lighting, and landscaping details (type of plants used; number, size, locations of plantings; and any irrigation provisions or other measures to ensure the survival of landscaping planted for screening purposes).

(o) For proposed mining and associated activities on lands visible from key viewing areas, in addition to submittal of plans and information pursuant to 350-81-520 (1)(f) section of this chapter, project applicants shall submit perspective drawings of the proposed mining areas as seen from applicable key viewing areas.

(p) Exterior lighting shall be directed downward and sited, hooded, and shielded such that it is not highly visible from key viewing areas. Shielding and hooding materials shall be composed of non-reflective, opaque materials.

(q) Additions to existing buildings smaller in total square area than the existing building may be the same color as the existing building. Additions larger than the existing building shall be of colors specified in the design guidelines for the subject property's landscape setting.

(r) Rehabilitation of or modifications to existing significant historic structures shall be exempted from visual subordination requirements for lands seen from key viewing areas. To be eligible for such exemption, the structure must be included in, or eligible for inclusion in, the National Register of Historic Places or be in the process of applying for a determination of significance pursuant to such regulations. Rehabilitation of or modifications to structures meeting this guideline shall be consistent with National Park Service regulations for such structures.

(s) New main lines on lands visible from key viewing areas for the transmission of electricity, gas, oil, other fuels, or communications, except for connections to individual users or small clusters of individual users, shall be built in existing transmission corridors unless it can be demonstrated that use of existing corridors is not practicable. Such new lines shall be underground as a first preference unless it can be demonstrated to be impracticable.

(t) New communication facilities (antennae, dishes, etc.) on lands visible from key viewing areas that require an open and unobstructed site shall be built upon existing facilities unless it can be demonstrated that use of existing facilities is not practicable.

(u) New communications facilities may protrude above a skyline visible from a key viewing area only upon demonstration that:

(A) The facility is necessary for public service,

(B) The break in the skyline is seen only in the background, and

(C) The break in the skyline is the minimum necessary to provide the service.

(v) Overpasses, safety and directional signs, and other road and highway facilities may protrude above a skyline visible from a key viewing area only upon a demonstration that:

(A) The facility is necessary for public service, and

(B) The break in the skyline is the minimum necessary to provide the service.

(x) Except for water-dependent development and for water-related recreation development, development shall be set back 100 feet from the ordinary high water mark of the Columbia River below Bonneville Dam, and 100 feet from the normal pool elevation of the Columbia River above Bonneville Dam, unless the setback would render a property unbuildable. In such cases, variances to this guideline may be authorized.

(y) New buildings shall not be permitted on lands visible from key viewing areas with slopes in excess of 30 percent. Variances to this guideline may be authorized if the guideline's application would render a property unbuildable. In determining the slope, the average percent slope of the proposed building site shall be used.

(z) Driveways and buildings shall be designed and sited to minimize visibility of cut banks and fill slopes from key viewing areas.

(aa) All proposed structural development involving more than 200 cubic yards of grading on sites visible from key viewing areas shall include submittal of a grading plan. This plan shall be reviewed by the local government for compliance with key viewing area policies. The grading plan shall include the following:

(A) A map of the site, prepared at a scale of 1 inch equals 200 feet (1:2,400) or a scale providing greater detail, with contour intervals of at least 5 feet, including:

(i) Existing and proposed final grades.

(ii) Location of all areas to be graded, with cut banks and fill slopes delineated.

(iii) Estimated dimensions of graded areas.

(B) A narrative description (may be submitted on the grading plan site map and accompanying drawings) of the proposed grading activity, including:

(i) Its purpose.

(ii) An estimate of the total volume of material to be moved.

(iii) The height of all cut banks and fill slopes.

(iv) Provisions to be used for compactions, drainage, and stabilization of graded areas. (Preparation of this information by a licensed engineer or engineering geologist is recommended.)

(v) A description of all plant materials used to revegetate exposed slopes and banks, including the species, number, size, and location of plants, and a description of irrigation provisions or other measures necessary to ensure the survival of plantings.

(vi) A description of any other interim or permanent erosion control measures to be used.

(bb) Expansion of existing quarries and new production and/or development of mineral resources proposed on sites more than 3 miles from the nearest key viewing areas from which it is visible may be allowed upon a demonstration that:

(A) The site plan requirements for such proposals pursuant to 350-81-520 have been met.

(B) The area to be mined and the area to be used for primary processing, equipment storage, stockpiling, etc. associated with the use would be visually subordinate as seen from any key viewing areas.

(C) A reclamation plan to restore the site to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with 350-81-520 (1)(f) and (g)

(D) A written report on a determination of visual subordination has been completed, with findings addressing the extent of visibility of proposed mining activities from key viewing areas, including:

(i) A list of key viewing areas from which exposed mining surfaces (and associated facilities/activities) would be visible.

(ii) An estimate of the surface area of exposed mining surfaces that would be visible from those key viewing areas.

(iii) The distance from those key viewing areas and the linear distance along those key viewing areas from which proposed mining surfaces are visible.

(iv) The slope and aspect of mining surfaces relative to those portions of key viewing areas from which they are visible.

(v) The degree to which potentially visible mining surfaces are screened from key viewing areas by existing vegetation, including winter screening considerations.

(vi) The degree to which potentially visible mining surfaces would be screened by new plantings, berms, etc. and appropriate time frames to achieve such results, including winter screening considerations.

(cc) Unless addressed by 350-81-520 (2)(bb), new production and/or development of mineral resources may be allowed upon a demonstration that:

(A) The site plan requirements for such proposals pursuant to this chapter have been met.

(B) The area to be mined and the area used for primary processing, equipment storage, stockpiling, etc., associated with the use would be fully screened from any key viewing area.

(C) A reclamation plan to restore the area to a natural appearance that blends with and emulates surrounding landforms to the maximum extent practicable has been approved. At minimum, the reclamation plan shall comply with 350-81-520 (1)(f) and (g).

(dd) An interim time period to achieve compliance with visual subordination requirements for expansion of existing quarries and development of new quarries located more than 3 miles from the nearest visible key viewing area shall be established before approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed 3 years beyond the date of approval.

(ee) An interim time period to achieve compliance with full screening requirements for new quarries located less than 3 miles from the nearest visible key viewing area shall be established before approval. The interim time period shall be based on site-specific topographic and visual conditions, but shall not exceed 1 year beyond the date of approval. Quarry-

ing activity occurring before achieving compliance with full screening requirements shall be limited to activities necessary to provide such screening (creation of berms, etc.).

(3) Landscape Settings

All review uses within the following landscape settings shall comply with the following applicable guidelines:

(a) Pastoral

(A) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures, and farm fields.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.

(ii) Vegetative landscaping shall, where feasible, retain the open character of existing pastures and fields.

(iii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include fruit trees, Douglas-fir, Lombardy poplar (usually in rows), Oregon white oak, big leaf maple, and black locust (primarily in the eastern Gorge).

(iv) At least one-quarter of any trees planted for screening shall be coniferous for winter screening.

(C) Compatible recreation uses include resource-based recreation of a very low-intensity or low-intensity nature (as defined by 350-81-610) occurring infrequently in the landscape.

(b) Coniferous Woodland

(A) Structure height shall remain below the forest canopy level.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(I) Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from key viewing areas shall be retained.

(II) At least half of any trees planted for screening purposes shall be species native to the setting. Such species include: Douglas-fir, grand fir, western red cedar, western hemlock, big leaf maple, red alder, ponderosa pine and Oregon white oak, and various native willows (for riparian areas).

(III) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(C) Compatible recreation uses include resource-based recreation uses of varying intensities. Typically, outdoor recreation uses should be low-intensity, and include trails, small picnic areas and scenic viewpoints. Some more intensive recreation uses, such as campgrounds, may occur. They should be scattered, interspersed with large areas of undeveloped land and low-intensity uses.

(c) Oak-Pine Woodland

(A) Structure height shall remain below the tree canopy level in wooded portions of this setting.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) At least half of any tree species planted for screening purposes shall be species native to the setting. Such species include Oregon white oak, ponderosa pine, and Douglas-fir.

(ii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

For substantially wooded portions:

(iii) Except as is necessary for construction of access roads, building pads, leach fields, etc., the existing tree cover screening the development from key viewing areas shall be retained.

For treeless portions or portions with scattered tree cover:

(iv) Structures shall be sited on portions of the property that provide maximum screening from key viewing areas, using existing topographic features.

(v) Patterns of plantings for screening vegetation shall be in character with the surroundings. Residences in grassy, open areas or savannahs shall be partly screened with trees in small groupings and openings between groupings.

(vi) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible, particularly towards the edges of existing meadows, pastures, and farm fields.

(C) Resource-based recreation uses of varying intensities may be compatible with this setting, although most are of low-intensity nature (such as trails or small scenic outlooks). More intensive recreation uses may be compatible where allowed by 350-81-610, although they are generally rare in this setting. As with Woodland settings, intensive recreation uses in Oak-Pine Woodlands may be compatible if widely scattered and not in large concentrations.

(d) Grassland

(A) Accessory structures, outbuildings, and access ways shall be clustered together as much as possible. Exceptions to this guideline are permitted where necessary for farming operations.

(B) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Structures shall be sited on portions of the property that provide maximum screening from key viewing areas, using existing topographic features.

(ii) Lower structures that emphasize horizontal lines and blend with this sweeping landscape should be encouraged rather than very tall structures.

(iii) Planting of trees for screening shall not be extensive, in character with the openness of this setting. Where used, screening vegetation shall either tie in with nearby riparian vegetation in seasonal drainages or emulate windrows. At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area. Such species include Oregon white oak, Lombardy poplar,

black locust, black cottonwood (wet locations), Russian olive and ponderosa pine.

(C) Resource-based recreation uses of a very low-intensity or low-intensity nature that occur infrequently are compatible with this setting, and include hiking, hunting and wildlife viewing.

(e) Rural Residential

(A) Existing tree cover shall be retained as much as possible, except as is necessary for site development, safety purposes, or as part of forest management practices.

(B) In portions of this setting visible from key viewing areas, and not exempt from visual subordination guidelines (see 350-81-520 (3)(k)), the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.

(ii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.

(iii) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(C) Compatible recreation uses should be limited to small community park facilities, but may occasionally include low-intensity resource-based recreation uses (such as scenic overlooks).

(f) Rural Residential/Pastoral, Rural Residential/Coniferous Woodland, and Rural Residential/Oak-Pine Woodland

(A) New development in this setting shall meet the design guidelines described for both the Rural Residential setting and the more rural setting with which it is combined (either Pastoral, Coniferous Woodland or Oak-Pine Woodland), unless it can be demonstrated that compliance with the guidelines for the more rural setting is impracticable. Expansion of existing development shall comply with this guideline to the maximum extent practicable.

(B) In the event of a possible conflict between the two sets of guidelines, the guidelines for the more rural setting (Coniferous Woodland, Oak-Pine Woodland or Pastoral) shall apply, unless it can be demonstrated that application of such guidelines would not be practicable.

(C) Compatible recreation uses should be limited to very low and low-intensity resource-based recreation uses, scattered infrequently in the landscape.

(g) Residential

(A) In portions of this setting visible from key viewing areas and not exempt from visual subordination guidelines (see 350-81-520 (3)(k)), the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, the existing tree cover screening the development from key viewing areas shall be retained.

(ii) The exteriors of structures shall be non-reflective unless fully screened from key viewing areas with existing vegetation and/or topography.

(iii) At least half of any trees planted for screening purposes shall be species native to the setting or commonly found in the area.

(iv) At least half of any trees planted for screening purposes shall be coniferous to provide winter screening.

(B) Compatible recreation uses are limited to community park facilities.

(h) Village

(A) New commercial buildings shall be limited in size to a total floor area of 5,000 square feet or less, and shall be limited in height to 2 1/2 stories or less.

(B) For new commercial, institutional (churches, schools, government buildings), or multifamily residential uses on parcels fronting a scenic travel corridor (Washington State Route 14 or the Historic Columbia River Highway) and expansion of existing development for such uses, parking shall be limited to rear or side yards of buildings to the maximum extent practicable.

(C) New vehicular access points to the scenic travel corridors shall be limited to the maximum extent practicable, and access consolidation shall be required where feasible.

(D) New development proposals and expansion of existing development shall be encouraged to follow planned unit development approaches, featuring consolidated access, commonly shared landscaped open areas, etc.

(E) New commercial, institutional or multifamily residential uses fronting a scenic travel corridor shall comply with the following landscape requirements:

(i) Parking or loading areas for 10 or more spaces shall include a landscaped strip at least 5 feet wide between the new use and the scenic travel corridor roadway.

(ii) The landscape strip required in 350-81-520 (3)(h)(E)(i) shall include shrubs, vegetative ground cover, and, at minimum, one tree. Trees shall be spaced as appropriate to the species and not to exceed 25 feet apart on the average.

(F) The use of building materials that reinforce the Village setting's character, such as wood, logs, or stone, and that reflect community desires, should be encouraged.

(G) Architectural styles that are characteristic of the area (such as 1 1/2-story dormer roof styles in Corbett) and that reflect community desires should be encouraged. Entry signs should be consistent with such architectural styles.

(H) Design features that create a "pedestrian-friendly" atmosphere, such as large shop windows on the ground floor of commercial buildings, porches along ground floors with street frontage, etc., should be encouraged.

(I) Pedestrian walkways and bicycle paths should be encouraged and integrated into new developments wherever feasible.

(J) Where feasible, existing tree cover of species native to the region or commonly found in the area shall be retained when designing new development or expanding existing development.

(K) Compatible recreation uses may include community parks serving the recreation needs of local residents, and varying intensities of other recreation uses.

(i) River Bottomlands

(A) In portions of this setting visible from key viewing areas, the following guidelines shall be employed to achieve visual subordination for new development and expansion of existing development:

(i) Except as is necessary for site development or safety purposes, existing tree cover screening the development from key viewing areas shall be retained.

(ii) At least half of any trees planted for screening purposes shall be species native to the River Bottomland setting. Public recreation developments are encouraged to maximize the percentage of planted screening vegetation native to this setting. Such species include black cottonwood, big leaf maple, red alder, Oregon white ash, Douglas-fir, western red cedar and western hemlock (west Gorge), and various native willow species.

(iii) At least one-quarter of any trees planted for screening purposes shall be coniferous for winter screening.

(C) Compatible recreation uses depend on the degree of natural resource sensitivity of a particular site. In the most critically sensitive River Bottomlands, very low-intensity uses which do not impair wetlands or special habitat requirements may be compatible.

In other River Bottomland areas, nodes of moderate-intensity and/or high-intensity recreation uses may be compatible, provided that:

(i) their designs emphasize retention and/or enhancement of native riparian communities,

(ii) structures and parking areas are visually subordinate

(iii) they are separated from other areas of concentrated recreation usage by stretches of natural-appearing shoreline and adjacent uplands.

(j) Gorge Walls, Canyons, and Wildlands

(A) New development and expansion of existing development shall be screened so it is not seen from key viewing areas, to the maximum extent practicable.

(B) All trees planted to screen permitted development and uses from key viewing areas shall be native to the area.

(C) Existing tree cover shall be retained to the maximum extent practicable, except for the minimum removal necessary to accommodate facilities otherwise permitted in the underlying land use designation or for safety purposes.

(D) All structures shall be limited in height to a maximum of 1 1/2 stories.

(E) The exteriors of structures shall be non-reflective.

(F) Signage shall be limited to natural materials such as wood or stone, with natural or earth-tone colors, unless public safety concerns or federal or state highway standards require otherwise.

(G) Compatible recreation uses are limited to very low or low-intensity resource-based activities which focus on enjoyment and appreciation of sensitive resources. Such compatible uses (such as trails) are generally associated with minimal facility development, if any.

(k) Developed Settings and Visual Subordination Policies

GMA policies to protect key viewing area viewsheds require that all new development on lands seen from key viewing areas be visually subordinate to its landscape setting, except for "specified developed settings that are not visually sensitive."

Three landscape settings are considered developed settings within this context: Rural Residential, Residential, and Village. Of all GMA lands in these three settings, six particular areas that are not visually sensitive have been identified.

New development in these settings shall be compatible with the setting, but not necessarily visually subordinate. New developments in these settings are exempt from the color and siting guidelines in the Key Viewing Areas section of this chapter. These areas are:

(A) Corbett Rural Center (Village)

(B) Skamania Rural Center (Village)

(C) West of Hood River Urban Area, east of Country Club Road (Rural Residential)

(D) Murray's Addition subdivision, The Dalles (Residential)

(E) Two small areas south of The Dalles in Sections 9 and 10, Township 1N, Range 13E (Residential)

(F) Portion of Underwood Heights along Cooper Avenue, south of Cook-Underwood Road (Rural Residential)

(4) Scenic Travel Corridors

All review uses within Scenic Travel Corridors shall comply with the following applicable guidelines:

(a) For the purposes of implementing this section, the foreground of a scenic travel corridor shall include those lands within 1/4 mile of the edge of pavement of the scenic travel corridor roadway.

(b) All new buildings and alterations to existing buildings, except in a Rural Center designation (village landscape setting), shall be set back at least 100 feet from the edge of pavement of the scenic travel corridor roadway. A variance to this setback requirement may be granted pursuant to 350-81-078(2). All new parking lots and expansions of existing parking lots shall be set back at least 100 feet from the edge of pavement of the scenic travel corridor roadway, to the maximum extent practicable.

(c) Additions to existing buildings or expansion of existing parking lots located within 100 feet of the edge of pavement of a scenic travel corridor roadway, except in a Rural Center designation (village landscape setting), shall comply with 350-81-520 (4)(b) above, to the maximum extent practicable.

(d) All proposed vegetation management projects in public rights-of-way to provide or improve views shall include the following:

(A) An evaluation of potential visual impacts of the proposed project as seen from any key viewing area.

(B) An inventory of any rare plants, sensitive wildlife habitat, wetlands, or riparian areas on the project site. If such resources are determined to be present, the project shall comply with applicable Management Plan guidelines to protect the resources.

(e) When evaluating possible locations for undergrounding of signal wires or powerlines, railroads and utility companies shall prioritize those areas specifically recommended as extreme or high priorities for undergrounding in the *Columbia River Gorge National Scenic Area Corridor Visual Inventory* (April 1990).

(f) New production and/or development of mineral resources proposed within 1/4 mile of the edge of pavement of a scenic travel corridor may be allowed upon a demonstration that full visual screening of the site from the scenic travel corridor can be achieved by use of existing topographic features or existing vegetation designed to be retained through the planned duration of the proposed project. An exception

to this may be granted if planting of new vegetation in the vicinity of the access road to the mining area would achieve full screening. If existing vegetation is partly or fully employed to achieve visual screening, over 75 percent of the tree canopy area shall be coniferous species providing adequate winter screening. Mining and associated primary processing of mineral resources is prohibited within 100 feet of a scenic travel corridor, as measured from the edge of pavement, except for access roads. Compliance with full screening requirements shall be achieved within timeframes specified in 350-81-520 (2)(ee)

(g) Expansion of existing quarries may be allowed pursuant to 350-81-520 (2)(bb). Compliance with visual subordination requirements shall be achieved within timeframes specified in 350-81-520 (2)(dd).

**350-81-530. Special Management Area Scenic Review Criteria**

(1) SMA Design Guidelines Based on Landscape Settings

(a) The following guidelines apply to all lands within SMA landscape settings regardless of visibility from KVAs (includes areas seen from KVAs as well as areas not seen from KVAs):

(A) Pastoral: Pastoral areas shall retain the overall appearance of an agricultural landscape.

(i) The use of plant species common to the landscape setting shall be encouraged. The use of plant species in rows, as commonly found in the landscape setting, is encouraged.

(B) Coniferous Woodland and Oak-Pine Woodland: Woodland areas shall retain the overall appearance of a woodland landscape. New developments and land uses shall retain the overall visual character of the natural appearance of the Coniferous Woodland and Oak-Pine Woodland landscape.

(i) Buildings shall be encouraged to have a vertical overall appearance in the Coniferous Woodland landscape setting and a horizontal overall appearance in the Oak-Pine Woodland landscape setting.

(ii) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(C) Residential: The Residential setting is characterized by concentrations of dwellings.

(i) At Rowena Dell, new buildings shall have a rustic appearance using natural materials. At Latourell Falls, new buildings shall have an appearance consistent with the predominant historical architectural style.

(ii) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(D) River Bottomlands: River Bottomlands shall retain the overall visual character of a floodplain and associated islands.

(i) Buildings shall have an overall horizontal appearance in areas with little tree cover.

(ii) Use of plant species native to the landscape setting shall be encouraged. Where non-native plants are used, they shall have native-appearing characteristics.

(E) Gorge Walls, Canyonlands, and Wildlands: New developments and land uses shall retain the overall visual character of the natural-appearing landscape.

(i) Structures, including signs, shall have a rustic appearance, use nonreflective materials, have low contrast with the surrounding landscape, and be of a Cascadian architectural style.

(ii) Temporary roads shall be promptly closed and revegetated.

(iii) New utilities shall be below ground surface, where feasible.

(iv) Use of plant species non-native to the Columbia River Gorge shall not be allowed.

(2) SMA Guidelines for Development and Uses Visible from KVAs

(a) The guidelines in this section shall apply to proposed developments on sites topographically visible from key viewing areas.

(b) New developments and land uses shall be evaluated to ensure that the required scenic standard is met and that scenic resources are not adversely affected, including cumulative effects, based on the degree of visibility from key viewing areas.

(c) The required SMA scenic standards for all development and uses are summarized in the following table:

REQUIRED SMA SCENIC STANDARDS		
LANDSCAPE SETTING	LAND USE DESIGNATION	SCENIC STANDARD
Coniferous Woodland, Oak-Pine Woodland	Forest (National Forest Lands), Open Space	Not Visually Evident
River Bottomlands	Open Space	Not Visually Evident
Gorge Walls, Canyonlands, Wildlands	Forest, Agriculture, Public Recreation, Open Space	Not Visually Evident
Coniferous Woodland, Oak-Pine Woodland	Forest, Agriculture, Residential, Public Recreation	Visually Subordinate
Residential	Residential	Visually Subordinate
Pastoral	Forest, Agriculture, Public Recreation, Open Space	Visually Subordinate
River Bottomlands	Forest, Agriculture, Public Recreation	Visually Subordinate

(d) In all landscape settings, scenic standards shall be met by blending new development with the adjacent natural landscape elements rather than with existing development.

(e) Proposed developments or land uses shall be sited to achieve the applicable scenic standard. Development shall be designed to fit the natural topography, to take advantage of landform and vegetation screening, and to minimize visible grading or other modifications of landforms, vegetation

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cover, and natural characteristics. When screening of development is needed to meet the scenic standard from key viewing areas, use of existing topography and vegetation shall be given priority over other means of achieving the scenic standard such as planting new vegetation or using artificial berms.

(f) The extent and type of conditions applied to a proposed development or use to achieve the scenic standard shall be proportionate to its degree of visibility from key viewing areas.

(A) Decisions shall include written findings addressing the factors influencing the degree of visibility, including but not limited to:

(i) The amount of area of the building site exposed to key viewing areas,

(ii) The degree of existing vegetation providing screening,

(iii) The distance from the building site to the key viewing areas from which it is visible,

(iv) The number of key viewing areas from which it is visible, and

(v) The linear distance along the key viewing areas from which the building site is visible (for linear key viewing areas, such as roads).

(B) Conditions may be applied to various elements of proposed developments to ensure they are visually subordinate to their setting as seen from key viewing areas, including but not limited to:

(i) Siting (location of development on the subject property, building orientation, and other elements),

(ii) Retention of existing vegetation,

(iii) Design (color, reflectivity, size, shape, height, architectural and design details and other elements), and

(iv) New landscaping.

(g) Sites approved for new development to achieve scenic standards shall be consistent with guidelines to protect wetlands, riparian corridors, sensitive plant or wildlife sites and the buffer zones of each of these natural resources, and guidelines to protect cultural resources.

(h) Proposed developments shall not protrude above the line of a bluff, cliff, or skyline as seen from key viewing areas.

(i) Structure height shall remain below the average tree canopy height of the natural vegetation adjacent to the structure, except if it has been demonstrated that meeting this guideline is not feasible considering the function of the structure.

(j) The following guidelines shall apply to new landscaping used to screen development from key viewing areas:

(A) New landscaping (including new earth berms) to achieve the required scenic standard from key viewing areas shall be required only when application of all other available guidelines in this chapter is not sufficient to make the development meet the scenic standard from key viewing areas. Development shall be sited to avoid the need for new landscaping wherever possible.

(B) If new landscaping is necessary to meet the required standard, existing on-site vegetative screening and other visibility factors shall be analyzed to determine the extent of new landscaping, and the size of new trees needed to achieve

the standard. Any vegetation planted pursuant to this guideline shall be sized to provide sufficient screening to meet the scenic standard within five years or less from the commencement of construction.

(C) Landscaping shall be installed as soon as practicable, and prior to project completion. Applicants and successors in interest for the subject parcel are responsible for the proper maintenance and survival of planted vegetation, and replacement of such vegetation that does not survive.

(D) The *Scenic Resources Implementation Handbook* shall include recommended species for each landscape setting consistent with the Landscape Settings Design Guidelines in this chapter, and minimum recommended sizes of new trees planted (based on average growth rates expected for recommended species).

(k) Unless expressly exempted by other provisions in this chapter, colors of structures on sites visible from key viewing areas shall be dark earth-tones found at the specific site or the surrounding landscape. The specific colors or list of acceptable colors shall be included as a condition of approval. The *Scenic Resources Implementation Handbook* will include a recommended palette of colors as dark or darker than the colors in the shadows of the natural features surrounding each landscape setting.

(l) The exterior of buildings on lands seen from key viewing areas shall be composed of non-reflective materials or materials with low reflectivity. The *Scenic Resources Implementation Handbook* will include a recommended list of exterior materials. These recommended materials and other materials may be deemed consistent with this guideline, including those where the specific application meets approval thresholds in the "Visibility and Reflectivity Matrices" in the *Implementation Handbook*. Continuous surfaces of glass unscreened from key viewing areas shall be limited to ensure meeting the scenic standard. Recommended square footage limitations for such surfaces will be provided for guidance in the *Implementation Handbook*.

(m) Any exterior lighting shall be sited, limited in intensity, shielded, or hooded in a manner that prevents lights from being highly visible from key viewing areas and from noticeably contrasting with the surrounding landscape setting, except for road lighting necessary for safety purposes.

(n) Seasonal lighting displays shall be permitted on a temporary basis, not to exceed 3 months.

(3) SMA Guidelines for KVA Foregrounds and Scenic Routes

(a) All new developments and land uses immediately adjacent to scenic routes shall be in conformance with state or county scenic route guidelines.

(b) Scenic highway corridor strategies shall be developed and implemented for Interstate 84 (I-84), Washington State Route 14 (SR 14) and the Historic Columbia River Highway (HCRH). For SR 14 and the HCRH, this involves ongoing implementation (and possible updating) of the associated existing documents. For I-84, a new scenic corridor strategy shall be developed by the end of 2005.

(c) The goals of scenic corridor strategies shall include: 1) providing a framework for future highway improvements and management that meet Management Plan scenic guidelines and public transportation needs; and 2) creating design

continuity for the highway corridor within the Scenic Area. Corridor strategies shall, at minimum, include design guidelines (e.g. materials, conceptual designs, etc.) for typical projects that are consistent with Management Plan scenic resources provisions and an interdisciplinary, interagency project planning and development process.

(d) The following guidelines shall apply only to development within the immediate foregrounds of key viewing areas. Immediate foregrounds are defined as within the developed prism of a road or trail KVA or within the boundary of the developed area of KVAs such as Crown Pt. and Multnomah Falls. They shall apply in addition to applicable guidelines in 350-81-530(2).

(A) The proposed development shall be designed and sited to meet the applicable scenic standard from the foreground of the subject KVA. If the development cannot meet the standard, findings must be made documenting why the project cannot meet the requirements in the previous section and why it cannot be redesigned or wholly or partly relocated to meet the scenic standard.

(B) Findings must evaluate the following:

(i) The limiting factors to meeting the required scenic standard and/or applicable guidelines from the previous section,

(ii) Reduction in project size;

(iii) Options for alternative sites for all or part of the project, considering parcel configuration and on-site topographic or vegetative screening;

(iv) Options for design changes including changing the design shape, configuration, color, height, or texture in order to meet the scenic standard.

(C) Form, line, color, texture, and design of a proposed development shall be evaluated to ensure that the development blends with its setting as seen from the foreground of key viewing areas:

(i) Form and Line-Design of the development shall minimize changes to the form of the natural landscape. Development shall borrow form and line from the landscape setting and blend with the form and line of the landscape setting. Design of the development shall avoid contrasting form and line that unnecessarily call attention to the development.

(ii) Color-Color shall be found in the project's surrounding landscape setting. Colors shall be chosen and repeated as needed to provide unity to the whole design.

(iii) Texture-Textures borrowed from the landscape setting shall be emphasized in the design of structures. Landscape textures are generally rough, irregular, and complex rather than smooth, regular, and uniform.

(iv) Design-Design solutions shall be compatible with the natural scenic quality of the Gorge. Building materials shall be natural or natural appearing. Building materials such as concrete, steel, aluminum, or plastic shall use form, line color and texture to harmonize with the natural environment. Design shall balance all design elements into a harmonious whole, using repetition of elements and blending of elements as necessary.

(e) Right-of-way vegetation shall be managed to minimize visual impacts of clearing and other vegetation removal as seen from key viewing areas. Roadside vegetation man-

agement (vista clearing, planting, etc.) should enhance views from the highway.

(f) Screening from key viewing areas shall be encouraged for existing and required for new road maintenance, warehouse, and stockpile areas.

(4) SMA Guidelines for Areas Not Seen from KVAs

(a) Unless expressly exempted by other provisions in this chapter, colors of structures on sites not visible from key viewing areas shall be earth-tones found at the specific site. The specific colors or list of acceptable colors shall be approved as a condition of approval, drawing from the recommended palette of colors included in the *Scenic Resources Implementation Handbook*.

### **350-81-540. General Management Area Cultural Resource Review Criteria**

(1) General Provisions for Implementing the Cultural Resources Protection Process.

(a) All cultural resource surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 Code of Federal Regulations (CFR) Part 61 and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date).

(b) Cultural resource surveys, evaluations, assessments, and mitigation plans shall generally be conducted in consultation with Indian tribal governments and any person who submits written comments on a proposed use (interested person). Indian tribal governments shall be consulted if the affected cultural resources are prehistoric or otherwise associated with Native Americans. If the cultural resources are associated with non-Native Americans, such as an historic house or pioneer campsite, the Indian tribal governments do not have to be consulted.

(c) Reconnaissance and Historic Surveys and Survey Reports.

(A) Reconnaissance survey requirements and exceptions.

(i) A reconnaissance survey shall be required for all proposed uses within 500 feet of a known cultural resource, including those uses listed as exceptions in 350-80-504 (1)(c)(A)(ii) below.

(ii) A reconnaissance survey shall be required for all proposed uses, except:

(I) The modification, expansion, replacement, or reconstruction of existing buildings and structures.

(II) Proposed uses that would not disturb the ground, including land divisions and lot-line adjustments; storage sheds that do not require a foundation; low-intensity recreation uses, such as fishing, hunting, and hiking; installation of surface chemical toilets; hand treatment of brush within established rights-of-way; and new uses of existing structures.

(III) Proposed uses that involve minor ground disturbance, as defined by depth and extent, including repair and maintenance of lawfully constructed and serviceable structures; home gardens; livestock grazing; cultivation that employs minimum tillage techniques, such as replanting pas-

tures using a grassland drill; construction of fences; new utility poles that are installed using an auger, post-hole digger, or similar implement; and placement of mobile homes where septic systems and underground utilities are not involved.

The Gorge Commission shall review all land use applications and determine if proposed uses would have a minor ground disturbance.

(IV) Proposed uses that occur on sites that have been disturbed by human activities, provided the proposed uses do not exceed the depth and extent of existing ground disturbance. To qualify for this exception, a project applicant must demonstrate that land-disturbing activities occurred in the project area. Land-disturbing activities include grading and cultivation.

(V) Proposed uses that would occur on sites that have been adequately surveyed in the past.

The project applicant must demonstrate that the project area has been adequately surveyed to qualify for this exception. Past surveys must have been conducted by a qualified professional and must include a surface survey and subsurface testing. The nature and extent of any cultural resources in the project area must be adequately documented.

(VI) Proposed uses occurring in areas that have a low probability of containing cultural resources, except:

- Residential development that involves two or more new dwellings for the same project applicant.
- Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities.
- Public transportation facilities that are outside improved rights-of-way.
- Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater.
- Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

Areas that have a low probability of containing cultural resources shall be identified using the results of reconnaissance surveys conducted by the Gorge Commission, the Forest Service, public agencies, and private archaeologists.

The Gorge Commission, after consulting Indian tribal governments and state historic preservation officers, shall prepare and adopt a map showing areas that have a low probability of containing cultural resources. This map shall be adopted within 200 days after the Secretary of Agriculture concurs with the Management Plan. It shall be refined and revised as additional reconnaissance surveys are conducted. Areas shall be added or deleted as warranted. All revisions of this map shall be reviewed and approved by the Gorge Commission.

(B) A historic survey shall be required for all proposed uses that would alter the exterior architectural appearance of buildings and structures that are 50 years old or older, or would compromise features of the surrounding area that are important in defining the historic or architectural character of buildings or structures that are 50 years old or older.

(C) The Gorge Commission shall conduct and pay for all reconnaissance and historic surveys for small-scale uses in the General Management Area. When archaeological

resources or traditional cultural properties are discovered, the Gorge Commission also shall identify the approximate boundaries of the resource or property and delineate a reasonable buffer zone. Reconnaissance surveys and buffer zone delineations for large-scale uses shall be the responsibility of the project applicant.

For 350-81-540, large-scale uses include residential development involving two or more new dwellings; all recreation facilities; commercial and industrial development; public transportation facilities; electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances.

(D) Reconnaissance Surveys for Small-Scale Uses.

Reconnaissance surveys for small-scale uses shall generally include a surface survey and subsurface testing. They shall meet the following guidelines:

(i) A surface survey of the project area shall be conducted, except for inundated areas and impenetrable thickets.

(ii) Subsurface testing shall be conducted if the surface survey reveals that cultural resources may be present. Subsurface probes shall be placed at intervals sufficient to determine the absence or presence of cultural resources.

(E) Reconnaissance Survey Reports for Small-Scale Uses

The results of a reconnaissance survey for small-scale uses shall be documented in a confidential report that includes:

(i) A description of the fieldwork methodology used to identify cultural resources, including a description of the type and extent of the reconnaissance survey.

(ii) A description of any cultural resources that were discovered in the project area, including a written description and photographs.

(iii) A map that shows the project area, the areas surveyed, the location of subsurface probes, and, if applicable, the approximate boundaries of the affected cultural resources and a reasonable buffer zone.

(F) Reconnaissance Surveys for Large-Scale Uses

(i) Reconnaissance surveys for large-scale uses shall be designed by a qualified professional. A written description of the survey shall be submitted to and approved by the Gorge Commission's designated archaeologist.

(ii) Reconnaissance surveys shall reflect the physical characteristics of the project area and the design and potential effects of the proposed use. They shall meet the following guidelines:

(I) Archival research shall be performed before any field work. It should entail a thorough examination of tax records; historic maps, photographs, and drawings; previous archaeological, historic, and ethnographic research; cultural resource inventories and records maintained by federal, state, and local agencies; and primary historic accounts, such as diaries, journals, letters, and newspapers.

(II) Surface surveys shall include the entire project area, except for inundated areas and impenetrable thickets.

(III) Subsurface probes shall be placed at intervals sufficient to document the presence or absence of cultural resources.

(IV) Archaeological site inventory forms shall be submitted to the State Historic Preservation Officer whenever cultural resources are discovered.

(G) Reconnaissance Survey Reports for Large-Scale Uses

The results of a reconnaissance survey for large-scale uses shall be documented in a confidential report that includes:

(i) A description of the proposed use, including drawings and maps.

(ii) A description of the project area, including soils, vegetation, topography, drainage, past alterations, and existing land use.

(iii) A list of the documents and records examined during the archival research and a description of any prehistoric or historic events associated with the project area.

(iv) A description of the fieldwork methodology used to identify cultural resources, including a map that shows the project area, the areas surveyed, and the location of subsurface probes. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(v) An inventory of the cultural resources that exist in the project area, including a written description, photographs, drawings, and a map. The map shall be prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(vi) A summary of all written comments submitted by Indian tribal governments and other interested persons.

(vii) A preliminary assessment of whether the proposed use would or would not have an effect on cultural resources. The assessment shall incorporate concerns and recommendations voiced during consultation meetings and information obtained through archival and ethnographic research and field surveys.

(H) Historic Surveys and Reports

(i) Historic surveys shall document the location, form, style, integrity, and physical condition of historic buildings and structures. They shall include original photographs and maps. Archival research, blueprints, and drawings should be used as necessary.

(ii) Historic surveys shall describe any uses that will alter or destroy the exterior architectural appearance of the historic buildings or structures, or compromise features of the site that are important in defining the overall historic character of the historic buildings or structures.

(iii) The project applicant shall provide detailed architectural drawings and building plans that clearly illustrate all proposed alterations.

(d) The responsibility and cost of preparing an evaluation of significance, assessment of effect, or mitigation plan shall be borne by the project applicant, except for resources discovered during construction. The Gorge Commission shall conduct and pay for evaluations of significance and mitigation plans for resources that are discovered during construction of small-scale and large-scale uses.

(e) Cultural resources are significant if one of the following criteria is satisfied:

(A) The cultural resources are included in, or eligible for inclusion in, the National Register of Historic Places. The criteria for evaluating the eligibility of cultural resources for

the National Register of Historic Places appear in the "National Register Criteria for Evaluation" (36 CFR 60.4).

(B) The cultural resources are determined to be culturally significant by an Indian tribal government, based on criteria developed by that Indian tribal government and filed with the Gorge Commission.

(f) The Gorge Commission shall establish a Cultural Advisory Committee (CAC). The CAC shall comprise cultural resource professionals, interested individuals, and at least one representative from each of the four Indian tribes. If a project applicant's and Indian tribal government's evaluations of significance contradict, the Cultural Advisory Committee (CAC) shall review the applicant's evaluation and Indian tribal government's substantiated concerns. The CAC will submit a recommendation to the Executive Director as to whether affected cultural resources are significant.

(2) Cultural Resource Reconnaissance and Historic Surveys

(a) Consultation and Ethnographic Research

(A) When written comments are submitted to the Executive Director within the comment period provided in 350-81-040, the project applicant shall offer to meet with the interested persons within 10 calendar days. The 10-day consultation period may be extended upon agreement between the project applicant and the interested persons.

Consultation meetings should provide an opportunity for interested persons to explain how the proposed use may affect cultural resources. Recommendations to avoid potential conflicts should be discussed.

All written comments and consultation meeting minutes shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report; inapplicable elements may be omitted.

(B) A project applicant who is proposing a large-scale use shall conduct interviews and other forms of ethnographic research if interested persons submit a written request for such research. All requests must include a description of the cultural resources that may be affected by the proposed use and the identity of knowledgeable informants. Ethnographic research shall be conducted by qualified specialists. Tape recordings, maps, photographs, and minutes shall be used when appropriate.

All written comments, consultation meeting minutes, and ethnographic research shall be incorporated into the reconnaissance or historic survey report. In instances where a survey is not required, all such information shall be recorded and addressed in a report that typifies a survey report.

(b) Notice of Survey Results

(A) The Executive Director shall submit a copy of all cultural resource survey reports to the State Historic Preservation Officer and the Indian tribal governments. Survey reports may include measures to avoid affected cultural resources, such as a map that shows a reasonable buffer zone.

(B) The State Historic Preservation Officer and the tribes shall have 30 calendar days from the date a survey report is mailed to submit written comments to the Executive Director.

The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the proposed use would be consistent with 350-81-540. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude when one of the following conditions exists:

(i) The proposed use does not require a reconnaissance or historic survey, no cultural resources are known to exist in the project area, and no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed.

(ii) A reconnaissance survey demonstrates that cultural resources do not exist in the project area, no substantiated concerns were voiced by interested persons within 21 calendar days of the date that a notice was mailed, and no substantiated concerns regarding the reconnaissance survey were voiced by the State Historic Preservation Officer or Indian tribal governments during the 30-day comment period required in subsection 2(b)(B) above.

(iii) The proposed use would avoid archaeological resources and traditional cultural resources that exist in the project area. To meet this guideline, a reasonable buffer zone must be established around the affected resources or properties; all ground-disturbing activities shall be prohibited within the buffer zone.

Buffer zones must preserve the integrity and context of cultural resources. They will vary in width depending on the eventual use of the project area, the type of cultural resources that are present, and the characteristics for which the cultural resources may be significant. A deed covenant, easement, or other appropriate mechanism shall be developed to ensure that the buffer zone and the cultural resources are protected.

An evaluation of significance shall be conducted if a project applicant decides not to avoid the affected cultural resource. In these instances, the reconnaissance survey and survey report shall be incorporated into the evaluation of significance.

(C) A historic survey demonstrates that the proposed use would not have an effect on historic buildings or structures because:

(i) The State Historic Preservation Officer concludes that the historic buildings or structures are clearly not significant, as determined by using the criteria in the "National Register Criteria for Evaluation" (36 CFR 60.4), or

(ii) The proposed use would not compromise the historic or architectural character of the affected buildings or structures, or compromise features of the site that are important in defining the overall historic character of the affected buildings or structures, as determined by the guidelines and standards in *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

The historic survey conducted by the Gorge Commission may provide sufficient information to satisfy these guidelines. If it does not, architectural and building plans, photographs, and archival research may be required. The project applicant shall be responsible for providing information beyond that included in the survey conducted by the Gorge Commission.

The historic survey and report must demonstrate that these guidelines have been clearly and absolutely satisfied. If the State Historic Preservation Officer or the Executive Director question whether these guidelines have been satisfied, the project applicant shall conduct an evaluation of significance.

(3) Evaluation of Significance

(a) Evaluation Criteria and Information Needs

If cultural resources would be affected by a new use, an evaluation of their significance shall be conducted. Evaluations of significance shall meet the following guidelines:

(A) Evaluations of significance shall follow the procedures in *How to Apply the National Register Criteria for Evaluation* (U.S. Department of the Interior, no date) and *Guidelines for Evaluating and Documenting Traditional Cultural Properties* (Parker and King, no date). They shall be presented within local and regional contexts and shall be guided by previous research and current research designs that are relevant to specific research questions for the Columbia River Gorge.

(B) To evaluate the significance of cultural resources, the information gathered during the reconnaissance or historic survey may have to be supplemented. Detailed field mapping, subsurface testing, photographic documentation, laboratory analyses, and archival research may be required.

(C) The project applicant shall contact Indian tribal governments and interested persons, as appropriate. Ethnographic research shall be undertaken as necessary to fully evaluate the significance of the cultural resources.

(D) The evaluation of significance shall follow the principles, guidelines, and report format recommended by the Oregon State Historic Preservation Office (Oregon SHPO 1990) or Washington Office of Archaeology and Historic Preservation (Washington SHPO, no date). It shall incorporate the results of the reconnaissance or historic survey and shall illustrate why each cultural resource is or is not significant. Findings shall be presented within the context of relevant local and regional research.

(E) All documentation used to support the evaluation of significance shall be cited. Evidence of consultation with Indian tribal governments and other interested persons shall be presented. All comments, recommendations, and correspondence from Indian tribal governments and interested persons shall be appended to the evaluation of significance.

(b) Notice of Evaluation Results

(A) If the evaluation of significance demonstrates that the cultural resources are not significant, the Executive Director shall submit a copy of the evaluation of significance to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the evaluation of significance is mailed to

submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Cultural Resources are Culturally Significant

(A) If an Indian tribal government believes that the affected cultural resources are culturally significant, contrary to the evaluation submitted by the project applicant, the Cultural Advisory Committee (CAC) shall make an independent review of the applicant's evaluation and the Indian tribal government's substantiated concerns. The CAC shall formulate a recommendation regarding the significance of the cultural resources.

(B) The Indian tribal government shall substantiate its concerns in a written report. The report shall be submitted to the Executive Director, CAC, and the project applicant within 15 calendar days from the date the evaluation of significance is mailed. The CAC must submit its recommendation to the Executive Director within 30 calendar days from the date the evaluation of significance is mailed.

(d) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the affected resources are significant. If the final decision contradicts the comments or recommendations submitted by the State Historic Preservation Officer or CAC, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the affected cultural resources are not significant.

(C) If the project applicant or the Executive Director determines that the cultural resources are significant, the effects of the proposed use shall be assessed.

(4) Assessment of Effect

(a) Assessment Criteria and Information Needs

If a use could potentially affect significant cultural resources, an assessment shall be made to determine if it would have no effect, no adverse effect, or an adverse effect. The assessment shall meet the following guidelines:

(A) The assessment of effect shall be based on the criteria published in "Protection of Historic Properties" (36 CFR 800.9) and shall incorporate the results of the reconnaissance or historic survey and the evaluation of significance. All documentation shall follow the requirements listed in 36 CFR 800.8.

(i) Proposed uses are considered to have an effect on cultural resources when they alter or destroy characteristics of the resources that make them significant [36 CFR 800.9(a)].

(ii) Proposed uses are considered to have an adverse effect when they may diminish the integrity of the cultural resource's location, design, setting, materials, workmanship, feeling, or association [36 CFR 800.9(b)]. Adverse effects on cultural resources include, but are not limited to:

(I) Physical destruction, damage, or alteration of all or part of the cultural resource.

(II) Isolation of the cultural resource from its setting or alteration of the character of the resource's setting when that character contributes to the resource's qualification as being significant.

(III) Introduction of visual, audible, or atmospheric elements that are out of character with the cultural resource or its setting.

(IV) Neglect of a significant cultural resource resulting in its deterioration or destruction.

(B) The assessment of effect shall be prepared in consultation with Indian tribal governments and interested persons, as appropriate. The concerns and recommendations voiced by Indian tribal governments and interested persons shall be recorded and addressed in the assessment.

(C) The effects of a proposed use that would otherwise be determined to be adverse may be considered to be not adverse if any of the following instances apply:

(i) The cultural resources are of value only for their potential contribution to archeological, historical, or architectural research, and when such value can be substantially preserved through the conduct of appropriate research before development begins, and such research is conducted in accordance with applicable professional standards and guidelines.

(ii) The undertaking is limited to the rehabilitation of buildings and structures, and is conducted in a manner that preserves the historical and architectural character of affected cultural resources through conformance with *The Secretary of the Interior's Standards for Rehabilitation* (U.S. Department of the Interior 1990) and *The Secretary of the Interior's Standards for Historic Preservation Projects* (U.S. Department of the Interior 1983).

(b) Notice of Assessment Results

(A) If the assessment of effect concludes that the proposed use would have no effect or no adverse effect on significant cultural resources, the Executive Director shall submit a copy of the assessment to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the assessment of effect is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

(c) Conclusion of the Cultural Resource Protection Process

(A) The Executive Director shall make a final decision on whether the proposed use would have no effect, no adverse effect, or an adverse effect. If the final decision contradicts the comments submitted by the State Historic Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if the proposed use would have no effect or no adverse effect on significant cultural resources.

(C) A mitigation plan shall be prepared if a project applicant or the Executive Director determines that the proposed use would have an adverse effect on significant cultural resources.

(5) Mitigation Plans

(a) Mitigation Plan Criteria and Information Needs

Mitigation plans shall be prepared when proposed uses would have an adverse effect on significant cultural resources. The plans shall reduce an adverse effect to no

effect or no adverse effect. Mitigation plans shall meet the following guidelines:

(A) Mitigation plans shall be prepared in consultation with persons who have concerns about or knowledge of the affected cultural resources, including Indian tribal governments, Native Americans, local governments whose jurisdiction encompasses the project area, and the State Historic Preservation Officer.

(B) Avoidance of cultural resources through project design and modification is preferred. Avoidance may be effected by reducing the size, scope, configuration, and density of the proposed use.

Alternative mitigation measures shall be used only if avoidance is not practicable. Alternative measures include, but are not limited to, burial under fill, stabilization, removal of the cultural resource to a safer place, and partial to full excavation and recordation. If the mitigation plan includes buffer zones to protect cultural resources, a deed covenant, easement, or other appropriate mechanism shall be developed and recorded in county deeds and records.

(C) Mitigation plans shall incorporate the results of the reconnaissance or historic survey, the evaluation of significance, and the assessment of effect, and shall provide the documentation required in 36 CFR 800.8(d), including, but not limited to:

(i) A description and evaluation of any alternatives or mitigation measures that the project applicant proposes for reducing the effects of the proposed use.

(ii) A description of any alternatives or mitigation measures that were considered but not chosen and the reasons for their rejection.

(iii) Documentation of consultation with the State Historic Preservation Officer regarding any alternatives or mitigation measures.

(iv) A description of the project applicant's efforts to obtain and consider the views of Indian tribal governments, interested persons, and Executive Director.

(v) Copies of any written recommendations submitted to the Executive Director or project applicant regarding the effects of the proposed use on cultural resources and alternatives to avoid or reduce those effects.

**(b) Notice of Mitigation Plan Results**

(A) If a mitigation plan reduces the effect of a use from an adverse effect to no effect or no adverse effect, the Executive Director shall submit a copy of the mitigation plan to the State Historic Preservation Officer and the Indian tribal governments.

(B) The State Historic Preservation Officer, Indian tribal governments, and interested persons shall have 30 calendar days from the date the mitigation plan is mailed to submit written comments to the Executive Director. The Executive Director shall record and address all written comments in the development review order.

**(c) Conclusion of the Cultural Resource Protection Process**

(A) The Executive Director shall make a final decision on whether the mitigation plan would reduce an adverse effect to no effect or no adverse effect. If the final decision contradicts the comments submitted by the State Historic

Preservation Officer, the Executive Director shall justify how an opposing conclusion was reached.

(B) The cultural resource protection process may conclude if a mitigation plan would reduce an adverse effect to no effect or no adverse effect.

(C) The proposed use shall be prohibited when acceptable mitigation measures fail to reduce an adverse effect to no effect or no adverse effect.

**(6) Cultural Resources Discovered After Construction Begins**

The following procedures shall be effected when cultural resources are discovered during construction activities. All survey and evaluation reports and mitigation plans shall be submitted to the Executive Director and the State Historic Preservation Officer. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.

(a) **Halt of Construction.** All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.

(b) **Notification.** The project applicant shall notify the Executive Director within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.

(c) **Survey and Evaluation.** The Gorge Commission shall survey the cultural resources after obtaining written permission from the landowner and appropriate permits from the State Historic Preservation Officer. (See Oregon Revised Statute [ORS] 273.705, ORS 358.905 to 358.955, and Revised Code of Washington [RCW] 27.53). It shall gather enough information to evaluate the significance of the cultural resources. The survey and evaluation shall be documented in a report that generally follows the guidelines in "Reconnaissance Survey Reports for Large-Scale Uses" [350-80-540 (1)(c)(G)] and "Evaluation of Significance: Evaluation Criteria and Information Needs" [350-80-540 (3)(a)].

Based on the survey and evaluation report and any written comments, the Executive Director shall make a final decision on whether the resources are significant. Construction activities may recommence if the cultural resources are not significant.

A mitigation plan shall be prepared if the affected cultural resources are significant.

(d) **Mitigation Plan.** Mitigation plans shall be prepared according to the information, consultation, and report guidelines contained in the "Mitigation Plans: Mitigation Plan Criteria and Information Needs" section of this chapter. Construction activities may recommence when the conditions in the mitigation plan have been executed.

**(7) Discovery of Human Remains**

The following procedures shall be effected when human remains are discovered during a cultural resource survey or during construction. Human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.

(a) Halt of Activities. All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.

(b) Notification. Local law enforcement officials, the Executive Director, and the Indian tribal governments shall be contacted immediately.

(c) Inspection. The county coroner, or appropriate official, shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.

(d) Jurisdiction. If the remains are modern, the appropriate law enforcement officials shall assume jurisdiction and the cultural resource protection process may conclude.

(e) Treatment. In Oregon, prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in ORS 97.740 to 97.760. In Washington, the procedures set forth in RCW 27.44 and 68.05 shall generally be implemented if the remains are prehistoric/historic.

If the human remains will be reinterred or preserved in their original position, a mitigation plan shall be prepared in accordance with the consultation and report requirements specified in "Mitigation Plans: Mitigation Plan Criteria and Information Needs" [350-81-540 (5)(a)].

The mitigation plan shall accommodate the cultural and religious concerns of Native Americans. The cultural resource protection process may conclude when the conditions set forth in "Mitigation Plans: Conclusion of the Cultural Resource Protection Process" [350-81-540 (5)(c)] are met and the mitigation plan is executed.

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

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

### **350-81-550. Special Management Area Cultural Resource Review Criteria.**

#### **(1) General Guidelines for Implementing the Cultural Resources Protection Process**

(a) All cultural resource information shall remain confidential, according to Section 6 (a)(1)(A) of the Scenic Area Act. Federal agency cultural resource information is also exempt by statute from the Freedom of Information Act under 16 USC 470 hh and 36 CFR 296.18.

(b) All cultural resources surveys, evaluations, assessments, and mitigation plans shall be performed by professionals whose expertise reflects the type of cultural resources that are involved. Principal investigators shall meet the professional standards published in 36 CFR 61.

(c) The Forest Service will be responsible for performing the literature review and consultation, inventory, evaluations of significance, assessments of effect, and mitigation requirements in 350-81-550(4) for forest practices and National Forest System lands.

(d) New developments or land uses shall not adversely affect significant cultural resources.

(2) The procedures and guidelines in 350-81-540 shall be used to review all proposed developments and land uses other

than those on all federal lands, federally assisted projects and forest practices.

(3) The procedures and guidelines in 36 CFR 800 and 350-81-550(4) shall be used by the Executive Director and federal agencies to evaluate new developments or land uses on federal lands, federally assisted projects, and forest practices.

(4) The following procedures as well as the provisions in 36 CFR 800 shall be used to assess potential effects to cultural resources.

#### **(a) Literature Review and Consultation**

(A) An assessment shall be made to determine if any cultural resources listed on the National Register of Historic Places at the national, state or county level exist on or within the area of potential direct and indirect impacts.

(B) A search shall be made of state and county government, National Scenic Area/Forest Service and any other pertinent inventories, such as archives and photographs, to identify cultural resources, including consultation with the State Historic Preservation Office and tribal governments. State and tribal government response to the consultation request shall be allowed for 30 days.

(C) Consultation with cultural resource professionals knowledgeable about the area.

(D) A field inventory by a cultural resource professional shall be required if the Forest Service or the Executive Director determines that a recorded or known cultural resource exists on or within the immediate vicinity of a new development or land use, including those reported in consultation with the Tribal governments.

#### **(b) Field Inventory**

(A) Tribal representatives shall be invited to participate in the field inventory.

(B) The field inventory shall consist of one or the other of the following guidelines, as determined by the cultural resource professional:

(i) Complete survey: the systematic examination of the ground surface through a controlled procedure, such as walking an area in evenly-spaced transects. A complete survey may also require techniques such as clearing of vegetation, augering or shovel probing of subsurface soils for the presence of buried cultural resources.

(ii) Sample survey: the sampling of an area to assess the potential of cultural resources within the area of proposed development or use. This technique is generally used for large or difficult to survey parcels, and is generally accomplished by a stratified random or non-stratified random sampling strategy. A parcel is either stratified by variables such as vegetation, topography or elevation, or by non-environmental factors such as a survey grid.

Under this method, statistically valid samples are selected and surveyed to indicate the probability of presence, numbers and types of cultural resources throughout the sampling strata. Depending on the results of the sample, a complete survey may or may not subsequently be recommended.

(C) A field inventory report shall be prepared, and shall include the following:

(i) A narrative integrating the literature review of section (4)(a) above with the field inventory of section (4)(b) above.



(ii) A description of the field inventory methodology used, including the type and extent of field inventory, supplemented by maps which graphically illustrate the areas surveyed, not surveyed, and the rationale for each.

(iii) A statement of the presence or absence of cultural resources within the area of the new development or land use.

(iv) When cultural resources are not located, a statement of the likelihood of buried or otherwise concealed cultural resources shall be included. Recommendations and standards for monitoring, if appropriate, shall be included.

(D) The report shall follow the format specified by the Washington Office of Archaeology and Historic Preservation for inventories conducted in the State of Washington. Reports for inventories conducted in the State of Oregon shall follow the format specified by the Oregon State Historic Preservation Office.

(E) The field inventory report shall be presented to the Forest Service or the Executive Director for review.

(c) Evaluations of Significance

(A) When cultural resources are found within the area of the new development or land use, an evaluation of significance shall be completed for each cultural resource in accordance with the criteria of the National Register of Historic Places (36 CFR 60.4).

(B) Evaluations of cultural resource significance shall be guided by previous and current research designs relevant to specific research questions for the area.

(C) Evaluations of the significance of traditional cultural properties shall follow National Register Bulletin 38, Guidelines for the Evaluation and Documentation of Traditional Cultural Properties, within local and regional contexts.

(D) Recommendations for eligibility to the National Register shall be completed for each identified resource, in accordance with National Register criteria A through D (36 CFR 60.4). The Forest Service or the Executive Director shall review evaluations for adequacy.

(E) Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources in the project area, and documentation of their concerns, shall be included as part of the evaluation of significance.

(F) An assessment of effect shall be required if the Forest Service or the Executive Director determines that the inventoried cultural resources are significant.

(d) Assessment of Effect

(A) For each significant (i.e., National Register eligible) cultural resource inventoried within the area of the proposed development or change in use, assessments of effect shall be completed, using the criteria outlined in 36 CFR 800.9 ("Assessing Effects"). Evidence of consultation with tribal governments and individuals with knowledge of the cultural resources of the project area shall be included for sections (4)(d)(B) through (4)(d)(D) below. The Forest Service or Executive Director shall review each determination for adequacy.

(B) If the proposed development or change in use will have "No Adverse Effect," as defined by 36 CFR 800.8, to a significant cultural resource, documentation for that finding shall be completed, following the "Documentation Requirements" of 36 CFR 800.8(a).

(C) If the proposed development or change in use will have an "Adverse Effect" as defined by 36 CFR 800.9(b) to a significant cultural resource, the type and extent of "adverse effect" upon the qualities of the property that make it eligible for the National Register shall be documented. This documentation shall follow the process outlined under 36 CFR 800.5(e).

(D) If the "effect" appears to be beneficial (i.e., an enhancement to cultural resources), documentation shall be completed for the recommendation of that effect upon the qualities of the cultural resource that make it eligible to the National Register. This documentation shall follow the process outlined under 36 CFR 800.8 ("Documentation Requirements").

(e) Mitigation

(A) If there will be an effect on cultural resources, measures shall be provided for mitigation of effects. These measures shall address factors such as avoidance of the property through project design or modification and subsequent protection, burial under fill, data recovery excavations, or other measures which are proposed to mitigate effects.

(B) Evidence of consultation with tribal governments and individuals with knowledge of the resources to be affected, and documentation of their concerns, shall be included for all mitigation proposals.

(C) The Forest Service or the Executive Director shall review all mitigation proposals for adequacy.

(5) Discovery During Construction

All authorizations for new developments or land uses shall be conditioned to require the immediate notification of the Forest Service or the Executive Director if cultural resources are discovered during construction or development.

(a) If cultural resources are discovered, particularly human bone or burials, work in the immediate area of discovery shall be suspended until a cultural resource professional can evaluate the potential significance of the discovery and recommend measures to protect and/or recover the resources.

(b) If the discovered material is suspected to be human bone or a burial, the following procedure shall be used:

(A) The applicant shall stop all work in the vicinity of the discovery.

(B) The applicant shall immediately notify the Executive Director, the Forest Service, the applicant's cultural resource professional, the State Medical Examiner, and appropriate law enforcement agencies.

(C) The Forest Service or the Executive Director shall notify the tribal governments if the discovery is determined to be an Indian burial or a cultural resource.

(D) A cultural resource professional shall evaluate the potential significance of the resource pursuant to 350-81-550 (4)(c) and report the results to the Forest Service or the Executive Director.

(c) The cultural resource review process shall be complete and work may continue if the Forest Service or the Executive Director determines that the cultural resource is not significant.

(d) The cultural resource professional shall recommend measures to protect and/or recover the resource pursuant to 350-81-550 (4)(e) if the Forest Service or the Executive Director determines that the cultural resource is significant.

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

### **350-81-560. General Management Area Wetland Review Criteria**

(1) Wetlands Boundaries and Site Plans for Review Uses in Wetlands

(a) If the proposed use is within a wetland or wetlands buffer zone, the applicant shall be responsible for determining the exact location of the wetland boundary.

(A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U.S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands. Wetlands boundaries shall be delineated using the procedures specified in the *Corps of Engineers Wetlands Delineation Manual* (Wetlands Research Program Technical Report Y-87-1, on-line edition, updated through March 21, 1997).

(B) All wetlands delineations shall be conducted by a professional which has been trained to use the federal delineation process, such as a soil scientist, botanist, or wetlands ecologist.

(C) The Executive Director may verify the accuracy of, and may render adjustments to, a wetlands boundary delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the applicant's expense, obtain professional services to render a final delineation.

(b) In addition to the information required in all site plans, site plans for proposed uses in wetlands or wetlands buffer zones shall include:

(A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) the exact boundary of the wetland and the wetlands buffer zone; and

(C) a description of actions that would alter or destroy the wetland.

(2) Commission Rule 350-81-560 shall not apply to proposed uses that would occur in the main stem of the Columbia River. The main stem of the Columbia River is depicted on the map titled "Boundary Map, Columbia River Gorge National Scenic Area," numbered NSA-001 and dated September 1986. (This map is available at county planning departments and Commission and Forest Service offices.) The boundaries of the main stem appear as a heavy black line that generally follows the shoreline. For Commission Rule 350-81, backwaters and isolated water bodies created by roads and railroads are not part of the main stem of the Columbia River.

(3) The following uses may be allowed in wetlands and wetlands buffer zones when approved pursuant to the provisions in 350-81-560(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620:

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, if such actions would not:

(A) Increase the size of an existing structure by more than 100 percent,

(B) Result in a loss of wetlands acreage or functions, or

(C) Intrude further into a wetland or wetlands buffer zone. New structures shall be considered intruding further into a wetland or wetlands buffer zone if any portion of the structure is located closer to the wetland or wetlands buffer zone than the existing structure.

(b) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(4) Uses not listed in 350-81-560 (2) and (3) may be allowed in wetlands and wetlands buffer zones, when approved pursuant to 350-81-560(6) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in wetlands shall demonstrate that:

(a) Practicable alternatives to locating the structure outside of the wetlands or wetland buffer zone and/or minimizing the impacts of the structure do not exist;

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of the wetlands, existing contour, functions, vegetation, fish and wildlife resources, and hydrology;

(c) The structure will be constructed using best management practices;

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(e) The structure complies with all applicable federal, state, and county laws.

(6) Applications for all other Review Uses in wetlands shall demonstrate that:

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative considering all of the following:

(A) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands;

(B) The basic purpose of the use cannot be reasonably accomplished by reducing its size, scope, configuration, or density as proposed, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands; and

(C) Reasonable attempts have been made to remove or accommodate constraints that caused a project applicant to reject alternatives to the use as proposed. Such constraints include inadequate infrastructure, parcel size, and zone designations. If a land designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.

An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.

(b) The proposed use is in the public interest. The following factors shall be considered when determining if a proposed use is in the public interest:

(A) The extent of public need for the proposed use.

(B) The extent and permanence of beneficial or detrimental effects that the proposed use may have on the public and private uses for which the property is suited.

(C) The functions and size of the wetland that may be affected.

(D) The economic value of the proposed use to the general area.

(E) The ecological value of the wetland and probable effect on public health and safety, fish, plants, and wildlife.

(c) Measures will be applied to ensure that the proposed use results in the minimum feasible alteration or destruction of the wetland's functions, existing contour, vegetation, fish and wildlife resources, and hydrology.

(d) Groundwater and surface-water quality will not be degraded by the proposed use.

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will not be located in wetlands or wetlands buffer zones.

(f) The proposed use complies with all applicable federal, state, and county laws.

(g) Areas that are disturbed during construction will be rehabilitated to the maximum extent practicable.

(h) Unavoidable impacts to wetlands will be offset through restoration, creation, or enhancement of wetlands. Wetlands restoration, creation, and enhancement are not alternatives to the guidelines listed above; they shall be used only as a last resort to offset unavoidable wetlands impacts.

The following wetlands restoration, creation, and enhancement guidelines shall apply:

(A) Impacts to wetlands shall be offset by restoring or creating new wetlands or by enhancing degraded wetlands. Wetlands restoration shall be the preferred alternative.

(B) Wetlands restoration, creation, and enhancement projects shall be conducted in accordance with a wetlands compensation plan.

(C) Wetlands restoration, creation, and enhancement projects shall use native vegetation.

(D) The size of replacement wetlands shall equal or exceed the following ratios (the first number specifies the required acreage of replacement wetlands and the second number specifies the acreage of wetlands altered or destroyed):

- (i) Restoration: 2:1
- (ii) Creation: 3:1
- (iii) Enhancement: 4:1

(E) Replacement wetlands shall replicate the functions of the wetland that will be altered or destroyed such that no net loss of wetlands functions occurs.

(F) Replacement wetlands should replicate the type of wetland that will be altered or destroyed. If this guideline is

not feasible or practical due to technical constraints, a wetland type of equal or greater benefit may be substituted, provided that no net loss of wetlands functions occurs.

(G) Wetlands restoration, creation, or enhancement should occur within 1,000 feet of the affected wetland. If this is not practicable due to physical or technical constraints, replacement shall occur within the same watershed and as close to the altered or destroyed wetland as practicable.

(H) Wetlands restoration, creation, and enhancement efforts should be completed before a wetland is altered or destroyed. If it is not practicable to complete all restoration, creation, and enhancement efforts before the wetland is altered or destroyed, these efforts shall be completed before the new use is occupied or used.

(I) Five years after a wetland is restored, created, or enhanced at least 75 percent of the replacement vegetation must survive. The owner shall monitor the hydrology and vegetation of the replacement wetland and shall take corrective measures to ensure that it conforms with the approved wetlands compensation plan and this guideline.

(7) Wetlands Buffer Zones

(a) The width of wetlands buffer zones shall be based on the dominant vegetation community that exists in a buffer zone.

(b) The dominant vegetation community in a buffer zone is the vegetation community that covers the most surface area of that portion of the buffer zone that lies between the proposed activity and the affected wetland. Vegetation communities are classified as forest, shrub, or herbaceous.

(A) A forest vegetation community is characterized by trees with an average height equal to or greater than 20 feet, accompanied by a shrub layer; trees must form a canopy cover of at least 40 percent and shrubs must form a canopy cover of at least 40 percent. A forest community without a shrub component that forms a canopy cover of at least 40 percent shall be considered a shrub vegetation community.

(B) A shrub vegetation community is characterized by shrubs and trees that are greater than 3 feet tall and form a canopy cover of at least 40 percent.

(C) A herbaceous vegetation community is characterized by the presence of herbs, including grass and grasslike plants, forbs, ferns, and nonwoody vines.

(c) Buffer zones shall be measured outward from a wetlands boundary on a horizontal scale that is perpendicular to the wetlands boundary. The following buffer zone widths shall be required:

- (A) Forest communities: 75 feet
- (B) Shrub communities: 100 feet
- (C) Herbaceous communities: 150 feet

(d) Except as otherwise allowed, wetlands buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

(8) Wetlands Compensation Plans

Wetlands compensation plans shall be prepared when a project applicant is required to restore, create or enhance wetlands. They shall satisfy the following guidelines:

PERMANENT

(a) Wetlands compensation plans shall be prepared by a qualified professional hired by a project applicant. They shall provide for land acquisition, construction, maintenance, and monitoring of replacement wetlands.

(b) Wetlands compensation plans shall include an ecological assessment of the wetland that will be altered or destroyed and the wetland that will be restored, created, or enhanced. The assessment shall include information on flora, fauna, hydrology, and wetlands functions.

(c) Compensation plans shall also assess the suitability of the proposed site for establishing a replacement wetland, including a description of the water source and drainage patterns, topography, wildlife habitat opportunities, and value of the existing area to be converted.

(d) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals no greater than 1 foot, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading, and erosion and sediment control needed for wetland construction and long-term survival.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(C) Water-quality parameters, water source, water depths, water-control structures, and water-level maintenance practices needed to achieve the necessary hydrologic conditions.

(e) A 5-year monitoring, maintenance, and replacement program shall be included in all plans. At a minimum, a project applicant shall provide an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor the replacement wetland.

(f) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a wetlands compensation plan.

### **350-81-570. General Management Area Stream, Pond, Lake and Riparian Area Review Criteria**

(1) Stream, Pond, and Lake Boundaries and Site Plans for Review Uses in Aquatic and Riparian Areas

(a) If a proposed use would be in a stream, pond, lake or their buffer zones, the project applicant shall be responsible for determining the exact location of the ordinary high watermark or normal pool elevation.

(b) In addition to the information required in all site plans, site plans for proposed uses in streams, ponds, lakes, and their buffer zones shall include:

(A) a site plan map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail;

(B) the exact boundary of the ordinary high watermark or normal pool elevation and prescribed buffer zone; and

(C) a description of actions that would alter or destroy the stream, pond, lake, or riparian area.

(2) Commission Rule 350-81-570 shall not apply to proposed uses that would occur in those portions of the main stem of the Columbia River that adjoin the Urban Area.

(3) The following uses may be allowed in streams, ponds, lakes and riparian areas when approved pursuant 350-81-570(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620:

(a) The modification, expansion, replacement, or reconstruction of serviceable structures, provided that such actions would not:

(A) Increase the size of an existing structure by more than 100 percent,

(B) Result in a loss of water quality, natural drainage, and fish and wildlife habitat, or

(C) Intrude further into a stream, pond, lake, or buffer zone. New structures shall be considered intruding further into a stream, pond, lake, or buffer zone if any portion of the structure is located closer to the stream, pond, lake, or buffer zone than the existing structure.

(b) The construction of minor water-related recreation structures that are available for public use. Structures in this category shall be limited to boardwalks; trails and paths, provided their surface is not constructed of impervious materials; observation decks; and interpretative aids, such as kiosks and signs.

(c) The construction of minor water-dependent structures that are placed on pilings, if the pilings allow unobstructed flow of water and are not placed so close together that they effectively convert an aquatic area to dry land. Structures in this category shall be limited to public and private docks and boat houses, and fish and wildlife management structures that are constructed by federal, state, or tribal resource agencies.

(4) Uses not listed in 350-81-074, 350-81-570 (2) and (3) may be allowed in streams, ponds, lakes, and riparian areas, when approved pursuant to 350-81-570(6) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(5) Applications for modifications to serviceable structures and minor water-dependent and water-related structures in aquatic and riparian areas shall demonstrate that:

(a) Practicable alternatives to locating the structure outside of the stream, pond, lake, or buffer zone and/or minimizing the impacts of the structure do not exist;

(b) All reasonable measures have been applied to ensure that the structure will result in the minimum feasible alteration or destruction of water quality, natural drainage, and fish and wildlife habitat of streams, ponds, lakes, and riparian areas;

(c) The structure will be constructed using best management practices;

(d) Areas disturbed during construction of the structure will be rehabilitated to the maximum extent practicable; and

(e) The structure complies with all applicable federal, state, and local laws.

(6) Applications for all other Review Uses in streams, ponds, lakes, and riparian areas shall demonstrate that:

(a) The proposed use is water-dependent, or is not water-dependent but has no practicable alternative as determined by

350-81-560 (6)(a), substituting the term stream, pond, lake, or riparian area as appropriate.

(b) The proposed use is in the public interest as determined by 350-81-560 (6)(b), substituting the term stream, pond, lake, or riparian area as appropriate.

(c) Measures have been applied to ensure that the proposed use results in minimum feasible impacts to water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone.

At a minimum, the following mitigation measures shall be considered when new uses are proposed in streams, ponds, lakes, and buffer zones:

(A) Construction shall occur during periods when fish and wildlife are least sensitive to disturbance. Work in streams, ponds, and lakes shall be conducted during the periods specified in "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources" (Oregon Department of Fish and Wildlife, 2000), unless otherwise coordinated with and approved by the Oregon Department of Fish and Wildlife. In Washington, the Washington Department of Fish and Wildlife shall evaluate specific proposals and specify periods for in-water work.

(B) All natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.

(C) Nonstructural controls and natural processes shall be used to the greatest extent practicable.

(D) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.

(E) Stream channels should not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to streams, ponds, lakes, and their banks. When culverts are necessary, oversized culverts with open bottoms that maintain the channel's width and grade should be used.

(F) Temporary and permanent control measures should be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.

(d) Groundwater and surface-water quality will not be degraded by the proposed use.

(e) Those portions of a proposed use that are not water-dependent or have a practicable alternative will be located outside of stream, pond, and lake buffer zones.

(f) The proposed use complies with all applicable federal, state, and county laws.

(g) Unavoidable impacts to aquatic and riparian areas will be offset through rehabilitation and enhancement.

Rehabilitation and enhancement shall achieve no net loss of water quality, natural drainage, and fish and wildlife habitat of the affected stream, pond, lake, and/or buffer zone. When a project area has been disturbed in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable.

When a project area cannot be completely rehabilitated, such as when a boat launch permanently displaces aquatic and riparian areas, enhancement shall also be required.

The following rehabilitation and enhancement guidelines shall apply:

(A) Rehabilitation and enhancement projects shall be conducted in accordance with a rehabilitation and enhancement plan.

(B) Natural hydrologic conditions shall be replicated, including current patterns, circulation, velocity, volume, and normal water fluctuation.

(C) Natural stream channel and shoreline dimensions shall be replicated, including depth, width, length, cross-sectional profile, and gradient.

(D) The bed of the affected aquatic area shall be rehabilitated with identical or similar materials.

(E) Riparian areas shall be rehabilitated to their original configuration, including slope and contour.

(F) Fish and wildlife habitat features shall be replicated, including pool-riffle ratios, substrata, and structures. Structures include large woody debris and boulders.

(G) Stream channels and banks, shorelines, and riparian areas shall be replanted with native plant species that replicate the original vegetation community.

(H) Rehabilitation and enhancement efforts shall be completed no later 90 days after the aquatic area or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.

(I) Three years after an aquatic area or buffer zone is rehabilitated or enhanced, at least 75 percent of the replacement vegetation must survive. The owner shall monitor the replacement vegetation and take corrective measures to satisfy this guideline.

#### (7) Stream, Pond, and Lake Buffer Zones

(a) Buffer zones shall generally be measured landward from the ordinary high water-mark on a horizontal scale that is perpendicular to the ordinary high water-mark. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

(A) Streams used by anadromous or resident fish (tributary fish habitat), special streams, intermittent streams that include year-round pools, and perennial streams: 100 feet

(B) Intermittent streams, provided they are not used by anadromous or resident fish: 50 feet

(C) Ponds and lakes: Buffer zone widths shall be based on dominant vegetative community as determined by 350-81-560 (7)(b), substituting the term pond or lake as appropriate.

(b) Except as otherwise allowed, buffer zones shall be retained in their natural condition. When a buffer zone is disturbed by a new use, it shall be replanted with native plant species.

(c) Determining the exact location of the ordinary high watermark or normal pool elevation shall be the responsibility of the project applicant. The Executive Director may verify the accuracy of, and may render adjustments to, an ordinary high water-mark or normal pool delineation. In the event the adjusted boundary delineation is contested by the applicant, the Executive Director shall, at the project applicant's expense, obtain professional services to render a final delineation.

#### (8) Rehabilitation and Enhancement Plans

Rehabilitation and enhancement plans shall be prepared when a project applicant is required to rehabilitate or enhance

a stream, pond, lake and/or buffer area. They shall satisfy the following guidelines:

(a) Rehabilitation and enhancement plans are the responsibility of the project applicant; they shall be prepared by qualified professionals, such as fish or wildlife biologists.

(b) All plans shall include an assessment of the physical characteristics and natural functions of the affected stream, pond, lake, and/or buffer zone. The assessment shall include hydrology, flora, and fauna.

(c) Plan view and cross-sectional, scaled drawings; topographic survey data, including elevations at contour intervals of at least 2 feet, slope percentages, and final grade elevations; and other technical information shall be provided in sufficient detail to explain and illustrate:

(A) Soil and substrata conditions, grading and excavation, and erosion and sediment control needed to successfully rehabilitate and enhance the stream, pond, lake, and buffer zone.

(B) Planting plans that specify native plant species, quantities, size, spacing, or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and where appropriate, measures to protect plants from predation.

(C) Water-quality parameters, construction techniques, management measures, and design specifications needed to maintain hydrologic conditions and water quality.

(d) A 3-year monitoring, maintenance, and replacement program shall be included in all rehabilitation and enhancement plans. At a minimum, a project applicant shall prepare an annual report that documents milestones, successes, problems, and contingency actions. Photographic monitoring shall be used to monitor all rehabilitation and enhancement efforts.

(e) A project applicant shall demonstrate sufficient fiscal, administrative, and technical competence to successfully execute and monitor a rehabilitation and enhancement plan.

### **350-80-580. General Management Area Sensitive Wildlife Review Criteria.**

#### **(1) Sensitive Wildlife Areas and Sites and Site Plans Near Sensitive Wildlife**

(a) Proposed uses shall not adversely affect sensitive wildlife areas or sensitive wildlife sites:

(A) "Sensitive wildlife areas" in the Columbia Gorge means the following land and water areas that appear in the wildlife inventory map prepared and maintained by the Gorge Commission:

- Bald eagle habitat
- Deer and elk winter range
- Elk habitat
- Mountain goat habitat
- Peregrine falcon habitat
- Pika colony area
- Pileated woodpecker habitat
- Pine marten habitat
- Shallow water fish habitat (Columbia R.)
- Special streams
- Special habitat area
- Spotted owl habitat
- Sturgeon spawning area

Tributary fish habitat

Turkey habitat

Waterfowl area

Western pond turtle habitat

(B) "Sensitive wildlife sites" means sites that are used by animal species that are

(i) listed as endangered or threatened pursuant to federal or state endangered species acts,

(ii) listed as endangered, threatened, sensitive, or candidate by the Washington Wildlife Commission,

(iii) listed as sensitive by the Oregon Fish and Wildlife Commission, or

(iv) considered to be of special interest to the public (limited to great blue heron, osprey, golden eagle, and prairie falcon).

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive wildlife area or site shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

#### **(2) Field Survey**

A field survey to identify sensitive wildlife areas or sites shall be required for:

(a) Land divisions that create four or more parcels;

(b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;

(c) Public transportation facilities that are outside improved rights-of-way;

(d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and

(e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a professional wildlife biologist hired by the project applicant. All sensitive wildlife areas and sites discovered in a project area shall be described and shown on the site plan map.

(3) Review uses may be allowed within 1,000 feet of a sensitive wildlife area or site, when approved pursuant to 350-81-580(4) and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(4) Uses that are proposed within 1,000 feet of a sensitive wildlife area or site shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife by the Development Review Officer. State wildlife biologists will review the site plan and their field survey records and:

(A) Identify/verify the precise location of the wildlife area or site,

(B) Ascertain whether the wildlife area or site is active or abandoned, and

(C) Determine if the proposed use may compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance, such as nesting or rearing seasons. In some instances, state wildlife biologists may conduct field surveys to verify the wildlife inventory and assess the potential effects of a proposed use.

(b) The following factors may be considered when site plans are reviewed:

(A) Biology of the affected wildlife species.

(B) Published guidelines regarding the protection and management of the affected wildlife species. The Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron. The Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner, 1991).

(C) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(D) Historic, current, and proposed uses in the vicinity of the sensitive wildlife area or site.

(E) Existing condition of the wildlife area or site and the surrounding habitat and the useful life of the area or site.

(c) The wildlife protection process may terminate if the Executive Director, in consultation with the state wildlife agency, determines:

(A) The sensitive wildlife area or site is not active, or

(B) The proposed use would not compromise the integrity of the wildlife area or site or occur during the time of the year when wildlife species are sensitive to disturbance.

(d) If the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would have only minor effects on the wildlife area or site that could be eliminated through mitigation measures recommended by the state wildlife biologist, or by simply modifying the site plan or regulating the timing of new uses, a letter shall be sent to the applicant that describes the effects and measures needed to eliminate them. If the project applicant accepts these recommendations, the Executive Director will incorporate them into the development review order and the wildlife protection process may conclude.

(e) The project applicant shall prepare a wildlife management plan if the Executive Director, in consultation with the state wildlife agency, determines that the proposed use would adversely affect a sensitive wildlife area or site and the effects of the proposed use cannot be eliminated through site plan modifications or project timing.

(f) The Executive Director shall submit a copy of all field surveys and wildlife management plans to Oregon Department of Fish and Wildlife or Washington Department of Fish and Wildlife. The state wildlife agency will have 20 days from the date that a field survey or management plan is mailed to submit written comments to the Executive Director.

The Executive Director shall record and address any written comments submitted by the state wildlife agency in the land use review order.

Based on the comments from the state wildlife agency, the Executive Director will make a final decision on whether the proposed use would be consistent with the wildlife poli-

cies and guidelines. If the final decision contradicts the comments submitted by the state wildlife agency, the Executive Director shall justify how the opposing conclusion was reached.

The Executive Director shall require the applicant to revise the wildlife management plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife area or site.

#### (5) Wildlife Management Plans

Wildlife management plans shall be prepared when a proposed use is likely to adversely affect a sensitive wildlife area or site. Their primary purpose is to document the special characteristics of a project site and the habitat requirements of affected wildlife species. This information provides a basis for the project applicant to redesign the proposed use in a manner that protects sensitive wildlife areas and sites, maximizes his/her development options, and mitigates temporary impacts to the wildlife area or site and/or buffer zone.

Wildlife management plans shall meet the following guidelines:

(a) Wildlife management plans shall be prepared by a professional wildlife biologist hired by the project applicant.

(b) All relevant background information shall be documented and considered, including biology of the affected species, published protection and management guidelines, physical characteristics of the subject parcel, past and present use of the subject parcel, and useful life of the wildlife area or site.

(c) The core habitat of the sensitive wildlife species shall be delineated. It shall encompass the sensitive wildlife area or site and the attributes, or key components, that are essential to maintain the long-term use and integrity of the wildlife area or site.

(d) A wildlife buffer zone shall be employed. It shall be wide enough to ensure that the core habitat is not adversely affected by new uses, or natural forces, such as fire and wind. Buffer zones shall be delineated on the site plan map and shall reflect the physical characteristics of the project site and the biology of the affected species.

(e) The size, scope, configuration, or density of new uses within the core habitat and the wildlife buffer zone shall be regulated to protect sensitive wildlife species. The timing and duration of all uses shall also be regulated to ensure that they do not occur during the time of the year when wildlife species are sensitive to disturbance. The following shall apply:

(A) New uses shall generally be prohibited within the core habitat. Exceptions may include uses that have temporary and negligible effects, such as the installation of minor underground utilities or the maintenance of existing structures. Low intensity, non-destructive uses may be conditionally authorized in the core habitat.

(B) Intensive uses shall be generally prohibited in wildlife buffer zones. Such uses may be conditionally authorized when a wildlife area or site is inhabited seasonally, provided they will have only temporary effects on the wildlife buffer zone and rehabilitation and/or enhancement will be completed before a particular species returns.

(f) Rehabilitation and/or enhancement shall be required when new uses are authorized within wildlife buffer zones.

When a buffer zone has been altered or degraded in the past, it shall be rehabilitated to its natural condition to the maximum extent practicable. When complete rehabilitation is not possible, such as when new structures permanently displace wildlife habitat, enhancement shall also be required. Enhancement shall achieve a no net loss of the integrity of the wildlife area or site.

Rehabilitation and enhancement actions shall be documented in the wildlife management plan and shall include a map and text.

(g) The applicant shall prepare and implement a 3-year monitoring plan when the affected wildlife area or site is occupied by a species that is listed as endangered or threatened pursuant to federal or state wildlife lists. It shall include an annual report and shall track the status of the wildlife area or site and the success of rehabilitation and/or enhancement actions.

At the end of 3 years, rehabilitation and enhancement efforts may conclude if they are successful. In instances where rehabilitation and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the rehabilitation and enhancement guidelines.

(6) New fences in deer and elk winter range

(a) New fences in deer and elk winter range shall be allowed only when necessary to control livestock or exclude wildlife from specified areas, such as gardens or sensitive wildlife sites. The areas fenced shall be the minimum necessary to meet the immediate needs of the project applicant.

(b) New and replacement fences that are allowed in winter range shall comply with the guidelines in Specifications for Structural Range Improvements (Sanderson, et. al. 1990), as summarized below, unless the applicant demonstrates the need for an alternative design:

(A) To make it easier for deer to jump over the fence, the top wire shall not be more than 42 inches high.

(B) The distance between the top two wires is critical for adult deer because their hind legs often become entangled between these wires. A gap of at least 10 inches shall be maintained between the top two wires to make it easier for deer to free themselves if they become entangled.

(C) The bottom wire shall be at least 16 inches above the ground to allow fawns to crawl under the fence. It should consist of smooth wire because barbs often injure animals as they crawl under fences.

(D) Stays, or braces placed between strands of wire, shall be positioned between fences posts where deer are most likely to cross. Stays create a more rigid fence, which allows deer a better chance to wiggle free if their hind legs become caught between the top two wires.

(c) Woven wire fences may be authorized only when it is clearly demonstrated that such a fence is required to meet specific and immediate needs, such as controlling hogs and sheep.

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Columbia River Gorge Commission and appears in the Register pursuant to the requirements of RCW 34.08.040.

### **350-80-590. General Management Areas Rare Plant Review Criteria.**

(1) Sensitive Plants and Site Plans for Review Uses Near Sensitive Plants

(a) Proposed uses shall not adversely affect sensitive plants. "Sensitive plants" means plant species that are

(A) endemic to the Columbia River Gorge and vicinity,

(B) listed as endangered or threatened pursuant to federal or state endangered species acts, or

(C) listed as endangered, threatened, or sensitive by the Oregon or Washington Natural Heritage program.

(b) In addition to the information required in all site plans, site plans for uses within 1,000 feet of a sensitive plant shall include a map prepared at a scale of 1 inch equals 100 feet (1:1,200), or a scale providing greater detail.

(2) Field Survey

A field survey to identify sensitive plants shall be required for:

(a) Land divisions that create four or more parcels;

(b) Recreation facilities that contain parking areas for more than 10 cars, overnight camping facilities, boat ramps, and visitor information and environmental education facilities;

(c) Public transportation facilities that are outside improved rights-of-way;

(d) Electric facilities, lines, equipment, and appurtenances that are 33 kilovolts or greater; and

(e) Communications, water and sewer, and natural gas transmission (as opposed to distribution) lines, pipes, equipment, and appurtenances and other project related activities, except when all of their impacts will occur inside previously disturbed road, railroad or utility corridors, or existing developed utility sites, that are maintained annually.

Field surveys shall cover all areas affected by the proposed use or recreation facility. They shall be conducted by a person with recognized expertise in botany or plant ecology hired by the project applicant. Field surveys shall identify the precise location of the sensitive plants and delineate a 200-foot buffer zone. The results of a field survey shall be shown on the site plan map.

(3) Review uses may be allowed within 1,000 feet of a sensitive plant, when approved pursuant to 350-81-590(5), and reviewed under the applicable provisions of 350-81-520 through 350-81-620.

(4) Uses that are proposed within 1,000 feet of a sensitive plant shall be reviewed as follows:

(a) Site plans shall be submitted to the Oregon or Washington Natural Heritage Program by the Executive Director. The Natural Heritage Program staff will review the site plan and their field survey records. They will identify the precise location of the affected plants and delineate a 200-foot buffer zone on the project applicant's site plan.

If the field survey records of the state heritage program are inadequate, the project applicant shall hire a person with recognized expertise in botany or plant ecology to ascertain the precise location of the affected plants.

(b) The rare plant protection process may conclude if the Executive Director, in consultation with the Natural Heritage Program staff, determines that the proposed use would be located outside of a sensitive plant buffer zone.



(c) New uses shall be prohibited within sensitive plant species buffer zones.

(d) If a proposed use must be allowed within a sensitive plant buffer area in accordance with 350-81-078, the project applicant shall prepare a protection and rehabilitation plan pursuant to 350-81-590(5).

(e) The Executive Director shall submit a copy of all field surveys and protection and rehabilitation plans to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that a field survey is mailed to submit written comments to the Executive Director.

The Executive Director shall record and address any written comments submitted by the Natural Heritage Program staff in the land use review order.

Based on the comments from the Natural Heritage Program staff, the Executive Director will make a final decision on whether the proposed use would be consistent with the rare plant policies and guidelines. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

#### (5) Protection and Rehabilitation Plans

Protection and rehabilitation plans shall minimize and offset unavoidable impacts that result from a new use that occurs within a sensitive plant buffer zone as the result of a variance.

Protection and rehabilitation plans shall meet the following guidelines:

(a) Protection and rehabilitation plans shall be prepared by a professional botanist or plant ecologist hired by the project applicant.

(b) Construction, protection, and rehabilitation activities shall occur during the time of the year when ground disturbance will be minimized and protection, rehabilitation, and replacement efforts will be maximized.

(c) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods.

Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted.

(d) Sensitive plants and their surrounding habitat that will not be altered or destroyed shall be protected and maintained. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation easements, livestock management, and noxious weed control.

(e) Habitat of a sensitive plant that will be affected by temporary uses shall be rehabilitated to a natural condition.

(f) Protection efforts shall be implemented before construction activities begin. Rehabilitation efforts shall be implemented immediately after the plants and their surrounding habitat are disturbed.

(g) Protection and rehabilitation plans shall include maps, photographs, and text. The text shall:

(A) Describe the biology of sensitive plant species that will be affected by a proposed use.

(B) Explain the techniques that will be used to protect sensitive plants and their surrounding habitat that will not be altered or destroyed.

(C) Describe the rehabilitation and enhancement actions that will minimize and offset the impacts that will result from a proposed use.

(D) Include a 3-year monitoring, maintenance, and replacement program. The project applicant shall prepare and submit to the Executive Director an annual report that documents milestones, successes, problems, and contingency actions.

#### (6) Sensitive Plant Buffer Zones

(a) A 200-foot buffer zone shall be maintained around sensitive plants. Buffer areas shall remain in an undisturbed, natural condition.

(b) Buffer zones may be reduced if a project applicant demonstrates that intervening topography, vegetation, man-made features, or natural plant habitat boundaries negate the need for a 200 foot radius. Under no circumstances shall the buffer zone be less than 25 feet.

(c) Requests to reduce buffer areas shall be considered if a professional botanist or plant ecologist hired by the project applicant:

(A) Identifies the precise location of the sensitive plants,

(B) Describes the biology of the sensitive plants, and

(C) Demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected plants and the surrounding habitat that is vital to their long-term survival.

All requests shall be prepared as a written report. Published literature regarding the biology of the affected plants and recommendations regarding their protection and management shall be cited. The report shall include detailed maps and photographs.

(d) The Executive Director shall submit all requests to reduce sensitive plant species buffer areas to the Oregon or Washington Natural Heritage Program. The Natural Heritage Program staff will have 20 days from the date that such a request is mailed to submit written comments to the Executive Director.

The Executive Director shall record and address any written comments submitted by the Oregon or Washington Natural Heritage Program in the development review order.

Based on the comments from the Oregon or Washington Natural Heritage Program, the Executive Director will make a final decision on whether the reduced buffer area is justified. If the final decision contradicts the comments submitted by the Natural Heritage Program staff, the Executive Director shall justify how the opposing conclusion was reached.

### **350-81-600. Special Management Areas Natural Resource Review Criteria**

(1) All new developments and uses, as described in a site plan prepared by the applicant, shall be evaluated using the following guidelines to ensure that natural resources are protected from adverse effects. Comments from state and federal agencies shall be carefully considered. (Site plans are described in 350-81-032).

(2) Water Resources (Wetlands, Streams, Ponds, Lakes, and Riparian Areas)

(a) All Water Resources shall, in part, be protected by establishing undisturbed buffer zones as specified in subsections (2)(a)(B)(i) and (ii) below. These buffer zones are measured horizontally from a wetland, stream, lake, or pond boundary as defined below.

(A) All buffer zones shall be retained undisturbed and in their natural condition, except as permitted with a mitigation plan.

(B) Buffer zones shall be measured outward from the bank full flow boundary for streams, the high water mark for ponds and lakes, the normal pool elevation for the Columbia River, and the wetland delineation boundary for wetlands on a horizontal scale that is perpendicular to the wetlands, stream, pond or lake boundary. On the main stem of the Columbia River above Bonneville Dam, buffer zones shall be measured landward from the normal pool elevation of the Columbia River. The following buffer zone widths shall be required:

(i) A minimum 200 foot buffer on each wetland, pond, lake, and each bank of a perennial or fish bearing stream, some of which can be intermittent.

(ii) A 50-foot buffer zone along each bank of intermittent (including ephemeral), non-fish bearing streams.

(iii) Maintenance, repair, reconstruction and realignment of roads and railroads within their rights-of-way shall be exempted from the wetlands and riparian guidelines upon demonstration of all of the following:

(I) The wetland within the right-of-way is a drainage ditch not part of a larger wetland outside of the right-of-way.

(II) The wetland is not critical habitat.

(III) Proposed activities within the right-of-way would not adversely affect a wetland adjacent to the right-of-way.

(C) The buffer width shall be increased for the following:

(i) When the channel migration zone exceeds the recommended buffer width, the buffer width shall extend to the outer edge of the channel migration zone.

(ii) When the frequently flooded area exceeds the recommended riparian buffer zone width, the buffer width shall be extended to the outer edge of the frequently flooded area.

(iii) When an erosion or landslide hazard area exceeds the recommended width of the buffer, the buffer width shall be extended to include the hazard area.

(D) Buffer zones can be reconfigured if a project applicant demonstrates all of the following: (1) the integrity and function of the buffer zones is maintained, (2) the total buffer area on the development proposal is not decreased, (3) the width reduction shall not occur within another buffer, and (4) the buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.

(E) Requests to reconfigure buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant (1) identifies the precise location of the sensitive wildlife/plant or water resource, (2) describes the biology of the

sensitive wildlife/plant or hydrologic condition of the water resource, and (3) demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long term function.

(F) The Executive Director shall submit all requests to re-configure sensitive wildlife/plant or water resource buffers to the Forest Service and the appropriate state agencies for review. All written comments shall be included in the project file. Based on the comments from the state and federal agencies, the Executive Director will make a final decision on whether the reconfigured buffer zones are justified. If the final decision contradicts the comments submitted by the federal and state agencies, the Executive Director shall justify how the opposing conclusion was reached.

(b) When a buffer zone is disturbed by a new use, it shall be replanted with only native plant species of the Columbia River Gorge.

(c) The applicant shall be responsible for identifying all water resources and their appropriate buffers. (see above)

(d) Wetlands Boundaries shall be delineated using the following:

(A) The approximate location and extent of wetlands in the Scenic Area is shown on the National Wetlands Inventory (U.S. Department of the Interior 1987). In addition, the list of hydric soils and the soil survey maps shall be used as an indicator of wetlands.

(B) Some wetlands may not be shown on the wetlands inventory or soil survey maps. Wetlands that are discovered by the local planning staff during an inspection of a potential project site shall be delineated and protected.

(C) The project applicant shall be responsible for determining the exact location of a wetlands boundary. Wetlands boundaries shall be delineated using the procedures specified in the '1987 Corps of Engineers Wetland Delineation Manual (on-line Edition)'.

(D) All wetlands delineations shall be conducted by a professional who has been trained to use the federal delineation procedures, such as a soil scientist, botanist, or wetlands ecologist.

(e) Stream, pond, and lake boundaries shall be delineated using the bank full flow boundary for streams and the high water mark for ponds and lakes. The project applicant shall be responsible for determining the exact location of the appropriate boundary for the water resource.

(f) The Executive Director may verify the accuracy of, and render adjustments to, a bank full flow, high water mark, normal pool elevation (for the Columbia River), or wetland boundary delineation. If the adjusted boundary is contested by the project applicant, the Executive Director shall obtain professional services, at the project applicant's expense, or ask for technical assistance from the Forest Service to render a final delineation.

(g) Buffer zones shall be undisturbed unless the following criteria have been satisfied:

(A) The proposed use must have no practicable alternative as determined by the practicable alternative test.

Those portions of a proposed use that have a practicable alternative will not be located in wetlands, stream, pond, lake, and riparian areas and/or their buffer zone.

(B) Filling and draining of wetlands shall be prohibited with exceptions related to public safety or restoration/enhancement activities as permitted when all of the following criteria have been met:

(i) A documented public safety hazard exists or a restoration/enhancement project exists that would benefit the public and is corrected or achieved only by impacting the wetland in question, and

(ii) Impacts to the wetland must be the last possible documented alternative in fixing the public safety concern or completing the restoration/enhancement project, and

(iii) The proposed project minimizes the impacts to the wetland.

(C) Unavoidable impacts to wetlands and aquatic and riparian areas and their buffer zones shall be offset by deliberate restoration and enhancement or creation (wetlands only) measures as required by the completion of a mitigation plan.

### (3) Wildlife and Plants

(a) Protection of sensitive wildlife/plant areas and sites shall begin when proposed new developments or uses are within 1000 ft of a sensitive wildlife/plant site and/or area.

Sensitive Wildlife Areas and endemic plants are those areas depicted in the wildlife inventory and listed in the "Types of Wildlife Areas and Sites Inventoried in the Columbia Gorge" and "Columbia Gorge and Vicinity Endemic Plant Species" tables in the Management Plan including all Priority Habitats listed in this Chapter. The approximate locations of sensitive wildlife and/or plant areas and sites are shown in the wildlife and rare plant inventory.

(b) The Executive Director shall submit site plans (of uses that are proposed within 1,000 feet of a sensitive wildlife and/or plant area or site) for review to the Forest Service and the appropriate state agencies (Oregon Department of Fish and Wildlife or the Washington Department of Fish and Wildlife for wildlife issues and by the Oregon or Washington Natural Heritage Program for plant issues).

(c) The Forest Service wildlife biologists and/or botanists, in consultation with the appropriate state biologists, shall review the site plan and their field survey records. They shall:

(A) Identify/verify the precise location of the wildlife and/or plant area or site,

(B) Determine if a field survey will be required,

(C) Determine, based on the biology and habitat requirements of the affected wildlife/plant species, if the proposed use would compromise the integrity and function of or result in adverse affects (including cumulative effects) to the wildlife or plant area or site. This would include considering the time of year when wildlife or plant species are sensitive to disturbance, such as nesting, rearing seasons, or flowering season, and

(D) Delineate the undisturbed 200 ft buffer on the site plan for sensitive plants and/or the appropriate buffer for sensitive wildlife areas or sites, including nesting, roosting and perching sites.

(i) Buffer zones can be reconfigured if a project applicant demonstrates all of the following: (1) the integrity and function of the buffer zones is maintained, (2) the total buffer area on the development proposal is not decreased, (3) the width reduction shall not occur within another buffer, and (4) the buffer zone width is not reduced more than 50% at any particular location. Such features as intervening topography, vegetation, man made features, natural plant or wildlife habitat boundaries, and flood plain characteristics could be considered.

(ii) Requests to reduce buffer zones shall be considered if an appropriate professional (botanist, plant ecologist, wildlife biologist, or hydrologist), hired by the project applicant, (1) identifies the precise location of the sensitive wildlife/plant or water resource, (2) describes the biology of the sensitive wildlife/plant or hydrologic condition of the water resource, and (3) demonstrates that the proposed use will not have any negative effects, either direct or indirect, on the affected wildlife/plant and their surrounding habitat that is vital to their long-term survival or water resource and its long term function.

(iii) The Executive Director shall submit all requests to re-configure sensitive wildlife/plant or water resource buffers to the Forest Service and the appropriate state agencies for review. All written comments shall be included in the record of application and based on the comments from the state and federal agencies, the Executive Director will make a final decision on whether the reduced buffer zone is justified. If the final decision contradicts the comments submitted by the federal and state agencies, the Executive Director shall justify how the opposing conclusion was reached

(d) The Executive Director, in consultation with the State and federal wildlife biologists and/or botanists, shall use the following criteria in reviewing and evaluating the site plan to ensure that the proposed developments or uses do not compromise the integrity and function of or result in adverse affects to the wildlife or plant area or site:

(A) Published guidelines regarding the protection and management of the affected wildlife/plant species. Examples include: the Oregon Department of Forestry has prepared technical papers that include management guidelines for osprey and great blue heron; the Washington Department of Fish and Wildlife has prepared similar guidelines for a variety of species, including the western pond turtle, the peregrine falcon, and the Larch Mountain salamander (Rodrick and Milner 1991).

(B) Physical characteristics of the subject parcel and vicinity, including topography and vegetation.

(C) Historic, current, and proposed uses in the vicinity of the sensitive wildlife/plant area or site.

(D) Existing condition of the wildlife/plant area or site and the surrounding habitat and the useful life of the area or site.

(E) In areas of winter range, habitat components, such as forage, and thermal cover, important to the viability of the wildlife must be maintained or, if impacts are to occur, enhancement must mitigate the impacts so as to maintain overall values and function of winter range.

(F) The site plan is consistent with the "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wild-

life Resources" (Oregon Department of Fish and Wildlife 2000) and the Washington guidelines when they become finalized.

(G) The site plan activities coincide with periods when fish and wildlife are least sensitive to disturbance. These would include, among others, nesting and brooding periods (from nest building to fledgling of young) and those periods specified.

(H) The site plan illustrates that new developments and uses, including bridges, culverts, and utility corridors, shall not interfere with fish and wildlife passage.

(I) Maintain, protect, and enhance the integrity and function of Priority Habitats (such as old growth forests, talus slopes, and oak woodlands) as listed on the following Priority Habitats Table. This includes maintaining structural, species, and age diversity, maintaining connectivity within and between plant communities, and ensuring that cumulative impacts are considered in documenting integrity and function.

Snags and logs	High fish and wildlife density, species diversity, limited availability, high vulnerability, dependent species.
Talus	Limited availability, unique and dependent species, high vulnerability.
Cliffs	Significant breeding habitat, limited availability, dependent species.
Dunes	Unique species habitat, limited availability, high vulnerability, dependent species.

(e) The wildlife/plant protection process may terminate if the Executive Director, in consultation with the Forest Service and state wildlife agency or Heritage program, determines (1) the sensitive wildlife area or site is not active, or (2) the proposed use is not within the buffer zones and would not compromise the integrity of the wildlife/plant area or site, and (3) the proposed use is within the buffer and could be easily moved out of the buffer by simply modifying the project proposal (site plan modifications). If the project applicant accepts these recommendations, the Executive Director shall incorporate them into the final decision and the wildlife/plant protection process may conclude.

(f) If the above measures fail to eliminate the adverse effects, the proposed project shall be prohibited, unless the project applicant can meet the Practicable Alternative Test and prepare a mitigation plan to offset the adverse effects by deliberate restoration and enhancement.

(g) The Executive Director shall submit a copy of all field surveys (if completed) and mitigation plans to the Forest Service and appropriate state agencies. The Executive Director shall include all comments in the record of application and address any written comments submitted by the state and federal wildlife agency/heritage programs in the final decision.

Based on the comments from the state and federal wildlife agency/heritage program, the Executive Director shall make a final decision on whether the proposed use would be consistent with the wildlife/plant policies and guidelines. If the final decision contradicts the comments submitted by the state and federal wildlife agency/heritage program, the Executive Director shall justify how the opposing conclusion was reached.

(h) The Executive Director shall require the project applicant to revise the mitigation plan as necessary to ensure that the proposed use would not adversely affect a sensitive wildlife/plant area or site.

(4) Soil Productivity

(a) Soil productivity shall be protected using the following guidelines:

(A) A description or illustration showing the mitigation measures to control soil erosion and stream sedimentation.

(B) New developments and land uses shall control all soil movement within the area shown on the site plan.

PERMANENT

PRIORITY HABITATS TABLE	
Priority Habitats	Criteria
Aspen stands	High fish and wildlife species diversity, limited availability, high vulnerability to habitat alteration.
Caves	Significant wildlife breeding habitat, limited availability, dependent species.
Old-growth forest	High fish and wildlife density, species diversity, breeding habitat, seasonal ranges, and limited and declining availability, high vulnerability.
Oregon white oak woodlands	Comparatively high fish and wildlife density, species diversity, declining availability, high vulnerability
Prairies and steppe	Comparatively high fish and wildlife density, species diversity, important breeding habitat, declining and limited availability, high vulnerability.
Riparian	High fish and wildlife density, species diversity, breeding habitat, movement corridor, high vulnerability, dependent species.
Wetlands	High species density, high species diversity, important breeding habitat and seasonal ranges, limited availability, high vulnerability.

(C) The soil area disturbed by new development or land uses, except for new cultivation, shall not exceed 15 percent of the project area.

(D) Within 1 year of project completion, 80 percent of the project area with surface disturbance shall be established with effective native ground cover species or other soil-stabilizing methods to prevent soil erosion until the area has 80 percent vegetative cover.

#### **Practicable Alternative Test**

(1) An alternative site for a proposed use shall be considered practicable if it is available and the proposed use can be undertaken on that site after taking into consideration cost, technology, logistics, and overall project purposes.

A practicable alternative does not exist if a project applicant satisfactorily demonstrates all of the following:

(a) The basic purpose of the use cannot be reasonably accomplished using one or more other sites in the vicinity that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife, or plant areas and sites.

(b) The basic purpose of the use cannot be reasonably accomplished by reducing its proposed size, scope, configuration, or density, or by changing the design of the use in a way that would avoid or result in less adverse effects on wetlands, ponds, lakes, riparian areas, wildlife, or plant areas and sites.

(c) Reasonable attempts were made to remove or accommodate constraints that caused a project applicant to reject alternatives to the proposed use. Such constraints include inadequate infrastructure, parcel size, and land use designations. If a land use designation or recreation intensity class is a constraint, an applicant must request a Management Plan amendment to demonstrate that practicable alternatives do not exist.

#### **Mitigation Plan**

(1) Mitigation Plan shall be prepared when:

(a) The proposed development or use is within a buffer zone (wetland, pond, lakes, riparian areas, wildlife or plant areas and/or sites).

(b) There is no practicable alternative (see the "practicable alternative" test).

(2) In all cases, Mitigation Plans are the responsibility of the applicant and shall be prepared by an appropriate professional (botanist/ecologist for plant sites, a wildlife/fish biologist for wildlife/fish sites, and a qualified professional for water resource sites).

(3) The primary purpose of this information is to provide a basis for the project applicant to redesign the proposed use in a manner that protects sensitive water resources, and wildlife/plant areas and sites, that maximizes his/her development options, and that mitigates, through restoration, enhancement, and replacement measures, impacts to the water resources and/or wildlife/plant area or site and/or buffer zones.

(4) The applicant shall submit the mitigation plan to the Executive Director. The Executive Director shall submit a copy of the mitigation plan to the Forest Service, and appropriate state agencies. If the final decision contradicts the comments submitted by the state and federal wildlife agency/heritage program, the Executive Director shall justify how the opposite conclusion was reached.

(5) A project applicant shall demonstrate sufficient fiscal, technical, and administrative competence to successfully execute a mitigation plan involving wetland creation.

(6) Mitigation plans shall include maps, photographs, and text. The text shall:

(a) Describe the biology and/or function of the sensitive resources (e.g. Wildlife/plant species, or wetland) that will be affected by a proposed use. An ecological assessment of the sensitive resource to be altered or destroyed and the condition of the resource that will result after restoration will be required. Reference published protection and management guidelines.

(b) Describe the physical characteristics of the subject parcel, past, present, and future uses, and the past, present, and future potential impacts to the sensitive resources. Include the size, scope, configuration, or density of new uses being proposed within the buffer zone.

(c) Explain the techniques that will be used to protect the sensitive resources and their surrounding habitat that will not be altered or destroyed (for examples, delineation of core habitat of the sensitive wildlife/plant species and key components that are essential to maintain the long-term use and integrity of the wildlife/plant area or site).

(d) Show how restoration, enhancement, and replacement (creation) measures will be applied to ensure that the proposed use results in minimum feasible impacts to sensitive resources, their buffer zones, and associated habitats.

(e) Show how the proposed restoration, enhancement, or replacement (creation) mitigation measures are NOT alternatives to avoidance. A proposed development/use must first avoid a sensitive resource, and only if this is not possible should restoration, enhancement, or creation be considered as mitigation. In reviewing mitigation plans, the local government, appropriate state agencies, and Forest Service shall critically examine all proposals to ensure that they are indeed last resort options.

(7) At a minimum, a project applicant shall provide to the Executive Director a progress report every 3-years that documents milestones, successes, problems, and contingency actions. Photographic monitoring stations shall be established and photographs shall be used to monitor all mitigation progress.

(8) A final monitoring report shall be submitted to the Executive Director for review upon completion of the restoration, enhancement, or replacement activity. This monitoring report shall document successes, problems encountered, resource recovery, status of any sensitive wildlife/plant species and shall demonstrate the success of restoration and/or enhancement actions. The Executive Director shall submit copies of the monitoring report to the Forest Service; who shall offer technical assistance to the Executive Director in helping to evaluate the completion of the mitigation plan. In instances where restoration and enhancement efforts have failed, the monitoring process shall be extended until the applicant satisfies the restoration and enhancement guidelines.

(9) Mitigation measures to offset impacts to resources and/or buffers shall result in no net loss of water quality, natural drainage, fish/wildlife/plant habitat, and water resources by addressing the following:

(a) Restoration and enhancement efforts shall be completed no later than one year after the sensitive resource or buffer zone has been altered or destroyed, or as soon thereafter as is practicable.

(b) All natural vegetation within the buffer zone shall be retained to the greatest extent practicable. Appropriate protection and maintenance techniques shall be applied, such as fencing, conservation buffers, livestock management, and noxious weed control. Within five years, at least 75 percent of the replacement vegetation must survive. All plantings must be with native plant species that replicate the original vegetation community.

(c) Habitat that will be affected by either temporary or permanent uses shall be rehabilitated to a natural condition. Habitat shall be replicated in composition, structure, and function, including tree, shrub and herbaceous species, snags, pool-riffle ratios, substrata, and structures, such as large woody debris and boulders.

(d) If this standard is not feasible or practical because of technical constraints, a sensitive resource of equal or greater benefit may be substituted, provided that no net loss of sensitive resource functions occurs and provided the Executive Director, in consultation with the appropriate State and Federal agency, determine that such substitution is justified.

(e) Sensitive plants that will be destroyed shall be transplanted or replaced, to the maximum extent practicable. Replacement is used here to mean the establishment of a particular plant species in areas of suitable habitat not affected by new uses. Replacement may be accomplished by seeds, cuttings, or other appropriate methods.

Replacement shall occur as close to the original plant site as practicable. The project applicant shall ensure that at least 75 percent of the replacement plants survive 3 years after the date they are planted.

(f) Nonstructural controls and natural processes shall be used to the greatest extent practicable.

(A) Bridges, roads, pipeline and utility corridors, and other water crossings shall be minimized and should serve multiple purposes and properties.

(B) Stream channels shall not be placed in culverts unless absolutely necessary for property access. Bridges are preferred for water crossings to reduce disruption to hydrologic and biologic functions. Culverts shall only be permitted if there are no practicable alternatives as demonstrated by the 'Practical Alternative Test'.

(C) Fish passage shall be protected from obstruction.

(D) Restoration of fish passage should occur wherever possible.

(E) Show location and nature of temporary and permanent control measures that shall be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems, and culverts.

(F) Groundwater and surface water quality will not be degraded by the proposed use. Natural hydrologic conditions shall be maintained, restored, or enhanced in such a manner that replicates natural conditions, including current patterns (circulation, velocity, volume, and normal water fluctuation), natural stream channel and shoreline dimensions and materi-

als, including slope, depth, width, length, cross-sectional profile, and gradient.

(G) Those portions of a proposed use that are not water-dependent or that have a practicable alternative will be located outside of stream, pond, and lake buffer zones.

(H) Streambank and shoreline stability shall be maintained or restored with natural revegetation.

(I) The size of restored, enhanced, and replacement (creation) wetlands shall equal or exceed the following ratios. The first number specifies the required acreage of replacement wetlands, and the second number specifies the acreage of wetlands altered or destroyed.

Restoration: 2:1

Creation: 3:1

Enhancement: 4:1

(g) Wetland creation mitigation shall be deemed complete when the wetland is self-functioning for 5 consecutive years. Self-functioning is defined by the expected function of the wetland as written in the mitigation plan. The monitoring report shall be submitted to the local government to ensure compliance. The Forest Service, in consultation with appropriate state agencies, shall extend technical assistance to the local government to help evaluate such reports and any subsequent activities associated with compliance.

(h) Wetland restoration/enhancement can be mitigated successfully by donating appropriate funds to a non-profit wetland conservancy or land trust with explicit instructions that those funds are to be used specifically to purchase protection easements or fee title protection of appropriate wetlands acreage in or adjacent to the Columbia River Gorge meeting the ratios given above in guideline (9)(f)(I). These transactions shall be explained in detail in the Mitigation Plan and shall be fully monitored and documented in the monitoring report.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

### **350-81-610. General Management Areas Recreation Resource Review Criteria**

The following uses are allowable, subject to compliance with 350-81-610 (5) and (6).

(1) Recreation Intensity Class 1 (Very Low Intensity)

(a) Parking areas for a maximum of 10 cars for any allowed uses in Recreation Intensity Class 1.

(b) Trails for hiking, equestrian, and mountain biking use.

(c) Pathways for pedestrian and bicycling use.

(d) Trailheads (with provisions for hitching rails and equestrian trailers at trailheads accommodating equestrian use).

(e) Scenic viewpoints and overlooks.

(f) Wildlife/botanical viewing and nature study areas.

(g) River access areas.

(h) Simple interpretive signs and/or displays, not to exceed a total of 50 square feet.

(i) Entry name signs, not to exceed 10 square feet per sign.

(j) Boat docks, piers, or wharfs.

- (k) Picnic areas.
- (l) Restrooms/comfort facilities.
- (2) Recreation Intensity Class 2 (Low Intensity)
  - (a) All uses permitted in Recreation Intensity Class 1.
  - (b) Parking areas for a maximum of 25 cars, including spaces for campground units, to serve any allowed uses in Recreation Intensity Class 2.
  - (c) Simple interpretive signs and displays, not to exceed a total of 100 square feet.
  - (d) Entry name signs, not to exceed 20 square feet per sign.
  - (e) Boat ramps, not to exceed two lanes.
  - (f) Campgrounds for 20 units or less, tent sites only.
- (3) Recreation Intensity Class 3 (Moderate Intensity)
  - (a) All uses permitted in Recreation Intensity Classes 1 and 2.
  - (b) Parking areas for a maximum of 75 cars, including spaces for campground units, for any allowed uses in Recreation Intensity Class 3.
  - (c) Interpretive signs, displays and/or facilities.
  - (d) Visitor information and environmental education signs, displays, or facilities.
  - (e) Entry name signs, not to exceed 32 square feet per sign.
  - (f) Boat ramps, not to exceed three lanes.
  - (g) Concessions stands, pursuant to applicable policies in Chapter 4, Part 1 of the Management Plan.
  - (h) Campgrounds for 50 individual units or less, for tents and/or recreational vehicles, with a total density of no more than 10 units per acre (density to be measured based on total size of recreation facility and may include required buffer and setback areas). Class 3 campgrounds may also include one group campsite area, in addition to the allowed individual campground units or parking area maximums allowed as described herein.
- (4) Recreation Intensity Class 4 (High Intensity)
  - (a) All uses permitted in Recreation Intensity Classes 1, 2, and 3.
  - (b) Parking areas for a maximum of 250 cars, including spaces for campground units, for any allowed uses in Recreation Intensity Class 4.
  - (c) Horseback riding stables and associated facilities.
  - (d) Entry name signs, not to exceed 40 square feet per sign.
  - (e) Boat ramps.
  - (f) Campgrounds for 175 individual units or less, for tents and/or recreational vehicles, with a total density of no more than 10 units per acre (density to be measured based on total size of recreation facility and may include required buffer and setback areas). Class 4 campgrounds may also include up to three group campsite areas, in addition to allowed individual campsite units or parking area maximums allowed as described herein.
- (5) Approval Criteria for Recreation Uses
 

All proposed recreation projects outside of Public or Commercial Recreation designations shall comply with the appropriate scenic, cultural, natural and recreation resource guidelines (350-81-520 through 350-81-620), and shall satisfy the following:

  - (a) Compliance with 350-81-520 through 350-81-610.

(b) Cumulative effects of proposed recreation projects on landscape settings shall be based on the "compatible recreation use" guideline for the landscape setting in which the use is located.

(c) For proposed recreation projects in or adjacent to lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland:

(A) The use would not seriously interfere with accepted forest or agricultural practices on surrounding lands devoted to forest or farm uses. Provision of on-site buffers may be used to partially or fully comply with this criterion, depending upon project design and/or site conditions.

(B) A declaration has been signed by the project applicant or owner and recorded with county deeds and records specifying that the applicant or owner is aware that operators are entitled to carry on accepted forest or farm practices on lands designated Large-Scale or Small-Scale Agriculture, Commercial Forest Land, or Large or Small Woodland.

(d) For proposed projects including facilities for outdoor fires for cooking or other purposes, or for proposed campgrounds, compliance with the following:

(A) The project applicant shall demonstrate that a sufficient quantity of water necessary for fire suppression (as determined pursuant to applicable fire codes or the county fire marshal) is readily available to the proposed facility, either through connection to a community water system or on-site wells, storage tanks, sumps, ponds or similar storage devices. If connection to a community water system is proposed, the project applicant shall demonstrate that the water system has adequate capacity to meet the facility's emergency fire suppression needs without adversely affecting the remainder of the water system with respect to fire suppression capabilities.

(B) To provide access for firefighting equipment, access drives shall be constructed to a minimum of 12 feet in width and a maximum grade of 12 percent. Access drives shall be maintained to a level that is passable to firefighting equipment.

(e) Trail or trailhead projects shall comply with applicable trails policies in the Management Plan.

(f) For proposed projects providing boating or windsurfing access to the Columbia River or its tributaries: compliance with applicable "River Access and Protection of Treaty Rights" objectives in the Management Plan.

(g) For proposed projects on public lands or proposed projects providing access to the Columbia River or its tributaries: compliance with guidelines for protection of tribal treaty rights in 350-81-084.

(h) For proposed projects that include interpretation of natural or cultural resources: A demonstration that the interpretive facilities will not adversely affect natural or cultural resources and that appropriate and necessary resource protection measures shall be employed.

(i) For proposed Recreation Intensity Class 4 projects (except for projects predominantly devoted to boat access): A demonstration that the project accommodates provision of mass transportation access to the site. The number and size of the mass transportation facilities shall reflect the physical capacity of the site. This requirement may be waived upon a demonstration that provision of such facilities would result in

overuse of the site, either degrading the quality of the recreation experience or adversely affecting other resources at the site.

(6) Facility Design Guidelines for All Recreation Projects

(a) Recreation facilities that are not resource-based in nature may be included at sites providing resource-based recreation uses consistent with the guidelines contained herein, as long as such facilities comprise no more than one-third of the total land area dedicated to recreation uses and/or facilities. Required landscaped buffers may be included in calculations of total land area dedicated to recreation uses and/or facilities.

(b) The facility design guidelines contained herein are intended to apply to individual recreation facilities. For the purposes of these guidelines, a recreation facility is considered a cluster or grouping of recreational developments or improvements located in relatively close proximity to one another.

To be considered a separate facility from other developments or improvements within the same recreation intensity class, recreation developments or improvements must be separated by at least one-quarter mile of undeveloped land (excluding trails, pathways, or access roads).

(c) Parking areas, access roads, and campsites shall be sited and designed to fit into the existing natural contours as much as possible, both to minimize ground-disturbing grading activities and utilize topography to screen parking areas and associated structures. Parking areas, access roads, and campsites shall be sited and set back sufficiently from bluffs so as to be visually subordinate as seen from key viewing areas.

(d) Existing vegetation, particularly mature trees, shall be maintained to the maximum extent practicable, and utilized to screen parking areas and campsites from key viewing areas and satisfy requirements for perimeter and interior landscaped buffers.

(e) Parking areas providing more than 50 spaces shall be divided into discrete "islands" separated by unpaved, landscaped buffer areas.

(f) Lineal frontage of parking areas and campsite loops to scenic travel corridors shall be minimized to the greatest extent practicable.

(g) Ingress/egress points shall be consolidated to the maximum extent practicable, providing for adequate emergency access pursuant to applicable fire and safety codes.

(h) Signage shall be limited to that necessary to provide relevant recreation or facility information, interpretive information, vehicular and pedestrian direction, and for safety purposes.

(i) Exterior lighting shall be shielded, designed and sited in a manner which prevents such lighting from projecting off-site or being highly visible from key viewing areas.

(j) Innovative designs and materials that reduce visual impacts (such as "turf blocks" instead of conventional asphalt paving) shall be encouraged through incentives such as additional allowable parking spaces and reduced required minimum interior or perimeter landscaped buffers. Upon a determination that potential visual impacts have been substantially reduced by use of such designs and materials, the Executive

Director may allow either reductions in required minimum interior or perimeter landscape buffers up to 50 percent of what would otherwise be required, or additional parking spaces not to exceed 10 percent of what would otherwise be permitted.

(k) A majority of trees, shrubs, and other plants in landscaped areas shall be species native or naturalized to the landscape setting in which they occur (landscape setting design guidelines specify lists of appropriate species).

(l) All structures shall be designed so that height, exterior colors, reflectivity, mass, and siting result in the structures blending with and not noticeably contrasting with their setting.

(m) Landscape buffers around the perimeter of parking areas accommodating more than 10 vehicles shall be provided. Minimum required widths are 5 feet for 20 vehicles or fewer, 20 feet for 50 vehicles or fewer, 30 feet for 100 vehicles or fewer, and 40 feet for 250 vehicles or fewer.

(n) Interior landscaped buffers breaking up continuous areas of parking shall be provided for any parking areas with more than 50 spaces. The minimum width of interior landscaped buffers between each parking lot of 50 spaces or less shall be 20 feet.

(o) Within required perimeter and interior landscaped buffer areas, a minimum of one tree of at least 6 feet in height shall be planted for every 10 lineal feet as averaged for the entire perimeter width. A minimum of 25 percent of planted species in perimeter buffers shall be coniferous to provide screening during the winter. Project applicants are encouraged to place such trees in random groupings approximating natural conditions. In addition to the required trees, landscaping shall include appropriate shrubs, groundcover, and other plant materials.

(p) Minimum required perimeter landscaped buffer widths for parking areas or campgrounds may be reduced by as much as 50 percent, at the discretion of the Executive Director, if existing vegetation stands and/or existing topography are utilized such that the development is not visible from any key viewing area.

(q) Grading or soil compaction within the drip line of existing mature trees shall be avoided to the maximum extent practicable, to reduce risk of root damage and associated tree mortality.

(r) All parking areas and campsites shall be set back from scenic travel corridors, and the Columbia River and its major tributaries at least 100 feet. Required perimeter landscaped buffers may be included when calculating such setbacks. Setbacks from rivers shall be measured from the ordinary high water mark. Setbacks from scenic travel corridors shall be measured from the edge of road pavements.

(s) Project applicants shall utilize measures and equipment necessary for the proper maintenance and survival of all vegetation utilized to meet the landscape guidelines contained herein, and shall be responsible for such maintenance and survival.

(t) All parking areas shall be set back from property boundaries by at least 50 feet. All campsites and associated facilities shall be set back from property boundaries by at least 100 feet.



(u) All proposed projects at levels consistent with Recreation Intensity Class 4 on lands classified Recreation Intensity Class 4 (except for proposals predominantly devoted to boat access) shall comply with 350-81-610 (5)(i) in this chapter regarding provision of mass transportation access.

**350-81-620. Special Management Area Recreation Resource Review Criteria**

(1) The following shall apply to all new recreation developments and land uses in the Special Management Area:

(a) New developments and land uses shall not displace existing recreational use.

(b) Recreation resources shall be protected from adverse effects by evaluating new developments and land uses as proposed in the site plan. An analysis of both on and off site cumulative effects shall be required.

(c) New pedestrian or equestrian trails shall not have motorized uses, except for emergency services and motorized wheelchairs.

(d) Mitigation measures shall be provided to preclude adverse effects on the recreation resource.

(e) The facility guidelines contained in 350-81-620(1) are intended to apply to individual recreation facilities. For the purposes of these guidelines, a recreation facility is considered a cluster or grouping of recreational developments or improvements located in relatively close proximity to one another. Recreation developments or improvements to be considered a separate facility from other developments or improvements within the same recreation intensity class must be separated by at least one-quarter mile of undeveloped land (excluding trails, pathways, or access roads).

(f) New development and reconstruction of scenic routes (see Part III, Chapter 1 of the Management Plan) shall include provisions for bicycle lanes.

(g) The Executive Director may grant a variance of up to 10 percent to the guidelines of Recreation Intensity Class 4 for parking and campground units upon demonstration that:

(A) Demand and use levels for the proposed activity(s), particularly in the area where the site is proposed, are high and expected to remain so and/or increase. Statewide Comprehensive Outdoor Recreation Plan (SCORP) data and data from National Scenic Area recreation demand studies shall be relied upon to meet the criterion in the absence of current applicable studies.

(B) The proposed use is dependent on resources present at the site.

(C) Reasonable alternative sites offering similar opportunities, including those in Urban Areas, have been evaluated, and it has been demonstrated that the proposed use cannot be adequately accommodated elsewhere.

(D) The proposed use is consistent with the goals, objectives, and policies in Chapter 4, Part 1 of the Management Plan.

(E) Through site design and/or mitigation measures, the proposed use can be implemented without adversely affecting scenic, natural, or cultural resources and adjacent land uses.

(F) Through site design and/or mitigation measures, the proposed use can be implemented without affecting treaty rights.

(G) Mass transportation shall be considered and implemented, if feasible, for all proposed variances to Recreation Intensity Class 4.

(2) Special Management Areas Recreation Intensity Class Guidelines

(a) Recreation Intensity Class 1 (Very Low Intensity)

Emphasis is to provide opportunities for semi-primitive recreation.

(A) Permitted uses are those in which people participate in outdoor activities to realize experiences such as solitude, tension reduction, and nature appreciation.

(B) The maximum site design capacity shall not exceed 35 people at one time on the site. The maximum design capacity for parking areas shall be 10 vehicles.

(C) The following uses may be permitted:

(i) Trails and trailheads.

(ii) Parking areas.

(iii) Dispersed campsites accessible only by a trail.

(iv) Viewpoints and overlooks.

(v) Picnic areas.

(vi) Signs.

(vii) Interpretive exhibits and displays.

(viii) Restrooms.

(b) Recreation Intensity Class 2 (Low Intensity)

Emphasis is to provide opportunities for semi-primitive recreation.

(A) Permitted uses are those that provide settings where people can participate in activities such as physical fitness, outdoor learning, relaxation, and escape from noise and crowds.

(B) The maximum site design capacity shall not exceed 70 people at one time on the site. The maximum design capacity for parking areas shall be 25 vehicles.

(C) All uses permitted in Recreation Intensity Class 1 are permitted in Recreation Intensity Class 2. The following uses may also be permitted:

(i) Campgrounds with vehicle access.

(ii) Boat anchorages designed for no more than 10 boats at one time.

(iii) Swimming areas.

(c) Recreation Intensity Class 3 (Moderate Intensity)

Emphasis is on facilities with design themes emphasizing the natural qualities of the area. Developments are complementary to the natural landscape, yet can accommodate moderate numbers of people.

(A) Permitted uses are those in which people can participate in activities to realize experiences such as group socialization, nature appreciation, relaxation, cultural learning, and physical activity.

(B) The maximum site design capacity shall not exceed 250 people at one time on the site. The maximum design capacity for parking areas shall be 50 vehicles. The GMA vehicle capacity level of 75 vehicles shall be allowed if enhancement or mitigation measures for scenic, cultural, or natural resources are approved for at least 10 percent of the site.

(C) Accommodation of facilities for mass transportation (bus parking, etc.) shall be required for all new Recreation Intensity Class 3 day-use recreation sites, except for sites predominantly devoted to boat access.

(D) All uses permitted in Recreation Intensity Classes 1 and 2 are permitted in Recreation Intensity Class 3. The following uses may also be permitted:

- (i) Campgrounds with improvements that may include water, power, sewer, and sewage dump stations.
  - (ii) Boat anchorages designed for not more than 15 boats.
  - (iii) Public visitor, interpretive, historic, and environmental education facilities.
  - (iv) Full-service restrooms, may include showers.
  - (v) Boat ramps.
  - (vi) Riding stables.
- (d) Recreation Intensity Class 4 (High Intensity)  
Emphasis is on providing roaded natural, rural, and suburban recreation opportunities with a high level of social interaction.

(A) Permitted uses are those in which people can participate in activities to realize experiences such as socialization,

cultural and natural history appreciation, and physical activity.

(B) The maximum design capacity shall not exceed 1,000 people at one time on the site. The maximum design capacity for parking areas shall be 200 vehicles. The GMA vehicle capacity level of 250 vehicles shall be allowed if enhancement or mitigation measures for scenic, cultural, or natural resources are approved for at least 20 percent of the site.

(C) Accommodation of facilities for mass transportation (bus parking, etc.) shall be required for all new Recreation Intensity Class 4 day-use recreation sites, except for sites predominantly devoted to boat access.

(D) All uses permitted in Recreation Intensity Classes 1, 2, and 3 are permitted in Recreation Intensity Class 4.

**Notice of Application Requirements**

350-81-630

	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
<b>GENERAL MANAGEMENT AREA</b>								
Residential LUD - Review uses except SFDs located adjacent to Agriculture and Forest LUDs, and those uses within 1000' of a sensitive wildlife area or site, or a rare plant	X	X	X	X	X			
Residential LUD - SFDs adjacent to Agriculture and Forest LUDs except those within 1000' of sensitive wildlife area or site, or a rare plant	X	X	X	X		X		
Residential LUD - Review uses within 1000' of a sensitive wildlife area or site except SFDs located adjacent to Agriculture or Forest LUDs	X	X	X	X	X		X	
Residential LUD - SFDs adjacent to Agriculture and Forest LUDs within 1000' of a sensitive wildlife area or site	X	X	X	X		X	X	
Residential LUD - Review uses within 1000' of a rare plant except SFDs located adjacent to Agriculture or Forest LUDs	X	X	X	X	X			X
Residential LUD - SFDs adjacent to Agriculture and Forest LUDs within 1000' of rare plant	X	X	X	X		X		X
Agriculture LUD - Review uses except non-farm SFD in Large-Scale Agriculture LUD and uses within 1000' of sensitive wildlife area or site, or rare plant	X	X	X	X	X			
Agriculture LUD - Review uses within 1000' of sensitive wildlife area or site except non-farm SFD in Large-Scale Agriculture LUD	X	X	X	X	X		X	
Agriculture LUD - Review uses within 1000' of a rare plant except non-farm SFD in Large-Scale Agriculture LUD	X	X	X	X	X			X
Agriculture LUD - Non-farm SFD in Large-Scale Agriculture LUD, except those within 1000' of sensitive wildlife area or site, or rare plant	X	X	X	X		X		
Agriculture LUD - Non-farm SFD in Large-Scale Agriculture within 1000' of sensitive wildlife area or site	X	X	X	X		X	X	
Agriculture LUD - Non-farm SFD in Large-Scale Agriculture within 1000' of rare plant	X	X	X	X		X		X
Commercial LUD - Review uses within 1000' of a sensitive wildlife area or site	X	X	X	X	X		X	
Commercial LUD - Review uses within 1000' of a rare plant	X	X	X	X	X			X

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	Tribes	USFS	State	County	Landowners w/in 200'	Landowners w/in 500'	Wildlife	Heritage
Recreation LUD - Review uses except those within 1000' of a sensitive wildlife area or site, or a rare plant	X	X	X	X	X			
Recreation LUD - Review uses within 1000' of a sensitive wildlife area or site	X	X	X	X	X		X	
Recreation LUD - Review uses within 1000' of a rare plant	X	X	X	X	X			X
Open Space LUD - Review uses except those within 1000' of a sensitive wildlife area or site, or a rare plant	X	X	X	X	X			
Open Space LUD - Review uses within 1000' of a sensitive wildlife area or site	X	X	X	X	X		X	
Open Space LUD - Review uses within 1000' of a rare plant	X	X	X	X	X			X
Agriculture—Special LUD - Review Uses	X	X	X	X	X			X
<b>SPECIAL MANAGEMENT AREAS</b>								
Review Uses - All LUDs	X	X	X	X	X		X	
Forest LUD - Review uses except utility facilities, railroads, home occupations, cottage industries, wineries, ag. produce process. and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit learning/research facilities, and those review uses within 1000' feet of a sensitive wildlife area or site, or rare plant	X	X	X	X	X			
Forest LUD - Utility facilities, railroads, home occupations, wineries, ag. produce process. and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities, and not within 1000' of a sensitive wildlife area or site, or rare plant	X	X	X	X		X		
Forest LUD - Review uses within 1000' of a sensitive wildlife area or site, except utility facilities, railroads, home occupations, wineries, ag. produce process and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities	X	X	X	X	X		X	
Forest LUD - Review uses within 1000' of a rare plant except utility facilities, railroads, home occupations, wineries, ag. produce process. and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities	X	X	X	X	X			X
Forest LUD - Utility facilities, railroads, home occupations, wineries, ag. produce process. and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit camps-retreats-conf. centers, B&Bs, non-profit learning/research facilities within 1000' of a sensitive wildlife area or site						X	X	
Forest LUD - Utility facilities, railroads, home occupations, wineries, ag. produce process. and pack., mineral resources, geothermal resources, aquaculture, boarding of horses, temp. asphalt/batch plants, expansion of non-profit learning/research facilities within 1000' of a rare plant	X	X	X	X		X		X
Commercial LUD - Review uses except those within 1000' of a sensitive wildlife area or site, or rare plant	X	X	X	X	X			

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Reviser's note: The typographical errors in the above material occurred in the copy filed by the Columbia River Gorge Commission and appear in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 05-11-082  
PERMANENT RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES**  
(Aging and Disability Services Administration)  
[Filed May 17, 2005, 4:45 p.m., effective June 17, 2005]

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

Purpose: Adopting new chapter 388-106 WAC, Long-term care services, and revision of other rules are required to phase out rules that no longer apply, due to the implementation of the comprehensive assessment reporting and evaluation (CARE) tool. In addition, ADSA is reorganizing, amending, and streamlining rules to ensure that all rules are current and clear.

**WAC Conversion Chart**

This chart indicates the new WAC number or location which will replace those WACs being repealed in chapters 388-71 and 388-72A WAC, and WAC sections that will remain in chapter 388-71 WAC.

PREVIOUS SECTIONS IN CHAPTER 388-71 WAC	NEW WAC NUMBER, IF ANY
<b>HOME AND COMMUNITY PROGRAMS</b>	
388-71-0194 Home and community services— Nursing services.	388-106-0200, 388-106-0300, 388-106-0305, 388-106-0400, and 388-106-0500
388-71-0202 Long-term care services— Definitions.	388-71-0215
388-71-0203 Long-term care services— Assessment of task self-performance and determination of required assistance.	388-71-0230
388-71-0205 Long-term care services— Service plan.	388-71-0235
388-71-0400 What is the intent of the department's home and community programs?	Repealed - No new number.
388-71-0405 What are the home and community programs?	388-106-0015
388-71-0410 What services may I receive under HCP?	388-106-0300, 388-106-0305, 388-106-0400, 388-106-0500, and 388-106-0600
388-71-0415 What other services may I receive under the COPES program?	388-106-0300, 0305
388-71-0420 What services are not covered under HCP?	388-106-0020
388-71-0425 Who can provide HCP services?	388-106-0040
388-71-0430 Am I eligible for one of the HCP programs?	388-106-0210, 388-106-0310, 388-106-0410, 388-106-0510, and 388-106-0610
388-71-0435 Am I eligible for COPES-funded services?	388-106-0310
388-71-0440 Am I eligible for MPC-funded services?	388-106-0210
388-71-0442 Am I eligible for medically needy residential waiver services?	388-106-0410
388-71-0445 Am I eligible for Chore-funded services?	388-106-0610

PREVIOUS SECTIONS IN CHAPTER 388-71 WAC	NEW WAC NUMBER, IF ANY
388-71-0450 How do I remain eligible for services?	388-106-0220, 388-106-0320, 388-106-0420, 388-106-0520, and 388-106-0620
388-71-0455 Can my services be terminated if eligibility requirements for HCP change?	388-106-0220, 388-106-0320, 388-106-0420, 388-106-0520, and 388-106-0620
388-71-0460 Are there limitations to HCP services I can receive?	388-106-0130
388-71-0465 Are there waiting lists for HCP services?	388-106-0235, 388-106-0335, 388-106-0435, and 388-106-0535
388-71-0470 Who pays for HCP services?	388-106-0225, 388-106-0325, 388-106-0425, 388-106-0525, and 388-106-0625
388-71-0480 If I am employed, can I still receive HCP services?	388-106-0230, 388-106-0330, 388-106-0430, 388-106-0530, and 388-106-0630
<b>INDIVIDUAL PROVIDER AND HOME CARE AGENCY PROVIDER QUALIFICATIONS</b>	Kept in chapter 388-71 WAC
<b>RESIDENTIAL CARE SERVICES</b>	
388-71-0600 What are residential services?	388-106-0010
388-71-0605 Am I eligible for residential services?	388-106-0905
388-71-0610 Who pays for residential care?	388-106-0225, 388-106-0325, 388-106-0425, and 388-106-0525
388-71-0613 For what days will the department pay the residential care facility?	388-106-0225, 388-106-0325, 388-106-0425, and 388-106-0525
388-71-0615 If I leave a hospital, residential facility, or nursing facility, are there resources available to help me find a place to live?	388-106-0950
388-71-0620 Am I eligible for a residential discharge allowance?	388-106-0955
<b>NURSING FACILITY CARE AND PAYMENT</b>	
388-71-0700 What are the requirements for nursing facility eligibility, assessment, and payment?	388-106-0350, 388-106-0355, and 388-106-0360
<b>ADULT DAY SERVICES (KEPT IN CHAPTER 388-71 WAC EXCEPT FOR THE FOLLOWING)</b>	
388-71-0704 Adult day care—Services.	388-106-0800
388-71-0706 Adult day health—Services.	388-106-0805
388-71-0708 Adult day care—Eligibility.	388-106-0810
388-71-0710 Adult day health—Eligibility.	388-106-0815
<b>PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)</b>	
388-71-0800 What is PACE?	388-106-0015
388-71-0805 What services does PACE cover?	388-106-0700
388-71-0810 Who provides these services?	Repealed - No new number.
388-71-0815 Where are these services provided?	Repealed - No new number.

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PREVIOUS SECTIONS IN CHAPTER 388-71 WAC	NEW WAC NUMBER, IF ANY
388-71-0820 How do I qualify for Medicaid-funded PACE services?	388-106-0705
388-71-0825 What are my appeal rights?	388-106-1305
388-71-0830 Who pays the PACE provider?	388-106-0710
388-71-0835 How do I enroll into the PACE program?	388-106-0705
388-71-0840 How do I disenroll from the PACE program?	388-106-0715
388-71-0845 What are my rights as a PACE client?	388-106-1300
<b>PRIVATE DUTY NURSING</b>	
388-71-0900 What is the intent of WAC 388-71-0900 through 388-71-0960?	Kept in chapter 388-71 WAC
388-71-0905 What is private duty nursing (PDN) for adults?	Kept in chapter 388-71 WAC
388-71-0910 Am I financially eligible for Medicaid-funded private duty nursing services?	Kept in chapter 388-71 WAC
388-71-0915 Am I medically eligible to receive private duty nursing services?	Kept in chapter 388-71 WAC
388-71-0920 How is my eligibility determined?	Kept in chapter 388-71 WAC
388-71-0925 Am I required to pay participation toward PDN services?	Kept in chapter 388-71 WAC
388-71-0930 Are PDN costs subject to estate recovery?	Kept in chapter 388-71 WAC
388-71-0935 Who can provide my PDN services?	Kept in chapter 388-71 WAC
388-71-0940 Are there limitations or other requirements for PDN?	Kept in chapter 388-71 WAC
388-71-0945 What requirements must a home health agency meet in order to provide and get paid for my PDN?	Kept in chapter 388-71 WAC
388-71-0950 What requirements must a private RN or LPN meet in order to provide and get paid for my PDN services?	Kept in chapter 388-71 WAC
388-71-0955 Can I receive PDN in a licensed adult family home (AFH)?	Kept in chapter 388-71 WAC
388-71-0960 Can I receive services in addition to PDN?	Kept in chapter 388-71 WAC
388-71-0965 Can I choose to self-direct my care if I receive PDN?	Kept in chapter 388-71 WAC
<b>SENIOR CITIZEN'S SERVICES</b>	
388-71-1000 What is the Senior Citizens Services Act?	388-106-0015
388-71-1005 Who administers the Senior Citizens Services Act funds?	Repealed - No new number.
388-71-1010 What services does the SCSA fund?	388-106-1100
388-71-1015 How do I apply for SCSA-funded services?	388-106-1105
388-71-1020 Am I eligible for SCSA-funded services at no cost?	388-106-1110
388-71-1025 What income and resources are exempt when determining eligibility?	388-106-1115
388-71-1030 What if I am not eligible to receive SCSA-funded services at no cost?	388-106-1120
388-71-1035 What are my rights under SCSA?	388-106-1300

PREVIOUS SECTIONS IN CHAPTER 388-71 WAC	NEW WAC NUMBER, IF ANY
<b>RESPIRE CARE SERVICES</b>	
388-71-1065 What is the purpose of the respite care program?	388-106-0015, 388-106-1205
388-71-1070 What definitions apply to respite care services?	388-106-1200
388-71-1075 Who is eligible to receive respite care services?	388-106-1210
388-71-1080 Who may provide respite care services?	388-106-1215
388-71-1085 How are respite care providers reimbursed for their services?	388-106-1220
388-71-1090 Are participants required to pay for the cost of their services?	388-106-1225
388-71-1095 Are respite care services always available?	388-106-1230
<b>VOLUNTEER CHORE</b>	
388-71-1100 What is volunteer chore services (VCS)?	388-106-0015, 388-106-0650
388-71-1105 Am I eligible to receive volunteer chore services?	388-106-0655
388-71-1110 How do I receive information on applying for volunteer chore services?	Repealed - No new number.

PREVIOUS SECTIONS IN CHAPTER 388-72A WAC	NEW WAC NUMBER, IF ANY
<b>APPLICATION</b>	
388-72A-0005 When do the rules in chapter 388-72A WAC apply to me?	Repealed - No new number
388-72A-0010 Does chapter 388-71 WAC apply to me?	Repealed - No new number.
388-72A-0015 If the department did not use the CARE tool for my last assessment, may I have my assessments done on the assessment form used for my last assessment?	Repealed - No new number.
<b>ASSESSMENT AND SERVICE PLANNING</b>	
388-72A-0020 What is an assessment?	388-106-005 [388-106-0005]
388-72A-0025 What is the process for conducting an assessment?	388-106-0065
388-72A-0030 What is the purpose of an assessment?	388-106-0055
388-72A-0035 What are personal care services?	388-106-0015
388-72A-0036 How are my needs for personal care services determined?	388-106-0075
388-72A-0037 How are self-performance and support provided for the activities of daily living (ADLs) scored?	388-106-0075
388-72A-0038 How are the ADLs bathing, body care, and medication management scored?	388-106-0075
388-72A-0039 How are self-performance and difficulty for the instrumental activities of daily living (IADLs) scored?	388-106-0075
388-72A-0042 How are ADLs and IADLs scored for children?	388-106-0213
388-72A-0043 How are other elements in CARE scored for children age seventeen and younger and foster care clients?	388-106-0213

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PREVIOUS SECTIONS IN CHAPTER 388-72A WAC	NEW WAC NUMBER, IF ANY
388-72A-0045 How will the department plan to meet my care needs?	Repealed - No new number.
388-72A-0050 What if I disagree with the result of the assessment or the decisions about what services I may receive?	388-106-1305
<b>CARE ELIGIBILITY</b>	
388-72A-0053 Am I eligible for one of the HCP programs?	388-106-0210, 388-106-0310, 388-106-0410, 388-106-0510, and 388-106-0610
388-72A-0055 Am I eligible for COPES-funded services?	388-106-0310
388-72A-0057 Am I eligible for medically needy residential waiver (MNRW)-funded services?	388-106-0410
388-72A-0058 Am I eligible for medically needy in-home waiver (MNIW)-funded services?	388-106-0510
388-72A-0060 Am I eligible for MPC-funded services?	388-106-0210
388-72A-0065 Am I eligible for Chore-funded services?	388-106-0610
388-72A-0069 How does CARE use the information the assessor gathers?	388-106-0055
<b>CLASSIFICATION FOR IN-HOME AND RESIDENTIAL CARE</b>	
388-72A-0070 What are the in-home hours and residential rate based on?	388-106-0080
388-72A-0080 What are the elements that the CARE tool evaluates for each of the criteria in WAC 388-72A-0075?	388-106-0085
388-72A-0081 How is cognitive performance measured in the CARE tool?	388-106-0090
388-72A-0082 How is clinical complexity measured within the CARE tool?	388-106-0095
388-72A-0083 How are mood and behaviors measured within the CARE tool?	388-106-0100
388-72A-0084 How are ADL scores measured within the CARE tool?	388-106-0105
388-72A-0085 How does the CARE tool evaluate for the two exceptional care classifications of in-home care?	388-106-0110
388-72A-0086 How is the information in WAC 388-72A-0081 through 388-72A-0084 used to determine the client's classification payment group for residential settings?	388-106-0115
388-72A-0087 How is the information in WAC 388-72A-0081 through 388-72A-0085 used to determine the classification payment group for in-home clients?	388-106-0125
<b>PAYMENT METHODOLOGY FOR IN-HOME SERVICES</b>	
388-72A-0090 What are the maximum hours that I can receive for in-home services?	388-106-0135
388-72A-0092 How are my in-home hours determined?	388-106-0130
388-72A-0095 What additional criteria are considered to determine the number of hours I will receive for in-home services?	388-106-0130

PREVIOUS SECTIONS IN CHAPTER 388-72A WAC	NEW WAC NUMBER, IF ANY
388-72A-0100 Are there other in-home services I may be eligible to receive in addition to those described in WAC 388-72A-0095(3)?	388-106-0300
388-72A-0105 What would cause a change in the maximum hours authorized?	388-106-0140
<b>HOME AND COMMUNITY PAYMENT RATES</b>	
388-72A-0110 How much will the department pay for my care?	388-106-0120
388-72A-0115 When the department adjusts an algorithm, when does the adjustment become effective?	Repealed - No new number.
388-72A-0120 When a client requests a fair hearing to have the client's CARE tool assessment results reviewed and there is (are) a more recent CARE assessment(s), which CARE tool assessment does the administrative law judge review in the fair hearing?	388-106-1310

Citation of Existing Rules Affected by this Order: Repealing WAC 388-71-0194 Home and community services—Nursing services, 388-71-0202 Long-term care services—Definitions, 388-71-0203 Long-term care services—Assessment of task self-performance and determination of required assistance, 388-71-0205 Long-term care services—Service plan, 388-71-0400 What is the intent of the department's home and community programs?, 388-71-0405 What are the home and community programs?, 388-71-0410 What services may I receive under HCP?, 388-71-0415 What other services may I receive under the waiver-funded programs?, 388-71-0420 What services are not covered under HCP?, 388-71-0425 Who can provide HCP services?, 388-71-0430 Am I eligible for one of the HCP programs?, 388-71-0435 Am I eligible for COPES-funded services?, 388-71-0440 Am I eligible for MPC-funded services?, 388-71-0442 Am I eligible for medically needy residential waiver services?, 388-71-0445 Am I eligible for Chore-funded services?, 388-71-0450 How do I remain eligible for services?, 388-71-0455 Can my services be terminated if eligibility requirements for HCP change?, 388-71-0460 Are there limitations to HCP services I can receive?, 388-71-0465 Are there waiting lists for HCP services?, 388-71-0470 Who pays for HCP services?, 388-71-0480 If I am employed, can I still receive HCP services?, 388-71-0600 What are residential services?, 388-71-0605 Am I eligible for residential services?, 388-71-0610 Who pays for residential care?, 388-71-0613 For what days will the department pay the residential care facility?, 388-71-0615 If I leave a hospital, residential facility, or nursing facility, are there resources available to help me find a place to live?, 388-71-0620 Am I eligible for a residential discharge allowance?, 388-71-0700 What are the requirements for nursing facility eligibility, assessment, and payment?, 388-71-0800 What is PACE?, 388-71-0805 What services does PACE cover?, 388-71-0810 Who provides these services?, 388-71-0815 Where are these services provided?, 388-71-0820 How do I qualify for Medicaid-funded PACE services?, 388-71-0825 What are my appeal rights?, 388-71-0830 Who pays the PACE provider?, 388-71-0835 How do I enroll into

the PACE program?, 388-71-0840 How do I disenroll from the PACE program?, 388-71-0845 What are my rights as a PACE client?, 388-71-1000 What is the Senior Citizens Services Act?, 388-71-1005 Who administers the Senior Citizens Services Act funds?, 388-71-1010 What services does the SCSA fund?, 388-71-1015 How do I apply for SCSA-funded services?, 388-71-1020 Am I eligible for SCSA-funded services at no cost?, 388-71-1025 What income and resources are exempt when determining eligibility?, 388-71-1030 What if I am not eligible to receive SCSA-funded services at no cost?, 388-71-1035 What are my rights under SCSA?, 388-71-1065 What is the purpose of the respite care program?, 388-71-1070 What definitions apply to respite care services?, 388-71-1075 Who is eligible to receive respite care services?, 388-71-1080 Who may provide respite care services?, 388-71-1085 How are respite care providers reimbursed for their services?, 388-71-1090 Are participants required to pay for the cost of their services?, 388-71-1095 Are respite care services always available?, 388-71-1100 What is volunteer chore services (VCS)?, 388-71-1105 Am I eligible to receive volunteer chore services?, 388-71-1110 How do I receive information on applying for volunteer chore services?, 388-72A-0005 When do the rules in chapter 388-72A WAC apply to me?, 388-72A-0010 Do chapter 388-71 WAC and WAC 388-845-1300 apply to me?, 388-72A-0015 If the department did not use the CARE tool for my last assessment, may I have my assessments done on the assessment form used for my last assessment?, 388-72A-0020 What is an assessment?, 388-72A-0025 What is the process for conducting an assessment?, 388-72A-0030 What is the purpose of an assessment?, 388-72A-0035 What are personal care services?, 388-72A-0036 How are my needs for personal care services determined?, 388-72A-0037 How are self-performance and support provided for the activities of daily living (ADLs) scored?, 388-72A-0038 How are the ADLs bathing, body care, and medication management scored?, 388-72A-0039 How are self-performance and difficulty for the instrumental activities of daily living (IADLs) scored?, 388-72A-0041 How are status and assistance available scored for ADLs and IADLs?, 388-72A-0042 How are ADLs and IADLs scored for children?, 388-72A-0043 How are other elements in CARE scored for children age seventeen and younger and foster care clients?, 388-72A-0045 How will the department plan to meet my care needs?, 388-72A-0050 What if I disagree with the result of the assessment or the decisions about what services I may receive?, 388-72A-0053 Am I eligible for one of the HCP programs?, 388-72A-0055 Am I eligible for COPES-funded services?, 388-72A-0057 Am I eligible for medically needy residential waiver (MNRW)-funded services?, 388-72A-0058 Am I eligible for medically needy in-home wavier (MNIW)-funded services?, 388-72A-0060 Am I eligible for MPC-funded services?, 388-72A-0065 Am I eligible for Chore-funded services?, 388-72A-0069 How does CARE use the information the assessor gathers?, 388-72A-0070 What are the in-home hours and residential rate based on?, 388-72A-0080 What criteria does the CARE tool use to place a client in one of the classification groups?, 388-72A-0081 How is cognitive performance measured in the CARE tool?, 388-72A-0082 How is clinical complexity measured within the CARE tool?, 388-72A-0083

How are mood and behaviors measured within the CARE tool?, 388-72A-0084 How are ADL scores measured within the CARE tool?, 388-72A-0085 How does the CARE tool evaluate for the two exceptional care classifications of in-home care?, 388-72A-0086 How is the information in WAC 388-72A-0081 through 388-72A-0084 used to determine the client's classification payment group for residential settings?, 388-72A-0087 How is the information in WAC 388-72A-0081 through 388-72A-0085 used to determine the classification payment group for in-home clients?, 388-72A-0090 What are the maximum hours that I can receive for in-home services?, 388-72A-0092 How are my in-home hours determined?, 388-72A-0095 What additional criteria are considered to determine the number of hours I will receive for in-home services?, 388-72A-0100 Are there other in-home services I may be eligible to receive in addition to those described in WAC 388-72A-0095(3)?, 388-72A-0105 What would cause a change in the maximum hours authorized?, 388-72A-0110 How much will the department pay for my care?, 388-72A-0115 When the department adjusts an algorithm, when does the adjustment become effective? and 388-72A-0120 When a client requests a fair hearing to have the client's CARE tool assessment results reviewed and there is (are) a more recent CARE assessment(s), which CARE tool assessment does the administrative law judge review in the fair hearing?; and amending WAC 388-515-1540, 388-515-1550, 388-71-0500, 388-71-0515, 388-71-0520, 388-71-0540, 388-71-0704, 388-71-0706, 388-71-0708, 388-71-0710, 388-71-0716, and 388-71-0720.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 05-03-096 on January 18, 2005.

Changes Other than Editing from Proposed to Adopted Version: (1) The department has withdrawn proposed rules on private duty nursing, WAC 388-106-1000 through 388-106-1055. In addition, the private duty nursing sections in chapter 388-71 WAC will not be repealed (WAC 388-71-0900 through 388-71-0955).

(2) WAC 388-106-0010:

(a) The department has bolded all defined terms and used a consistent numbering format under each definition (i.e. a, b, c).

(b) The department has removed the sentence "In licensed boarding homes, this may include situations in which you cannot physically self-administer medications but can accurately direct others, per WAC 388-78A-0300" from the term "Assistance with medication management" (c). This WAC no longer exists.

(c) The department has clarified the "service summary" definition to more accurately describe its contents and to include relevant sections from WAC 388-71-0205: "CARE information which includes: contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care needs, the list of formal and informal providers and what tasks they will provide, a provider schedule, referral needs/information, and dates and agreement to the services."

(3) WAC 388-106-0015:

## Chapter 388-106 WAC

## Long-Term Care Services

## SCOPE AND DEFINITIONS

NEW SECTION

**WAC 388-106-0005** What is the purpose and scope of this chapter? This chapter applies to applicants and recipients of long-term care services.

NEW SECTION

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

(a) Understood: You express ideas clearly;

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

(c) Sometimes understood: You have limited ability, but are able;

(d) Rarely/never understood.

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

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

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

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

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

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

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

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

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

(g) Locomotion outside of immediate living environment including outdoors: How you move to and return from more distant areas. If you are living in a boarding home or

(a) Language has been revised: "The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 0360). You may receive services from any of the following:"

(b) Language has been removed from subsection (4), Medically Needy In-Home Waiver (MNIW): "Clients eligible for this program may receive personal care in their own home ~~or in a residential facility.~~"

(c) The WAC reference 388-820, cited in subsection (15), has been changed to 388-825.

(d) Nursing facility has been added to the list of services.

(4) WAC 388-106-0065: Replaced third party with third parties. "However, you have the right to request that third parties be present...."

(5) WAC 388-106-0305 and 388-106-0400, subsection (5)(c): The department has replaced the word "defined" with "described."

(6) WAC 388-106-1110(3) and 388-106-1225 (1). The language has been corrected to say "...income at or below forty percent of the state median income (SMI), based on family size."

(7) WAC 388-106-1210: To be consistent with (1)(b), the language in (3) has been updated to reinforce that the caregiver must provide 12 hours a day "...to become eligible for respite care services, as long as it is a minimum of twelve hours per day, as outlined in (1)(b) of this section."

(8) WAC 388-106-1305: The department has clarified that the decisions pertain to eligibility. "What if I disagree with the result of the CARE assessment and/or other eligibility decisions made by the department? You have a right to contest the result of your CARE assessment and/or other eligibility decisions made by the department..."

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 107, Amended 12, Repealed 96.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 107, Amended 12, Repealed 96.

Date Adopted: May 10, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit



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

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

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

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

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

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

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

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

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

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

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

"Assistance available" means the amount of informal support available if the need is partially met. The department determines the amount of the assistance available using one of four categories:

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

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

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

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

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

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

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

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

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

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

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act.

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

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

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

(b) The frequency of the behavior.

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

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

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

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require reminders, cues and supervision in planning, organizing and

correcting daily routines. You attempt to make decisions, although poorly.

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

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

**"Designee"** means Area Agency on Aging.

**"Difficulty"** means how difficult it is or would be for you to perform an Instrumental Activity of Daily Living (IADL). This is assessed as:

(a) No difficulty in performing the activity;

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

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

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

**"Estate recovery"** means after the client's death, the department's activity in recouping funds that were expended for long-term care services provided to the client during the client's lifetime, per WAC 388-527-2742.

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

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

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

(i) Private duty nursing; or

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

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

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

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

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

**"Institution"** means medical facilities, nursing facilities, and institutions for the mentally retarded. It does not include correctional institutions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) In a building that you own;

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

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

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

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

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

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

**"Plan of care"** means Assessment Details and Service Summary generated by CARE.

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

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

(b) Qualified and eligible to receive department payment.

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

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

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

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

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

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

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

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

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

(ii) No provider was available to assist; or

(iii) You declined assistance with the task.

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

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

(b) Supervision if you received set-up help or arrangements only;

(c) Limited assistance if you sometimes performed the activity yourself and other times needed assistance;

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

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

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

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

**"SSI-related"** is defined under WAC 388-500-0005.

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

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

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

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

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

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

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

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

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater self performance of the activity (such as giving or holding out an item that you take from others);

(c) One-person physical assist provided;

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

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

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

## APPLYING FOR SERVICES

### NEW SECTION

**WAC 388-106-0015 What long-term care services does the department provide?** The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) **Medical Personal Care (MPC)** is a Medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(2) **Community Options Program Entry System (COPES)** is a Medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(3) **Medically Needy Residential Waiver (MNRW)** is a Medicaid waiver program authorized under RCW 74.39.041. Clients eligible for this program may receive personal care in a residential facility.

(4) **Medically Needy In-Home Waiver (MNIW)** is a Medicaid waiver program authorized under RCW 74.09.700. Clients eligible for this program may receive personal care in their own home.

(5) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.

(6) **Volunteer Chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.

(7) **Program of All-Inclusive Care for the Elderly (PACE)** is a Medicaid/Medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.

(8) **Adult Day Health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.

(9) **Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.

(10) **GAU-funded residential care** is a state-funded program authorized under WAC 388-400-0025. Clients eligible for this program may receive personal care services in an adult family home or an adult residential care facility.

(11) **Residential Care Discharge Allowance** is a service that helps eligible clients to establish or resume living in their own home.

(12) **Private Duty Nursing** is a Medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.

(13) **Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.

(14) **Respite Program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for unpaid family or other caregivers of adults with a functional disability.

(15) **Programs for persons with developmental disabilities** are discussed in chapter 388-825 through 388-853 WAC.

(16) **Nursing Facility.**

#### NEW SECTION

**WAC 388-106-0020 Under the MPC, COPEs, MNRW, MNIW, and Chore programs, what services are not covered?** The following types of services are not covered under MPC, COPEs, MNRW, MNIW, and Chore:

(1) Child Care.

(2) Individual providers and agency providers must not provide sterile procedures, administration of medications, or other tasks requiring a licensed health professional unless these tasks are provided through nursing delegation, self-directed care or provided by a family member.

(3) Services provided over the telephone.

(4) Services to assist other household members not eligible for services.

(5) Development of social, behavioral, recreational, communication, or other types of community living skills.

(6) Nursing care.

(7) Pet care.

(8) Assistance with managing finances.

(9) Respite.

(10) Yard care.

#### NEW SECTION

**WAC 388-106-0025 How do I apply for long-term care services?** To apply for long-term care services, you must request an assessment from the department and submit a Medicaid application.

#### NEW SECTION

**WAC 388-106-0030 Where can I receive services?**

You may receive services:

(1) In your own home.

(2) In a residential facility, which includes licensed:

(a) Adult family homes, as defined in RCW 70.128.010.

(b) Boarding homes. Types of licensed and contracted boarding homes include:

(i) Assisted living facilities, as defined in WAC 388-110-020;

(ii) Enhanced adult residential care facilities, as defined in WAC 388-110-020;

(iii) Enhanced adult residential care facilities-Specialized Dementia Care, as defined in WAC 388-110-020; and

(iv) Adult residential care facilities, as defined in WAC 388-110-020.

(3) In a nursing home, as defined in WAC 388-97-005.

#### NEW SECTION

**WAC 388-106-0035 May I receive personal care services through any of the long-term care programs when I am out of the state of Washington?** (1) You may receive personal care assistance through any long-term care programs in WAC 388-106-0015 subsections (1) through (5) when temporarily traveling out of state for less than thirty days, as long as your:

(a) Individual provider is contracted with the state of Washington;

(b) Travel plans are coordinated with the department prior to departure;

(c) Services are authorized on your plan of care prior to departure; and

(d) Services are strictly for your personal care.

(2) You may not receive personal care services outside of the United States.

#### NEW SECTION

**WAC 388-106-0040 Who can provide long-term care services?** The following types of providers can provide long-term care services:

(1) Individual providers (IPs), who provide services to clients in their own home. IPs must meet the requirements outlined in WAC 388-71-0500 through WAC 388-71-05909.

(2) Home care agencies, who provide services to clients in their own home. Home care agencies must be licensed

under chapter 70.127 RCW and chapter 246-336 WAC and contracted with Area Agency on Aging.

(3) Residential providers, which include licensed adult family homes and boarding homes, who contract with the department to provide assisted living, adult residential care, and enhanced adult residential care services (which may also include specialized dementia care).

(4) Providers who have contracted with the department to perform other services.

#### NEW SECTION

**WAC 388-106-0045 When will the department authorize my long-term care services?** The department will authorize long-term care services when you:

- (1) Are assessed using CARE;
- (2) Are found financially and functionally eligible for services including, if applicable, the determination of the amount of participation toward the cost of your care and/or the amount of room and board that you must pay;
- (3) Have given consent for services and approved your plan of care; and
- (4) Have chosen a provider(s), qualified for payment.

#### **COMPREHENSIVE ASSESSMENT REPORTING EVALUATION (CARE) ASSESSMENT**

#### NEW SECTION

**WAC 388-106-0050 What is an assessment?** An assessment is an inventory and evaluation of abilities and needs based on an in-person interview in your home or your place of residence.

#### NEW SECTION

**WAC 388-106-0055 What is the purpose of an assessment?** The purpose of an assessment is to:

- (1) Determine eligibility for long-term care programs;
- (2) Identify your strengths, limitations, and preferences;
- (3) Evaluate your living situation and environment;
- (4) Evaluate your physical health, functional and cognitive abilities;
- (5) Determine availability of informal supports and other non-department paid resources;
- (6) Determine need for intervention;
- (7) Determine need for case management activities;
- (8) Determine your classification group that will set your payment rate for residential care or number of hours of in-home care;
- (9) Determine need for referrals; and
- (10) Develop a plan of care, as defined in WAC 388-106-0010.

#### NEW SECTION

**WAC 388-106-0060 Who must perform the assessment?** The assessment must be performed by the department.

#### NEW SECTION

**WAC 388-106-0065 What is the process for conducting an assessment?** The department:

- (1) Will assess you using a department-prescribed assessment tool, titled the comprehensive assessment reporting evaluation (CARE).
- (2) May request the assessment be conducted in private. However, you have the right to request that third parties be present (e.g. a friend, a family member, or a legal representative).
- (3) Has the right to end the assessment if behaviors by any party are impeding the assessment process. If an assessment is terminated, the department will reschedule.

#### NEW SECTION

**WAC 388-106-0070 Will I be assessed in CARE?** You will be assessed in CARE if you are applying for or receiving COPEs, MNIW, MNRW, MPC, Chore, Respite, Adult Day Health, GAU-funded residential care, PACE, or Private Duty Nursing. You may not be assessed by forms previously used by the department once you have been assessed under CARE.

#### NEW SECTION

**WAC 388-106-0075 How is my need for personal care services assessed in CARE?** To assess your need for personal care services, the department gathers information from you, your caregivers, family members, and other sources. The department will assess your ability to perform:

- (1) Activities of Daily Living (ADL) using self performance, support provided, status and assistance available, as defined in WAC 388-106-0010. Also, the department determines your need for "assistance with body care" and "assistance with medication management", as defined in WAC 388-106-0010; and
- (2) Instrumental Activities of Daily Living (IADL) using self performance, difficulty, status and assistance available, as defined in WAC 388-106-0010.

#### **CARE CLASSIFICATION**

#### NEW SECTION

**WAC 388-106-0080 How is the amount of long-term care services I can receive in my own home or in a residential facility determined?** The amount of long-term care services you can receive in your own home or in a residential facility is determined through a classification system. Twelve classifications apply to clients served in residential and in-home settings. Two additional exceptional care groups apply to clients served in in-home settings. The department has assigned each classification a residential facility rate or a base number of hours you can receive in your own home.

**NEW SECTION**

**WAC 388-106-0085** What criteria does the CARE tool use to place me in one of the classification groups? The department uses CARE to assess your characteristics. Based on this assessment, the CARE tool uses the following criteria to place you in one of the classification groups:

- (1) Cognitive performance.
- (2) Clinical complexity.
- (3) Mood/behaviors symptoms.
- (4) Activities of Daily Living (ADLs).

**NEW SECTION**

**WAC 388-106-0090** How does the CARE tool measure cognitive performance? (1) The CARE tool uses a tool called the cognitive performance scale (CPS) to evaluate your cognitive impairment. The CPS results in a score that ranges from zero (intact) to six (very severe impairment). Your CPS score is based on:

- (a) Whether you are comatose.
- (b) Your ability to make decisions, as defined in WAC 388-106-0010 "Decision making."
- (c) Your ability to make yourself understood, as defined in WAC 388-106-0010 "Ability to make self understood."
- (d) Whether you have short-term memory problem (e.g. can you remember recent events?) or whether you have delayed recall; and
- (e) Whether you score as total dependence for self performance in eating, as defined in WAC 388-106-0010 "Self performance of ADLs."

(2) You will receive a CPS score of:

(a) **Zero** when you do not have problems with decision-making ability, making yourself understood, or recent memory.

(b) **One** when you meet one of the following:

- (i) Your decision-making ability is scored as Modified Independence or Moderately Impaired;
- (ii) Your ability to make yourself understood is usually, sometimes, or rarely/never understood; or
- (iii) You have a recent memory problem.

(c) **Two** when you meet two of the following:

- (i) Your decision-making ability is scored as Modified Independence or Moderately Impaired;
- (ii) Your ability to make yourself understood is usually, sometimes, or rarely/never understood; and/or
- (iii) You have a short-term memory problem or delayed recall.

(d) **Three** when you meet at least two of the criteria listed in sub-section (2)(b) of this section and one of the following applies:

- (i) Your decision-making is Moderately Impaired; or
- (ii) Your ability to make yourself understood is sometimes or rarely/never understood.

(e) **Four** when both of the following criteria applies:

- (i) Your decision-making is Moderately Impaired; and
- (ii) Your ability to make yourself understood is sometimes or rarely/never understood.

(f) **Five** when your ability to make decisions is scored as severely impaired.

(g) **Six** when one of the following applies:

- (i) Your ability to make decisions is severely impaired and you require total dependence in eating; or
- (ii) You are comatose.

**NEW SECTION**

**WAC 388-106-0095** How does the CARE tool measure clinical complexity? The CARE tool places you in the Clinically Complex classification group only when you have one or more of the following criteria and corresponding ADL scores:

Condition	AND an ADL Score of
ALS (Lou Gehrig's disease)	>14
Aphasia (expressive and/or receptive)	>=2
Cerebral Palsy	>14
Diabetes Mellitus (insulin dependent)	>14
Diabetes Mellitus (noninsulin dependent)	>14
Emphysema & Shortness of Breath (at rest or exertion) or dizziness/vertigo	>10
COPD & Shortness of Breath (at rest or exertion) or dizziness/vertigo	>10
Explicit terminal prognosis	>14
Hemiplegia	>14
Multiple sclerosis	>14
Parkinson disease	>14
Pathological bone fracture	>14
Quadriplegia	>14
Rheumatoid Arthritis	>14
You have one or more of the following skin problems: <ul style="list-style-type: none"> <li>■ Pressure ulcers, with areas of persistent skin redness;</li> <li>■ Pressure ulcers with partial loss of skin layers;</li> <li>■ Pressure ulcers, with a full thickness lost;</li> <li>■ Skin desensitized to pain/pressure;</li> <li>■ Open lesions; and/or</li> <li>■ Stasis ulcers.</li> </ul>	>=2
AND You require one of the following types of assistance: <ul style="list-style-type: none"> <li>■ Ulcer care;</li> <li>■ Pressure relieving device;</li> <li>■ Turning/reposition program;</li> <li>■ Application of dressing; or</li> <li>■ Wound/skin care.</li> </ul>	
You have a burn(s) and you need one of the following: <ul style="list-style-type: none"> <li>■ Application of dressing; or</li> <li>■ Wound/skin care</li> </ul>	>=2
You have one or more of the following problems: <ul style="list-style-type: none"> <li>■ You are frequently incontinent (bladder);</li> <li>■ You are incontinent all or most of the time (bladder);</li> <li>■ You are frequently incontinent (bowel); or</li> <li>■ You are incontinent all or most of the time (bowel).</li> </ul>	>10
AND One of the following applies: <ul style="list-style-type: none"> <li>■ The status of your individual management of bowel bladder supplies is "Uses, has leakage, needs assistance";</li> <li>■ The status of your individual management of bowel bladder supplies is "Does not use, has leakage"; or</li> <li>■ You use any scheduled toileting plan.</li> </ul>	

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Condition	AND an ADL Score of
You have a current swallowing problem, and you are not independent in eating.	>10
You have Edema.	>14
You have Pain daily.	>14
You need and receive a Bowel program.	>10
You need Dialysis.	>10
You require IV nutritional support or tube feedings; and Your total calories received per IV or tube was at least 25%; and Your fluid intake is greater than 2 cups.	>=2
You need Hospice care.	>14
You need Injections.	>14
You need Intravenous medications.	>10
You need management of IV lines.	>10
You need Ostomy care.	>=2
You need Oxygen therapy.	>10
You need Radiation.	>10
You need and receive Passive range of motion.	>10
You need and receive Walking training.	>10
You need Suction treatment.	>=2
You need Tracheostomy care.	>10
You need a Ventilator/respirator	>10
Key: > means greater than. >= means greater than or equal to.	

**NEW SECTION**

**WAC 388-106-0100 How does the CARE tool measure mood and behaviors?** (1) When you do not meet the criteria for the Clinically Complex classification group, or the criteria for exceptional care, or for in-home only have a cognitive performance scale score of five or six, the mood and behavior criteria listed in subsection (3) below determines your classification group.

(2) For each behavior that the CARE tool has documented, the department will determine a status as "Current" or "Past" as defined in WAC 388-106-0010.

(3) CARE places you in the Mood and Behavior classification group only if you have one or more of the behavior/moods that also meets the listed status, frequency, and alterability as identified in the following chart. No other moods or behaviors documented by CARE will qualify you for the Mood and Behavior classification.

Behavior/Mood	AND Status, Frequency & Alterability
Assaultive	Current
Combative during personal care	Current
Combative during personal care	In past and addressed with current interventions
Crying tearfulness	Current, frequency 4 or more days per week
Delusions	In past, addressed with current interventions
Depression score >=14	N/A
Disrobes in public	Current and not easily altered
Easily irritable/agitated	Current and not easily altered
Eats nonedible substances	Current

Behavior/Mood	AND Status, Frequency & Alterability
Eats nonedible substances	In past, addressed with current interventions
Hallucinations	Current
Hiding items	In past, addressed with current interventions
Hoarding/collecting	In past, addressed with current interventions
Mental health therapy/program	Need
Repetitive complaints/questions	Current, daily
Repetitive complaints/questions	In past, addressed with current interventions
Repetitive movement/pacing	Current, daily
Resistive to care	Current
Resistive to care	In past, addressed with current interventions
Sexual acting out	Current
Sexual acting out	In past, addressed with current interventions
Spitting	Current and not easily altered
Spitting	In past, addressed with current interventions
Breaks/throws items	Current
Unsafe smoking	Current and not easily altered
Up at night and requires intervention	Current
Wanders exit seeking	Current
Wanders exit seeking	In past, addressed with current interventions
Wanders not exit seeking	Current
Wanders not exit seeking	In past, addressed with current interventions
Yelling/screaming	Current, frequency 4 or more days per week
Key: > means greater than. >= means greater than or equal to.	

**NEW SECTION**

**WAC 388-106-0105 How does the CARE tool measure activities of daily living (ADLs)?** (1) CARE determines an ADL score ranging from zero to twenty-eight for each of the following ADLs.

- (a) Personal hygiene;
- (b) Bed mobility;
- (c) Transfers;
- (d) Eating;
- (e) Toilet use;
- (f) Dressing;
- (g) Locomotion in room;
- (h) Locomotion outside room; and
- (i) Walk in room.

(2) The department through the CARE tool determines the ADL score by using the definitions in WAC 388-106-0010 under "Self-performance for ADLs". The CARE tool assigns the following points to the level of self performance for each of the ADLs listed in subsection (1) of this section. For the locomotion in room, locomotion outside of room and walk in room, the department uses the highest score of the three in determining the total ADL score.

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ADL Scoring Chart	
If Self Performance is:	Score Equals
Independent	0
Supervision	1
Limited assistance	2
Extensive assistance	3
Total dependence	4
Did not occur/no provider	4
Did not occur/client not able	4
Did not occur/client declined	0

(3) Although assessed by CARE, the department does not score bathing and medication management to determine classification groups.

**NEW SECTION**

**WAC 388-106-0110** How does the CARE tool evaluate me for the exceptional care classification of in-home care? CARE places you in the Exceptional care classifications for the in-home setting when the following criteria are met in either Diagram 1 or 2:

Diagram 1
You have one of the following diagnoses: <ul style="list-style-type: none"> <li>■ Quadriplegia;</li> <li>■ Paraplegia;</li> <li>■ ALS (Amyotrophic Lateral Sclerosis);</li> <li>■ Parkinson's Disease;</li> <li>■ Multiple Sclerosis;</li> <li>■ Comatose;</li> <li>■ Muscular Dystrophy;</li> <li>■ Cerebral Palsy;</li> <li>■ Post Polio Syndrome; or</li> <li>■ TBI (traumatic brain injury).</li> </ul>
AND
You have an ADL score of greater than or equal to 22.
AND
You need a Turning/repositioning program.
AND
You require at least one of the following: <ul style="list-style-type: none"> <li>■ External catheter;</li> <li>■ Intermittent catheter;</li> <li>■ Indwelling catheter care;</li> <li>■ Bowel program; or</li> <li>■ Ostomy care</li> </ul>
AND
You need one of the following services provided by an individual provider, agency provider, a private duty nurse, or through self-directed care: <ul style="list-style-type: none"> <li>■ Active range of motion (AROM); or</li> <li>■ Passive range of motion (PROM).</li> </ul>

Diagram 2
You have an ADL score of greater than or equal to 22.
AND
You need a Turning/repositioning program.
AND
You need one of the following services provided by an individual provider, agency provider, a private duty nurse, or through self-directed care: <ul style="list-style-type: none"> <li>■ Active Range of Motion (AROM); or</li> <li>■ Passive Range of Motion (PROM).</li> </ul>
AND
All of the following apply: <ul style="list-style-type: none"> <li>■ You require IV nutrition support or tube feeding;</li> <li>■ Your total calories received per IV or tube was greater than 50%; and</li> <li>■ Your fluid intake is greater than 2 cups.</li> </ul>
AND
You need assistance with one of the following, provided by an individual provider, agency provider, a private duty nurse, or through self-directed care: <ul style="list-style-type: none"> <li>■ Dialysis; or</li> <li>■ Ventilator/respirator.</li> </ul>

**NEW SECTION**

**WAC 388-106-0115** How does CARE use the criteria of cognitive performance as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behaviors as determined under WAC 388-106-0100, and ADLs as determined under WAC 388-106-0105 to place me in a classification group for residential facilities? The CARE tool uses the criteria of cognitive performance as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behaviors as determined under WAC 388-106-0100, and ADLs as determined under WAC 388-106-0105 to place you into one of the following twelve residential classification groups:

PERMANENT



Classification	ADL Score	Group
<b>Group D</b> Cognitive performance score = 4-6 and Clinically complex = yes and Mood/behavior = yes or no	ADL Score 18-28	D High (12)
	ADL Score 13-17	D Med (11)
	ADL Score 2-12	D Low (10)
<b>Group C</b> Cognitive performance score = 0-3 and Clinically complex = yes and Mood/behavior = yes or no	ADL Score 18-28	C High (9)
	ADL Score 9-17	C Med (8)
	ADL Score 2-8	C Low (7)
<b>Group B</b> Mood & behavior = Yes and Clinically complex = no and Cognitive performance score = 0-6	ADL Score 15-28	B High (6)
	ADL Score 5-14	B Med (5)
	ADL Score 0-4	B Low (4)
<b>Group A</b> Mood & behavior = No and Clinically complex = No and Cognitive performance score = 0-6	ADL Score 10-28	A High (3)
	ADL Score 5-9	A Med (2)
	ADL Score 0-4	A Low (1)

PERMANENT

**NEW SECTION**

**WAC 388-106-0120** What is the payment rate that the department will pay the provider if I receive personal care services in a residential facility? The department publishes rates and/or adopts rules to establish how much the department pays toward the cost of your care in a residential facility. The department assigns payment rates to the CARE classification groups. Payment for care in a residential facility corresponds to the payment rate assigned to the classification group in which the CARE tool has placed you.

**NEW SECTION**

**WAC 388-106-0125** How does CARE use the criteria of cognitive performance as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behaviors as determined under WAC 388-106-0100, ADLs as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110, to place me in a classification group for in-home care? CARE uses the criteria of cognitive performance as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behavior as determined under WAC 388-106-0100, ADLS as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following fourteen in-home groups.

PERMANENT

Classification	ADL Score	Group	Base Hours of Group
<b>Group E</b> Exceptional care = yes and Mood and behavior = yes or no and Cognitive performance score = 0-6	ADL Score 26-28	E High (14)	420
	ADL Score 22-25	E Med (13)	350
<b>Group D</b> Cognitive performance score = 4-6 and Clinically complex = yes and Mood and behavior = yes or no OR Cognitive performance score = 5-6 and Clinically complex = no and Mood and behavior = yes or no	ADL Score 18-28	D High (12)	240
	ADL Score 13-17	D Med (11)	190
	ADL Score 2-12	D Low (10)	145
<b>Group C</b> Cognitive performance score = 0-3 and Clinically complex = yes and Mood and behavior = yes or no	ADL Score 18-28	C High (9)	180
	ADL Score 9-17	C Med (8)	140
	ADL Score 2-8	C Low (7)	83
<b>Group B</b> Mood and behavior = yes and Clinically complex = no and Cognitive performance score = 0-4	ADL Score 15-28	B High (6)	155
	ADL Score 5-14	B Med (5)	90
	ADL Score 0-4	B Low (4)	52
<b>Group A</b> Mood and behavior = no and Clinically complex = no and Cognitive performance score = 0-4	ADL Score 10-28	A High (3)	78
	ADL Score 5-9	A Med (2)	62
	ADL Score 0-4	A Low (1)	29

**NEW SECTION**

**WAC 388-106-0130** How does the department determine the number of hours I may receive for in-home care? (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will deduct from the base hours to account for your informal supports, as defined in WAC 388-106-0010, as follows:

(a) The CARE tool determines the adjustment for informal supports by determining the amount of assistance avail-

able to meet your needs, assigns it a numeric percentage, and reduces the base hours assigned to the classification group by the numeric percentage. The department has assigned the following numeric values for the amount of assistance available for each ADL and IADL:

<b>Meds</b>	<b>Self Performance</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value Percentage</b>
Self administration of medications	Rules for all codes apply except independent is not counted	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
	1/2 to 3/4 time	.5		
	>3/4 time	.3		
<b>Unscheduled ADLs</b>	<b>Self Performance</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value Percentage</b>
Bed mobility, transfer, walk in room, eating, toilet use	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
	1/2 to 3/4 time	.5		
	>3/4 time	.3		
<b>Scheduled ADLs</b>	<b>Self Performance</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value Percentage</b>
Dressing, personal hygiene, bathing	Rules apply for all codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted .	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.75
			1/4 to 1/2 time	.55
	1/2 to 3/4 time	.35		
	>3/4 time	.15		
<b>IADLs</b>	<b>Self Performance</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value Percentage</b>
Meal preparation, Ordinary housework, Essential shopping	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.3
			1/4 to 1/2 time	.2
	1/2 to 3/4 time	.1		
	>3/4 time	.05		
<b>IADLs</b>	<b>Self Performance</b>	<b>Status</b>	<b>Assistance Available</b>	<b>Value Percentage</b>
Travel to medical	Rules for all codes apply except independent is not counted.	Unmet	N/A	1
		Met	N/A	0
		Decline	N/A	0
		Partially met	<1/4 time	.9
			1/4 to 1/2 time	.7
	1/2 to 3/4 time	.5		
	>3/4 time	.3		

**Key:**  
 > means greater than  
 < means less than

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(b) To determine the amount of reduction for informal support, the value percentage is divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is base in-home care hours reduced for informal supports.

(3) Also, the department will adjust in-home base hours for the following shared living circumstances:

(a) If there is more than one client living in the same household, the status under subsection (2)(a) of this section must be met or partially met for the following IADLs:

- (i) Meal preparation,
- (ii) Housekeeping,
- (iii) Shopping, and
- (iv) Wood supply.

(b) If you and your paid provider live in the same household, the status under subsection (2)(a) of this section must be met for the following IADLs:

- (i) Meal preparation,
- (ii) Housekeeping,
- (iii) Shopping, and
- (iv) Wood supply.

(c) When there is more than one client living in the same household and your paid provider lives in your household, the status under subsection (2)(a) of this section must be met for the following IADLs:

- (i) Meal preparation,
- (ii) Housekeeping,
- (iii) Shopping, and
- (iv) Wood supply.

(4) After deductions are made to your base hours, as described in subsections (2) and (3), the department may add on hours based on your living environment:

Condition	Status	Assistance Available	Add On Hours
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done.	Unmet	N/A	8
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market).	Unmet	N/A	5
	Met	N/A	0
	Partially met	<1/4 time	5
		between 1/4 to 1/2 time	4
		between 1/2 to 3/4 time	2
>3/4 time		2	
Wood supply used as sole source of heat.	Unmet	N/A	8
	Met	N/A	0
	Declines	N/A	0
	Partially met	<1/4 time	8
		between 1/4 to 1/2 time	6
		between 1/2 to 3/4 time	4
		>3/4 time	2

(5) The result of actions under subsections (2), (3), and (4) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to meet your identified needs.

(6) You and your case manager will work to determine what services you choose to receive if you are eligible. The hours may be used to authorize:

(a) Personal care services from a home care agency provider and/or an individual provider.

(b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized).

(c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized).

(d) A home health aide.

**NEW SECTION**

**WAC 388-106-0135 What are the maximum hours that I can receive for in-home services?** The maximum hours that you may receive is the base hours assigned to your classification group and adjusted per WAC 388-106-0130. For Chore program clients, the maximum personal care hours per month the department will pay is one hundred sixteen.

**NEW SECTION**

**WAC 388-106-0140 What will change the maximum hours I can receive?** When you have a change in any of the criteria listed in WAC 388-106-0125 and/or WAC 388-106-0130, the maximum hours you can receive will change.

PERMANENT

**MEDICAID PERSONAL CARE (MPC)**

**NEW SECTION**

**WAC 388-106-0200 What services may I receive under Medicaid personal care (MPC)?** You may be eligible to receive only the following services under Medicaid Personal Care (MPC):

(1) Personal care services, as defined in WAC 388-106-0010, in your own home and, as applicable, assistance with personal care tasks while you are out of the home accessing community resources or working.

(2) Personal care services in one of the following residential care facilities:

- (a) Adult family homes; or
- (b) A licensed boarding home that has contracted with the department to provide adult residential care services.

(3) Nursing services, if you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities:

- (a) Nursing assessment/reassessment;
- (b) Instruction to you and your providers;
- (c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In non-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource;

- (e) File review; and/or
- (f) Evaluation of health-related care needs affecting service planning and delivery.

**NEW SECTION**

**WAC 388-106-0210 Am I eligible for MPC-funded services?** You are eligible for MPC-funded services when the department assesses your needs and determines that you meet all of the following criteria:

(1) You are certified as noninstitutional categorically needy, as defined in WAC 388-500-0005. Categorically needy medical institutional programs described in chapter 388-513 WAC do not meet this criteria.

(2) You are functionally eligible which means one of the following applies:

(a) You have an unmet or partially met need with at least three of the following Activities of Daily Living, as defined in WAC 388-106-0010:

For each Activity of Daily Living, the minimum level of assistance required in:		
	Self Performance is:	Support Provided is:
Eating	N/A	Setup
Toileting	Supervision	N/A
Bathing	Supervision	N/A

Dressing	Supervision	N/A
Transfer	Supervision	Setup
Bed Mobility	Supervision	Setup
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Supervision	Setup
Medication Management	Assistance Required	N/A
Personal Hygiene	Supervision	N/A
Body care which includes: Application of ointment or lotions; Toenails trimmed; Dry bandage changes; or Passive range of motion treatment.	Need	N/A

Your need for assistance in any of the activities listed in subsection (a) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.

; or

(b) You have an unmet or partially met need or the activity did not occur (because you were unable or no provider was available) with at least one or more of the following:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	Supervision	One person physical assist
Toileting	Extensive Assistance	One person physical assist
Bathing	Limited Assistance	One person physical assist
Dressing	Extensive Assistance	One person physical assist
Transfer	Extensive Assistance	One person physical assist
Bed Mobility and Turning and repositioning	Limited Assistance and Need	One person physical assist

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Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Extensive Assistance	One person physical assist
Medication Management	Assistance Required Daily	N/A
Personal Hygiene	Extensive Assistance	One person physical assist
Body care which includes: Application of ointment or lotions;	Need	N/A

Toenails trimmed; Dry bandage changes; or Passive range of motion treatment.		
Your need for assistance in any of the activities listed in subsection (b) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose determining your functional eligibility.		

**NEW SECTION**

**WAC 388-106-0213** How are my needs assessed if I am a child applying for MPC services? If you are a child applying for MPC services, the department will complete a CARE assessment and:

- (1) Consider and document the role of your legally responsible natural/step/adoptive parent(s).
- (2) Code your needs as met based on the guidelines outlined in the following table:

**Activities of Daily Living (ADLs)**

**Ages**

■ = Code status as Met

**Medication Management**  
Independent, supervision, limited, extensive, or Total

**Locomotion in Room<sup>Note</sup>**  
Independent, supervision, limited or extensive  
Total

**Locomotion Outside Room<sup>Note</sup>**  
Independent or supervision  
Limited or extensive  
Total

**Walk in Room<sup>Note</sup>**  
Independent, supervision, limited or extensive  
Total

**Bed Mobility**  
Independent, supervision, limited or extensive  
Total

**Transfers**  
Independent, supervision, limited, extensive or total & under 30 pounds  
(Total & over 30 pounds = no age limit)

**Toilet Use**  
Support provided for nighttime wetting only  
(Independent, supervision, limited, extensive, or total)

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Medication Management	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Locomotion in Room <sup>Note</sup>																	
Independent, supervision, limited or extensive	■	■	■														
Total	■																
Locomotion Outside Room <sup>Note</sup>																	
Independent or supervision	■	■	■	■	■												
Limited or extensive	■	■	■														
Total	■																
Walk in Room <sup>Note</sup>																	
Independent, supervision, limited or extensive	■	■	■														
Total	■																
Bed Mobility																	
Independent, supervision, limited or extensive	■	■															
Total	■																
Transfers																	
Independent, supervision, limited, extensive or total & under 30 pounds (Total & over 30 pounds = no age limit)	■	■															
Toilet Use																	
Support provided for nighttime wetting only (Independent, supervision, limited, extensive, or total)	■	■	■	■	■	■	■										

PERMANENT

Activities of Daily Living (ADLs)

Ages	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
■ = Code status as Met																	
<b>Independent, supervision, limited, extensive</b>	■	■	■	■	■												
<b>Total</b>	■	■	■														
<b>Eating</b>																	
<b>Independent, supervision, limited, extensive, or total</b>	■	■															
<b>Bathing</b>																	
<b>Independent or supervision</b>	■	■	■	■	■	■	■	■	■	■	■						
<b>Physical assistance all/part</b>	■	■	■	■	■	■	■										
<b>Total</b>	■	■	■	■	■	■	■										
<b>Dressing</b>																	
<b>Independent or supervision</b>	■	■	■	■	■	■	■	■	■	■	■	■					
<b>Limited or extensive</b>	■	■	■	■	■	■	■										
<b>Total</b>	■	■	■	■	■	■	■										
<b>Personal Hygiene</b>																	
<b>Independent or supervision</b>	■	■	■	■	■	■	■	■	■	■	■	■					
<b>Limited or extensive</b>	■	■	■	■	■	■	■										
<b>Total</b>	■	■	■	■	■	■	■										

Instrumental Activities of Daily Living

Ages	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
■ = Code status as Met																	
<b>Telephone</b>																	
<b>Independent, supervision, limited, extensive, or Total</b>	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Transportation</b>																	
<b>Independent, supervision, limited, extensive, or total</b>	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Shopping</b>																	
<b>Independent, supervision, limited, extensive, or total</b>	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Wood Supply</b>																	
<b>Independent, supervision, limited, extensive, or total</b>	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Housework</b>																	
<b>Independent, supervision, limited, extensive, or total</b>	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Finances</b>																	
<b>Independent, supervision, limited, extensive, or total</b>	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Meal Preparation</b>																	
<b>Independent, supervision, limited, extensive, or total</b>	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■

NOTE: If the activity did not occur, the department codes self performance as total and status as met.

	Ages																
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
<b>Additional guidelines based on age</b>																	
<b>Any foot care needs</b>																	
<b>Status Need met</b>	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Any skin care (other than feet)</b>																	
<b>Status Need met</b>	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Speech/Hearing</b>																	

PERMANENT

	Ages																
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17
Score comprehension as understood	■	■															
<b>Memory</b>																	
Short term memory ok	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Long term memory ok	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Depression</b>																	
Select interview = unable to obtain	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Decision making</b>																	
Rate how client makes decisions = independent	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
<b>Bladder/Bowel</b>																	
Support provided for nighttime wetting only - Individual management = Does not need/use	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■	■
Support provided for daytime wetting - Individual Management = Does not need/use	■	■	■	■	■												

PERMANENT

- (3) In addition, determine that the status and assistance available are met or partially met over three-fourths of the time, when you are living with your legally-responsible natural/step/adoptive parent(s).
- (4) Will not code mental health therapy, behaviors, or depression if you are in foster care.

**NEW SECTION**

**WAC 388-106-0220 How do I remain eligible for MPC?** (1) In order to remain eligible for MPC, you must be in need of services in accordance with WAC 388-106-0210 as determined through a CARE assessment. The assessment in CARE must be at least annually or more often when there are significant changes in your functional or financial circumstances.

(2) When eligibility statutes, regulations, and/or rules for MPC change, irrespective of whether your functional or financial circumstances have changed, if you do not meet the changed eligibility requirements, the department will terminate your MPC services.

**NEW SECTION**

**WAC 388-106-0225 How do I pay for MPC?** (1) If you live in your own home, you do not participate toward the cost of your personal care services.

- (2) If you live in a residential facility and are:
  - (a) An SSI beneficiary who receives only SSI income, you only pay for board and room. You are allowed to keep a personal needs allowance of at least thirty-eight dollars and eighty-four cents per month;
  - (b) An SSI beneficiary who receives SSI and SSA benefits, you only pay for board and room. You are allowed to keep a personal needs allowance of at least fifty-eight dollars and eighty-four cents per month;
  - (c) An SSI-related person under WAC 388-511-1105, you may be required to participate towards the cost of your personal care services in addition to your board and room if

your financial eligibility is based on the facility's state contracted rate. You will receive a personal allowance of fifty-eight dollars and eighty-four cents; or

(d) A GA-X client in a residential care facility, you are allowed to keep a personal allowance of only thirty-eight dollars and eighty-four cents per month. The remainder of your grant must be paid to the facility.

(3) The department pays the residential care facility from the first day of service through the:

- (a) Last day of service when the Medicaid resident dies in the facility; or
- (b) Day of service before the day the Medicaid resident is discharged.

**NEW SECTION**

**WAC 388-106-0230 Can I be employed and receive MPC?** You can be employed and receive MPC services if you remain medicaid eligible under the noninstitutional categorically needy program.

**NEW SECTION**

**WAC 388-106-0235 Are there waiting lists for MPC?** There are no waiting lists for MPC. Instead of waiting lists, the department may revise rules to reduce caseload size, hours, rates, or payments in order to stay within the legislative appropriation.

**COMMUNITY OPTIONS PROGRAM ENTRY SYSTEM (COPES)**

**NEW SECTION**

**WAC 388-106-0300 What services may I receive under community options program entry system (COPES) when I live in my own home?** When you live in your own home, you may be eligible to receive only the following services under COPES:



(1) Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.

(2) Adult day care if you meet the eligibility requirements under WAC 388-106-0805.

(3) Environmental modifications, if the minor physical adaptations to your home:

(a) Are necessary to ensure your health, welfare and safety;

(b) Enable you to function with greater independence in the home;

(c) Directly benefit you medically or remedially;

(d) Meet applicable state or local codes; and

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

(4) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:

(a) You are homebound and live in your own home;

(b) You are unable to prepare the meal;

(c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and

(d) Receiving this meal is more cost-effective than having a paid caregiver.

(5) Home health aide service tasks in your own home, if the service tasks:

(a) Include assistance with ambulation, exercise, self-administered medications and hands-on personal care;

(b) Are beyond the amount, duration or scope of Medicaid reimbursed home health services as described in WAC 388-551-2120 and are in addition to those available services;

(c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and

(d) Do not replace Medicare home health services.

(6) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if you:

(a) Live alone in your own home; or

(b) Are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time.

(7) Skilled nursing, if the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and

(b) Beyond the amount, duration or scope of Medicaid-reimbursed home health services as provided under WAC 388-551-2100.

(8) Specialized durable and non-durable medical equipment and supplies under WAC 388-543-1000, if the items are:

(a) Medically necessary under WAC 388-500-0005;

(b) Necessary for: life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under Medicaid and/or Medicare.

(9) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(10) Transportation services, if the service:

(a) Provides you access to community services and resources to meet your therapeutic goal;

(b) Is not diversional in nature; and

(c) Is in addition to and does not replace the Medicaid-brokered transportation or transportation services available in the community.

(11) Nurse delegation services, when:

(a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) Your medical condition is considered stable and predictable by the delegating nurse; and

(c) Services are provided in compliance with WAC 246-840-930.

(12) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities:

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In non-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

(13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:

(a) May include: safety deposits, utility set-up fees or deposits, health and safety assurances such as pest eradication, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution; and

(b) Do not include rent, recreational or diversional items such as TV, cable or VCR's.

#### NEW SECTION

**WAC 388-106-0305 What services may I receive under COPEs if I live in a residential facility?** If you live in one of the following residential facilities: a licensed boarding home contracted with the department to provide Assisted Living, Enhanced Adult Residential Care, Enhanced Adult Residential Care-Specialized Dementia Care or an

Adult Family Home, you may be eligible to receive only the following services under COPES:

(1) Personal care services as defined under WAC 388-106-0010.

(2) Specialized durable and non-durable medical equipment and supplies under WAC 388-543-1000, when the items are:

(a) Medically necessary under WAC 388-500-0005; and

(b) Necessary: for life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live; and

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under Medicaid and/or Medicare; and

(e) In addition to and do not replace the services required by the department's contract with a residential facility.

(3) Training needs identified in CARE or in a professional evaluation, that are in addition to and do not replace the services required by the department's contract with the residential facility and that meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(4) Transportation services, when the service:

(a) Provides you access to community services and resources to meet a therapeutic goal;

(b) Is not diversional in nature;

(c) Is in addition to and does not replace the Medicaid-brokered transportation or transportation services available in the community; and

(d) Does not replace the services required by DSHS contract in residential facilities.

(5) Skilled nursing, when the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;

(b) Beyond the amount, duration or scope of Medicaid-reimbursed home health services as provided under WAC 388-551-2100; and

(c) In addition to and does not replace the services required by the department's contract with the residential facility (e.g. intermittent nursing services as described in WAC 388-78A-2310).

(6) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities:

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In non-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

(7) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to live in a residential facility. Services:

(a) May include: safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.

(b) Do not include rent, recreational or diversional items such as TV, cable or VCR's.

#### NEW SECTION

**WAC 388-106-0310 Am I eligible for COPES-funded services?** You are eligible for COPES-funded services if you meet all of the following criteria. The department must assess your needs in CARE and determine that:

(1) You are age:

(a) Eighteen or older and blind or have a disability, as defined in WAC 388-511-1105; or

(b) Sixty-five or older.

(2) You meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC 388-515-1505, Community Options Program Entry System (COPES).

(3) You:

(a) Are not eligible for Medicaid personal care services (MPC); or

(b) Are eligible for MPC services, but the department determines that the amount, duration, or scope of your needs is beyond what MPC can provide.

(4) Your CARE assessment shows you need the level of care provided in a nursing facility (or will likely need the level of care within thirty days unless COPES services are provided) which is defined in WAC 388-106-0355(1).

#### NEW SECTION

**WAC 388-106-0315 When do COPES services start?** Your eligibility for COPES begins the date the department authorizes services.

#### NEW SECTION

**WAC 388-106-0320 How do I remain eligible for COPES?** (1) In order to remain eligible for COPES, you must be in need of services in accordance with WAC 388-106-0310 as determined through a CARE assessment. The assessment in CARE must be at least annually or more often when there are significant changes in your functional or financial circumstances.

(2) When eligibility statutes, regulations, and/or rules for COPES change, irrespective of whether your functional or financial circumstances have changed, if you do not meet the changed eligibility requirements, the department will terminate your COPES services.

**NEW SECTION**

**WAC 388-106-0325 How do I pay for COPES services?** Depending on your income and resources, you may be required to pay participation toward the cost of your care, as outlined in WAC 388-515-1505. If you have nonexempt income that exceeds the cost of COPES services, you may retain the difference. If you are receiving services in:

(1) Your own home, you are allowed to keep some of your income for a maintenance allowance.

(2) In a residential facility, you must use your income to pay for your room and board and services. You are allowed to keep some of your income for personal needs allowance (PNA). The department determines the amount of PNA that you may keep. The department pays the facility for the difference between what you pay and the department-set rate for the facility. The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the Medicaid resident dies in the facility; or

(b) Day of service before the day the Medicaid resident is discharged.

**NEW SECTION**

**WAC 388-106-0330 Can I be employed and receive COPES?** You can be employed and receive COPES, per WAC 388-515-1505.

**NEW SECTION**

**WAC 388-106-0335 Are there waiting lists for COPES?** The department will create a waiting list in accordance with caseload limits determined by legislative funding. Wait listed clients will gain access in the following manner:

(1) Nursing home residents wanting COPES waiver services will be ranked first on the wait list by date of application for services;

(2) Then clients living in the community with a higher level of need, as determined by the CARE assessment, will be ranked higher on the wait list over clients with a lower level of need; and

(3) When two or more clients in the community have equal need levels, the client with the earlier application for services will have priority over later applications for services.

**NURSING FACILITY CARE SERVICES**

**NEW SECTION**

**WAC 388-106-0350 What are nursing facility care services?** You may receive care in a nursing facility, as outlined in chapter 388-97 WAC.

**NEW SECTION**

**WAC 388-106-0355 Am I eligible for nursing facility care services?** You are eligible for nursing facility care if the department:

(1) Assesses you in CARE and determines that you meet the functional criteria for nursing facility level of care which means one of the following applies:

(a) You require care provided by or under the supervision of a registered nurse or a licensed practical nurse on a daily basis;

(b) You have an unmet or partially met need with at least three of the following Activities of Daily Living, as defined in WAC 388-106-0010:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	N/A	Setup
Toileting	Supervision	N/A
Bathing	Supervision	N/A
Transfer	Supervision	Setup
Bed Mobility	Supervision	Setup
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Supervision	Setup
Medication Management	Assistance Required	N/A
Your need for assistance in any activities listed in subsection (b) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose in determining your functional eligibility.		

(c) You have an unmet or partially met need with at least two of the following Activities of Daily Living, as defined in WAC 388-106-0010:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	Supervision	One person physical assist
Toileting	Extensive Assistance	One person physical assist
Bathing	Limited Assistance	One person physical assist
Transfer	Extensive Assistance	One person physical assist

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Bed Mobility and Turning and repositioning	Limited Assistance and Need	One person physical assist
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Extensive Assistance	One person physical assist
Medication Management	Assistance Required Daily	N/A
Your need for assistance in any of the activities listed in subsection (c) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

or:

(d) You have a cognitive impairment and require supervision due to one or more of the following: Disorientation, memory impairment, impaired decision-making, or wandering and have an unmet or partially met need with at least one or more of the following:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	Supervision	One person physical assist
Toileting	Extensive Assistance	One person physical assist
Bathing	Limited Assistance	One person physical assist
Transfer	Extensive Assistance	One person physical assist
Bed Mobility and Turning and repositioning	Limited Assistance and Need	One person physical assist
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Extensive Assistance	One person physical assist
Medication Management	Assistance Required Daily	N/A

Your need for assistance in any of the activities listed in subsection (d) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.

(2) Determines that you meet the financial eligibility requirements set through WAC 388-513-1315.

**NEW SECTION**

**WAC 388-106-0360 How do I pay for nursing facility care services?** (1) If you are Medicaid eligible and the nursing facility admits you without a request for assessment from the department, the nursing facility will not:

- (a) Be reimbursed by the department; or
- (b) Be allowed to collect payment, including a deposit or minimum stay fee, from you or your family/representative for any care provided before the date of request for assessment.

(2) If you are eligible for Medicaid-funding nursing facility care, the department pays for your services beginning on the date:

- (a) Of the request for a department assessment; or
- (b) Nursing facility care actually begins, whichever is later.

(3) If you become financially eligible for Medicaid after you have been admitted, the department pays for your nursing facility care beginning on the date of:

- (a) Request for assessment or financial application, whichever is earlier;
- (b) Nursing facility placement; or
- (c) When you are determined financially eligible, whichever is later.

(4) Exception: Payment back to the request date is limited to three months prior to the month that the financial application is received.

**MEDICALLY NEEDY RESIDENTIAL WAIVER**

**NEW SECTION**

**WAC 388-106-0400 What services may I receive under medically needy residential waiver (MNRW)?** You may be eligible to receive only the following MNRW services in one of the following residential facilities: a licensed boarding home contracted with the department to provide Assisted Living, Enhanced Residential Care, Enhanced Adult Residential Care-Specialized Dementia Care or an Adult Family Home:

(1) Personal care services as defined in WAC 388-106-0010.

(2) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, when the items are:

- (a) Medically necessary under WAC 388-500-0005; and
- (b) Necessary: for life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;
- (c) Directly medically or remedially beneficial to you;

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(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under Medicaid and/or Medicare; and

(e) In addition to and do not replace the services required by the department's contract with the residential facility.

(3) Training needs identified in CARE or in a professional evaluation that are in addition to and do not replace services required by the department's contract with the residential facility and that meet a therapeutic goal such as:

- (a) Adjusting to a serious impairment;
- (b) Managing personal care needs; or
- (c) Developing necessary skills to deal with care providers.

(4) Transportation services, when the service:

(a) Provides you access to community services and resources provided to meet a therapeutic goal;

(b) Is not diversional in nature;

(c) Is in addition to and does not replace the Medicaid-brokered transportation or transportation services available in the community; and

(d) Does not replace the services required by the department's contract with a residential facility.

(5) Skilled nursing, when the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;

(b) Beyond the amount, duration or scope of Medicaid-reimbursed home health services as provided under WAC 388-551-2120; and

(c) In addition to and does not replace the services required by the department's contract with the residential facility (e.g. intermittent nursing services as described in WAC 388-78A-2310).

(6) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities:

- (a) Nursing assessment/reassessment;
- (b) Instruction to care providers and clients;
- (c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In non-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

(7) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to live in a residential facility. Services:

(a) May include: safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.

(b) Do not include rent, recreational or diversional items such as TV, cable or VCR's.

#### NEW SECTION

**WAC 388-106-0410 Am I eligible for MNRW-funded services?** You are eligible for MNRW-funded services if you choose to receive services in a residential facility and you meet all of the following criteria. The department must assess your needs, using CARE, and determine that:

(1) You are age:

(a) Eighteen or older and blind or have a disability, as defined in WAC 388-511-1105; or

(b) Sixty-five or older.

(2) You meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC 388-515-1540.

(3) You are not eligible for Medicaid personal care services (MPC) or COPEs.

(4) Your CARE assessment shows you need the level of care provided in a nursing facility (or will likely need the level of care within thirty days unless MNRW services are provided) which is defined in WAC 388-106-0355(1).

#### NEW SECTION

**WAC 388-106-0415 When do MNRW services start?** Your eligibility for MNRW begins the date the department authorizes services.

#### NEW SECTION

**WAC 388-106-0420 How do I remain eligible for MNRW?** (1) In order to remain eligible for MNRW, you must be in need of services in accordance with WAC 388-106-0410 as determined through a CARE assessment. The assessment in CARE must be at least annually or more often when there are significant changes in your functional or financial circumstances.

(2) When eligibility statutes, regulations, and/or rules for MNRW change, irrespective of whether your functional or financial circumstances have changed, if you do not meet the changed eligibility requirements, the department will terminate your MNRW services.

#### NEW SECTION

**WAC 388-106-0425 How do I pay for MNRW services?** (1) You must use your income to pay for your room and board and services. The amount you pay is determined in WAC 388-515-1540. You are allowed to keep some of your income for personal needs allowance (PNA). The department pays the facility for the difference between what you pay and the department-set rate for the facility. The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the Medicaid resident dies in the facility; or

(b) Day of service before the day the Medicaid resident is discharged.

**NEW SECTION**

**WAC 388-106-0430 Can I be employed and receive MNRW?** You may be employed and receive MNRW per WAC 388-515-1540.

**NEW SECTION**

**WAC 388-106-0435 Are there waiting lists for MNRW?** The department will create a waiting list in accordance with caseload limits determined by legislative funding. Wait listed clients will gain access in the following manner:

(1) Nursing home residents wanting MN waiver services will be ranked first on the wait list by date of application for services;

(2) Then clients living in the community with a higher level of need, as determined by the department's CARE assessment, will be ranked higher on the wait list over clients with lower level of need; and

(3) When two or more clients in the community have equal need levels, the client with the earlier application for services will have priority over later applications for services.

**MEDICALLY NEEDED IN-HOME WAIVER****NEW SECTION**

**WAC 388-106-0500 What services may I receive under medically needy in-home waiver (MNIW)?** You may be eligible to receive only the following Medically Needy In-Home Waiver (MNIW) services in your own home:

(1) Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.

(2) Adult day care if you meet the eligibility requirements under WAC 388-106-0805.

(3) Environmental modifications, if the minor physical adaptations to your home:

(a) Are necessary to ensure your health, welfare and safety;

(b) Enable you to function with greater independence in the home;

(c) Directly benefit you medically or remedially;

(d) Meet applicable state or local codes; and

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

(4) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:

(a) You are homebound and live in your own home;

(b) You are unable to prepare the meal;

(c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and

(d) Receiving this meal is more cost-effective than having a paid caregiver.

(5) Home health aide service, if the service tasks:

(a) Include assistance with ambulation, exercise, self-administered medications and hands on personal care;

(b) Are beyond the amount, duration or scope of Medicaid reimbursed home health services (WAC 388-551-2120) and are in addition to those available services;

(c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and

(d) Do not replace Medicare home health services.

(6) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if you:

(a) Live alone in your own home; or

(b) Are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time.

(7) Skilled nursing, if the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and

(b) Beyond the amount, duration or scope of Medicaid-reimbursed home health services as provided under WAC 388-551-2120.

(8) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, if the items are:

(a) Medically necessary under WAC 388-500-0005;

(b) Necessary: for life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under Medicaid and/or Medicare.

(9) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(10) Transportation services if you live in your own home, if the service:

(a) Provides you access to community services and resources to meet a therapeutic goal;

(b) Is not diversional in nature;

(c) Is in addition to and does not replace the Medicaid-brokered transportation or transportation services available in the community.

(11) Nurse delegation services when:

(a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) Your medical condition is considered stable and predictable by the delegating nurse; and

(c) Services are provided in compliance with WAC 246-840-930.

(12) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities:

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In non-emergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource;

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service planning and delivery.

(13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:

(a) May include: safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.

(b) Do not include rent, recreational or diversional items such as TV, cable or VCR's.

**NEW SECTION**

**WAC 388-106-0510 Am I eligible for MNIW-funded services?** You are eligible for MNIW-funded services if you choose to receive services in your own home and you meet all of the following criteria. The department must assess your needs in CARE and determine that:

(1) You are age:

(a) Eighteen or older and blind or have a disability, as defined in WAC 388-511-1105; or

(b) Sixty-five or older.

(2) You meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC 388-515-1505;

(3) You are not eligible for Medicaid personal care services (MPC) or COPES;

(4) Your CARE assessment shows you need the level of care provided in a nursing facility (or will likely need the level of care within thirty days unless MNIW services are provided) which is defined in WAC 388-106-0355(1).

**NEW SECTION**

**WAC 388-106-0515 When do MNIW services start?** Your eligibility for MNIW begins the date the department authorizes services.

**NEW SECTION**

**WAC 388-106-0520 How do I remain eligible for MNIW?** (1) In order to remain eligible for MNIW, you must be in need of services in accordance with WAC 388-106-0510 as determined through a CARE assessment. The assessment in CARE must be at least annually or more often when there are significant changes in your functional or financial circumstances.

(2) When eligibility statutes, regulations, and/or rules for MNIW change, irrespective of whether your functional or

financial circumstances have changed, if you do not meet the changed eligibility requirements, the department will terminate your MNIW services.

**NEW SECTION**

**WAC 388-106-0525 How do I pay for MNIW?** The amount you pay is determined in WAC 388-515-1550.

**NEW SECTION**

**WAC 388-106-0530 Can I be employed and receive MNIW?** You can be employed and receive MNIW, per WAC 388-515-1550.

**NEW SECTION**

**WAC 388-106-0535 Are there waiting lists for MNIW?** The department will create a waiting list in accordance with caseload limits determined by legislative funding. Wait listed clients will gain access in the following manner:

(1) Nursing home residents wanting MN waiver services will be ranked first on the wait list by date of application for services;

(2) Then clients living in the community with a higher level of need as determined by the department's CARE assessment will be ranked higher on the wait list over clients with lower level of need; and

(3) When two or more clients in the community have equal need levels, the client with the earlier application for services will have priority over later applications for services.

**CHORE**

**NEW SECTION**

**WAC 388-106-0600 What services may I receive under Chore?** You may receive personal care services in your own home and, as applicable, assistance with personal care tasks while you are out of the home accessing community resources or working.

**NEW SECTION**

**WAC 388-106-0610 Am I eligible for Chore-funded services?** To be eligible for Chore-funded services you must meet all of the following criteria:

(1) Be grandfathered on the Chore program before August 1, 2001 and have continued to receive Chore without a break in service.

(2) Not be eligible for MPC or COPES.

(3) Be eighteen years of age or older.

(4) Have an unmet or partially met need with at least one of the following Activities of Daily Living, as defined in WAC 388-106-0010.

For each Activity of Daily Living, the minimum level of assistance required in		
	Self Performance is:	Support Provided is:
Eating	N/A	Setup

PERMANENT

	Self Performance is:	Support Provided is:
Toileting	Supervision	N/A
Bathing	Supervision	N/A
Dressing	Supervision	N/A
Transfer	Supervision	Setup
Bed Mobility	Supervision	Setup
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Supervision	Setup
Medication Management	Assistance Required	N/A
Personal Hygiene	Supervision	N/A
Body care which includes: Application of ointment or lotions; Toenails trimmed; Dry bandage changes; or Passive range of motion treatment.	Need	N/A
Your need for assistance in any of the activities listed in this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

(5) Have net household income (as described in WAC 388-450-0005 and 388-450-0040) not exceeding:

- (a) The sum of the cost of your Chore services; and
- (b) One-hundred percent of the Federal Poverty Level (FPL) adjusted for family size.

(6) Have resources, as described in chapter 388-470 WAC, which do not exceed ten thousand dollars for a one-person family or fifteen thousand dollars for a two-person family. (Note: One thousand dollars for each additional family member may be added to these limits.); and

(7) Not transfer assets on or after November 1, 1995 for less than fair market value, as described in WAC 388-513-1365.

**NEW SECTION**

**WAC 388-106-0615 When do Chore services start?**

Your eligibility for Chore services begins the date the department authorizes services.

**NEW SECTION**

**WAC 388-106-0620 How do I remain eligible for Chore?** (1) In order to remain eligible for Chore, you must be in need of services in accordance with WAC 388-106-0610 as determined through a CARE assessment. The assessment in CARE must be at least annually or more often when there are significant changes in your functional or financial circumstances.

(2) When eligibility statutes, regulations, and/or rules for Chore change, irrespective of whether your functional or financial circumstances have changed, if you do not meet the changed eligibility requirements, the department will terminate your Chore services.

**NEW SECTION**

**WAC 388-106-0625 How do I pay for Chore?** You may retain an amount equal to one hundred percent of the federal poverty level, adjusted for family size, as the home maintenance allowance and pay the difference between the FPL and your nonexempt income. Exempt income includes:

- (1) Income listed in WAC 388-513-1340;
- (2) Spousal income allocated and actually paid as participation in the cost of the spouse's Community Options Program Entry System (COPEs) services;
- (3) Amounts paid for medical expenses not subject to third party payment;
- (4) Health insurance premiums, coinsurance or deductible charges; and
- (5) If applicable, those work expense deductions listed in WAC 388-106-0630(2).

**NEW SECTION**

**WAC 388-106-0630 Can I be employed and receive Chore?** If you are not Medicaid eligible due to your earned income and resources and are receiving chore personal care services:

- (1) You may be required to pay participation, per WAC 388-106-0625, for any earned income above one hundred percent of the federal poverty level.
- (2) The department will exempt fifty percent of your earned income after work expense deductions. Work expense deductions are:
  - (a) Personal work expenses in the form of self-employment taxes (FICA); and income taxes when paid;
  - (b) Payroll deductions required by law or as a condition of employment in the amounts actually withheld;
  - (c) The necessary cost of transportation to and from the place of employment by the most economical means, except rental cars;
  - (d) Expenses necessary for continued employment such as tools, materials, union dues, transportation to service customers not furnished by the employer; and
  - (e) Uniforms needed on the job and not suitable for wear away from the job.

PERMANENT



**VOLUNTEER CHORE****NEW SECTION**

**WAC 388-106-0650** What services may I receive under volunteer chore? Volunteer Chore is a state-funded program which provides volunteer assistance with household tasks and:

- (1) Assists people who need but are not eligible for DSHS services.
- (2) Complements DSHS services by using volunteer assistance to perform tasks which do not require specially-skilled personnel.
- (3) Provides assistance with housework, laundry, shopping, cooking, moving, minor home repair, yard care, limited personal care, monitoring and transportation.

**NEW SECTION**

**WAC 388-106-0655** Am I eligible to receive volunteer chore services? You may receive volunteer chore services if you are:

- (1) Eighteen years of age or older;
- (2) Living at home unless you are moving from a residential facility to home and need assistance moving;
- (3) Unable to perform certain personal care tasks due to functional or cognitive impairment;
- (4) Financially unable to purchase services from a private provider;
- (5) Not receiving services under COPEs, MNIW, MPC, or Chore because you:
  - (a) Do not meet the eligibility requirements; or
  - (b) Decline these services.
- (6) In need of assistance from volunteer chore in addition to or in substitution of paid services under COPEs, MNIW, MPC, or Chore.

**PROGRAM OF ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE)****NEW SECTION**

**WAC 388-106-0700** What services may I receive under PACE? Under their contract with the department, the PACE provider develops an individualized plan of care, as defined in 42 CFR 460.106, that integrates necessary long-term care, medical services, mental health services, and alcohol and substance abuse treatment services.

- (1) The care plan includes, but is not limited to any of the following long-term care services:
  - (a) Care coordination;
  - (b) Home and community-based services:
    - (i) Personal (in-home) care;
    - (ii) Residential care.
  - (c) And, if necessary, nursing facility care.
- (2) The care plan may also include, but is not limited to, the following medical services:
  - (a) Primary medical care;
  - (b) Vision care;
  - (c) End of life care;

- (d) Restorative therapies, including speech, occupational, and physical therapy;
  - (e) Oxygen therapy;
  - (f) Audiology (including hearing aids);
  - (g) Transportation;
  - (h) Podiatry;
  - (i) Durable medical equipment (e.g., wheelchair);
  - (j) Dental care;
  - (k) Pharmaceutical products;
  - (l) Immunizations and vaccinations;
  - (m) Emergency room visits and inpatient hospital stays.
- (3) The care plan may also include any other services determined necessary by the interdisciplinary team to improve and maintain your overall health status.

**NEW SECTION****WAC 388-106-0705** Am I eligible for PACE services?

To qualify for Medicaid-funded PACE services, you must apply for an assessment by contacting your local home and community services office. The department will assess and determine whether you:

- (1) Are age:
  - (a) Fifty-five or older, and blind or have a disability, as defined in WAC 388-511-1105, SSI-related eligibility requirements; or
  - (b) Sixty-five or older.
- (2) Need nursing facility level of care as defined in WAC 388-106-0355. Note: If you are already enrolled, but no longer need nursing facility care, you may still be eligible for PACE services if the department reasonably expects you to need nursing facility care within the next six months in the absence of continued PACE coverage;
- (3) Live within the designated service area of the PACE provider;
- (4) Meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC 388-515-1505;
- (5) Not be enrolled in any other medical coverage plan that purchases services on a prepaid basis (e.g., prepaid health plan); and
- (6) Agree to receive services exclusively through the PACE provider and the PACE provider's network of contracted providers.

**NEW SECTION**

**WAC 388-106-0710** How do I pay for PACE services? Depending on your income and resources, you may be required to pay for part of the PACE services. The department's financial worker will determine what amount, if any, you must contribute if you decide to enroll. The department pays the PACE provider the remaining amount.

**NEW SECTION**

**WAC 388-106-0715** How do I disenroll from the PACE program? (1) You may choose to voluntarily disenroll from the PACE program without cause at any time. To

do so, you must give the PACE provider written notice. If you give notice:

(a) Before the fifteenth of the month, disenrollment is effective at the end of the month; or

(b) After the fifteenth, disenrollment is not effective until the end of the following month.

(2) You may also be involuntarily disenrolled from the program by the PACE provider, if you:

(a) Move out of the designated service area or are out of the service area for more than thirty consecutive days, unless the PACE provider agrees to a longer absence due to extenuating circumstances;

(b) Engage in disruptive or threatening behavior such that the behavior jeopardizes your health or safety, or the safety of others;

(c) Fail to comply with your plan of care or the terms of the PACE enrollment agreement;

(d) Fail to pay or make arrangements to pay your part of the costs after the thirty-day grace period;

(e) Become financially ineligible for Medicaid services, unless you choose to pay privately;

(f) Are enrolled with a provider that loses its license and/or contract; or

(g) No longer meet the nursing facility level of care requirement as defined in WAC 388-106-0205 and are not deemed PACE eligible.

(3) For any of the above reasons, the PACE provider must give you written notice, explaining that they are terminating benefits. If the provider gives you notice:

(a) Before the fifteenth of the month, then you may be disenrolled at the end of the month; or

(b) After the fifteenth, then you may be disenrolled at the end of the following month.

(4) Before the PACE provider can involuntarily disenroll you from the PACE program, the department must review and approve all proposed involuntary disenrollments.

## ADULT DAY SERVICES

### NEW SECTION

**WAC 388-106-0800 What adult day care services may I receive?** You may receive the following services in an adult day care:

(1) Core services, which include assistance with:

(a) Locomotion Outside of Room, Locomotion in Room, Walk in Room;

(b) Body care;

(c) Eating;

(d) Repositioning;

(e) Medication Management that does not require a licensed nurse;

(f) Transfer;

(g) Toileting;

(h) Personal hygiene at a level that ensures your safety and comfort while in attendance at the program; and

(i) Bathing at a level that ensures your safety and comfort while in attendance at the program.

(2) Social services on a consultation basis, which may include:

(a) Referrals to other providers for services not within the scope of Medicaid reimbursed adult day care services;

(b) Caregiver support and education; or

(c) Assistance with coping skills.

(3) Routine health monitoring with consultation from a registered nurse that a consulting nurse acting within the scope of practice can provide with or without a physician's order. Examples include:

(a) Obtaining baseline and routine monitoring information on your health status, such as vital signs, weight, and dietary needs;

(b) General health education such as providing information about nutrition, illnesses, and preventative care;

(c) Communicating changes in your health status to your caregiver;

(d) Annual and as needed updating of your medical record; or

(e) Assistance as needed with coordination of health services provided outside of the adult day care program.

(4) General therapeutic activities that an unlicensed person can provide or that a licensed person can provide with or without a physician's order. These services are planned for and provided based on your abilities, interests, and goals. Examples include:

(a) Recreational activities;

(b) Diversionary activities;

(c) Relaxation therapy;

(d) Cognitive stimulation; or

(e) Group range of motion or conditioning exercises.

(5) General health education that an unlicensed person can provide or that a licensed person can provide with or without a physician's order, including but not limited to topics such as:

(a) Nutrition;

(b) Stress management;

(c) Disease management skills; or

(d) Preventative care.

(6) A nutritional meal and snacks are provided every four hours, including a modified diet if needed and within the scope of the program, as provided under WAC 388-71-0768;

(7) Supervision and/or protection if needed for your safety;

(8) Assistance with arranging transportation to and from the program; and

(9) First aid and provisions for obtaining or providing care in an emergency. NOTE: If you require the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of your physician, consider adult day health services.

### NEW SECTION

**WAC 388-106-0805 Am I eligible for adult day care?**

(1) If you receive COPES or MNIW, you may be eligible for adult day care as a waiver service if you are assessed as having an unmet need for one or more of the following core services:

(a) Personal care services;

(b) Routine health monitoring with consultation from a registered nurse;

(c) General therapeutic activities; or  
 (d) Supervision and/or protection if required for your safety.

(2) You are not eligible for adult day care if you receive COPEs or MNIW and you:

(a) Can independently perform or obtain the services provided at an adult day care center;

(b) Have unmet needs that can be met through the COPEs or MNIW program more cost effectively without authorizing day care services;

(c) Have referred care needs that:

(i) Exceed the scope of authorized services that the adult day care center is able to provide;

(ii) Can be met in a less structured care setting; or

(iii) Are being met by paid or unpaid caregivers.

(d) Live in a nursing home, boarding home, adult family home, or other licensed institutional or residential facility; or

(e) Are not capable of participating safely in a group care setting.

### NEW SECTION

**WAC 388-106-0810 What adult day health services may I receive?** You may receive the following adult day health services:

(1) All core services under WAC 388-106-0800;

(2) Skilled nursing services other than routine health monitoring with nurse consultation;

(3) At least one of the following skilled therapy services: physical therapy, occupational therapy, or speech-language pathology or audiology, as defined under chapter 18.74, 18.59, and 18.35 RCW, and

(4) Psychological or counseling services, including assessing for psycho-social therapy need, dementia, abuse or neglect, and alcohol or drug abuse; making appropriate referrals; and providing brief, intermittent supportive counseling.

### NEW SECTION

**WAC 388-106-0815 Am I eligible for adult day health?** (1) You are eligible for adult day health services if you meet all of the following criteria. You are:

(a) Age eighteen years or older.

(b) Enrolled in one of the following medical assistance programs:

(i) Categorically needy (CNP);

(ii) Categorically needy qualified Medicare beneficiaries (CNP-QMB);

(iii) General assistance—Expedited Medicaid Disability (GA-X); or

(iv) Alcohol and Drug Abuse Treatment and Support Act (ADATSA).

(c) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714; and

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering; and

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(d) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(2) You are not eligible for adult day health if you:

(a) Can independently perform or obtain the services provided at an adult day health center;

(b) Have referred care needs that:

(i) Exceed the scope of authorized services that the adult day health center is able to provide;

(ii) Do not need to be provided or supervised by a licensed nurse or therapist;

(iii) Can be met in a less structured care setting; or

(iv) In the case of skilled care needs, are being met by paid or unpaid caregivers.

(c) Live in a nursing home or other institutional facility; or

(d) Are not capable of participating safely in a group care setting.

### **GAU-FUNDED RESIDENTIAL CARE**

#### NEW SECTION

**WAC 388-106-0900 What services may I receive under GAU-funded residential care?** You may receive personal care services in an adult family home or a licensed boarding home contracted with the department to provide adult residential care services. You may also receive nurse delegation services under this program.

#### NEW SECTION

**WAC 388-106-0905 Am I eligible to receive GAU-funded residential care services?** You are eligible to receive GAU-funded residential care services if:

(1) You meet financial eligibility requirements for general assistance unemployable (GAU), described in WAC 388-400-0025;

(2) You are not eligible for services under COPEs, MNRW, or MPC; and

(3) You are assessed in CARE and meet the functional criteria outlined in WAC 388-106-0210(2).

### **RESIDENTIAL CARE DISCHARGE ALLOWANCE**

#### NEW SECTION

**WAC 388-106-0950 What services may I receive under the residential care discharge allowance?** The residential care discharge allowance is a one-time payment used to help you establish or resume living in your own home. You may receive up to eight hundred and sixteen dollars to cover necessary equipment, remodeling, rent, and utilities.

NEW SECTION

**WAC 388-106-0955 Am I eligible for residential care discharge allowance?** You are eligible for a residential discharge allowance if you:

- (1) Receive long-term care services from Home and Community Services;
- (2) Are being discharged from a hospital, nursing facility, a licensed boarding home, or adult family home to your own home;
- (3) Do not have other programs, services, or resources to assist you with these costs; and
- (4) Have needs beyond what is covered under the Community Transition Service (under COPES, MNRW, and MNIW).

**SENIOR CITIZENS' SERVICES**NEW SECTION

**WAC 388-106-1100 What services can I receive under the Senior Citizens' Services Act (SCSA) fund?** You may receive community-based services, described in RCW 74.38.040.

NEW SECTION

**WAC 388-106-1105 How do I apply for SCSA-funded services?** To receive SCSA-funded services, you or your representative must:

- (1) Complete and submit a department application form, providing complete and accurate information; and
- (2) Promptly submit a written report of any changes in income or resources. For the definition of income and resources, refer to WAC 388-500-0005.

NEW SECTION

**WAC 388-106-1110 Am I eligible for SCSA-funded services at no cost?** To be eligible for SCSA-funded services at no cost, you must:

- (1) Be age:
  - (a) Sixty-five or older; or
  - (b) Sixty or older, and:
    - (i) Either unemployed, or
    - (ii) Working twenty hours a week or less;
- (2) Have a physical, mental, or other type of impairment, which without services would prevent you from remaining in your home;
- (3) Have income at or below forty percent of the state median income (SMI), based on family size; and
- (4) Have nonexempt resources (including cash, marketable securities, and real or personal property) not exceeding ten thousand dollars for a single person or fifteen thousand for a family of two, increased by one thousand dollars for each additional family member of the household. Household means a person living alone or a group of people living together.
- (5) If you have income over forty percent of SMI, you may be eligible for services on a sliding fee basis.

NEW SECTION

**WAC 388-106-1115 What income and resources are exempt when determining eligibility?** The following income and resources, regardless of value, are exempt when determining whether you are eligible for SCSA-funded services:

- (1) Your home, and the lot it is upon;
- (2) Garden produce, livestock, and poultry used for home consumption;
- (3) Program benefits which are exempt from consideration in determining eligibility for needs based programs (e.g., uniform relocation assistance, Older Americans Act funds, foster grandparents' stipends or similar monies);
- (4) Used and useful household furnishings, personal clothing, and automobiles;
- (5) Personal property of great sentimental value;
- (6) Personal property used by the individual to earn income or for rehabilitation;
- (7) One cemetery plot for each member of the family unit;
- (8) Cash surrender value of life insurance;
- (9) Real property held in trust for an individual Indian or Indian tribe; and
- (10) Any payment received from a foster care agency for children in the home.

NEW SECTION

**WAC 388-106-1120 What if I am not eligible to receive SCSA-funded services at no cost?** (1) Even if your income is above the forty percent SMI limit to receive SCSA-funded services at no cost, you may receive SCSA-subsidized services. The department uses a sliding fee schedule to determine what percentage the department pays for the cost of your services. You pay the remaining amount, but not more than the usual rate paid for services, as negotiated by the AAA or the department. The formula for determining the department's share of the cost of the services is:

$$\frac{100\% \text{ State Median Income (SMI)} - \text{Household Income} \times 100}{100\% - 40\% \text{ SMI}}$$

- (2) Service providers must be responsible for collecting fees owed by eligible persons and reporting to area agencies all fees paid or owed by eligible persons.
- (3) Some services are provided at no charge regardless of income or need requirements. These services include, but are not limited to, nutritional services, health screening, services under the long-term care ombudsman program, and access services. Note: Well adult clinic services may be provided in lieu of health screening services if such clinics use the fee schedule established by this section.

**RESPITE CARE SERVICES**NEW SECTION

**WAC 388-106-1200 What definitions apply to respite care services?** The following definitions apply to respite care services:

"Caregivers" means a spouse, relative, or friend who has primary responsibility for the daily care of an adult with a functional disability without receiving payment for services provided.

"Continuous care or supervision" means daily assistance or oversight of an adult with a functional disability.

"Functionally disability" means a condition requiring substantial assistance in completing activities of daily living and community living skills.

"Participant" means an adult with a functional disability who needs substantial daily continuous care or supervision.

"Service provider" means an individual, agency, or organization under contract to the area agency on aging (AAA) or its subcontractor.

#### NEW SECTION

##### **WAC 388-106-1205 What are respite care services?**

Respite services relieve unpaid caregivers by providing temporary care or supervision to adults with a functional disability.

#### NEW SECTION

**WAC 388-106-1210 Who is eligible to receive respite care services?** (1) To be eligible to receive respite care services, the caregivers must:

(a) Have primary responsibility for the daily continuous care or supervision of an adult with a functional disability;

(b) Provide a minimum of an average of twelve hours per day for care or supervision;

(c) Not be compensated for the care; and

(d) Be assessed as being at risk of placing the participant in a long-term care facility if home and community support services, including respite care, are not available.

(2) An eligible participant is an adult who:

(a) Has a functional disability;

(b) Needs daily substantial continuous care or supervision; and

(c) Is assessed as requiring placement in a long-term care facility if home and community support services, including respite care, are not available.

(3) The Area Agency on Aging (AAA) determines how many hours of continuous care or supervision a day an unpaid caregiver must provide to a participant to become eligible for respite care services, as long as it is a minimum of twelve hours per day, as outlined in subsection (1)(b) of this section.

#### NEW SECTION

**WAC 388-106-1215 Who may provide respite care services?** Respite care providers include, but are not limited to the following:

(1) Nursing homes (chapter 388-97 WAC).

(2) Adult day services, which includes adult day care and adult day health.

(3) Home health/care agencies.

(4) Hospitals.

(5) Licensed residential care facilities such as boarding homes, adult family homes, and assisted living facilities.

(6) Providers such as volunteer chore workers, senior companions, and individual providers.

#### NEW SECTION

**WAC 388-106-1220 How are respite care providers reimbursed for their services?** The department reimburses:

(1) Respite care providers for the number of hours or days of services authorized and used. The rate that is established for the services is negotiated between the respite care program of the local area agency on aging and the respite care service provider.

(2) Medicaid-certified nursing homes and DDD-certified group homes providing respite services the Medicaid rate approved for that facility. Contracted nursing homes must not charge more than the Medicaid rate for any services covered from the date of eligibility, unless authorized by the department (see RCW 18.51.070). Participants must pay for services not included in the Medicaid rate.

(3) Private nursing homes at their published daily rate.

#### NEW SECTION

**WAC 388-106-1225 Are participants required to pay for the cost of their services?** (1) There is no charge to the participant whose income is at or below forty percent of the state median income, based on family size.

(2) If the participant's gross income is above forty percent of the state median income, he or she is required to pay for part or all of the cost of the respite care services. The department will determine what amount the participant must contribute based on the state median income and family size.

(3) If the participant's gross income is one hundred percent or more of the state median income, the participant must pay the full cost of services.

#### NEW SECTION

**WAC 388-106-1230 Are there waiting lists for respite services?** (1) The department must first consider requests for emergency respite care. An example of an emergency is when the caregiver becomes ill or injured to the extent that the caregiver's ability to care for the participant is impaired.

(2) In non-emergency situations, respite care is allocated based upon available respite funds at the local level. Respite care must be provided on a first-come, first-served basis. If sufficient funds are not available when respite care is requested, services are made available using waiting lists and department-approved priority categories, developed by the AAA, including caregiver vulnerability and health condition, availability of other support systems, and whether other family members need care.

### **CLIENT RIGHTS**

#### NEW SECTION

**WAC 388-106-1300 What rights do I have as a client of the department?** As a client of the department, you have a right to:

- (1) Be treated with dignity, respect and without discrimination;
- (2) Not be abused, neglected, financially exploited, abandoned;
- (3) Have your property treated with respect;
- (4) Not answer questions, turn down services, and not accept case management services you do not want to receive. However, it may not be possible for the department to offer some services if you do not give enough information;
- (5) Be told about all services you can receive and make choices about services you want or don't want;
- (6) Have information about you kept private within the limits of the laws and DSHS regulations;
- (7) Be told in writing of agency decisions and receive a copy of your care plan;
- (8) Make a complaint without fear of harm;
- (9) Not be forced to answer questions or do something you don't want to;
- (10) Talk with your social service worker's supervisor if you and your social service worker do not agree;
- (11) Request a fair hearing;
- (12) Have interpreter services provided to you free of charge if you cannot speak or understand English well;
- (13) Take part in and have your wishes included in planning your care;
- (14) Choose, fire, or change a qualified provider you want; and
- (15) Receive results of the background check for any individual provider you choose.

#### NEW SECTION

**WAC 388-106-1305 What if I disagree with the result of the CARE assessment and/or other eligibility decisions made by the department?** You have a right to contest the result of your CARE assessment and/or other eligibility decisions made by the department. The department will notify you in writing of the right to contest a decision and provide you with information on how to request a hearing.

#### NEW SECTION

**WAC 388-106-1310 When I request a fair hearing on my CARE assessment and another CARE assessment(s) is done between my fair hearing request and the fair hearing, which CARE assessment must the administrative law judge review?** When you request a fair hearing on your CARE assessment and another CARE assessment(s) is done between your fair hearing request and the fair hearing, the administrative law judge must review the most recent CARE assessment.

### COMPREHENSIVE ASSESSMENT (CA)

#### NEW SECTION

**WAC 388-71-0210 What is the purpose of WAC 388-71-0210 through 388-71-0260?** The purpose of this section is to describe comprehensive assessment and service plan procedures and eligibility criteria for children age seventeen and younger, receiving Medicaid Personal Care (MPC). This

section does not apply to you if you are assessed in the comprehensive assessment reporting evaluation (CARE).

#### NEW SECTION

**WAC 388-71-0215 What definitions apply to WAC 388-71-0210 through 0260?** The following definitions apply to this chapter:

"Ambulation" means assisting the child to move around as a result of a disability. Ambulation includes age appropriate supervision of the child when walking alone or with the help of a mechanical device such as a walker if guided, assisting with difficult parts of walking such as climbing stairs, supervising the child if able to propel a wheelchair if guided, pushing of the wheelchair, and providing constant or standby physical assistance to the child if totally unable to walk alone or with a mechanical device.

"Assessment" means an inventory and evaluation of a child's abilities and needs based on an in-person interview in the child's own home.

"Bathing" means assisting the child to wash. Bathing includes age appropriate supervision of the child who is able to bathe when guided, assisting the child with difficult tasks such as getting in or out of the tub or washing back, and completely bathing the child if totally unable to wash self.

"Body care" means age appropriate assistance to the child, as a result of a disability, with exercises, skin care including the application of non-prescribed ointments or lotions, changing dry bandages or dressings when professional judgment is not required, and pedicure to trim toenails and apply lotion to feet. Body care excludes:

- Foot care for child who is diabetic or has poor circulation; or
- Changing bandages or dressings when sterile procedures are required.

"Child/Children" means a child age seventeen and younger.

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

"Dressing" means age appropriate assistance with dressing and undressing as a result of the child's disability. Dressing includes supervising and guiding the child when dressing and undressing, assisting with difficult tasks such as tying shoes and buttoning, and completely dressing or undressing when unable to participate in dressing or undressing self.

"Eating" means age appropriate assistance with eating as a result of the child's disability. Eating includes supervising children when able to feed self if guided, assisting with difficult tasks such as cutting food or buttering bread, and feeding the child when unable to feed self.

"Household assistance" means assistance with incidental household tasks provided as an integral, but subordinate part of personal care. Household assistance is considered an integral part of personal care when such assistance is directly related to the children's medical or mental health condition, is reflected in the children's service plan, and is provided only when children are assessed as needing personal care assistance with one or more direct personal care tasks. Household assistance tasks include a second adult to assist with travel to medical services, meal preparation, laundry, housework.

"Housework" means, as a result of the child's disability, extraordinary housekeeping measures are required. The following are examples: daily extensive cleaning due to a child's severe allergies or substantial cleanup is required due to destructive behaviors which are a result of the child's disability.

"Laundry" means extraordinary laundry needs are required due to excessive soiling related to the child's medical condition.

"Meal preparation" means unusual time or tasks are required such as ground food or special diet preparations due to the child's disability.

"Own Home" means any of the following places where the child resides:

- In the home of the natural, step, or adoptive parent;
- In a relative's established residence;
- In the home of any legally responsible adult; or
- In a Children's Administration licensed and paid child foster home.

"Personal care services" mean both physical assistance and/or prompting and supervising the performance of direct personal care tasks and household tasks. Such services may be provided for children who are functionally unable to perform all or part of such tasks or who are incapable of performing the tasks without specific instructions. Personal care services do not include assistance with tasks that are age appropriate for children or performed by a licensed health professional.

"Personal hygiene" means age appropriate assistance required as a result of the child's disability with care of hair, teeth, shaving, menses care, filing of nails, and other basic personal hygiene and grooming needs. Personal hygiene includes supervising the child when performing the tasks, assisting the child to care for own appearance, and performing grooming tasks when the child is unable to care for own appearance.

"Positioning" means age appropriate assistance required as a result of the child's disability to assume a desired position, assistance in turning and positioning to prevent secondary disabilities, such as contractures and balance deficits or exercises to maintain the highest level of functioning which has already been attained and/or to prevent the decline in physical functional level. (Range of motion ordered as part of a physical therapy treatment is not included.)

"Supervision" means being available to:

• Help the child with age appropriate personal care tasks that cannot be scheduled, such as toileting, ambulation, transfer, positioning, as a result of a disability; and

• Provide age appropriate protective supervision to a child age twelve or older who cannot be left alone due to the disability.

"Toileting" means age appropriate assistance with bladder or bowel functions as a result of the child's disability. Toileting includes guidance when the child is able to care for own toileting needs, helping to and from the bathroom, assisting with bedpan routines, using incontinent briefs on the child, and lifting the child on and off the toilet. Toileting may include performing routine perineal care, colostomy care, or catheter care for the child when he/she is able to supervise the activities.

"Transfer" means age appropriate assistance required, as a result of the child's disability, with getting in and out of a bed or wheelchair or on and off the toilet or in and out of the bathtub. Transfer includes supervising the child when able to transfer if guided, providing steadying, and helping the child when he/she can assist in own transfer.

"Travel to medical services" means transporting the child to a physician's office or clinic in the local area to obtain medical diagnosis or treatment when a child, as a result of a disability, requires a second adult to accompany the parent or guardian.

"You" means a child.

#### NEW SECTION

**WAC 388-71-0220 What is an assessment?** An assessment is an inventory and evaluation of abilities and needs based on an in-person interview in your own home or place of residence, using the department-prescribed form, comprehensive assessment (child).

#### NEW SECTION

**WAC 388-71-0225 What is the purpose of a comprehensive assessment?** The purpose of the Comprehensive Assessment is to:

- (1) Identify strengths to maximize current strengths and promote your independence;
- (2) Evaluate physical health, functional and cognitive abilities, social resources and emotional and social functioning for service planning for long-term care;
- (3) Identify your values and preferences for effective service planning; and
- (4) Determine your need for informal support, community support and services, and department paid services.
- (5) Account for your:
  - (a) Health status, psychological/social/cognitive functioning, income and resources, and functional abilities;
  - (b) Living situation; and
  - (c) Availability of alternative resources providing needed assistance, including family, neighbors, friends, community programs, and volunteers.

#### NEW SECTION

**WAC 388-71-0230 How are my needs for MPC services assessed?** (1) Using the comprehensive assessment, the department will determine your ability to self-perform each personal care task and household task using the following definitions of the assistance required:

- (a) Ambulation:
  - (i) Independent. No special assistance is needed.
  - (ii) Minimal. You are age four or older and you need your hand held on stairs or uneven surfaces or use adaptive devices with minimal assistance.
  - (iii) Substantial. You are age four or older and mobile inside but need assistance of another person outside.
  - (iv) Total.
    - (A) You are age two or three and always require total physical assistance (e.g. you need to be carried or your caregiver must push your manual wheelchair).

(B) You are age four or older and only mobile with physical assistance of another person or need ongoing assistance with adaptive devices.

(b) Bathing:

(i) Independent. You can bathe self.

(ii) Minimal.

(A) You are age eight or older and require minor physical or verbal assistance such as adjusting water temperature; or

(B) You are age five or older and require the presence of an adult in the room due to your health condition.

(iii) Substantial. You are age five or older and require physical help in a large part of the bathing activity (i.e. to lather, wash and/or rinse own body or hair).

(iv) Total. You are age five or older and dependent on others to provide a complete bath.

(c) Body care:

(i) Independent. No specialized body care is needed.

(ii) Minimal. You are age ten or older and need reminding or occasional physical assistance to: Apply non-prescription ointments or lotion; perform non-sterile bandage or dressing change; or perform exercises.

(iii) Substantial. You are age ten or older and require limited physical help to: Apply ointment/lotion; perform non-sterile bandage or dressing change; or perform exercises on a daily basis.

(iv) Total. You are age ten or older and dependent on others to perform all required body care.

(d) Dressing:

(i) Independent. You can dress and undress without assistance or supervision.

(ii) Minimal. You are age eight or older and need some physical assistance, reminders, or supervision several times per week.

(iii) Substantial. You are age four or older and need daily physical assistance to do parts of dressing and undressing.

(iv) Total. You are age four or older and totally dependent on others to do all dressing and undressing or significant time and effort is required due to the nature of your disability or behavior.

(e) Eating:

(i) Independent. You can feed self, chew and swallow solid foods without difficulty, or can feed self by stomach tube or catheter.

(ii) Minimal. You are age four or older and can feed self, chew and swallow, but need verbal prompting to maintain adequate intake; or you are age ten or older and also need assistance with such things as cutting up food, buttering bread and pouring liquids.

(iii) Substantial. You are age three or older and

(A) Can feed self but need stand-by assistance for occasional gagging, choking, or swallowing difficulty; or

(B) Need reminders/assistance with adaptive feeding equipment; or

(C) Must be fed some or all food by mouth by another person.

(iv) Total. You are a child of any age who needs extraordinary time and supervision due to behavior issues or because you frequently gag or choke due to swallowing difficulties.

(f) Housework:

(i) Independent. No extraordinary housework needs.

(ii) Total. You are a child of any age who, as a result of your disability, requires extraordinary housekeeping measures such as daily extensive cleaning due to severe allergies or substantial clean up is required due to destructive behaviors.

(g) Laundry:

(i) Independent. No additional needs for laundry.

(ii) Total. You are a child of any age who has extraordinary laundry needs or clothing repairs due to excessive soiling related to your medical condition.

(h) Meal preparation:

(i) Independent. No unusual time or activities required or you are able to participate as expected in simple meal preparation.

(ii) Total. You are a child of any age and unusual time or tasks are required such as grinding food or special diet preparations; or you are age ten or older and totally dependent on others for meal preparation due to cognitive, physical or behavioral disability.

(i) Personal hygiene:

(i) Independent. You can manage personal hygiene and grooming tasks on a regular basis.

(ii) Minimal. You are age twelve or older and must be reminded and supervised at least some of the time.

(iii) Substantial. You are age eight or older and always require direct physical assistance with such tasks as combing hair, brushing teeth, menses care and shaving.

(iv) Total. You are age five or older and all personal hygiene must be done by someone else.

(j) Positioning:

(i) Independent. No positioning needed.

(ii) Minimal. You are age three or older and require assistance some of the time.

(iii) Substantial. You are age three or older and can move self, but assistance with positioning is required throughout the day such as specialized sleeping positions, sitting supports and/or minor adjustments to adaptive equipment.

(iv) Total.

(A) You are age two or older and cannot move self and require positioning by another person most or all of the time throughout the day; or

(B) You are a child of any age who requires scheduled positioning changes by another person throughout the night.

(k) Toileting:

(i) Independent. No additional help is needed.

(ii) Minimal. You are age four or older and:

(A) Require verbal cueing and/or have occasional infrequent daytime toileting accidents and/or have a toileting program that must be followed; or

(B) Need occasional physical assistance for one or more of the following: clothing adjustments, washing hands, wiping and cleansing.

(iii) Substantial. You are age four or older and cannot get to the toilet without assistance; or need substantial physical assistance at least daily with part of the task.

(iv) Total.



(A) You are age four or older and require total cleansing and are unable to use toilet or require incontinence supplies.

(B) You are a child of any age and have a medical condition requiring more frequent scheduled change of incontinence garments on a twenty-four hour basis.

(C) You are age eight or older, you are continent during the day but are incontinent at night and require incontinence garment changes during the night.

(l) Transfer:

(i) Independent. You can transfer without physical assistance.

(ii) Minimal. You are age four or older and need assistance on occasion.

(iii) Substantial. You are age four or older and need daily assistance and can bear some weight and assist with your transfer; or weigh less than thirty pounds.

(iv) Total. You are a child of any age who weighs thirty pounds or more and requires total physical support of the caregiver to transfer.

(m) Travel to medical services:

(i) Independent. No unusual transportation needs required.

(ii) Minimal. You are a child of any age and have a medical condition that requires a second adult to assist with transport to medical appointments less than monthly.

(iii) Substantial. You are a child of any age and have a medical condition that requires a second adult to assist with transport to medical appointments at least monthly.

(iv) Total. You are a child of any age and have a medical condition that requires a second adult to assist with transport to medical appointments at least weekly.

(2) The department will score functional abilities and supports.

(a) For each direct personal care service and household assistance task listed on the CA, the department must determine:

(i) Your ability to perform each activity;

(ii) Assistance available to you through alternative resources, including parents, families, friends, neighbors, community programs, and unpaid caregivers; and

(iii) Assistance needed from department programs after alternative resources have been taken into account.

(b) The department must award points for each task based on the level of unmet need. The number of points allowable for each task is listed below under columns identified as 0 = none, M = minimal, S = substantial, and T = total:

Task	0	M	S	T
Eating	0	5	12	16
Toileting	0	5	12	16
Ambulation	0	8	10	12
Transfer	0	4	8	11
Positioning	0	3	5	7
Body care	0	4	5	6
Personal hygiene	0	4	6	8
Dressing	0	5	8	12
Bathing	0	4	8	10
Travel to medical services	0	1	2	3

Task	0	M	S	T
Meal preparation	0	0	0	6
Laundry	0	0	0	4
Housework	0	0	0	5

(c) The department must add together the points awarded for each task to obtain the total score for you.

(3) The department must determine if additional hours of supervision are needed:

(a) Due to cognitive protective supervision; and

(b) For standby assistance necessary for unscheduled tasks (NOTE: Supervision hours show a child's need and may not reflect department paid hours as determined by program standards.)

(4) The department must authorize services to correspond with your assessed need according to eligibility criteria and your service plan. The department must notify you of the right to contest the department's decision and/or the results of the assessment.

**NEW SECTION**

**WAC 388-71-0235 What is a service plan?** (1) The department must develop a service plan with you to identify ways to meet your needs with the most appropriate services, both formal and informal.

(2) The department must document:

(a) Your specific problems and needs;

(b) A plan for meeting each need;

(c) Responsible parties for carrying out each part of the plan;

(d) Anticipated outcomes;

(e) Dates and changes to the plan;

(f) Dates of referral, service initiation, follow-up reviews; and

(g) Your agreement to the service plan.

**NEW SECTION**

**WAC 388-71-0240 What services may I receive under MPC as a child?** You may receive personal care services in your own home as defined in WAC 388-71-0215, and as applicable, assistance with personal care tasks while you are out of the home accessing community resources.

**NEW SECTION**

**WAC 388-71-0245 What services are not covered under MPC for children?** MPC does not cover the following services:

(1) Teaching, including teaching how to perform personal care tasks;

(2) Development of social, behavioral, recreational, communication, or other types of community living skills;

(3) Nursing care;

(4) Personal care services provided outside of your residence, unless the services are authorized in your written service plan and meet the program criteria;

(5) Child care;

(6) Respite care;

PERMANENT

(7) Sterile procedures, administration of medications, or other tasks requiring a licensed health professional, unless provided by a family member;

(8) Services provided over the telephone;

(9) Services provided outside the state of Washington unless you are receiving personal care assistance while temporarily traveling out of state and:

(i) Your individual provider is contracted with the state of Washington; and

(ii) The travel plans are coordinated with your social service case manager prior to departure; and

(iii) Services are authorized on your service plan prior to departure; and

(iv) Services are strictly for your personal care, which does not include your provider's travel time, expenses, lodging or subsistence;

(10) Services to assist other household members not eligible for services; and

(11) Yard care.

#### NEW SECTION

**WAC 388-71-0250 Am I eligible for MPC services?** To be eligible for MPC-funded services you must:

(1) Have unmet need for substantial assistance with at least one of the following direct personal care tasks or have unmet needs for minimal assistance with three of the following direct personal care tasks:

- (a) Ambulation;
- (b) Bathing;
- (c) Body care;
- (d) Dressing;
- (e) Eating;
- (f) Personal hygiene;
- (g) Positioning;
- (h) Self-medication;
- (i) Toileting; or
- (j) Transfer.

(2) Be certified as Title 19 categorically needy, as defined in WAC 388-500-0005.

(3) Be assessed by department staff or designee using a department approved comprehensive assessment and have a determination of unmet needs for services.

#### NEW SECTION

**WAC 388-71-0255 How do children remain eligible for MPC services?** In order to remain eligible for services, you must:

- (1) Be reassessed at least every twelve months; and
- (2) Meet eligibility requirements for MPC.

#### NEW SECTION

**WAC 388-71-0260 Are there limitations to MPC services for children?** The following are limitations to MPC services you can receive:

(1) MPC services may not replace other available resources, both paid and unpaid.

(2) ADSA published rates and program rules establish your total hours and how much the department pays toward the cost of your services.

(3) The department will not pay for housework, laundry, or meal preparation, when you and your individual provider, agency provider, or personal aide live in the same household.

(4) The department will adjust payments to an individual provider, agency provider, or personal aide who is doing household tasks for more than one client living in the same household.

(5) MPC cannot pay for services already reimbursed with other state and federal funding.

**AMENDATORY SECTION** (Amending WSR 02-21-098, filed 10/21/02, effective 11/21/02)

**WAC 388-71-0500 What is the purpose of WAC 388-71-0500 through 388-71-05909?** A client/legal representative may choose an individual provider or a home care agency provider. The intent of WAC 388-71-0500 through 388-71-05909 is to describe the:

(1) Qualifications of an individual provider, as defined in WAC ((388-71-202)) 388-106-0010;

(2) Qualifications of a home care agency provider, as defined in WAC ((388-71-202)) 388-106-0010 and chapter 246-336 WAC;

(3) Conditions under which the department or the area agency on aging (AAA) will pay for the services of an individual provider or a home care agency provider;

(4) Training requirements for an individual provider and home care agency provider.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

**AMENDATORY SECTION** (Amending WSR 02-21-098, filed 10/21/02, effective 11/21/02)

**WAC 388-71-0515 What are the responsibilities of an individual provider or home care agency provider when employed to provide care to a client?** An individual provider or home care agency provider must:

(1) Understand the client's ((service)) plan of care that is signed by the client or legal representative and social worker/case manager, and translated or interpreted, as necessary, for the client and the provider;

(2) Provide the services as outlined on the client's ((service plan, within the scope of practice in WAC 388-71-202 and 388-71-203)) plan of care, as defined in WAC 388-106-0010;

(3) Accommodate client's individual preferences and differences in providing care((, within the scope of the service plan));

(4) Contact the client's representative and case manager when there are changes which affect the personal care and other tasks listed on the ((service)) plan of care;

(5) Observe the client for change(s) in health, take appropriate action, and respond to emergencies;

(6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;

(7) Notify the case manager immediately if the client dies;

(8) Notify the department or AAA immediately when unable to staff/serve the client; and

(9) Notify the department/AAA when the individual provider or home care agency will no longer provide services. Notification to the client/legal guardian must:

(a) Give at least two weeks' notice, and

(b) Be in writing.

(10) Complete and keep accurate time sheets that are accessible to the social worker/case manager; and

(11) Comply with all applicable laws and regulations.

**AMENDATORY SECTION** (Amending WSR 04-02-001, filed 12/24/03, effective 1/24/04)

**WAC 388-71-0520 Are there training requirements for an individual provider or a home care agency provider of an adult client?** An individual provider or a home care agency provider for an adult client must meet the training requirements in WAC 388-71-05665 through ~~((388-71-05909))~~ 388-71-05865.

**AMENDATORY SECTION** (Amending WSR 02-10-117, filed 4/30/02, effective 5/31/02)

**WAC 388-71-0540 When will the department or AAA deny payment for services of an individual provider or home care agency provider?** The department or AAA will deny payment for the services of an individual provider or home care agency provider who:

(1) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore ~~((e))~~spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0030;

(2) Is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under ~~((this chapter))~~ Medicaid Personal Care;

(3) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

(4) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(5) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

(6) Does not successfully complete the training requirements within the time limits required in WAC ~~((388-71-05910 through 388-71-05952))~~ 388-71-05665 through 388-71-05865;

(7) Is already meeting the client's needs on an informal basis, and the client's assessment or reassessment does not identify any unmet need; and/or

(8) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

(9) In addition, the department or AAA may deny payment to or terminate the contract of an individual provider as

provided under WAC 388-71-0546, 388-71-0551, and 388-71-0556.

#### NEW SECTION

**WAC 388-71-05832 What is safety training?** Safety training and applicable requirements are defined in WAC 257-05-020 through WAC 257-05-240.

**AMENDATORY SECTION** (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

**WAC 388-71-0704 Adult day care—Services.** ~~((1))~~ Adult day care is a supervised daytime program providing core services as defined ~~((under subsection (2) of this section))~~ in WAC 388-106-0800. Core services are appropriate for adults with medical or disabling conditions that do not require the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client's physician.

~~((2))~~ The adult day care center must offer and provide on site the following core services:

~~(a)~~ The following personal care services as defined in WAC 388-71-0202, "personal care services," or its successor:

~~(i)~~ Ambulation;

~~(ii)~~ Body care;

~~(iii)~~ Eating;

~~(iv)~~ Positioning;

~~(v)~~ Self-medication;

~~(vi)~~ Transfer;

~~(vii)~~ Toileting;

~~(viii)~~ Personal hygiene at a level that ensures client safety and comfort while in attendance at the program; and

~~(ix)~~ Bathing at a level that ensures client safety and comfort while in attendance at the program.

~~(b)~~ Social services on a consultation basis, which may include:

~~(i)~~ Referrals to other providers for services not within the scope of Medicaid reimbursed adult day care services;

~~(ii)~~ Caregiver support and education; or

~~(iii)~~ Assistance with coping skills.

~~(c)~~ Routine health monitoring with consultation from a registered nurse that a consulting nurse acting within the scope of practice can provide with or without a physician's order. Examples include:

~~(i)~~ Obtaining baseline and routine monitoring information on a client's health status, such as vital signs, weight, and dietary needs;

~~(ii)~~ General health education such as providing information about nutrition, illnesses, and preventive care;

~~(iii)~~ Communicating changes in the client's health status to the client's caregiver;

~~(iv)~~ Annual and as-needed updating of the client's medical record;

~~(v)~~ Assistance as needed with coordination of health services provided outside of the adult day care program.

~~(d)~~ General therapeutic activities that an unlicensed person can provide or that a licensed person can provide with or without a physician's order. These services are planned and provided as an integral part of the client's plan of care and are

based on the client's abilities, interests and goals. Examples include:

- (i) Recreational activities;
- (ii) Diversionary activities;
- (iii) Relaxation therapy;
- (iv) Cognitive stimulation;
- (v) Group range of motion or conditioning exercises.
- (e) General health education that an unlicensed person can provide or that a licensed person can provide with or without a physician's order, including but not limited to topics such as:
  - (i) Nutrition;
  - (ii) Stress management;
  - (iii) Disease management skills;
  - (iv) Preventive care.
- (f) A nutritional meal and snacks provided each four-hour period at regular times comparable to normal meal times, including modified diet if needed and within the scope of the program, as provided under WAC 388-71-0768;
- (g) Supervision and/or protection for clients who require supervision or protection for their safety;
- (h) Assistance with arranging transportation to and from the program; and
- (i) First aid and provisions for obtaining or providing care in an emergency.)

**AMENDATORY SECTION** (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

**WAC 388-71-0706 Adult day health—Services.**

((1)) Adult day health is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services ((outlined in WAC 388-71-0704)). Adult day health services are only appropriate for adults with medical or disabling conditions that require the intervention or services of a registered nurse or licensed rehabilitative therapist acting under the supervision of the client's physician.

((2)) The adult day health center must offer and provide on site the ((following)) services((:

- (a) All core services under WAC 388-71-0704;
- (b) Skilled nursing services other than routine health monitoring with nurse consultation;
- (c) At least one of the following skilled therapy services: physical therapy, occupational therapy, or speech language pathology or audiology, as those services are defined under chapter 18.74, 18.59, and 18.35 RCW, respectively; and
- (d) Psychological or counseling services, including assessing for psycho-social therapy need, dementia, abuse or neglect, and alcohol or drug abuse; making appropriate referrals; and providing brief, intermittent supportive counseling)) listed in WAC 388-106-0810.

**AMENDATORY SECTION** (Amending WSR 04-16-029, filed 7/26/04, effective 8/26/04)

**WAC 388-71-0708 Adult day care—Eligibility.** ((1)) COPES or MNIW) Clients ((may be)) are eligible for adult day care ((as a waiver service)) services if they ((are assessed as having an unmet need for one or more of the following core services identified in WAC 388-71-0704:

- (a) Personal care services;
- (b) Routine health monitoring with consultation from a registered nurse;
- (c) General therapeutic activities; or
- (d) Supervision and/or protection for clients who require supervision or protection for their safety.
- (2) COPES or MNIW clients are not eligible for adult day care if they:
  - (a) Can independently perform or obtain the services provided at an adult day care center;
  - (b) Have unmet needs that can be met through the COPES program more cost effectively without authorizing day care services;
  - (c) Have referred care needs that:
    - (i) Exceed the scope of authorized services that the adult day care center is able to provide;
    - (ii) Can be met in a less structured care setting; or
    - (iii) Are being met by paid or unpaid caregivers.
  - (d) Live in a nursing home, boarding home, adult family home, or other licensed institutional or residential facility; or
  - (e) Are not capable of participating safely in a group care setting)) meet criteria outlined in WAC 388-106-0805.

**AMENDATORY SECTION** (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

**WAC 388-71-0710 Adult day health—Eligibility.**

((1)) Clients are eligible for adult day health services if they meet ((all of the following criteria:

- (a) Age eighteen years or older; and
- (b) Identified on their medical assistance identification (MAID) card, or through other methods of eligibility verification, as enrolled in one of the following medical assistance programs:
  - (i) Categorically needy (CNP);
  - (ii) Categorically needy qualified Medicare beneficiaries (CNP-QMB);
  - (iii) General assistance—Expedited Medicaid Disability (GA-X); or
  - (iv) Alcohol and Drug Abuse Treatment and Support Act (ADATSA).
- (c) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714, and:
  - (i) There is a reasonable expectation that these services will improve, restore or maintain the client's health status, or in the case of a progressive disabling condition, will either restore or slow the decline of the client's health and functional status or ease related pain or suffering; and
  - (ii) The client is at risk for deteriorating health, deteriorating functional ability, or institutionalization; and
  - (iii) The client has a chronic or acute health condition that he or she is not able to safely manage due to a cognitive, physical, or other functional impairment.
- (d) Assessed as having needs for personal care or other core services under WAC 388-71-0708, whether or not those needs are otherwise met.

(2) Clients are not eligible for adult day health if they:

- (a) Can independently perform or obtain the services provided at an adult day health center;

- (b) ~~Have referred care needs that:~~
- (i) ~~Exceed the scope of authorized services that the adult day health center is able to provide;~~
  - (ii) ~~Do not need to be provided or supervised by a licensed nurse or therapist;~~
  - (iii) ~~Can be met in a less structured care setting; or~~
  - (iv) ~~In the case of skilled care needs, are being met by paid or unpaid caregivers.~~
- (e) ~~Live in a nursing home or other institutional facility;~~  
or  
(d) ~~Are not capable of participating safely in a group care setting))~~ the criteria outlined in WAC 388-106-0815.

**AMENDATORY SECTION** (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

**WAC 388-71-0716 Adult day care—Assessment and service plan.** (1) The department or an authorized case manager must ~~((assess a client's need for adult day care in accordance with WAC 388-71-0203 and 388-71-0716))~~ perform a CARE assessment to determine a client's need for adult day care, per WAC 388-106-0065. Based on the assessment, the case manager determines whether the client should be referred for day care services or whether the client's needs can be met in other ways.

(2) If the case manager determines an unmet need for a core service that may be provided at a day care center, the case manager works with the client and/or the client's representative to develop a service plan that documents the needed services and the number of days per week that the services are to be provided. The case manager refers the client to a ~~((COPES))~~ waiver-contracted day care center that the client and the case manager agree can potentially meet the client's needs.

(3) Clients receiving adult day care services must be reassessed at least annually ~~((in accordance with WAC 388-71-0203 and 388-71-0716)).~~

**AMENDATORY SECTION** (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

**WAC 388-71-0720 Adult day health—Assessment and service plan.** (1) The department or an authorized case manager must ~~((assess a client's potential need for adult day health in accordance with WAC 388-71-0203 and 388-71-0720))~~ perform a CARE assessment to determine a client's need for adult day health, per WAC 388-106-0065. Based on the assessment, the case manager determines whether the client should be referred for day health services or whether the client's needs can be met in other ways.

(2) If the client has a department or area agency on aging case manager, the adult day health center or other referral source must notify the case manager of the client's potential adult day health service need. The case manager must assess the client's need for skilled nursing or skilled rehabilitative therapy within the department's normal time frames for client reassessments.

(3) If the client does not have a department or area agency on aging case manager, the adult day health center or other referral source must notify the department of the referral and the client's potential adult day health service need, or

refer the client to the department for intake. The department's assigned case manager must assess the client's need for adult day health services within the department's normal time frames for initial client eligibility assessments.

(4) ~~((Based on the assessment, the department or area agency on aging case manager determines whether the client should be referred for a day health service evaluation or whether the client's needs can be met in other ways.))~~ The case manager may consult with the client's practitioner, department or area agency on aging nursing services staff, or other pertinent collateral contacts, concerning the client's need for skilled nursing or rehabilitative therapy.

(5) If the department or area agency on aging case manager determines and documents a potential unmet need for day health services, the case manager works with the client and/or the client's representative to develop a service plan that documents the potential unmet needs and the anticipated number of days per week that the services are needed. The case manager refers the client to a department contracted day health center for evaluation and the development of a preliminary negotiated plan of care.

(6) The department or area agency on aging case manager must reassess adult day health clients at least annually ~~((in accordance with WAC 388-71-0203 and 388-71-0720 or its successor)).~~ Clients must also be reassessed if they have a break in service of more than thirty days. The adult day center must inform the case manager of the break in service so payment authorization can be discontinued.

(7) ~~((Effective upon the adoption of these rules,))~~ Recipients of adult day health services must be assessed by the department or an authorized case manager for continued or initial eligibility ((in accordance with this section. The assessment from the department will occur in conjunction with the)) as follows:

- (a) Annual reassessment for department clients;
- (b) Adult day health quarterly review for current nondepartmental clients as resources allow; and
- (c) New referrals for adult day health services are to be forwarded to local department offices for intake and assessment for eligibility.

(8) The department or area agency on aging case manager must review a client's continued eligibility for adult day health services every ninety days, coinciding with the quarterly review completed by the adult day health program. At the case manager's discretion, additional information will be gathered through face to face, collateral or other contact methods to determine continued eligibility. Services will be continued, adjusted, or terminated based upon the case manager's determination during the eligibility review.

#### **REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 388-71-0194	Home and community services—Nursing services.
WAC 388-71-0202	Long-term care services—Definitions.

WAC 388-71-0203	Long-term care services— Assessment of task self-per- formance and determination of required assistance.	WAC 388-71-0613	For what days will the department pay the residen- tial care facility?
WAC 388-71-0205	Long-term care services— Service plan.	WAC 388-71-0615	If I leave a hospital, residen- tial facility, or nursing facil- ity, are there resources avail- able to help me find a place to live?
WAC 388-71-0400	What is the intent of the department's home and com- munity programs?	WAC 388-71-0620	Am I eligible for a residential discharge allowance?
WAC 388-71-0405	What are the home and com- munity programs?	WAC 388-71-0700	What are the requirements for nursing facility eligibility, assessment, and payment?
WAC 388-71-0410	What services may I receive under HCP?	WAC 388-71-0800	What is PACE?
WAC 388-71-0415	What other services may I receive under the waiver- funded programs?	WAC 388-71-0805	What services does PACE cover?
WAC 388-71-0420	What services are not cov- ered under HCP?	WAC 388-71-0810	Who provides these services?
WAC 388-71-0425	Who can provide HCP ser- vices?	WAC 388-71-0815	Where are these services pro- vided?
WAC 388-71-0430	Am I eligible for one of the HCP programs?	WAC 388-71-0820	How do I qualify for Medic- aid-funded PACE services?
WAC 388-71-0435	Am I eligible for COPES- funded services?	WAC 388-71-0825	What are my appeal rights?
WAC 388-71-0440	Am I eligible for MPC- funded services?	WAC 388-71-0830	Who pays the PACE pro- vider?
WAC 388-71-0442	Am I eligible for medically needy residential waiver ser- vices?	WAC 388-71-0835	How do I enroll into the PACE program?
WAC 388-71-0445	Am I eligible for chore- funded services?	WAC 388-71-0840	How do I disenroll from the PACE program?
WAC 388-71-0450	How do I remain eligible for services?	WAC 388-71-0845	What are my rights as a PACE client?
WAC 388-71-0455	Can my services be termi- nated if eligibility require- ments for HCP change?	WAC 388-71-1000	What is the Senior Citizens Services Act?
WAC 388-71-0460	Are there limitations to HCP services I can receive?	WAC 388-71-1005	Who administers the Senior Citizens Services Act funds?
WAC 388-71-0465	Are there waiting lists for HCP services?	WAC 388-71-1010	What services does the SCSA fund?
WAC 388-71-0470	Who pays for HCP services?	WAC 388-71-1015	How do I apply for SCSA- funded services?
WAC 388-71-0480	If I am employed, can I still receive HCP services?	WAC 388-71-1020	Am I eligible for SCSA- funded services at no cost?
WAC 388-71-0600	What are residential ser- vices?	WAC 388-71-1025	What income and resources are exempt when determin- ing eligibility?
WAC 388-71-0605	Am I eligible for residential services?	WAC 388-71-1030	What if I am not eligible to receive SCSA-funded ser- vices at no cost?
WAC 388-71-0610	Who pays for residential care?	WAC 388-71-1035	What are my rights under SCSA?

- WAC 388-71-1065 What is the purpose of the respite care program?
- WAC 388-71-1070 What definitions apply to respite care services?
- WAC 388-71-1075 Who is eligible to receive respite care services?
- WAC 388-71-1080 Who may provide respite care services?
- WAC 388-71-1085 How are respite care providers reimbursed for their services?
- WAC 388-71-1090 Are participants required to pay for the cost of their services?
- WAC 388-71-1095 Are respite care services always available?
- WAC 388-71-1100 What is volunteer chore services (VCS)?
- WAC 388-71-1105 Am I eligible to receive volunteer chore services?
- WAC 388-71-1110 How do I receive information on applying for volunteer chore services?
- (i) Is not subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1364, 388-513-1365 and 388-513-1366; and
- (j) Meets the resource and income requirements described in subsections (2) through (6).
- (2) The department determines a client's nonexcluded resources under MNRW as described in WAC 388-513-1350 (1) through (4)(a) and WAC 388-513-1360;
- (3) Nonexcluded resources, after disregarding excess resources described in (4), must be at or below the resource standard described in WAC 388-513-1350 (1) and (2).
- (4) In determining a client's resource eligibility, the department disregards excess resources above the standard described in subsection (3) of this section:
- (a) In an amount equal to incurred medical expenses such as:
- (i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and Medicare premiums;
- (ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; or
- (iii) Necessary medical care covered under the state's Medicaid plan.
- (b) As long as the incurred medical expenses:
- (i) Are not subject to third-party payment or reimbursement;
- (ii) Have not been used to satisfy a previous spend down liability;
- (iii) Have not previously been used to reduce excess resources;
- (iv) Have not been used to reduce client responsibility toward cost of care; and
- (v) Are amounts for which the client remains liable.
- (5) The department determines a client's countable income under MNRW in the following way:
- (a) Considers income available described in WAC 388-513-1325 and 388-513-1330 (1), (2), and (3);
- (b) Excludes income described in WAC 388-513-1340;
- (c) Disregards income described in WAC 388-513-1345;
- (d) Deducts monthly health insurance premiums, except Medicare premiums.
- (6) If the client's countable income is:
- (a) Less than the residential facility's department-contracted rate, based on an average of 30.42 days in a month the client may qualify for MNRW subject to availability per WAC ((388-71-0465)) 388-106-0435;
- (b) More than the residential facility's department-contracted rate, based on an average of 30.42 days in a month the client may qualify for MNRW when they meet the requirements described in subsections (7) through (9), subject to availability per WAC ((388-71-0465)) 388-106-0435.
- (7) The portion of a client's countable income over the department-contracted rate is called "excess income."
- (8) A client who meets the requirements for MNRW chooses a three or six month base period. The months must be consecutive calendar months.
- (9) A client who has or will have "excess income" is not eligible for MNRW until the client has medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown." The excess income from

**AMENDATORY SECTION** (Amending WSR 03-13-052, filed 6/12/03, effective 7/13/03)

**WAC 388-515-1540 Medically needy residential waiver (MNRW) effective March 17, 2003.** This section describes the financial eligibility requirements for waiver services under the medically needy residential waiver (MNRW) and the rules used to determine a client's responsibility in the total cost of care.

(1) To be eligible for MNRW, a client must meet the following conditions:

(a) Does not meet financial eligibility for Medicaid personal care or the COPES program;

(b) Is eighteen years of age or older;

(c) Meets the SSI related criteria described in WAC 388-511-1105(1);

(d) Requires the level of care provided in a nursing facility as described in WAC ((388-71-0700)) 388-106-0355;

(e) In the absence of waiver services described in WAC ((388-71-0410 and 388-71-0415)) 388-106-0400, would continue to reside in a medical facility as defined in WAC 388-513-1301, or will likely be placed in one within the next thirty days;

(f) Has attained institutional status as described in WAC 388-513-1320;

(g) Has been determined to be in need of waiver services as described in WAC ((388-71-0442)) 388-106-0410;

(h) Lives in one of the following department-contracted residential facilities:

(i) Licensed adult family home (AFH);

(ii) Assisted living (AL) facility; or

(iii) Enhanced adult residential care (EARC) facility.

each of the months in the base period is added together to determine the total "spenddown" amount.

(10) Medical expenses described in subsection (4) of this WAC may be used to meet spenddown if not already used in subsection (4) of this WAC to disregard excess resources or to reduce countable income as described in subsection (5)(d).

(11) In cases where spenddown has been met, medical coverage begins the day services are authorized.

(12) The client's income that remains after determining available income in WAC 388-513-1325 and 388-513-1330 (1), (2), (3) and excluded income in WAC 388-513-1340 is paid towards the cost of care after deducting the following amounts in the order listed:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Personal needs allowance (PNA) described in WAC 388-515-1505 (7)(b);

(c) Medicare and health insurance premiums not used to meet spenddown or reduce excess resources;

(d) Incurred medical expenses described in (4) not used to meet spenddown or reduce excess resources.

**AMENDATORY SECTION** (Amending WSR 04-16-029, filed 7/26/04, effective 8/26/04)

**WAC 388-515-1550 Medically needy in-home waiver (MNIW) effective May 1, 2004.** This section describes the financial eligibility requirements for waiver services under the Medically Needy In-home Waiver (MNIW) and the rules used to determine a client's responsibility in the total cost of care.

(1) To be eligible for MNIW, a client must:

(a) Not meet financial eligibility for Medicaid personal care or the COPEs program;

(b) Be eighteen years of age or older;

(c) Meet the SSI-related criteria described in WAC 388-475-0050(1);

(d) Require the level of care provided in a nursing facility as described in WAC ((388-71-0700)) 388-106-0355;

(e) In the absence of waiver services described in WAC ((388-71-0410 and 388-71-0415)) 388-106-0500, continue to reside in a medical facility as defined in WAC 388-513-1301, or will likely be placed in one within the next thirty days;

(f) Have attained institutional status as described in WAC 388-513-1320;

(g) Have been determined to be in need of waiver services as described in WAC ((388-71-0442)) 388-106-0510;

(h) Be able to live at home with community support services and choose to remain at home;

(i) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1364, 388-513-1365 and 388-513-1366; and

(j) Meet the resource and income requirements described in subsections (2) through (6) of this section.

(2) The department determines a client's nonexcluded resources under MNIW as described in WAC 388-513-1350 (1) through (4)(a) and 388-513-1360;

(3) Nonexcluded resources, after disregarding excess resources described in subsection (4) of this section, must be

at or below the resource standard described in WAC 388-513-1350 (1) and (2).

(4) In determining a client's resource eligibility, the department disregards excess resources above the standard described in subsection (3) of this section:

(a) In an amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and Medicare premiums;

(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; or

(iii) Necessary medical care covered under the state's Medicaid plan.

(b) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Have not been used to satisfy a previous spenddown liability;

(iii) Have not previously been used to reduce excess resources;

(iv) Have not been used to reduce client responsibility toward cost of care; and

(v) Are amounts for which the client remains liable.

(5) The department determines a client's countable income under MNIW in the following way:

(a) Considers income available described in WAC 388-513-1325 and 388-513-1330 (1), (2), and (3);

(b) Excludes income described in WAC 388-513-1340;

(c) Disregards income described in WAC 388-513-1345;

(d) Deducts monthly health insurance premiums, except Medicare premiums, not used to reduce excess resources in subsection (4) of this section;

(e) Allows an income deduction for a nonapplying spouse, equal to the one person medically needy income level (MNIL) less the nonapplying spouse's income, if the nonapplying spouse is living in the same home as the applying person.

(6) A client whose countable income exceeds the MNIL may become eligible for MNIW:

(a) When they have or expect to have medical expenses to offset their income which is over the MNIL; and

(b) Subject to availability in WAC ((388-71-0465)) 388-106-0535.

(7) The portion of a client's countable income over the MNIL is called "excess income."

(8) A client who has or will have "excess income" is not eligible for MNIW until the client has medical expenses which are equal in amount to that excess income. This is the process of meeting "spenddown." The excess income from each of the months in the base period is added together to determine the total "spenddown" amount.

(9) The following medical expenses may be used to meet spenddown if not already used in subsection (4) of this section to disregard excess resources or to reduce countable income as described in subsection (5)(d) of this section:

(a) An amount equal to incurred medical expenses such as:

(i) Premiums, deductibles, and co-insurance/co-payment charges for health insurance and Medicare premiums;



(ii) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; and

(iii) Necessary medical care covered under the state's Medicaid plan.

(b) The cost of waiver services authorized during the base period.

(c) As long as the incurred medical expenses:

(i) Are not subject to third-party payment or reimbursement;

(ii) Have not been used to satisfy a previous spenddown liability;

(iii) Have not been used to reduce client responsibility toward cost of care; and

(iv) Are amounts for which the client remains liable.

(10) Eligibility for MNIW is effective the first full month the client has met spenddown.

(11) In cases where spenddown has been met, medical coverage and MNIW begin the day services are authorized.

(12) A client who meets the requirements for MNIW chooses a three or six month base period. The months must be consecutive calendar months.

(13) The client's income that remains after determining available income in WAC 388-513-1325 and 388-513-1330 (1), (2), (3) and excluded income in WAC 388-513-1340 is paid towards the cost of care after deducting the following amounts in the order listed:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Personal needs allowance (PNA) in an amount equal to the one-person MNIL described in WAC 388-478-0070 (1)(a);

(c) Medicare and health insurance premiums not used to meet spenddown or reduce excess resources;

(d) Incurred medical expenses described in subsection (4) of this section not used to meet spenddown or reduce excess resources.

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-72A-0005 When do the rules in chapter 388-72A WAC apply to me?

WAC 388-72A-0010 Do chapter 388-71 WAC and WAC 388-845-1300 apply to me?

WAC 388-72A-0015 If the department did not use the CARE tool for my last assessment, may I have my assessments done on the assessment form used for my last assessment?

WAC 388-72A-0020 What is an assessment?

WAC 388-72A-0025 What is the process for conducting an assessment?

WAC 388-72A-0030 What is the purpose of an assessment?

WAC 388-72A-0035

WAC 388-72A-0036

WAC 388-72A-0037

WAC 388-72A-0038

WAC 388-72A-0039

WAC 388-72A-0041

WAC 388-72A-0042

WAC 388-72A-0043

WAC 388-72A-0045

WAC 388-72A-0050

WAC 388-72A-0053

WAC 388-72A-0055

WAC 388-72A-0057

WAC 388-72A-0058

WAC 388-72A-0060

WAC 388-72A-0065

WAC 388-72A-0069

WAC 388-72A-0070

What are personal care services?

How are my needs for personal care services determined?

How are self-performance and support provided for the activities of daily living (ADLs) scored?

How are the ADLs bathing, body care, and medication management scored?

How are self-performance and difficulty for the instrumental activities of daily living (IADLs) scored?

How are status and assistance available scored for ADLs and IADLs?

How are ADLs and IADLs scored for children?

How are other elements in CARE scored for children age seventeen and younger and foster care clients?

How will the department plan to meet my care needs?

What if I disagree with the result of the assessment or the decisions about what services I may receive?

Am I eligible for one of the HCP programs?

Am I eligible for COPES-funded services?

Am I eligible for medically needy residential waiver (MNRW)-funded services?

Am I eligible for medically needy in-home waiver (MNIW)-funded services?

Am I eligible for MPC-funded services?

Am I eligible for Chore-funded services?

How does CARE use the information the assessor gathers?

What are the in-home hours and residential rate based on?

- WAC 388-72A-0080 What criteria does the CARE tool use to place a client in one of the classification groups?
- WAC 388-72A-0081 How is cognitive performance measured in the CARE tool?
- WAC 388-72A-0082 How is clinical complexity measured within the CARE tool?
- WAC 388-72A-0083 How are mood and behaviors measured within the CARE tool?
- WAC 388-72A-0084 How are ADL scores measured within the CARE tool?
- WAC 388-72A-0085 How does the CARE tool evaluate for the two exceptional care classifications of in-home care?
- WAC 388-72A-0086 How is the information in WAC 388-72A-0081 through 388-72A-0084 used to determine the client's classification payment group for residential settings?
- WAC 388-72A-0087 How is the information in WAC 388-72A-0081 through 388-72A-0085 used to determine the classification payment group for in-home clients?
- WAC 388-72A-0090 What are the maximum hours that I can receive for in-home services?
- WAC 388-72A-0092 How are my in-home hours determined?
- WAC 388-72A-0095 What additional criteria are considered to determine the number of hours I will receive for in-home services?
- WAC 388-72A-0100 Are there other in-home services I may be eligible to receive in addition to those described in WAC 388-72A-0095(3)?
- WAC 388-72A-0105 What would cause a change in the maximum hours authorized?
- WAC 388-72A-0110 How much will the department pay for my care?
- WAC 388-72A-0115 When the department adjusts an algorithm, when does the adjustment become effective?
- WAC 388-72A-0120 When a client requests a fair hearing to have the client's CARE tool assessment results reviewed and there is (are) a more recent CARE assessment(s), which CARE tool assessment does the administrative law judge review in the fair hearing?

**WSR 05-12-022****PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Medical Assistance Administration)

[Filed May 20, 2005, 4:31 p.m., effective June 20, 2005]

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

Purpose: To establish standards for selection of surgeons and hospitals performing gastric bypass surgery for MAA clients and to establish criteria and pre- and post-operative requirements for clients that would further prevent the likelihood of complications.

Citation of Existing Rules Affected by this Order: Amending WAC 388-531-0150, 388-531-0200, 388-531-0250, 388-531-0650, 388-531-1600, 388-550-2800, and 388-550-4400.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 05-07-135 on March 22, 2005.

A final cost-benefit analysis is available by contacting Dr. Carolyn Coyne, MD, MHA, Senior Medical Consultant, Medical Assistance Administration, Division of Medical Management, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1904, fax (360) 586-8827, e-mail coynecm@dshs.wa.gov. The preliminary cost benefit analysis was not changed and is final.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 7, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 7, Repealed 0.

Date Adopted: May 16, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

**WAC 388-531-0150 Noncovered physician-related services—General and administrative.** (1) Except as provided in WAC 388-531-0100 and subsection (2) of this section, MAA does not cover the following:

- (a) Acupuncture, massage, or massage therapy;
  - (b) Any service specifically excluded by statute;
  - (c) Care, testing, or treatment of infertility, frigidity, or impotency. This includes procedures for donor ovum, sperm, womb, and reversal of vasectomy or tubal ligation;
  - (d) Cosmetic treatment or surgery, except for medically necessary reconstructive surgery to correct defects attributable to trauma, birth defect, or illness;
  - (e) Experimental or investigational services, procedures, treatments, devices, drugs, or application of associated services, except when the individual factors of an individual client's condition justify a determination of medical necessity under WAC 388-501-0165;
  - (f) Hair transplantation;
  - (g) Marital counseling or sex therapy;
  - (h) More costly services when MAA determines that less costly, equally effective services are available;
  - (i) Vision-related services listed as noncovered in chapter 388-544 WAC;
  - (j) Payment for body parts, including organs, tissues, bones and blood, except as allowed in WAC 388-531-1750;
  - (k) Physician-supplied medication, except those drugs administered by the physician in the physician's office;
  - (l) Physical examinations or routine checkups, except as provided in WAC 388-531-0100;
  - (m) Routine foot care. This does not include clients who have a medical condition that affects the feet, such as diabetes or arteriosclerosis obliterans. Routine foot care includes, but is not limited to:
    - (i) Treatment of mycotic disease;
    - (ii) Removal of warts, corns, or calluses;
    - (iii) Trimming of nails and other hygiene care; or
    - (iv) Treatment of flat feet;
  - (n) Except as provided in WAC 388-531-1600, weight reduction and control services, procedures, treatments, devices, drugs, products, gym memberships, equipment for the purpose of weight reduction, or the application of associated services.
    - (o) Nonmedical equipment; and
    - (p) Nonemergent admissions and associated services to out-of-state hospitals or noncontracted hospitals in contract areas.
- (2) MAA covers excluded services listed in (1) of this subsection if those services are mandated under and provided to a client who is eligible for one of the following:
- (a) The EPSDT program;
  - (b) A Medicaid program for qualified Medicare beneficiaries (QMBs); or
  - (c) A waiver program.

**AMENDATORY SECTION** (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

**WAC 388-531-0200 Physician-related services requiring prior authorization.** (1) MAA requires prior authorization for certain services. Prior authorization includes expedited prior authorization (EPA) and limitation extension (LE). See WAC 388-501-0165.

(2) The EPA process is designed to eliminate the need for telephone prior authorization for selected admissions and procedures.

(a) The provider must create an authorization number using the process explained in MAA's physician-related billing instructions.

(b) Upon request, the provider must provide supporting clinical documentation to MAA showing how the authorization number was created.

(c) Selected nonemergent admissions to contract hospitals require EPA. These are identified in MAA billing instructions.

(d) Procedures requiring expedited prior authorization include, but are not limited to, the following:

- (i) Bladder repair;
- (ii) Hysterectomy for clients age forty-five and younger, except with a diagnosis of cancer(s) of the female reproductive system;
- (iii) Outpatient magnetic resonance imaging (MRI) and magnetic resonance angiography (MRA);
- (iv) Reduction mammoplasties/mastectomy for gynecomastia; and
- (v) Strabismus surgery for clients eighteen years of age and older.

(3) MAA evaluates new technologies under the procedures in WAC 388-531-0550. These require prior authorization.

(4) Prior authorization is required for the following:

- (a) Abdominoplasty;
- (b) All inpatient hospital stays for **acute physical medicine and rehabilitation (PM&R)**;
- (c) Cochlear implants, which also:
  - (i) For coverage, must be performed in an ambulatory surgery center (ASC) or an inpatient or outpatient hospital facility; and
  - (ii) For reimbursement, must have the invoice attached to the claim;
- (d) Diagnosis and treatment of eating disorders for clients twenty-one years of age and older;
- (e) Osteopathic manipulative therapy in excess of MAA's published limits;
- (f) Panniculectomy;
- (g) ~~((Surgical procedures related to weight loss or reduction))~~ **Bariatric surgery (see WAC 388-531-1600)**; and
- (h) Vagus nerve stimulator insertion, which also:
  - (i) For coverage, must be performed in an inpatient or outpatient hospital facility; and
  - (ii) For reimbursement, must have the invoice attached to the claim.

(5) MAA may require a second opinion and/or consultation before authorizing any elective surgical procedure.

(6) Children six year of age and younger do not require authorization for hospitalization.

PERMANENT

**AMENDATORY SECTION** (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

**WAC 388-531-0250 Who can provide and bill for physician-related services.** (1) The following enrolled providers are eligible to provide and bill for physician-related medical services which they provide to eligible clients:

- (a) Advanced registered nurse practitioners (ARNP);
- (b) Federally qualified health centers (FQHCs);
- (c) Health departments;
- (d) Hospitals currently licensed by the department of health;
- (e) Independent (outside) laboratories CLIA certified to perform tests. See WAC 388-531-0800;
- (f) Licensed radiology facilities;
- (g) Medicare-certified ambulatory surgery centers;
- (h) Medicare-certified rural health clinics;
- (i) Providers who have a signed agreement with MAA to provide screening services to eligible persons in the EPSDT program;
- (j) Registered nurse first assistants (RNFA); and
- (k) Persons currently licensed by the state of Washington department of health to practice any of the following:
  - (i) Dentistry (refer to chapter 388-535 WAC);
  - (ii) Medicine and osteopathy;
  - (iii) Nursing;
  - (iv) Optometry; or
  - (v) Podiatry.

(2) MAA does not reimburse for services performed by any of the following practitioners:

- (a) Acupuncturists;
- (b) Christian Science practitioners or theological healers;
- (c) Counselors;
- (d) Herbalists;
- (e) Homeopaths;
- (f) Massage therapists as licensed by the Washington state department of health;
- (g) Naturopaths;
- (h) Sanipractors;
- (i) Those who have a master's degree in social work (MSW), except those employed by an FQHC or who have prior authorization to evaluate a client for bariatric surgery;

(j) Any other licensed or unlicensed practitioners not otherwise specifically provided for in WAC 388-502-0010; or

(k) Any other licensed practitioners providing services which the practitioner is not:

- (i) Licensed to provide; and
- (ii) Trained to provide.

(3) MAA reimburses practitioners listed in subsection (2) of this section for physician-related services if those services are mandated by, and provided to, clients who are eligible for one of the following:

- (a) The EPSDT program;
- (b) A Medicaid program for qualified Medicare beneficiaries (QMB); or
- (c) A waiver program.

**AMENDATORY SECTION** (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

**WAC 388-531-0650 Hospital physician-related services not requiring authorization when provided in MAA-approved centers of excellence or hospitals authorized to provide the specific services.** MAA covers the following services without prior authorization when provided in MAA-approved centers of excellence. MAA issues periodic publications listing centers of excellence. These services include the following:

- (1) All transplant procedures specified in WAC 388-550-1900;
- (2) Chronic pain management services, including outpatient evaluation and inpatient treatment, as described under WAC 388-550-2400. See also WAC 388-531-0700;
- (3) Sleep studies including but not limited to polysomnograms for clients one year of age and older. MAA allows sleep studies only in outpatient hospital settings as described under WAC 388-550-6350. See also WAC 388-531-1500; and
- (4) Diabetes education, in a DOH-approved facility, per WAC 388-550-6300(~~and~~
- (5) ~~MAA approved structured weight loss programs. See also WAC 388-531-1600).~~

**AMENDATORY SECTION** (Amending WSR 01-01-012, filed 12/6/00, effective 1/6/01)

**WAC 388-531-1600 (~~Structured weight loss physician-related services~~) Bariatric surgery.** (~~MAA covers structured outpatient weight loss only through an MAA-approved program~~) (1) The medical assistance administration (MAA) covers medically necessary bariatric surgery for eligible clients.

(2) Bariatric surgery must be performed in a hospital with a bariatric surgery program, and the hospital must be:

(a) Located in the state of Washington or approved border cities (see WAC 388-501-0175); and

(b) Meet the requirements of WAC 388-550-2301.

(3) If bariatric surgery is requested or prescribed under the EPSDT program, MAA evaluates it as a covered service under EPSDT's standard of coverage that requires the service to be:

(a) Medically necessary;

(b) Safe and effective; and

(c) Not experimental.

(4) MAA authorizes payment for bariatric surgery and bariatric surgery-related services in three stages:

(a) Stage one - initial assessment of client;

(b) Stage two - evaluations for bariatric surgery and successful completion of a weight loss regimen; and

(c) Stage three - bariatric surgery.

Stage one - initial assessment

(5) Any MAA provider who is licensed to practice medicine in the state of Washington may examine a client requesting bariatric surgery to ascertain if the client meets the criteria listed in subsection (6) of this section.

(6) The client meets the preliminary conditions of stage one when:

(a) The client is between twenty-one and fifty-nine years of age;

(b) The client has a body mass index (BMI) of thirty-five or greater;

(c) The client is not pregnant. (Pregnancy within the first two years following bariatric surgery is not recommended. When applicable, a Family Planning consultation is highly recommended prior to bariatric surgery.);

(d) The client is diagnosed with one of the following:

(i) Diabetes mellitus;

(ii) Degenerative joint disease of a major weight bearing joint(s) (the client must be a candidate for joint replacement surgery if weight loss is achieved); or

(iii) Other rare co-morbid conditions (such as pseudo tumor cerebri) in which there is medical evidence that bariatric surgery is medically necessary and that the benefits of bariatric surgery outweigh the risk of surgical mortality; and

(e) The client has an absence of other medical conditions such as multiple sclerosis (MS) that would increase the client's risk of surgical mortality or morbidity from bariatric surgery.

(7) If a client meets the criteria in subsection (6) of this section, the provider must request prior authorization from MAA before referring the client to stage two of the bariatric surgery authorization process. The provider must attach a medical report to the request for prior authorization with supporting documentation that the client meets the stage one criteria in subsections (5) and (6) of this section.

(8) MAA evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions when medically necessary, under the standards for covered services in WAC 388-501-0165.

**Stage two - evaluations for bariatric surgery and successful completion of a weight loss regimen**

(9) After receiving prior authorization from MAA to begin stage two of the bariatric surgery authorization process, the client must:

(a) Undergo a comprehensive psychosocial evaluation performed by a psychiatrist, licensed psychiatric ARNP, or licensed independent social worker with a minimum of two years postmasters' experience in a mental health setting. Upon completion, the results of the evaluation must be forwarded to MAA. The comprehensive psychosocial evaluation must include:

(i) An assessment of the client's mental status or illness to:

(A) Evaluate the client for the presence of substance abuse problems or psychiatric illness which would preclude the client from participating in presurgical dietary requirements or postsurgical lifestyle changes; and

(B) If applicable, document that the client has been successfully treated for psychiatric illness and has been stabilized for at least six months and/or has been rehabilitated and is free from any drug and/or alcohol abuse and has been drug and/or alcohol free for a period of at least one year.

(ii) An assessment and certification of the client's ability to comply with the postoperative requirements such as life-long required dietary changes and regular follow-up.

(b) Undergo an internal medicine evaluation performed by an internist to assess the client's preoperative condition and mortality risk. Upon completion, the internist must forward the results of the evaluation to MAA.

(c) Undergo a surgical evaluation by the surgeon who will perform the bariatric surgery (see subsection (13) of this section for surgeon requirements). Upon completion, the surgeon must forward the results of the surgical evaluation to MAA and to the licensed medical provider who is supervising the client's weight loss regimen (refer to WAC 388-531-1600 (9)(d)(ii)).

(d) Under the supervision of a licensed medical provider, the client must participate in a weight loss regimen prior to surgery. The client must, within one hundred and eighty days from the date of MAA's stage one authorization, lose at least five percent of his or her initial body weight. If the client does not meet this weight loss requirement within one hundred and eighty days from the date of MAA's initial authorization, MAA will cancel the authorization. The client or the client's provider must reapply for prior authorization from MAA to restart stage two. For the purpose of this section, "initial body weight" means the client's weight at the first evaluation appointment.

(i) The purpose of the weight loss regimen is to help the client achieve the required five percent loss of initial body weight prior to surgery and to demonstrate the client's ability to adhere to the radical and lifelong behavior changes and strict diet that are required after bariatric surgery.

(ii) The weight loss regimen must:

(A) Be supervised by a licensed medical provider who has a core provider agreement with MAA;

(B) Include monthly visits to the medical provider;

(C) Include counseling twice a month by a registered dietician referred to by the treating provider or surgeon; and

(D) Be at least six months in duration.

(iii) Documentation of the following requirements must be retained in the client's medical file. Copies of the documentation must be forwarded to MAA upon completion of stage two. MAA will evaluate the documentation and authorize the client for bariatric surgery if the stage two requirements were successfully completed.

(A) The provider must document the client's compliance in keeping scheduled appointments and the client's progress toward weight loss by serial weight recordings. Clients must lose at least five percent loss of initial body weight and must maintain the five percent weight loss until surgery;

(B) For diabetic clients, the provider must document the efforts in diabetic control or stabilization;

(C) The registered dietician must document the client's compliance (or noncompliance) in keeping scheduled appointments, and the client's weight loss progress;

(D) The client must keep a journal of active participation in the medically structured weight loss regimen including the activities under (d)(iii)(A), (d)(iii)(B) if appropriate, and (d)(iii)(C) of this subsection.

(10) If the client fails to complete all of the requirements of subsection (9) of this section, MAA will not authorize stage three - bariatric surgery.

(11) If the client is unable to meet all of the stage two criteria, the client or the client's provider must reapply for prior authorization from MAA to re-enter stage two.

**Stage three - bariatric surgery**

(12) MAA may withdraw authorization of payment for bariatric surgery at any time up to the actual surgery if MAA determines that the client is not complying with the requirements of this section.

(13) A surgeon who performs bariatric surgery for medical assistance clients must:

(a) Have a signed core provider agreement with MAA;

(b) Have a valid medical license in the state of Washington; and

(c) Be affiliated with a bariatric surgery program that meets the requirements of WAC 388-550-2301.

(14) For hospital requirements for stage three - bariatric surgery, see WAC 388-530-2301.

**NEW SECTION**

**WAC 388-550-2301 Hospital and medical criteria requirements for bariatric surgery.** (1) The medical assistance administration (MAA) pays a hospital for bariatric surgery and bariatric surgery-related services only when:

(a) The client qualifies for bariatric surgery by successfully completing all requirements under WAC 388-531-1600;

(b) The client continues to meet the criteria to qualify for bariatric surgery under WAC 388-531-1600 up to the actual surgery date; and

(c) The hospital providing the bariatric surgery and bariatric surgery-related services meets the requirements in this section and other applicable WAC.

(2) A hospital must meet the following requirements in order to be reimbursed for bariatric surgery and bariatric surgery-related services provided to an eligible medical assistance client. The hospital must:

(a) Be located in Washington state or approved bordering cities (see WAC 388-501-0175) and have a current core provider agreement with MAA.

(b) Have an established bariatric surgery program in operation under which at least one hundred bariatric surgery procedures have been performed. The program must have been in operation for at least five years and be under the direction of an experienced board-certified surgeon. In addition, MAA requires the bariatric surgery program to:

(i) Have a mortality rate of two percent or less;

(ii) Have a morbidity rate of fifteen percent or less;

(iii) Document patient follow-up for at least five years post-surgery;

(iv) Have an average loss of at least fifty percent of excess body weight achieved by patients at five years post-surgery; and

(v) Have a re-operation or revision rate of five percent or less.

(c) Submit documents to MAA's Division of Medical Management that verify the performance requirements listed in this section. The hospital must receive approval from MAA prior to performing a bariatric surgery for a medical assistance client.

(3) MAA waives the program requirements listed in subsection (2)(b) of this section if the hospital participates in a statewide bariatric surgery quality assurance program such as the Clinical Outcomes Assessment Program (COAP).

(4) See WAC 388-531-1600(13) for requirements for surgeons who perform bariatric surgery.

(5) Authorization does not guarantee payment. Authorization for bariatric surgery and bariatric surgery-related services is valid only if:

(a) The client is eligible on the date of service; and

(b) The provider meets the criteria in this section and other applicable WAC to perform bariatric surgery and/or to provide bariatric surgery-related services.

**AMENDATORY SECTION** (Amending WSR 04-19-113, filed 9/21/04, effective 10/22/04)

**WAC 388-550-2800 Inpatient payment methods and limits.** (1) The department reimburses hospitals for Medicaid inpatient hospital services using the rate setting methods identified in the department's approved state plan that includes:

Method	Used for
Diagnoses related group (DRG) negotiated conversion factor	Hospitals participating in the Medicaid hospital selective contracting program under waiver from the federal government
DRG cost-based conversion factor	Hospitals not participating in or exempt from the Medicaid hospital selective contracting program
Ratio of costs-to-charges (RCC)	Hospitals or services exempt from DRG payment methods
<u>Single case rate</u>	<u>Bariatric surgery</u>
Fixed per diem rate	Acute physical medicine and rehabilitation (Acute PM&R) Level B facilities and long-term acute care (LTAC) hospitals
Cost settlement	MAA-approved critical access hospitals (CAHS)

(2) The department's annual aggregate Medicaid payments to each hospital for inpatient hospital services provided to Medicaid clients will not exceed the hospital's usual and customary charges to the general public for the services (42 CFR § 447.271). The department recoups annual aggregate Medicaid payments that are in excess of the usual and customary charges.

(3) The department's annual aggregate payments for inpatient hospital services, including state-operated hospitals, will not exceed the estimated amounts that the department would have paid using Medicare payment principles.

(4) When hospital ownership changes, the department's payment to the hospital will not exceed the amount allowed under 42 U.S.C. Section 1395x (v)(1)(O).

(5) Hospitals participating in the medical assistance program must annually submit to the medical assistance administration:

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(a) A copy of the hospital's HCFA 2552 Medicare Cost Report; and

(b) A disproportionate share hospital application.

(6) Reports referred to in subsection (5) of this section must be completed according to:

(a) Medicare's cost reporting requirements;

(b) The provisions of this chapter; and

(c) Instructions issued by MAA.

(7) The department requires hospitals to follow generally accepted accounting principles unless federally or state regulated.

(8) Participating hospitals must permit the department to conduct periodic audits of their financial and statistical records.

(9) The department reimburses hospitals for claims involving clients with third-party liability insurance:

(a) At the lesser of either the DRG:

(i) Billed amount minus the third-party payment amount; or

(ii) Allowed amount minus the third-party payment amount; or

(b) The RCC allowed payment minus the third-party payment amount.

**AMENDATORY SECTION** (Amending WSR 01-16-142, filed 7/31/01, effective 8/31/01)

**WAC 388-550-4400 Services—Exempt from DRG payment.** (1) Except when otherwise specified, inpatient services exempt from the diagnosis-related group (DRG) payment method are reimbursed by the RCC payment method described in WAC 388-550-4500.

(2) Subject to the restrictions and limitations in this section, the department exempts the following services for Medicaid clients from the DRG payment method:

(a) Neonatal services for DRGs 602-619, 621-628, 630, 635, and 637-641.

(b) Acquired immunodeficiency syndrome (AIDS)-related inpatient services for those cases with a reported diagnosis of AIDS-related complex and other human immunodeficiency virus infections. These services are also exempt from the DRG payment method when funded by the department through the general assistance programs(~~(-, medically indigent program,))~~) and any other state-only administered program.

(c) Alcohol or other drug detoxification services when provided in a hospital having a detoxification provider agreement with the department to perform these services. These services are also exempt from the DRG payment method when funded by the department through the general assistance programs(~~(-, medically indigent program,))~~) and any other state-only administered program.

(d) Hospital-based intensive inpatient detoxification, medical stabilization, and drug treatment services provided to chemically dependent pregnant women (CUP program) by a certified hospital. These are Medicaid program services and are not funded by the department through the general assistance programs(~~(-, medically indigent program,))~~) or any other state-only administered program.

(e) Acute physical medicine and rehabilitation services provided in MAA-approved rehabilitation hospitals and hospital distinct units, and services for physical medicine and rehabilitation patients. Rehabilitation services provided to clients under the general assistance programs(~~(-, medically indigent program,))~~) and any other state-only administered program are also reimbursed through the RCC payment method.

(f) Psychiatric services provided in nonstate-owned psychiatric hospitals and designated distinct psychiatric units of hospitals.

(g) Chronic pain management treatment provided in department-approved pain treatment facilities.

(h) Administrative day services. The department reimburses administrative days based on the statewide average Medicaid nursing facility per diem rate, which is adjusted annually each November 1. The department applies this rate to patient days identified as administrative days on the hospital's notice of rates. Hospitals must request an administrative day designation on a case-by-case basis.

(i) Inpatient services recorded on a claim that is grouped by MAA to a DRG for which MAA has not published an all patient DRG relative weight, except that claims grouped to DRGs 469 and 470 will be denied payment. This policy also applies to covered services paid through the general assistance programs(~~(-, medically indigent program,))~~) and any other state-only administered program.

(j) Organ transplants that involve the heart, kidney, liver, lung, allogeneic bone marrow, autologous bone marrow, or simultaneous kidney/pancreas. These services are also exempt from the DRG payment method when funded by MAA through the general assistance programs(~~(-, medically indigent program,))~~) and any other state-only administered program.

(k) Bariatric surgery performed in hospitals that meet the criteria in WAC 388-550-2301. MAA pays hospitals for bariatric surgery on a single case rate basis.

(3) Inpatient services provided through a managed care plan contract are reimbursed by the managed care plan.

WSR 05-12-130

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed June 1, 2005, 10:47 a.m., effective July 2, 2005]

Effective Date of Rule: July 2, 2005.

Purpose: The purpose of these rules is to clarify the entire application and eligibility determination process used by the Division of Developmental Disabilities (DDD). This new chapter, chapter 388-823 WAC, Division of Developmental Disabilities Intake and Determination of Developmental Disabilities:

- Describes how to apply for a determination of a developmental disability;
- Defines the conditions required to be considered a person with a developmental disability, defines how these

conditions may meet substantial limitations to adaptive functioning and defines the evidence required to substantiate adaptive functioning limitations;

- Defines how the age of an individual affects the eligibility determination process;
- Describes the inventory for client and agency planning (ICAP);
- Defines the expiration of eligibility, reviews and reapplication; and
- Describes an individual's rights as a client of DDD.

When effective, these rules replace the emergency rules filed as WSR 05-07-081.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-825-030, 388-825-035, and 388-825-040.

Statutory Authority for Adoption: RCW 71A.10.020, 71A.12.030, 71A.12.050, 71A.12.070, 71A.16.020, 71A.16.030, 71A.16.040, and 71A.16.050.

Other Authority: Chapters 71A.10, 71A.12, and 71A.16 RCW.

Adopted under notice filed as WSR 05-04-057 on January 28, 2005.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-823-0420 (1)(d), in the table under "Qualifying Score," a cross reference to WAC 388-823-0900 was added for clarity. Other changes are editing only.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 63, Amended 0, Repealed 3.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 63, Amended 0, Repealed 3.

Date Adopted: June 1, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

## Chapter 388-823 WAC

### DIVISION OF DEVELOPMENTAL DISABILITIES INTAKE AND DETERMINATION OF DEVELOPMENTAL DISABILITIES

#### APPLYING FOR A DETERMINATION OF A DEVELOPMENTAL DISABILITY

#### NEW SECTION

**WAC 388-823-0010 Definitions** The following definitions apply to this chapter:

"Client" means a person with a developmental disability as defined in chapter 388-823 WAC who is currently eligible and active with the division of developmental disabilities.

"DAS" means Differential Ability Scales, which is a cognitive abilities battery for children and adolescents at least age two years, six months but under age eighteen.

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

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

"Division" means the division of developmental disabilities.

"Eligible" means you have a developmental disability that meets all of the requirements in this chapter for a specific condition.

"Expiration date" means a specific date that your eligibility as a client of DDD and all services paid by DDD will stop.

"FSIQ" means the full scale intelligence quotient which is a broad measure of intelligence achieved through one of the standardized intelligence tests included in these rules. Any standard error of measurement value will not be taken into consideration when making a determination for DDD eligibility.

"ICAP" means the inventory for client and agency planning. This is a standardized assessment of functional ability. The adaptive behavior section of the ICAP assesses daily living skills and the applicant awareness of when to perform these skills. The goal is to get a snapshot of his/her ability.

"IMR" means an institution for the mentally retarded, per chapter 388-835 WAC or chapter 388-837 WAC.

"K-ABC" means Kaufman Assessment Battery for Children, which is a clinical instrument for assessing intellectual development. It is an individually administered test of intelligence and achievement for children at least age two years, six months but under age twelve years, six months. The K-ABC comprises four global scales, each yielding standard scores. A special nonverbal scale is provided for children at least age four years but under age twelve years, six months.

"Leiter-R" means Leiter International Performance Scale - Revised, which is an untimed, individually administered test of nonverbal cognitive ability for individuals at least age two years but under age twenty-one years.

"Review" means DDD must redetermine that you still have a developmental disability according to the rules that are in place at the time of the review.

"RHC" means one of five residential habilitation centers operated by the division: Lakeland Village, Yakima Valley School, Fircrest, Rainier School, and Francis Haddon Morgan Center.

"SIB-R" means the scale of independent behavior-revised which is an adaptive behavior assessment derived from quality standardization and norming. It can be administered as a questionnaire or as a carefully structured interview, with special materials to aid the interview process.

"SOLA" means a state operated living alternative residential service for adults operated by the Division.



"Stanford-Binet" is a battery of fifteen subtests measuring intelligence for individuals at least age two years but under age twenty-three years.

"Termination" means an action taken by DDD that stops your DDD eligibility and services paid by DDD.

"VABS" means Vineland Adaptive Behavior Scales, which is an assessment to measure adaptive behavior in children from birth but under age eighteen years, nine months and in adults with low functioning in four separate domains: communication, daily living skills, socialization, and motor skills.

"Wechsler" means the Wechsler Intelligence Scale, which is an individually administered 11-subtest measure of an individual's capacity for intelligent behavior. The Wechsler has both a verbal scale and a performance scale. The Wechsler is used with individuals at least age three years but under age seventy-four years. The verbal scale can be used alone with individuals who have visual or motor impairments, and the performance scale can be used alone with individuals who cannot adequately understand or produce spoken language. There are three Wechsler Intelligence Scales, dependent upon the age of the individual:

- The Wechsler Preschool and Primary Scale of Intelligence - Revised (WPPSI-R), for children at least age three years but under age seven years;
- The Wechsler Intelligence Scale for Children - Third Edition, (WISC-III), for children at least age six years but under age sixteen years; and
- The Wechsler Adult Intelligence Scale - Revised (WAIS-R), for individuals at least age sixteen years but under age seventy-four years.

**NEW SECTION**

**WAC 388-823-0020 How do I become a client of the division of developmental disabilities?** You become a client of the division of developmental disabilities (DDD) if you apply for eligibility with DDD and DDD determines that you have a "developmental disability" as defined in this chapter.

**NEW SECTION**

**WAC 388-823-0030 Will I receive paid services if DDD decides that I have a developmental disability?** If DDD determines that you have a developmental disability, your access to paid services as a DDD client depends on:

- (1) Your meeting eligibility requirements for the specific service;
- (2) An assessed need for the service; and
- (3) Available funding for the service. The availability of funding does not apply to Medicaid state plan services or services available under the DDD Medicaid Home and Community Based Services waiver.

**NEW SECTION**

**WAC 388-823-0040 What is a developmental disability?** (1) A developmental disability is defined in RCW 71A.10.020(3) and must meet all of the following requirements. The developmental disability must currently:

(a) Be attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition found by DDD to be closely related to mental retardation or requiring treatment similar to that required for individuals with mental retardation;

- (b) Originate prior to age eighteen;
- (c) Be expected to continue indefinitely; and
- (d) Result in substantial limitations to an individual's adaptive functioning.

(2) In addition to the requirements listed in (1) above, you must meet the other requirements contained in this chapter.

**NEW SECTION**

**WAC 388-823-0050 Must I be a resident of the state of Washington?** When you apply for eligibility with DDD, you must be a resident of the state of Washington. Proof of residency includes:

- (1) The receipt of Medicaid or other benefits from the department of social and health services that require residency as a condition of eligibility; or
- (2) Documentation that shows you live in the state of Washington, or, if you are a child under the age of eighteen, documentation that shows your parent or legal guardian lives in the state of Washington.

**NEW SECTION**

**WAC 388-823-0060 How do I apply to become a client of DDD?** (1) You apply to become a client of DDD by calling the regional DDD office or a local DDD office and requesting determination of a developmental disability. The toll free regional numbers are:

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

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

**NEW SECTION**

**WAC 388-823-0070 Who can apply for an eligibility determination?** (1) The following individuals can apply for a determination of developmental disability:

- (a) The parent or legal representative must apply on behalf of a child under the age of eighteen years;

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(b) If there is a legal guardian of an applicant age eighteen years or older, the legal guardian must apply on behalf of the adult applicant; or

(c) If there is no legal guardian of an adult applicant age eighteen years or older, the adult applicant can apply on his/her own behalf.

(2) Any person, agency, or advocate may refer an adult for a determination of a developmental disability and assist with the application process. However, since the request for a determination of developmental disability is voluntary, DDD will request the verbal or written consent from the legal guardian of the adult or from the adult applicant if there is no legal guardian.

#### NEW SECTION

**WAC 388-823-0080 Who determines that I have a developmental disability?** DDD determines if you have a developmental disability as defined in this chapter after reviewing all documentation received by the division.

#### NEW SECTION

**WAC 388-823-0090 How long will it take to complete a determination of my eligibility?** (1) Once DDD receives sufficient documentation to determine you eligible, DDD has thirty days from receipt of the final piece of documentation to make the determination of eligibility.

(2) If DDD has received all requested documentation but it is insufficient to establish eligibility, DDD will make a determination of ineligibility and send you written notice of denial of eligibility.

(3) If DDD has insufficient information to determine you eligible but has not received all of the requested documentation, DDD may deny your eligibility after ninety days from the date of application. Rules governing reapplying for eligibility are in WAC 388-823-1080.

#### NEW SECTION

**WAC 388-823-0100 What is the effective date that I become an eligible client of DDD?** (1) If DDD receives sufficient information to substantiate your DDD eligibility, the effective date of your eligibility as a DDD client is the date of receipt of the final piece of documentation.

(2) Paid DDD services cannot begin before the effective date of your DDD eligibility.

#### NEW SECTION

**WAC 388-823-0105 How will DDD notify me of the results of my eligibility determination?** DDD will send you written notification of the final determination of your eligibility per WAC 388-825-100.

(1) If you are not eligible, the written notice will explain why you are not eligible, explain your appeal rights to this decision, and provide you with a fair hearing request form.

(2) If you are eligible, the written notice will include:

(a) Your eligibility condition(s);

(b) The effective date of your eligibility;

(c) The expiration date or review date of your eligibility, if applicable; and

(d) The name and phone number of your assigned case manager.

#### NEW SECTION

**WAC 388-823-0110 Who is responsible for obtaining the documentation needed to make this eligibility determination?** You are responsible to obtain all of the information needed to document your disability or to provide DDD with the sources for obtaining the documentation.

(1) DDD will assist you in obtaining records but the purchase of diagnostic assessments or intelligence quotient (IQ) testing is your responsibility.

(2) If DDD determines that an Inventory of Client and Agency Planning (ICAP) is required, DDD will administer the ICAP at no expense to you.

#### NEW SECTION

**WAC 388-823-0120 Will my diagnosis of a developmental disability qualify me for DDD eligibility?** Eligibility for DDD requires more than a diagnosis of a developmental disability. You must meet all of the elements that define a developmental disability in WAC 388-823-0040 and meet the requirements of a specific eligible condition defined in this chapter.

#### NEW SECTION

**WAC 388-823-0130 Can I be eligible for DDD if my disability occurs on or after my eighteenth birthday?** DDD eligibility requires that your disability exist before your eighteenth birthday.

#### NEW SECTION

**WAC 388-823-0140 What if I do not have written evidence that my disability began before my eighteenth birthday?** (1) If there is no documentation available to prove that your disability began prior to age eighteen, DDD may accept verbal information from your family or others who knew you prior to the age of eighteen about your early developmental history, educational history, illnesses, injuries or other information sufficient to validate the existence of an eligible condition prior to age eighteen.

(2) DDD will determine if the reported verbal information is adequate for documenting the existence of your condition prior to age eighteen.

(3) Additional evidence of your eligible condition and the resulting substantial limitations to adaptive functioning is still required.

#### NEW SECTION

**WAC 388-823-0150 Which rules define a developmental disability if I am a child under the age of six years?** If you are a child under the age of six years, assessment of developmental delays and other age appropriate criteria are used to substantiate an eligible condition and substantial lim-

itations in adaptive functioning as defined in WAC 388-823-0800 through WAC 388-823-0850.

**NEW SECTION**

**WAC 388-823-0160 Which rules define a developmental disability if I am age six through nine?** If you are a child age six but under age ten, you can meet the criteria for a developmental disability under either of the two following sets of rules:

- (1) Developmental delays per WAC 388-823-0800 through WAC 388-823-0850; or
- (2) Developmental disabilities per WAC 388-823-0200 through WAC 388-823-0710.

**NEW SECTION**

**WAC 388-823-0170 Which rules define a developmental disability if I am age ten or older?** If you are age ten or older, only the rules in WAC 388-823-0200 through WAC 388-823-0710 apply when deciding if you have a developmental disability.

**DETERMINATION OF A DEVELOPMENTAL DISABILITY  
MENTAL RETARDATION**

**NEW SECTION**

**WAC 388-823-0200 What evidence do I need to substantiate "mental retardation" as an eligible condition?** Evidence that you have an eligible condition under "mental retardation" requires a diagnosis of mental retardation by a licensed psychologist, or a finding of mental retardation by a certified school psychologist or a diagnosis of Down syndrome by a licensed physician.

- (1) This diagnosis is based on documentation of a life-long condition originating before age eighteen.
- (2) The condition results in significantly below average intellectual and adaptive skills functioning that will not improve with treatment, instruction or skill acquisition.
- (3) A diagnosis or finding of mental retardation by the examining psychologist must include an evaluation of adaptive functioning that includes the use of a standardized adaptive behavior scale indicating adaptive functioning that is more than two standard deviations below the mean, in at least two of the following areas: communication, self care, home living, social/interpersonal skills, use of community resources, self direction, functional academic skills, work, leisure, health, and safety.

**NEW SECTION**

**WAC 388-823-0210 If I have mental retardation, how do I meet the definition of substantial limitations in adaptive functioning?** (1) If you meet the definition of mental retardation in WAC 388-823-0200, you must have substantial limitations in adaptive functioning of two standard deviations below the mean and a full-scale intelligence quotient (FSIQ) of more than two standard deviations below the mean.

- (2) The substantial limitation in adaptive functioning must reflect your current condition.

**NEW SECTION**

**WAC 388-823-0215 What evidence do I need of my FSIQ?** Evidence of a qualifying FSIQ to meet the definition of substantial limitations for the condition of mental retardation is a FSIQ derived from a Stanford-Binet, Wechsler Intelligence Scale (Wechsler), Differential Abilities Scale (DAS), Kaufman Assessment Battery for Children (K-ABC), or a Leiter International Performance Scale-Revised (Leiter-R) if you have a significant hearing impairment or English is not your primary language.

- (1) The test must be administered by a licensed psychologist or certified school psychologist.
- (2) The FSIQ cannot be attributable to mental illness or other psychiatric condition occurring at any age; or other illness or injury occurring after age eighteen:
  - (a) If you are dually diagnosed with mental retardation and mental illness, other psychiatric condition, or other illness or injury, DDD must make its eligibility decision based solely on the diagnosis of mental retardation, excluding the effects of the mental illness, other psychiatric condition, illness or injury; or
  - (b) If DDD is unable to make this eligibility decision based solely on the diagnosis of mental retardation due to the existence of mental illness, other psychiatric condition or illness or injury, DDD will deny eligibility.
- (3) If you have a significant hearing impairment, the administering professional may estimate an FSIQ score using only the performance IQ score of the appropriate Wechsler or administer the Leiter-R.
- (4) If you have a vision impairment that prevents completion of the performance portion of the IQ test, the administering professional may estimate an FSIQ using only the verbal IQ score of the appropriate Wechsler.
- (5) The following table shows the standard deviation for each assessment and the qualifying score of more than two standard deviations below the mean.

ASSESSMENT	STANDARD DEVIATION	QUALIFYING SCORE
Stanford-Binet 4th edition	16	67 or less
Stanford-Binet 5th edition	15	69 or less
Wechsler Intelligence Scales (Wechsler)	15	69 or less
Differential Abilities Scale (DAS)	15	69 or less
Kaufman Assessment Battery for Children (K-ABC)	15	69 or less

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ASSESSMENT	STANDARD DEVIATION	QUALIFYING SCORE
Leiter International Performance Scale-Revised (Leiter-R) [for persons with significant hearing impairments or when English is not a primary language]	15	69 or less

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

**NEW SECTION**

**WAC 388-823-0220 If I am too intellectually impaired to complete a standardized IQ test, how do I meet the criteria under mental retardation?** If in the opinion of the examining psychologist, you are too intellectually impaired to complete all of the subtests necessary to achieve an FSIQ score on an approved standardized IQ test, the examining psychologist may estimate an FSIQ from the available information based on a professional judgment about your intellectual functioning.

**NEW SECTION**

**WAC 388-823-0230 If I have more than one FSIQ score, what criteria will DDD use to select the FSIQ score for determining eligibility?** (1) If you have more than one FSIQ, DDD will review the pattern of FSIQ scores.

(a) If there is no significant difference among these, DDD will accept the score the closest to age eighteen.

(b) If there are significant differences among the FSIQ scores, DDD will review the pattern and attempt to determine reasons for the fluctuations to ensure that the FSIQ is resulting from mental retardation and not from mental illness or other psychiatric condition, or illness, or other injury.

(i) If you are age eighteen or older, DDD will use the FSIQ obtained at age thirteen or older, provided the FSIQ is resulting from mental retardation.

(ii) If you are under age eighteen, DDD will use the most current FSIQ, provided the FSIQ is resulting from mental retardation.

(2) DDD will exclude any FSIQ score attributable to a condition or impairment that began on or after your eighteenth birthday.

**CEREBRAL PALSY**

**NEW SECTION**

**WAC 388-823-0300 What evidence do I need to substantiate "cerebral palsy" as an eligible condition?** Evidence that you have an eligible condition under "cerebral palsy" requires a diagnosis by a licensed physician of cerebral palsy, quadriplegia, hemiplegia, or diplegia with symptoms that:

- (1) Existed prior to age three; and
- (2) Impair control of movement.

**NEW SECTION**

**WAC 388-0823-0310 If I have cerebral palsy, how do I meet the definition of substantial limitations to adaptive functioning?** If you have an eligible condition of cerebral palsy, substantial limitations of adaptive functioning is the need for direct physical assistance on a daily basis with two or more of the following activities as a result of your condition:

- (1) Toileting;
- (2) Bathing;
- (3) Eating;
- (4) Dressing;
- (5) Mobility; or
- (6) Communication.

Reviser's note: The above new section was filed by the agency as WAC 388-0823-0310. This section is placed among sections forming new chapter 388-823 WAC, and therefore should be numbered WAC 388-823-0310. Pursuant to the requirements of RCW 34.08.040, the section is published in the same form as filed by the agency.

**NEW SECTION**

**WAC 388-823-0320 What evidence do I need of my need for direct physical assistance with activities of daily living?** Evidence for direct physical assistance with activities of daily living means:

(1) You need the presence and assistance of another person on a daily basis to be able to communicate and be understood by any other person.

(a) If you are able to communicate through a communication device you will be considered independent in communication.

(b) You must require more than "setting up" of the communication device.

(2) You need direct physical assistance from another person on a daily basis with toileting, bathing, eating, dressing, or mobility.

(a) You require more than "setting up" the task to enable you to perform the task independently.

(b) You must require direct physical assistance for more than transferring in and out of wheelchair, in and out of the bath or shower, and/or on and off of the toilet.

(c) Your ability to be mobile is your ability to move yourself from place to place, not your ability to walk. For instance, if you can transfer in and out of a wheelchair and are independently mobile in a wheelchair, you do not meet the requirement for direct physical assistance with mobility.

**NEW SECTION**

**WAC 388-823-0330 How can I document my need for direct physical assistance?** Any of the following can be used as evidence to determine your direct physical assistance needs:

(1) The comprehensive assessment reporting evaluation (CARE) tool or other department assessments that measure direct assistance needs in the areas specified above;

(2) Assessments and reports from educational or health-care professionals that are current and consistent with your current functioning;

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(3) In the absence of professional reports or assessments, DDD may document its own observation of your direct assistance needs along with reported information by family and others familiar with you.

**EPILEPSY**

**NEW SECTION**

**WAC 388-823-0400** What evidence do I need to substantiate "epilepsy" as an eligible condition? Evidence of an eligible condition under "epilepsy" requires a diagnosis of a neurological condition that produces brief disturbances in the normal electrical functions of the brain resulting in seizures.

(1) This condition requires a diagnosis of epilepsy or seizure disorder that originated prior to age eighteen and is expected to continue indefinitely.

(2) The diagnosis must be made by a board certified neurologist and be based on documentation of medical history and neurological testing.

(3) You must provide confirmation from your physician or neurologist that your seizures are currently uncontrolled and ongoing or recurring and cannot be controlled by medication.

(4) DDD will not consider your seizures uncontrolled or ongoing if it is documented or reported that you refuse to take medications.

(5) Your seizures must make you physically incapacitated, requiring direct physical assistance for one or more activities as defined in WAC 388-823-0310 and WAC 388-823-0320 during or following seizures.

**NEW SECTION**

**WAC 388-823-0410** If I have epilepsy, how do I meet the definition of substantial limitations to adaptive functioning? A substantial limitation to adaptive functioning under epilepsy is a functional assessment score of more than two standard deviations below the mean on a Vineland Adaptive Behavior Scales (VABS), Scale of Independent Behavior-Revised (SIB-R) or Inventory for Client and Agency Planning (ICAP) assessment instrument as described in WAC 388-823-0420.

**NEW SECTION**

**WAC 388-823-0420** What evidence do I need to substantiate adaptive functioning limitations for the eligible conditions of epilepsy, autism and other conditions similar to mental retardation? (1) Evidence of substantial limitations of adaptive functioning for the conditions of epilepsy, autism, and other conditions similar to mental retardation requires a qualifying score completed in the past thirty-six months in a VABS or a SIB-R, or a qualifying score completed in the past twenty-four months in an ICAP.

(a) Professionals who administer and score the VABS must have a background in individual assessment, human development and behavior, and tests and measurements, as well as an understanding of individuals with disabilities.

(b) Department staff or designee contracted with DDD must administer the ICAP.

(c) DDD will administer or arrange for the administration of the ICAP if VABS or SIB-R results are not submitted.

(d) Qualifying scores for each assessment are as follows:

ASSESSMENT	STANDARD EVIATION	QUALIFYING SCORE
Vineland Adaptive Behavior Scales (VABS)	15	An adaptive behavior composite score of 69 or less
Scales of Independent Behavior-Revised (SIB-R)	15	A broad independence standard score of 69 or less for the adaptive behaviors
Inventory for Client and Agency Planning (ICAP)	15	Pursuant to WAC 388-823-0900, the broad independence domain score based on the applicant's birth date and the date the test is administered.

(2) If DDD is unable to determine that your current adaptive functioning impairment is the result of your developmental disability because you have an unrelated injury or illness that is impairing your current adaptive functioning:

(a) DDD will not accept the results of a VABS or SIB-R administered after that event and will not administer the ICAP; and

(b) Your eligibility will have to be determined under a different condition that does not require evidence of adaptive functioning per a VABS, SIB-R or ICAP.

**AUTISM**

**NEW SECTION**

**WAC 388-823-0500** What evidence do I need to substantiate "autism" as an eligible condition? Evidence of an eligible condition under "autism" requires a diagnosis by a qualified professional of autism or autistic disorder per 299.00 in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) that is expected to continue indefinitely, and evidence of onset before age three.

(1) The following professionals are qualified to give this diagnosis:

(a) Board eligible neurologist;

(b) Board eligible psychiatrist;

(c) Licensed psychologist; or

(d) Board certified developmental and behavioral pediatrician.

(2) The evidence provided by a diagnosing professional in subsection (1) above exhibits a total of six or more of the following diagnostic criteria listed in the current DSM-IV-TR for Autistic Disorder 299.00:

(a) Two or more qualitative impairments in social interactions;

(b) One or more qualitative impairments in communication; and

(c) One or more impairments in restricted repetitive and stereotypical patterns or behavior, interests, and activities.

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(3) A checklist of diagnostic criteria follows:

DSM-IV-TR Diagnostic Criteria required for Autism	Check if present
1. Qualitative impairment in social interaction	
a. Marked impairment in the use of multiple non-verbal behaviors	
b. Failure to develop peer relationships appropriate to developmental level	
c. A lack of spontaneous seeking to share enjoyment, interests, or achievements with other people	
d. Lack of social or emotional reciprocity	
2. Qualitative impairment in communication	
a. Delay in the development of spoken language without non-verbal compensation	
b. In individuals with adequate speech, marked impairment in the ability to initiate or sustain a conversation with others	
c. Stereotyped and repetitive use of language or idiosyncratic use of language	
d. Lack of varied, spontaneous, make-believe play or social imitative play appropriate to developmental level	
3. Restricted repetitive and stereotyped patterns of behavior, interests, and activities	
a. Encompassing preoccupation with stereotyped and restricted patterns of interest that is abnormal in either intensity or focus	
b. Apparently inflexible adherence to specific, nonfunctional routines or rituals	
c. Stereotyped and repetitive motor mannerisms (e.g., hand or finger flapping or twisting, or complex whole-body movements)	
d. Persistent occupation with parts of objects	
TOTAL	

**NEW SECTION**

**WAC 388-823-0510** If I have autism, how do I meet the definition of substantial limitations to adaptive functioning? A substantial limitation of adaptive functioning for the condition of autism is the presence of adaptive functioning impairment as described in WAC 388-823-0515.

**NEW SECTION**

**WAC 388-823-0515** What evidence do I need to substantiate adaptive functioning limitations for the condition of autism? Evidence of the substantial limitations of adaptive functioning for the condition of autism is both (1) and (2) below:

(1) Evidence of delay or abnormal functioning prior to age three years in at least one of the following areas:

- (a) Social interaction;
- (b) Language as used in social interaction;
- (c) Communication; or
- (d) Symbolic or imaginative play.

(2) Eligible scores in adaptive functioning per WAC 388-823-0420 (1)(d) and subject to all of WAC 388-823-0420.

**ANOTHER NEUROLOGICAL CONDITION**

**NEW SECTION**

**WAC 388-823-0600** What evidence do I need to substantiate "another neurological condition" as an eligible condition? Evidence of an eligible condition under "another neurological condition" requires a diagnosis by a licensed physician of an impairment of the central nervous system involving the brain and/or spinal cord that meets all of the following:

- (1) Originated before age eighteen;
- (2) Results in both physical disability and intellectual impairment;
- (3) Is expected to continue indefinitely; and
- (4) Is not attributable to a mental illness or psychiatric disorder.

**NEW SECTION**

**WAC 388-823-0610** If I have another neurological condition, how do I meet the definition of substantial limitations to adaptive functioning? Substantial limitations to adaptive functioning for the condition of another neurological condition require both intellectual impairment and the need for direct physical assistance with activities of daily living per WAC 388-823-0615 (1) and (2) below.

**NEW SECTION**

**WAC 388-823-0615** What evidence do I need to substantiate adaptive functioning limitations for another neurological condition? Evidence of substantial limitations to intellectual functioning for another neurological condition is all of the following:

(1) You must have an FSIQ score of 1.5 or more standard deviations below the mean on one of the following acceptable assessments in addition to the other criteria in this section. The acceptable assessments, the standard deviation and the qualifying scores are contained in the following table:

ASSESSMENT	STANDARD DEVIATION	QUALIFYING SCORE
Stanford-Binet 4th edition	16	76 or less
Stanford-Binet 5th edition	15	78 or less
Wechsler	15	78 or less
Differential Abilities Scale (DAS)	15	78 or less
Kaufman Assessment Battery for Children (K-ABC)	15	78 or less
Leiter-R [for persons with significant hearing impairments or when English is not primary language]	15	78 or less

(2) You must have evidence of need for direct physical assistance on a daily basis with two or more of the following activities: Toileting, bathing, eating, dressing, mobility, or

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communication as a result of your condition as defined in WAC 388-823-0320 and WAC 388-823-0330.

(3) The intellectual impairment and physical assistance needs must be the result of the central nervous system impairment and not due to another condition or diagnosis.

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

**"OTHER CONDITION" SIMILAR TO MENTAL RETARDATION**

**NEW SECTION**

**WAC 388-823-0700** How do I meet the definition for an "other condition" similar to mental retardation? You will need evidence in (1) or (2) below to substantiate that you have an "other condition" similar to mental retardation.

(1) You have a diagnosis of a condition or disorder that by definition results in both intellectual and adaptive skills deficits; and

(a) The diagnosis must be made by a licensed physician or licensed psychologist;

(b) The diagnosis must be due to a neurological condition, central nervous system disorder involving the brain or spinal column, or chromosomal disorder;

(c) The diagnosis or condition is not attributable to or is itself a mental illness, or emotional, social or behavior disorder;

(d) The condition must have originated before age eighteen; and

(e) The condition must be expected to continue indefinitely.

(2) You are under the age of eighteen and are eligible for DSHS-paid in-home nursing through the medically intensive program, defined in WAC 388-551-3000.

**NEW SECTION**

**WAC 388-823-0710** What evidence do I need to meet the definition of substantial limitations for an "other condition" similar to mental retardation? (1) Evidence of substantial limitation in both (a) and (b) below is required for an "other condition" similar to mental retardation.

(a) Evidence of intellectual impairment requires documentation of either (i) or (ii) or (iii) below:

(i) An FSIQ of 1.5 or more standard deviations below the mean as described in WAC 388-823-0615(1) for another neurological condition; or

(ii) Significant academic delays resulting in delay of at least twenty-five percent below the chronological age or age equivalent academic functioning in at least two academic areas or grade placement; or

(iii) In the absence of school records to substantiate (ii) above, DDD may review other information about your academic progress sufficient to validate your cognitive deficits.

(b) Unless there is evidence of other conditions or impairments unrelated to the eligible condition currently affecting adaptive functioning, the following evidence will determine if the eligible condition or disorder results in a substantial limitation in adaptive functioning:

(i) A score of more than two standard deviations below the mean on a VABS or SIB-R current within the past three years, or in the absence of a VABS or SIB-R, an ICAP administered by DDD within the past twenty-four months.

(ii) The qualifying scores for these tests are listed in WAC 388-823-0420 (1)(d).

(2) You do not need the additional evidence of your substantial limitations to adaptive functioning in (1)(a) and (b) above if your eligible condition is solely due to your eligibility and participation in the medically intensive program offered through DDD, defined in WAC 388-551-3000.

**EFFECT OF AGE ON ELIGIBILITY**

**NEW SECTION**

**WAC 388-823-0800** Which eligible developmental disability conditions apply at what age? (1) Children under the age of six must meet the definition of having a developmental disability by meeting the requirements listed in WAC 388-823-0810 through WAC 388-823-0850.

(2) Children at least age six but under the age of ten can meet the definition of developmental disability by:

(a) Meeting the requirements listed in WAC 388-823-0200 through WAC 388-823-0710; or

(b) Meeting the requirements listed in WAC 388-823-0810 through WAC 388-823-0850.

(3) Children age ten and older must meet the requirements in WAC 388-823-0200 through WAC 388-823-0710.

(4) The following chart summarizes the applicable eligibility conditions by age.

Eligible Conditions	Age 0-5	Age 6-9	Age 10-17	Age 18 and older
Developmental Delays	X	X		
Down Syndrome	X	X		
Too severe to be assessed	X	X		
Medically Intensive	X	X	X	
Mental Retardation (MR)		X	X	X
Cerebral Palsy		X	X	X
Epilepsy		X	X	X
Autism		X	X	X
Another Neurological		X	X	X
Other condition similar to MR		X	X	X

PERMANENT

NEW SECTION

**WAC 388-823-0810** If I am a child under age ten, what evidence do I need to meet the definition for an "other condition" similar to mental retardation? If you are a child under age ten, evidence of one of the following substantiates that you have an eligible "other condition" similar to mental retardation:

(1) Developmental delay measured by developmental assessment tools administered by qualified professionals as described in WAC 388-823-0850.

(2) A diagnosis of Down syndrome by a licensed physician;

(3) A determination of eligibility for the DSHS medically intensive program;

(4) A diagnosis by a licensed physician or licensed psychologist of a condition that is so severe the child is unable to demonstrate the minimal skills required to complete a developmental evaluation or assessment.

NEW SECTION

**WAC 388-823-0820** If I am a child under age ten with an eligible condition under the medically intensive program, Down syndrome, or a diagnosed condition that is too severe for developmental testing, how do I meet the definition of substantial limitations to adaptive functioning? You do not need additional evidence of substantial limitations if you are a child under the age of ten with an eligible condition based on the medically intensive program, Down syndrome, or a diagnosed condition that is too severe for developmental testing.

NEW SECTION

**WAC 388-823-0830** If I am a child under age ten with an eligible condition based on developmental delays, how do I meet the definition of substantial limitations to adaptive functioning? (1) If you are a child under age ten with an eligible condition based on developmental delays, evidence of substantial handicap requires developmental delays of at least 1.5 standard deviations or twenty-five percent or more of the chronological age in the following developmental areas:

- (a) Physical skills (fine or gross motor);
- (b) Self help/adaptive skills;
- (c) Expressive or receptive communication, including American Sign Language;
- (d) Social/emotional skills; and
- (e) Cognitive, academic, or problem solving skills.

(2) The number of areas in which you are required to have delays to meet the evidence is specific to your age.

NEW SECTION

**WAC 388-823-0840** If I am a child under age ten, how many areas of developmental delays meet the definition of substantial limitations to adaptive functioning? If you are a child under the age ten, eligible based on developmental delays, the number of delays required for substantial limitations to adaptive functioning is specific to your age.

(1) A child from birth but under age three must have a developmental delay in one or more developmental areas.

(2) A child age three but under age ten must have developmental delays in three or more developmental areas.

AGE	NUMBER OF AREAS OF DELAY
Birth but under age three	One or more
Age three but under age ten	Three or more

NEW SECTION

**WAC 388-823-0850** What developmental evaluations or assessments will be acceptable for determining developmental delay? DDD will accept any standardized developmental evaluation test of procedures to assess developmental delays if:

(1) The results of the evaluation/assessment are reasonably reliable and valid by professional standards.

(a) If you are under age three, there is an evaluation of developmental areas that is current within the past twelve months. Evaluations determine eligibility for services and need to address each of the five developmental areas.

(b) If you are age three or older, there is an assessment of developmental areas. Assessments are more detailed than evaluations and are needed for determining types of services, method, intensity, and funding. Assessments are also the way to document the ongoing status of child's development, progress and recommended steps to meet outcomes.

(2) The evaluation/assessment is administered by one of the following professionals qualified to administer the evaluation or assessment of developmental areas:

- (a) Licensed physician;
- (b) Licensed psychologist or certified school psychologist;
- (c) Speech language pathologist;
- (d) Audiologist;
- (e) Registered occupational therapist;
- (f) Licensed physical therapist;
- (g) Registered nurse;
- (h) Certified teacher;
- (i) Masters level social worker; or
- (j) Orientation and mobility specialist.

**INVENTORY FOR CLIENT AND AGENCY PLANNING (ICAP)**

NEW SECTION

**WAC 388-823-0900** What are the qualifying scores for inventory of client and agency planning broad independence for each age? When the ICAP is administered to determine eligibility under substantial handicap for a developmental disability, the qualifying score must be at or below the three digit broad independence domain score specific to the age of the applicant at the time of the administration of the ICAP. The score specific to age follows:

PERMANENT



AGE	SCORE (at or below)
6	449
7	456
8	463
9	469
10	476
11	482
12	487
13	492
14	497
15	501
16	505
17 and older	509

**NEW SECTION**

**WAC 388-823-0910 What is the purpose of ICAP?** The purpose of the ICAP is to assess your adaptive skills in the areas of motor skills, personal living skills, social and communication skills, and community living skills.

**NEW SECTION**

**WAC 388-823-0920 What sections of the ICAP does DDD or a designee contracted with DDD complete and score?** (1) DDD or a designee contracted with DDD completes the adaptive behavior portion of the ICAP.

(2) There is a computer generated broad independence score of your motor skills, personal living skills, social and communication skills, and community living skills, based on your age.

**NEW SECTION**

**WAC 388-823-0930 How does DDD or a designee contracted with DDD administer the ICAP?** (1) DDD or a designee contracted with DDD completes the adaptive section of the ICAP by interviewing a qualified respondent who has known you for at least three months and who sees you on a day-to-day basis. You cannot be the respondent for your own ICAP.

(2) DDD or a designee contracted with DDD will choose the respondent and may interview more than one respondent to ensure that information is complete and accurate.

(3) DDD or a designee contracted with DDD will ask you to demonstrate some of the skills in order to evaluate what skills you are able to perform. DDD or a designee contracted with DDD cannot administer the ICAP if no respondent is identified and available.

**NEW SECTION**

**WAC 388-823-0940 What happens if DDD or a designee contracted with DDD cannot identify a qualified respondent?** If you and DDD or a designee contracted with DDD cannot identify a qualified respondent for the ICAP, DDD or a designee contracted with DDD will not be able to

administer the ICAP or determine you eligible under any conditions that require an ICAP.

**ELIGIBILITY EXPIRATION, REVIEWS, AND REAPPLICATION**

**NEW SECTION**

**WAC 388-823-1000 Once I become an eligible DDD client, is there a time limit to my eligibility?** While DDD has the authority to review your eligibility at any time, your eligibility as a DDD client will expire or have required reviews as indicated in WAC 388-823-1005 and WAC 388-823-1010.

**NEW SECTION**

**WAC 388-823-1005 When does my eligibility as a DDD client expire?** (1) If you are determined eligible prior to age four, your eligibility expires on your fourth birthday.

(a) DDD will notify you at least ninety days before your eligibility expiration date.

(b) You must reapply for eligibility with DDD.

(2) If you are determined or redetermined eligible at age three but under age ten per WAC 388-823-0810 through WAC 388-823-0850, your eligibility expires on your tenth birthday.

(a) DDD will notify you at least ninety days before your eligibility expiration date.

(b) You must reapply for eligibility with DDD.

(3) If your eligibility determination was prior to July 2005 under developmental delays, Down syndrome, or medically intensive program and you are age four or older as of June 30, 2005, your eligibility expires on your tenth birthday.

(a) DDD will notify you at least ninety days before of your eligibility expiration date.

(b) You must reapply for eligibility with DDD.

(4) If your eligibility determination was made after July 2005 and is solely due to your need for nursing through the medically intensive program, your eligibility expires when you are no longer eligible for the program but no later than your eighteenth birthday.

(a) DDD will notify you at least ninety days before your eighteenth birthday.

(b) You must reapply for eligibility with DDD.

**NEW SECTION**

**WAC 388-823-1010 When will DDD review my eligibility to determine if I continue to have a developmental disability?** (1) Your eligibility can be reviewed at any time if your eligibility effective date is prior to July 2005 and you are age ten or older and were eligible under a condition of developmental delay or Down syndrome.

(2) Your eligibility will be reviewed at age seventeen with termination occurring no sooner than your eighteenth birthday if your most current eligibility determination was at sixteen or younger under mental retardation, cerebral palsy, epilepsy, autism, another neurological condition, or other condition similar to mental retardation.

PERMANENT

(3) DDD will review your eligibility prior to the initial authorization of any paid service from DDD when you are not currently receiving paid services and:

(a) You are age eighteen or older and your most current eligibility determination is more than twenty-four months old; or

(b) You are age four but under age eighteen and your eligibility was established under the eligible conditions of developmental delay or Down syndrome and your eligibility effective date is prior to July 2005.

(4) DDD will review your eligibility if DDD discovers:

(a) The evidence used to make your most recent eligibility determination completed in 1992 or later appears to be insufficient, in error, or fraudulent; or

(b) New diagnostic information becomes available that does not support your current eligibility and you are under the age of eighteen.

(a) If DDD determines you eligible after your eligibility expires, your eligibility and paid services will be reinstated on the date that DDD determines you eligible pursuant to WAC 388-823-0100.

(b) If DDD determines you eligible after your eligibility expires, your eligibility and paid services will not be retroactive to the expiration date.

(2) This expiration of eligibility takes effect even if DDD is unable to locate you to provide written notification that eligibility is expiring.

(3) There is no appeal right to an expired eligibility determination.

(4) Your appeal rights to the termination of services resulting from a review of your eligibility due to the expiration of your eligibility on your fourth or tenth birthday are in WAC 388-825-120 and WAC 388-825-150(2).

#### NEW SECTION

**WAC 388-823-1015** What is the definition of "DDD paid services" in WAC 388-823-1010(3)? DDD paid services are defined by one or more of the following:

(1) Authorization of a paid service within the last ninety days as evidenced by a social services payment system (SSPS) authorization, a county authorization for day program services, a Waiver Plan of Care approving a DDD paid service, or residence in a SOLA, RHC, or IMR (authorization of a State Supplementary Payment through SSPS does not meet the definition of a DDD paid service);

(2) Authorization of family support services within the last twelve months.

(3) Documentation of DDD approval of your absence from DDD paid services for more than ninety days with available funding for your planned return to services.

#### NEW SECTION

**WAC 388-823-1020** Can DDD terminate my eligibility if I no longer am a resident of the state of Washington? DDD will terminate your eligibility if you lose residency in the state of Washington as defined in WAC 388-823-0050.

#### NEW SECTION

**WAC 388-823-1030** How will I know that my eligibility is expiring or is due for review? If your eligibility has a required expiration or review date, DDD will send you prior written notification with reapplication or review information.

#### NEW SECTION

**WAC 388-823-1040** What happens if I do not reapply for eligibility before my eligibility expiration date? (1) If you fail to reapply before your eligibility expires on your fourth or tenth birthday or if you reapply so near in time to your fourth or tenth birthday that DDD does not have sufficient time to make an eligibility determination by the date of expiration, DDD eligibility will expire and your DDD paid services will stop.

#### NEW SECTION

**WAC 388-823-1050** What happens if I do not respond to a request for information to review my eligibility? If you do not provide DDD with the information required to review and redetermine your eligibility, DDD will terminate your eligibility and any DDD services you might be receiving.

#### NEW SECTION

**WAC 388-823-1060** How will DDD notify me of its decision? DDD will notify you and your legal representative or one other responsible party in writing of its determination of eligibility, ineligibility, or expiration of eligibility per WAC 388-825-100.

#### NEW SECTION

**WAC 388-823-1070** What are my appeal rights to a department decision that I do not have a developmental disability? Your appeal rights to a department decision that you are not eligible to be a DDD client because you do not have a developmental disability are limited to those described in WAC 388-825-120 through WAC 388-825-165.

#### NEW SECTION

**WAC 388-823-1080** If DDD decides that I do not have a developmental disability, how soon can I reapply for another decision? If DDD decides that you do not have a developmental disability as defined in this chapter, you may reapply only if:

(1) Your eligibility was terminated because DDD could not locate you and you have subsequently contacted DDD;

(2) Your eligibility was terminated because you lost residency in the state of Washington and you have reestablished residency;

(3) You have additional or new information relevant to the determination that DDD did not review for the previous determination of eligibility; or

(4) DDD denied or terminated your eligibility based solely on your ICAP score and it has been more than twenty-four months since your last ICAP.

**NEW SECTION**

**WAC 388-823-1090** If I am already eligible, how do these new rules affect me? If you are an eligible DDD client on the effective date of these rules, you continue to be an eligible DDD client but you are subject to the expiration and required eligibility reviews per WAC 388-823-1000 through WAC 388-823-1050.

**NEW SECTION**

**WAC 388-823-1095** What are my rights as a DDD client? As a DDD client, you have the following rights:

(1) The right to be free from any kind of abuse or punishment (verbal, mental, physical, and/or sexual); or being sent to a place by yourself, if you do not choose to be alone;

(2) The right to appeal any decision by DDD that denies, reduces, or terminates your eligibility, your services or your choice of provider;

(3) The right to receive only those services you agree to;

(4) The right to meet with and talk privately with your friends and family;

(5) The right to personal privacy and confidentiality of your personal and other records;

(6) The right to choose activities, schedules, and health care that meet your needs;

(7) The right to be free from discrimination because of your race, color, creed, national origin, religion, age, disability, marital status, or sexual orientation;

(8) The right to set your own rules in your home and to know what rules your providers have when you are living in their house or working in their facility;

(9) The right to request information regarding services that may be available from DDD;

(10) The right to know what your doctor wants you to do or take and to help plan how that will happen;

(11) The right to be free from unnecessary medication, restraints and restrictions;

(12) The right to vote and help people get elected to office;

(13) The right to complain and not to have someone "get even";

(14) The right to have your provider listen to your concerns including those about the behavior of other people where you live;

(15) The right to receive help from an advocate;

(16) The right to manage your money or choose other persons to assist you;

(17) The right to be part of the community;

(18) The right to make choices about your life;

(19) The right to wear your clothes and hair the way you want;

(20) The right to work and be paid for the work you do; and

(21) The right to decide whether or not to participate in research after the research has been explained to you, and after you or your guardian gives written consent for you to participate in the research;

**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.

**NEW SECTION**

**WAC 388-823-1100** How do I complain to DDD about my services or treatment? If you have a complaint or grievance about your services or treatment, follow these steps in this order:

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

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

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

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

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 388-825-030	Eligibility for services.
WAC 388-825-035	Determination of eligibility.
WAC 388-825-040	Application for services.

**WSR 05-12-132****PERMANENT RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Medical Assistance Administration)

[Filed June 1, 2005, 10:49 a.m., effective July 1, 2005]

Effective Date of Rule: July 1, 2005.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The earlier effective date is necessary because of imminent peril to the public health, safety, or welfare. The federal government will eliminate intergovernmental transfers (IGT) in the near future which will create an estimated budget gap of \$160,000,000 for the state. This will lead to reductions in department programs, which will in turn have a direct negative impact on public health unless the rule is effective on July 1, 2005.

Purpose: The amended rules allow the department to reimburse certain public hospitals through the "full cost" public hospital certified public expenditure (CPE) payment program. The department is also updating, amending, and repealing other applicable sections. Clarifying language is being added to explain how high cost outliers are paid for state administered program claims. The verbiage, "medically indigent (MI) costs or charges" is being replaced with "charity costs or charges."

Citation of Existing Rules Affected by this Order: Repealing WAC 388-550-5100, 388-550-5250, 388-550-5300, 388-550-5350 and 388-550-6900; and amending WAC 388-550-330, 388-550-4300, 388-550-4600, 388-550-4650,

388-550-4800, 388-550-4900, 388-550-5210, 388-550-5220, 388-550-5400, and 388-550-6800.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090.

Adopted under notice filed as WSR 05-09-085 and 05-09-086 on April 19, 2005.

A final cost-benefit analysis is available by contacting Kathy Sayre, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1342, fax (360) 586-9727, e-mail sayrek@dshs.wa.gov. No changes were made to the preliminary analysis, which will be final.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 5.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 10, Repealed 5.

Date Adopted: June 1, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 01-16-142, filed 7/31/01, effective 8/31/01)

**WAC 388-550-3300 Hospital peer groups and cost caps.** (1) For rate-setting purposes the department groups hospitals into peer groups and establishes cost caps for each peer group. The department sets hospital reimbursement rates at levels that recognize the costs of reasonable, efficient, and effective providers.

(2) The ~~((four))~~ six medical assistance administration (MAA) hospital peer groups are:

(a) Group A, rural hospitals;

(b) Group B, urban hospitals without medical education programs;

(c) Group C, urban hospitals with medical education program; ~~((and))~~

(d) Group D, specialty hospitals or other hospitals not easily assignable to the other ~~((three))~~ five groups;

(e) Group E, public hospitals participating in the "full cost" public hospital certified public expenditure (CPE) program; and

(f) Group F, critical access hospitals.

(3) MAA uses a cost cap at the seventieth percentile for ~~((a peer group))~~

~~((a) MAA caps at the seventieth percentile the costs of))~~ hospitals in peer groups B and C ~~((whose costs exceed the seventieth percentile for their peer group)).~~ All other peer groups are exempt from the cost cap.

~~((b))~~ (a) MAA exempts peer group A hospitals from the cost cap because they are paid under the ratio of costs-to-charges methodology for Medicaid claims.

~~((c))~~ (b) MAA exempts peer group D hospitals from the cost cap because they are specialty hospitals without a common peer group on which to base comparisons.

(c) MAA exempts peer group E hospitals from the cost cap because they are paid under the ratio of costs-to-charges (RCC) methodology for Medicaid and GAU inpatient claims.

(d) MAA exempts peer group F hospitals from the cost cap because they are paid under the departmental weighted costs-to-charges methodology for Medicaid claims.

(4) MAA calculates a peer group's cost cap based on the hospitals' base period costs after subtracting:

(a) Indirect medical education costs, in accordance with WAC 388-550-3250(2), from the aggregate operating and capital costs of each hospital in the peer group; and

(b) The cost of outlier cases from the aggregate costs in accordance with WAC 388-550-3350(1).

(5) MAA uses the lesser of each individual hospital's calculated aggregate cost or the peer group's seventieth percentile cost cap as the base amount in calculating the individual hospital's adjusted cost-based conversion factor. After the peer group cost cap is calculated, MAA adds back to the individual hospital's base amount its indirect medical education costs and appropriate outlier costs, as determined in WAC 388-550-3350(2).

~~((In its rate setting process for peer groups A and B, MAA recognizes changes in peer group status and considers DOH's approval or recommendation.))~~ In cases where corrections or changes in an individual hospital's base-year cost or peer group assignment occur after peer group cost caps are calculated, MAA updates the peer group cost caps involved only if the change in the individual hospital's base-year costs or peer group assignment will result in a five percent or greater change in the seventieth percentile of costs calculated for either its previous peer group category, its new peer group category, or both.

**AMENDATORY SECTION** (Amending WSR 01-16-142, filed 7/31/01, effective 8/31/01)

**WAC 388-550-4300 Hospitals and units exempt from the DRG payment method.** (1) Except when otherwise specified, inpatient services provided by hospitals and units that are exempt from the diagnosis-related group (DRG) payment method are reimbursed ~~((by))~~ under the RCC payment method described in WAC 388-550-4500.

(2) Subject to the restrictions and limitations listed in this section, the department exempts the following hospitals and units from the DRG payment method for inpatient services provided to Medicaid-eligible clients:

(a) Peer group A hospitals, as ~~((defined))~~ described in WAC 388-550-3300(2). Exception: Inpatient services provided to clients eligible under the following programs are reimbursed through the DRG payment method:

(i) General assistance programs; and

(ii) ~~((Medically indigent program (MIP); and~~

~~((iii)))~~ Other state-only administered programs.

(b) Peer group E hospitals, as described in WAC 388-550-3300(2). See WAC 388-550-4650 for how the department calculates payment to Peer group E hospitals.

(c) Peer group F hospitals (critical access hospitals).

(d) Rehabilitation units when the services are provided in medical assistance administration (MAA)-approved acute physical medicine and rehabilitation (acute PM&R) hospitals and designated distinct rehabilitation units in acute care hospitals.

MAA uses the same criteria as the Medicare program to identify exempt rehabilitation hospitals and designated distinct rehabilitation units. Exception: Inpatient rehabilitation services provided to clients eligible under the following programs are covered and reimbursed through the DRG payment method:

- (i) General assistance programs; and
- (ii) ~~((Medically indigent program (MIP); and~~
- ~~((iii)))~~ Other state-only administered programs.

~~((e)))~~ (e) Out-of-state hospitals excluding hospitals located in designated ~~((border areas))~~ bordering cities as described in WAC 388-501-0175. Inpatient services provided in out-of-state hospitals to clients eligible under the following programs are not covered or reimbursed by the department:

- (i) General assistance programs; and
- (ii) ~~((Medically indigent program (MIP); and~~
- ~~((iii)))~~ Other state-only administered programs.

~~((d)))~~ (f) Military hospitals when no other specific arrangements have been made with the department. Military hospitals may individually elect or arrange for one of the following payment methods in lieu of the RCC payment method:

- (i) A negotiated per diem rate; or
- (ii) DRG.

~~((e)))~~ (g) Nonstate-owned specifically identified psychiatric hospitals and designated hospitals with Medicare certified distinct psychiatric units. The department uses the same criteria as the Medicare program to identify exempt psychiatric hospitals and distinct psychiatric units of hospitals.

(i) Inpatient psychiatric services provided to clients eligible under the following programs are reimbursed through the DRG payment method:

- (A) General assistance programs; and
- (B) ~~((Medically indigent program (MIP); and~~
- ~~((C)))~~ Other state-only administered programs.

(ii) If the department determines that the psychiatric services provided to a client~~((s))~~ eligible under ~~((the))~~ a program~~((s))~~ listed in subsection (2)~~((e))~~(g)(i) of this section qualify for a special exemption, the services may be reimbursed by using the ratio of costs-to-charges (RCC) payment method.

(iii) Regional support networks (RSNs) that arrange to reimburse nonstate-owned psychiatric hospitals and designated distinct psychiatric units of hospitals directly, may use the department's payment methods or contract with the hospitals to reimburse using different methods. Claims not paid directly through an RSN are paid through the department's MMIS payment system.

(3) The department limits inpatient hospital stays that are exempt from the DRG payment method and identified in sub-

section (2) of this section to the number of days established at the seventy-fifth percentile in the current edition of the publication, "Length of Stay by Diagnosis and Operation, Western Region," unless the stay is:

(a) Approved for a specific number of days by the department, or for psychiatric inpatient stays, by the regional support network (RSN);

(b) For chemical dependency treatment which is subject to WAC 388-550-1100; or

(c) For detoxification of acute alcohol or other drug intoxication.

(4) If subsection (3)(c) of this section applies to an eligible client~~((s))~~, the department will:

(a) Pay for three-day detoxification services for an acute alcoholic condition; or

(b) Pay for five-day detoxification services for acute drug addiction when the services are directly related to detoxification; and

(c) Extend the three- and five-day limitations for up to six additional days if either of the following is invoked on a client under care in a hospital:

(i) Petition for commitment to chemical dependency treatment; or

(ii) Temporary order for chemical dependency treatment.

AMENDATORY SECTION (Amending WSR 98-01-124, filed 12/18/97, effective 1/18/98)

**WAC 388-550-4600 Hospital selective contracting program.** (1) The department ~~((shall))~~ designates selective contracting areas (SCA) in which hospitals participate in competitive bidding to provide hospital services to ~~((medical care))~~ Medicaid clients. Selective contracting areas are based on historical patterns of hospital use by Medicaid clients.

(2) The department ~~((shall))~~ requires ~~((medical-care))~~ Medicaid clients in a selective contracting area obtain their elective (nonemergent) inpatient hospital services from participating or exempt hospitals in the SCA. Elective (nonemergent) inpatient hospital services provided by nonparticipating hospitals in an SCA shall not be reimbursed by the department, except as provided in WAC 388-550-4700.

(3) The department ~~((shall))~~ exempts from the selective contracting program those hospitals that are:

(a) In an SCA but designated by the department as remote. The department ~~((shall))~~ designates as remote, hospitals meeting the following criteria:

(i) Located more than ten miles from the nearest hospital in the SCA;

(ii) Having fewer than seventy-five beds; and

(iii) Having fewer than five hundred Medicaid admissions in a two-year period.

(b) Owned by health maintenance organizations (HMOs) and providing inpatient services to HMO enrollees only;

(c) Children's hospitals;

(d) State psychiatric hospitals or separate (freestanding) psychiatric facilities; ~~((and))~~

(e) Out-of-state hospitals located in ~~((nonborder areas))~~ nonbordering cities, and out-of-state hospitals in ~~((border~~

areas)) bordering cities not designated as selective contracting areas;

(f) Peer group E hospitals; and

(g) Peer group F hospitals (critical access hospitals).

(4)((~~a~~) ~~The department shall~~) MAA:

(a) Negotiates with selectively contracted hospitals a negotiated conversion factor (NCF) for inpatient hospital services provided to Medicaid clients.

(b) ((~~The department shall~~)) Calculates its maximum financial obligation for a Medicaid client under the hospital selective contract in the same manner as DRG payments using cost-based conversion factors (CBCFs).

(c) ((~~The department shall apply~~)) Applies NCFs to Medicaid clients only. ((~~The department shall~~)) (MAA uses CBCFs in calculating payments for ((~~MI~~) medical care services clients.)

### NEW SECTION

**WAC 388-550-4650 "Full cost" public hospital certified public expenditure (CPE) payment program.** (1) The medical assistance administration's (MAA's) "full cost" public hospital certified public expenditure (CPE) payment program is a public hospital program that pays eligible hospitals the same amount as the Medicaid federal match portion of the "full cost" of covered medically necessary services. MAA uses the ratio of costs-to-charges methodology described in WAC 388-550-4500 to determine "full cost."

(2) Only the following facilities are reimbursed through the "full cost" public hospital CPE payment program:

(a) Public hospitals located in the state of Washington that are:

(i) Owned by public hospital districts; and

(ii) Not certified by the department of health (DOH) as a critical access hospital;

(b) Harborview Medical Center; and

(c) University of Washington Medical Center.

(3) Payments made under the CPE payment program are limited to inpatient hospital services provided to clients eligible under the Medicaid and general assistance-unemployable (GA-U) fee-for-service programs.

(4) Each hospital described in subsection (2) of this section is responsible to provide certified public expenditures as the required state match for claiming federal Medicaid funds. Certified public expenditures cannot include federal funds or money used to match federal funds.

(5) Payments made by MAA under the CPE payment program equal the hospital's RCC rate times allowable charges times the state's Medicaid federal match percentage.

(6) Client responsibility and third party liability as identified on the hospital claim or by MAA are deducted from the basic payment to determine MAA's actual payment for that admission.

**AMENDATORY SECTION** (Amending WSR 04-19-113, filed 9/21/04, effective 10/22/04)

**WAC 388-550-4800 Hospital payment methods—State administered programs.** (1) Except as provided in subsection (2) of this section, the medical assistance administration (MAA) uses the ratio of costs-to-charges (RCC) and

diagnosis-related group (DRG) payment methods described in this section to reimburse hospitals at reduced rates for covered services provided to a client((s)) not eligible under ((the following state-administered programs)) any Medicaid program and:

(a) ((~~Medically indigent (MI) program;~~

~~(b))) Who qualifies for the general assistance unemployable (GAU) program; or~~

~~((c) Alcoholism and Drug Addiction Treatment and Support Act (ADATSA) program; and~~

~~(d))) (b) Is involuntarily detained under the Involuntary Treatment Act (ITA)((-Q program. (The ITA-Q program covers ITA services for non-Medicaid eligible clients.))~~

(2) MAA exempts the following services from the state-administered programs' payment methods and/or reduced rates:

(a) Detoxification services when the services are provided under an MAA-assigned provider number starting with "thirty-six." (MAA reimburses these services using the Title XIX Medicaid RCC payment method.)

(b) Program services provided by MAA-approved critical access hospitals (CAHs) to clients eligible under state-administered programs. (MAA reimburses these services through cost settlement as described in WAC 388-550-2598.)

(c) Program services provided by Peer group E hospitals to clients eligible under the GAU program. (MAA reimburses these services through the "full cost" public hospital certified public expenditure (CPE) program (see WAC 388-550-4650)).

(3) MAA determines:

(a) A state-administered program RCC payment by reducing a hospital's Title XIX Medicaid RCC rate using the hospital's ratable.

(b) A state-administered program DRG payment by reducing a hospital's Title XIX Medicaid DRG cost based conversion factor (CBCF) using the hospital's ratable and equivalency factor (EF).

(4) MAA determines:

(a) The RCC rate for the state-administered programs mathematically as follows:

State-administered programs' RCC rate = current Title XIX Medicaid RCC rate x (one minus the current hospital ratable)

(b) The DRG conversion factor (CF) for the state-administered programs mathematically as follows:

State-administered programs' DRG CF = current Title XIX Medicaid DRG CBCF x (one minus the current hospital ratable) x EF

(5) MAA determines payments to hospitals for covered services provided to clients eligible under the state-administered programs mathematically as follows:

(a) Under the RCC payment method:

State-administered programs' RCC payment = state-administered programs' RCC Rate x allowed charges

(b) Under the DRG payment method:

State-administered programs' DRG payment = state-administered programs' DRG CF x all patient DRG relative weight ~~((to include any necessary high-cost outlier payment))~~ (See subsection (6) of this section for how MAA

determines payment for state-administered program claims that qualify as DRG high-cost outliers.)

(6) For state-administered program claims that qualify as DRG high-cost outliers, MAA determines:

(a) In-state children's hospital payments for state-administered program claims that qualify as DRG high-cost outliers mathematically as follows:

Eighty-five percent of the allowed charges above the outlier threshold x the specific hospital's RCC rate x (one minus the current hospital ratable) plus the DRG allowed amount

(b) Psychiatric DRG high-cost outlier payments for DRGs 424 through 432 mathematically as follows:

One hundred percent of the allowed charges above the outlier threshold x the specific hospital's RCC rate x (one minus the current hospital ratable) plus the applicable DRG allowed amount

(c) Payments for all other claims that qualify as DRG high-cost outliers as follows:

Sixty percent x the specific hospital's RCC rate x (one minus the current hospital ratable) plus the applicable DRG allowed amount

**High-cost Outlier Calculations for Qualifying Claims  
State-administered Programs  
(for admission dates January 1, 2001 and after)**

In-state Children's Hospitals Allowed charges	(-)	≥ of \$33000 or 3 x DRG	(=)	Charges ≥ threshold	(x)	RCC	(x)	1 (-) Ratable	(x)	85%	(=)	Outlier Add-on Amount	(+)	*DRG Allowed Amount
Psychiatric DRGs 424-432 Allowed charges	(-)	≥ of \$33000 or 3 x DRG	(=)	Charges > threshold	(x)	RCC	(x)	1 (-) Ratable	(x)	100%	(=)	Outlier Add-on Amount	(+)	*DRG Allowed Amount
All other qualifying claims Allowed charges	(-)	≥ of \$33000 or 3 x DRG	(=)	Charges > threshold	(x)	RCC	(x)	1 (-) Ratable	(x)	60%	(=)	Outlier Add-on Amount	(+)	*DRG Allowed Amount

\*Basic DRG allowed amount calculation: DRG relative weight x conversion factor = DRG allowed amount

(7) See WAC 388-550-3700(5) for how claims qualify as low-cost outliers.

(8) MAA determines payments for claims that qualify as DRG low-cost outliers mathematically as follows:

Allowed charges for the claim x the specific hospital's RCC rate x (one minus the current hospital ratable)

(9) To calculate a hospital's ratable that is applied to both the Title XIX Medicaid RCC rate and the Title XIX Medicaid DRG CBF used to determine the respective state-administered program's reduced rates, MAA:

(a) Adds the hospital's Medicaid revenue (Medicaid revenue as reported by department of health (DOH) includes all Medicaid revenue and all other medical assistance revenue) and Medicare revenue to the value of the hospital's charity care and bad debts, all of which is taken from the most recent complete calendar year data available from DOH at the time of the ratable calculation; then

(b) Deducts the hospital's low-income disproportionate share hospital (LIDSH) revenue from the amount derived in (a) of this subsection to arrive at the hospital's community care dollars; then

(c) Subtracts the hospital-based physicians revenue that is reported in the hospital's most recent HCFA-2552 Medicare cost report received by MAA at the time of the ratable calculation, from the total hospital revenue reported by DOH from the same source as discussed in (a) of this subsection, to arrive at the net hospital revenue; then

(d) Divides the amount derived in (b) of this subsection by the amount derived in (c) of this subsection to obtain the ratio of community care dollars to net hospital revenue (also called the preliminary ratable factor); then

(e) Subtracts the amount derived in (d) of this subsection from 1.0 to obtain the hospital's preliminary ratable; then

(f) Determines a neutrality factor by:

(i) Multiplying hospital-specific Medicaid revenue that is reported by DOH from the same source as discussed in (a) of this subsection by the preliminary ratable factor; then

(ii) Multiplying that same hospital-specific Medicaid revenue by the prior year's final ratable factor; then

(iii) Summing all hospital Medicaid revenue from the hospital-specific calculations that used the preliminary ratable factor discussed in (f)(i) of this subsection; then

(iv) Summing all hospital revenue from the hospital-specific calculations that used the prior year's final ratable factor discussed in (f)(ii) of this subsection; then

(v) Comparing the two totals; and

(vi) Setting the neutrality factor at 1.0 if the total using the preliminary ratable factor is less than the total using the prior year's final ratable factor; or

(vii) Establishing a neutrality factor that is less than 1.0 that will reduce the total using the preliminary ratable factor to the level of the total using the prior year's final ratable factor, if the total using the preliminary ratable factor is greater than the total using the prior year's ratable factor; then

(g) Multiplies, for each specific hospital, the preliminary ratable by the neutrality factor to establish hospital-specific final ratables for the year; then

(h) Subtracts each hospital-specific final ratable from 1.0 to determine hospital-specific final ratable factors for the year; then

PERMANENT

(i) Calculates an in-state-average ratable and an in-state-average ratable factor used for new hospitals with no prior year history.

~~((7))~~ (10) MAA updates each hospital's ratable annually on August 1.

~~((8))~~ (11) MAA:

(a) Uses the equivalency factor (EF) to hold the hospital specific state-administered programs' DRG CF at the same level prior to rebasing, adjusted for inflation; and

(b) Calculates a hospital's EF as follows:

EF = State-administered programs' prior DRG CF divided by current Title XIX Medicaid DRG CBCF x (one minus the prior ratable)

~~((9) Effective December 1, 1991, for hospital admissions of clients eligible under the state-administered MI program, MAA:~~

~~(a) Further reduces RCC and DRG payments to a hospital for covered services provided to clients eligible under the MI program by multiplying the respective payment referred to in subsection (5) of this section by ninety-seven percent; and~~

~~(b) Applies this payment reduction to the medically indigent disproportionate share hospital (MIDSH) payment methodology in accordance with section 3(b) of the "Medicaid Voluntary Contributions and Provider Specific Tax Amendment of 1991."~~

**AMENDATORY SECTION** (Amending WSR 04-12-044, filed 5/28/04, effective 7/1/04)

**WAC 388-550-4900 Disproportionate share payments.** As required by section 1902 (a)(13)(A) of the Social Security Act, the medical assistance administration (MAA) gives consideration to hospitals that serve a disproportionate number of low-income clients with special needs by making a payment adjustment to eligible hospitals per legislative direction and established prospective payment methods. MAA considers this adjustment a disproportionate share hospital (DSH) payment.

(1) To qualify for a DSH payment for each state fiscal year (SFY), an in-state or ~~(border area))~~ bordering city hospital provider must submit to MAA, the hospital's completed and final DSH application by the due date specified in that year's application letter. The application due date will not be less than sixty days after MAA makes the application available.

(2) A hospital is a disproportionate share hospital eligible for the low-income disproportionate share hospital (LIDSH) program for a specific SFY if the hospital submits a DSH application for that specific year in compliance with subsection (1) and if both the following apply:

(a) The hospital's Medicaid inpatient utilization rate (MIPUR) is at least one standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state, or its low-income utilization rate (LIUR) exceeds twenty-five percent; and

(b) At least two obstetricians who have staff privileges at the hospital ~~(and))~~ have agreed to provide obstetric services to eligible individuals at the hospital. For the purpose of establishing DSH eligibility, "obstetric services" is defined as

routine nonemergency delivery of babies. This requirement for two obstetricians with staff privileges does not apply to a hospital:

(i) That provides inpatient services predominantly to individuals under eighteen years of age; or

(ii) That did not offer nonemergency obstetric services to the general public as of December 22, 1987, when section 1923 of the Social Security Act was enacted.

(3) For hospitals located in rural areas, "obstetrician" means any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

(4) MAA may consider a hospital a disproportionate share hospital for programs other than the LIDSH program if the hospital submits a DSH application for the specific year and meets the following criteria for the year specified in the application:

(a) The hospital has a MIPUR of not less than one percent; and

(b) The hospital meets the requirement of subsection (2)(b) of this section.

(5) MAA administers the low-income disproportionate share (LIDSH) program and may administer any of the following DSH programs:

~~(a) ((Medically indigent disproportionate share hospital (MIDSH));~~

~~(b))~~ General assistance-unemployable disproportionate share hospital (GAUDSH);

~~((e))~~ (b) Small rural hospital assistance program disproportionate share hospital (SRHAPDSH);

~~((d))~~ (c) Small rural hospital indigent adult assistance program disproportionate share hospital (SRHIAAPDSH);

~~((e))~~ (d) Nonrural hospital indigent adult assistance program disproportionate share hospital (NRHIAAPDSH);

~~((f) Teaching hospital assistance program disproportionate share hospital (THAPDSH);~~

~~(g) State teaching hospital financing program disproportionate share hospital (STHFPDSH);~~

~~(h) County teaching hospital financing program disproportionate share hospital (CTHFPDSH); and~~

~~(i)) and~~  
(e) Public hospital ~~((district))~~ disproportionate share hospital ~~((PHDSDH))~~ (PHDSH).

(6) MAA allows a hospital to receive any one or all of the DSH payment adjustments discussed in subsection (5) of this section when the hospital:

(a) Meets the requirements in subsection (4) of this section; and

(b) Meets the eligibility requirements for the particular DSH payment program, as discussed in WAC 388-550-5000 through 388-550-5400.

(7) MAA ensures each hospital's total DSH payments do not exceed the individual hospital's DSH limit, defined as:

(a) The cost to the hospital of providing services to Medicaid clients, including clients served under Medicaid managed care programs;

(b) Less the amount paid by the state under the non-DSH payment provision of the state plan;

(c) Plus the cost to the hospital of providing services to uninsured patients;



(d) Less any cash payments made by uninsured clients; and

(e) Plus any adjustments required and/or authorized by federal regulation.

(8) MAA's total annual DSH payments must not exceed the state's DSH allotment for the federal fiscal year.

If the MAA statewide allotment is exceeded, MAA may adjust future DSH payments to each hospital to compensate for the amount overpaid. Adjustments will be made in the following program order:

- (a) ~~((PHDDSH;~~
- (b) ~~THAPDSH;~~
- (c) ~~CTHFPDSH;~~
- (d) ~~STHFPDSH;~~
- (e) SRHAPDSH;
- (f) NRHIAAPDSH;
- (g) SRHIAAPDSH;
- (h) ~~MIDSH;~~
- (i) GAUDSH; (and
- (j) LIDSH; and
- (k) PHDSH.

**AMENDATORY SECTION** (Amending WSR 04-12-044, filed 5/28/04, effective 7/1/04)

**WAC 388-550-5210 Payment method—SRHIAAPDSH.** (1) The medical assistance administration (MAA) makes small rural hospital indigent adult assistance program disproportionate share hospital (SRHIAAPDSH) payments to qualifying small rural hospitals through the disproportionate share hospital (DSH) program.

(2) To qualify for an SRHIAAPDSH payment, a hospital must:

- (a) Meet the criteria in WAC 388-550-4900 (2)(b) and (4);
- (b) Be an in-state hospital that provided charity services to clients (~~((eligible under the medically indigent (MI) program))~~) during the most recent, completed fiscal year;
- (c) Be a small rural hospital with fewer than seventy-five acute licensed beds; and
- (d) For state fiscal year (SFY) beginning July 1, 2003, be located in a city or town that has a nonstudent population of fifteen thousand eight hundred ten or less. For each subsequent SFY, the nonstudent population requirement is increased cumulatively by two percent.

(3) MAA pays hospitals qualifying for SRHIAAPDSH payments from a legislatively appropriated pool. MAA determines each hospital's individual SRHIAAPDSH payment from the total dollars in the pool using percentages established through the following prospective payment method:

(a) At the time the SRHIAAPDSH payment is to be made, MAA calculates each hospital's profitability margin based on the most recent, completed year-end data using audited financial statements from the hospital.

(b) MAA determines the average profitability margin for the qualifying hospitals.

(c) Any hospital with a profitability margin of less than one hundred ten percent of the average profitability margin for qualifying hospitals receives a profit factor of 1.1. All other hospitals receive a profit factor of 1.0.

(d) MAA:

(i) Identifies from historical data considered to be complete, each individual qualifying hospital's (~~(inpatient and outpatient))~~ allowed charity charges (~~((for MAA's MI clients))~~); then

(ii) Multiplies the total allowed charity charges by the hospital's ratio of costs-to-charges (RCC), limiting the RCC to a value of 1, to determine the hospital's (~~(MI))~~ charity costs; then

(iii) Multiplies the hospital's (~~(MI))~~ charity costs by the hospital's profit factor assigned in (c) of this subsection to identify a revised cost amount; then

(iv) Determines the hospital's percentage of revised costs by dividing its revised cost amount by the sum of the revised (~~(MI))~~ charity cost amounts for all qualifying hospitals during the same period.

(4) MAA's SRHIAAPDSH payments to a hospital may not exceed one hundred percent of the projected cost of care for Medicaid clients and uninsured indigent patients for that hospital unless an exception is identified by federal regulation. MAA reallocates dollars as defined in the state plan.

**AMENDATORY SECTION** (Amending WSR 04-12-044, filed 5/28/04, effective 7/1/04)

**WAC 388-550-5220 Payment method—NRHIAAPDSH.** (1) The medical assistance administration (MAA) makes nonrural hospital indigent adult assistance program disproportionate share hospital (NRHIAAPDSH) payments to qualifying nonrural hospitals through the disproportionate share (DSH) program.

(2) To qualify for an NRHIAAPDSH payment, a hospital must:

- (a) Meet the criteria in WAC 388-550-4900 (2)(b) and (4);
- (b) Be an in-state or (~~(border-area))~~ bordering city hospital that provided charity services to clients (~~((eligible under the medically indigent (MI) program))~~) during the most recent, completed fiscal year; and
- (c) Be a hospital that does not qualify as a small rural hospital as defined in WAC 388-550-5210.

(3) MAA pays hospitals qualifying for NRHIAAPDSH payments from a legislatively appropriated pool. MAA determines each hospital's individual NRHIAAPDSH payment from the total dollars in the pool using percentages established through the following prospective payment method:

(a) At the time the NRHIAAPDSH payment is to be made, MAA calculates each hospital's profitability margin based on the most recent, completed year-end data using audited financial statements from the hospital.

(b) MAA determines the average profitability margin for the qualifying hospitals.

(c) Any hospital with a profitability margin of less than one hundred ten percent of the average profitability margin for qualifying hospitals receives a profit factor of 1.1. All other hospitals receive a profit factor of 1.0.

(d) MAA:

(i) Identifies from historical data considered to be complete, each individual qualifying hospital's (~~(inpatient and~~

outpatient)) allowed charity charges ((for MAA's MI clients)); then

(ii) Multiplies the total allowed charity charges by the hospital's ratio of costs-to-charges (RCC), limiting the RCC to a value of 1, to determine the hospital's ((MA)) charity costs; then

(iii) Multiplies the hospital's ((MA)) charity costs by the hospital's profit factor assigned in (c) of this subsection to identify a revised cost amount; then

(iv) Determines the hospital's percentage of the NRHIAAPDSH revised costs by dividing the hospital's revised cost amount by the total ((MA)) charity costs for all qualifying hospitals during the same period.

(4) MAA's NRHIAAPDSH payments to a hospital may not exceed one hundred percent of the projected cost of care for Medicaid clients and uninsured indigent patients for the hospital unless an exception is identified by federal regulation. MAA reallocates dollars as defined in the state plan.

**AMENDATORY SECTION** (Amending WSR 03-13-055, filed 6/12/03, effective 7/13/03)

**WAC 388-550-5400 Payment method—(~~PHDDSH~~) PHDSH.** (1) The medical assistance administration's (MAA's) (~~considers a hospital eligible for the public hospital district disproportionate share hospital (PHDDSH) payment if the hospital:~~

(a) ~~Meets the criteria in WAC 388-550-4900 (2)(b) and (4);~~

(b) ~~Is a public district hospital in Washington state or a border area hospital owned by a public corporation; and~~

(c) ~~Provides at least one percent of its services to low-income patients.~~

(2) ~~Using a prospective payment method, MAA pays hospitals considered eligible under the criteria in subsection (1) of this section a PHDDSH payment amount from the legislatively appropriated PHDDSH pool)) public hospital disproportionate share hospital (PHDSH) program is a public hospital program for:~~

(a) Public hospitals located in the state of Washington that are:

(i) Owned by public hospital districts; and

(ii) Not certified by the department of health (DOH) as a critical access hospital;

(b) Harborview Medical Center; and

(c) University of Washington Medical Center.

(2) MAA pays hospitals eligible under this program a payment equal to the hospital's individual disproportionate share hospital (DSH) payment limit calculated according to WAC 388-550-4900. The resulting amount is multiplied by the federal matching assistance percentage in effect for Washington State at the time of the payment. This amount is sent to the hospital.

(3) Hospitals receiving payment in this DSH program must certify that funds have been spent on uncompensated care at the hospital equal to or in excess of the payment amount before applying the federal matching assistance percentage. Certified funds cannot include federal funds or money used to match federal funds.

**AMENDATORY SECTION** (Amending WSR 03-13-055, filed 6/12/03, effective 7/13/03)

**WAC 388-550-6800 Proportionate share payments for inpatient hospital services.** (1) Each state fiscal year, per legislative direction and established prospective payment methods, the department creates a proportionate share pool that provides supplemental payments for inpatient hospital services to a hospital provider of Title XIX Medicaid services that is classified as either a:

(a) Washington state-owned or state-operated hospital; or

(b) Nonstate government-owned hospital.

(2) Prior to payment, proportionate share payments for inpatient hospital services are subject to:

(a) Federal approval for federal matching funds;

(b) A department analysis of the Medicare upper limit; and

(c) The federal Medicare upper payment limit for hospital payment.

(3) The medical assistance administration (MAA) determines each payment year's total proportionate share payment for inpatient hospital services by:

(a) Using the charge and payment data from MAA's Medicaid Management Information System (MMIS) for inpatient hospital services for the base years; and

(b) Calculating the cumulative difference between covered Title XIX inpatient charges, Title XIX payments, and third party liability payments for all eligible hospitals during the most recent federal fiscal year.

(4) Proportionate share payments for inpatient hospital services:

(a) Are determined and paid periodically to participating eligible hospitals during each federal fiscal year; and

(b) Must be used to improve health care services to low income patients.

#### **REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 388-550-5100 Payment method—MIDSH.

WAC 388-550-5250 Payment method—THAP-DSH.

WAC 388-550-5300 Payment method—STHFP-DSH.

WAC 388-550-5350 Payment method—CTHFP-DSH.

WAC 388-550-6900 Proportionate share payments for outpatient hospital services.

## WSR 05-13-008

## PERMANENT RULES

## DEPARTMENT OF AGRICULTURE

[Filed June 3, 2005, 12:37 p.m., effective July 4, 2005]

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

Purpose: Amendments were made to sections within the Puget Sound Salmon Commission's marketing order, chapter 16-585 WAC. During past legislative sessions, significant amendments were made to the commission's enabling statute, chapter 15.65 RCW. These statutory changes prompted the amendments to chapter 16-585 WAC. The changes achieve consistency with the statute, as well as, improve the readability and clarity of the marketing order.

Citation of Existing Rules Affected by this Order: Repealing WAC 16-585-030; and amending WAC 16-585-010, 16-585-020, 16-585-040, 16-585-050, 16-585-060, and 16-585-070.

Statutory Authority for Adoption: RCW 15.65.047 and chapter 34.05 RCW.

Adopted under notice filed as WSR 04-24-092 on December 1, 2004.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 6, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 2, Amended 6, Repealed 1.

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 6, Repealed 1.

Date Adopted: June 3, 2005.

Valoria H. Loveland  
Director

NEW SECTION

**WAC 16-585-005 Marketing order for Puget Sound gillnet salmon—Policy statement.** (1) The marketing of Puget Sound gillnet salmon within this state is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that Puget Sound gillnet salmon be properly promoted by:

(a) Enabling producers of Puget Sound gillnet salmon to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the Puget Sound gillnet salmon they produce; and

(b) Working towards stabilizing the agricultural industry by increasing consumption of Puget Sound gillnet salmon within the state, the nation, and internationally.

(2) That it is in the overriding public interest that support for the Puget Sound gillnet salmon industry be clearly expressed, that adequate protection be given to the industry and its activities and operations, and that Puget Sound gillnet

salmon be promoted individually and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Puget Sound gillnet salmon.

(b) Increase the sale and use of Puget Sound gillnet salmon in local, domestic, and foreign markets.

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Puget Sound gillnet salmon.

(d) Increase the knowledge of the health-giving qualities and dietetic value of Puget Sound gillnet salmon and products.

(e) Support and engage in programs or activities that benefit the production, harvesting, handling, processing, marketing, and uses of Puget Sound gillnet salmon produced in Washington state.

(3) The director is authorized to implement, administer, and enforce chapter 15.65 RCW through the adoption of this marketing order.

(4) The Washington state Puget Sound salmon commodity board exists primarily for the benefit of the people of the state of Washington and its economy, and with oversight by the director, the board is authorized to speak on behalf of Washington state government with regard to Puget Sound gillnet salmon under the provisions of this marketing order.

NEW SECTION

**WAC 16-585-006 Marketing order purposes.** This marketing order is to promote the general welfare of the state and for the purposes of maintaining existing markets or creating new or larger local, domestic, and foreign markets; increasing production efficiency; ensuring a fair regulatory environment; or increasing per capita consumption of Puget Sound gillnet salmon produced in Washington state. The Washington state Puget Sound salmon commodity board is designated by the director to conduct the following programs in accordance with chapter 15.65 RCW:

(1) Establish plans and conduct programs for marketing, labeling, sales, promotion, public relations, and consumer education, or other programs for maintaining present markets or creating new or larger markets for commercially harvested Puget Sound gillnet salmon and salmon products. Such programs shall be directed toward increasing the sale, improving the markets, or promoting Puget Sound gillnet salmon and salmon products without reference to any particular brand or trade name and shall neither make use of false or unwarranted claims on behalf of commercial Puget Sound gillnet salmon products nor disparage the quality, value, sale, or use of any other agricultural commodity. The board may also engage in cooperative efforts in the domestic or foreign marketing of Puget Sound gillnet salmon.

(2) Provide for research in the production, transportation, handling, management, harvest, harvest management, harvest selectivity, harvest regulation or proposed regulation, protection against harvest impact on habitat or other species, processing or marketing of commercial Puget Sound gillnet salmon products and expend the necessary funds for such purposes. Insofar as practicable, such research shall be carried on by experiment stations of Washington State Univer-

sity or the University of Washington, but if in the judgment of the board, said experiment stations do not have the facilities for a particular project or if some other research agency has better facilities therefore, the project may be carried out by other research agencies selected by the board.

(3) Conduct programs for the purpose of providing information and education including:

(a) Marketing information and services for affected producers of Puget Sound gillnet salmon for the verification of grades, standards, weights, tests, and sampling of quality and quantity of Puget Sound gillnet salmon purchased by handlers from affected producers.

(b) Information and services enabling affected producers to meet their resource conservation objectives.

(c) Puget Sound gillnet salmon-related education and training.

(4) Investigate and take necessary action to prevent unfair trade practices and to correct where possible, trade practices which hinder marketing of Puget Sound gillnet salmon products.

(5) Allocation of assessments collected from affected producers shall be made by the board using the following formula:

(a) All operating costs will be borne by all affected producers.

(b) All programs, plans, research, and marketing deemed by the board to be in the collective best interest of all affected producers, regardless of Puget Sound gillnet salmon or salmon product produced, will be borne by all affected producers.

(6) Subject to the provisions of the act, provide information and communicate on matters pertaining to the production, processing, transportation, marketing, or uses of Puget Sound gillnet salmon produced in Washington state to any elected official or officer or employee of any agency.

(7) The director shall approve any plan, programs, and projects concerning:

(a) The establishment, issuance, effectuation, and administration of programs authorized under this section for marketing and promotion of Puget Sound gillnet salmon.

(b) The establishment and effectuation of market research projects, market development projects, or both to the end that marketing and utilization of the affected commodity may be encouraged, expanded, or made more efficient.

**AMENDATORY SECTION** (Amending WSR 02-14-091, filed 7/1/02, effective 8/1/02)

**WAC 16-585-010 Definitions ((of terms)).** Definitions for terms used in this chapter are also found in chapter 15.65 RCW, Washington State Agricultural Commodity Boards Act. For the purpose of this marketing order, the following additional definitions shall apply:

(1) "Act" means the Washington Agricultural ((Enabling Act of 1961)) Commodity Boards Act or chapter 15.65 RCW.

(2) "Affected area" means Western Washington.

(3) "Affected commodity" means ((salmon harvested pursuant to Washington, Puget Sound commercial salmon gillnet license or with gear now or hereafter lawfully permit-

ted for use pursuant to Puget Sound commercial salmon gillnet licenses)) commercial quantities of Puget Sound gillnet salmon.

(4) "Affected producer" means any person who is a commercial harvester of commercial quantities of Puget Sound gillnet salmon ((taken pursuant to Washington state Puget Sound commercial salmon gillnet license or with gear lawfully permitted for use pursuant to Puget Sound commercial salmon gillnet licenses in the waters of the state of Washington in areas lawfully permitted for such licenses, including in and adjacent to the areas of Puget Sound, the San Juan Islands, Georgia Strait, and the Strait of Juan de Fuca east of Cape Flattery)).

(5) "Commercial quantity" means any Puget Sound gillnet salmon produced ((by an affected producer which producer produces an annual quantity greater than zero and sufficient for sale and entry into the stream of commerce for salmon)) for market.

(6) ((("Commission" means the Puget Sound salmon commission formed pursuant to this order.

(7)) "Department" means the department of agriculture of the state of Washington.

((8)) (7) "Director" means the director of agriculture of the state of Washington or ((the)) his/her duly appointed representative.

((9)) (8) "Fiscal year" means the twelve-month period beginning with ((January)) July 1 of any year and ending with ((December 31st)) June 30th, both dates being inclusive.

((10)) (9) "Order" means this marketing order.

((11)) (10) "Person" means any ((person)) individual, firm, (association, or) corporation, limited liability company, trust, association, partnership, society or any other organization of individuals, or any unit or agency of local or state government.

((12)) (11) "Production area" means the waters of the state of Washington in and adjacent to the areas of Puget Sound, the San Juan Islands, Georgia Strait, and the Strait of Juan de Fuca east of Cape Flattery ((and)), or other lawful areas in which fishing is ((lawfully)) permitted pursuant to a Puget Sound commercial salmon gillnet license.

((13)) (12) "Puget Sound gillnet salmon" means salmon ((taken)) and salmon products which have been harvested by affected producers in the ((waters of the state of Washington in and adjacent to the areas of Puget Sound, the San Juan Islands, Georgia Strait, and the Strait of Juan de Fuca east of Cape Flattery, or other lawful area permitted)) production area pursuant to Puget Sound commercial salmon gillnet license ((and taken pursuant to Washington state Puget Sound commercial gillnet license)) or taken with gear lawfully permitted for use pursuant to Puget Sound commercial salmon gillnet license. "Puget Sound gillnet salmon" does not include privately farmed or cultivated salmon or salmon products nor salmon harvested pursuant to license issued by the various treaty Indian tribes. Nothing herein shall prevent the board from engaging in cooperative marketing of tribal and nontribal salmon.

((14)) (13) "Puget Sound salmon commodity board" hereinafter referred to as "board" or "commission" means the commodity board formed under the provisions of this marketing order.

~~((15))~~ (14) "Purchase" means obtain through sale, exchange, barter, or trade.

~~((16))~~ "Salmon" means Puget Sound salmon and salmon products which have been harvested by affected producers as defined in this marketing order. "Salmon" does not include privately farmed or cultivated salmon or salmon products nor salmon harvested pursuant to license issued by the various Treaty Indian Tribes. Nothing herein shall prevent the board from engaging in cooperative marketing of tribal and non-tribal salmon.

~~((17))~~ (15) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade, whether directly or through agents.

~~((18))~~ (16) "Handler" or "processor" shall mean those who purchase, process for market, or otherwise obtain from affected producers the affected commodity for further handling or sale in the course of commerce. "Handler" and "processor" includes those who ~~((eateh))~~ commercially harvest and then obtain from themselves, process, or further handle for subsequent direct sale to the public the affected commodity after having themselves produced that commodity as affected producers. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

~~((19))~~ (17) "Process" means to prepare the affected commodity or product therefrom by filleting, heading, gutting, canning, cooking, smoking, fermenting, dehydrating, drying or packaging.

~~((20))~~ (18) "Affected unit" means one pound landed weight of salmon.

**AMENDATORY SECTION** (Amending WSR 02-14-091, filed 7/1/02, effective 8/1/02)

**WAC 16-585-020 Puget Sound salmon commodity board.** (1) Administration. The provisions of this marketing order and the applicable provisions of the act shall be administered and enforced by the board as the designee of the director.

(2) Board membership. The board shall consist of seven members, six of whom shall be affected producers appointed or elected as provided in this section. The director shall appoint one additional member to the board who is not an affected producer to represent the ~~((department and the general public))~~ director. The position representing the director shall be a voting member.

(a) Director-appointed affected producer positions on the board shall be designated as position one, position two, and position three.

(b) Elected affected producer positions on the board shall be designated as position four, position five, and position six.

(c) The position representing the director who is not an affected producer shall be designated as position seven.

(3) Qualifications for board membership. The producer members of the board ~~((shall))~~ must be practical producers of the affected commodity and ~~((shall))~~ must be a citizen(s) and resident(s) of this state, over the age of ~~((twenty-five))~~ eighteen years ~~((, each of whom is and has))~~. Each affected producer board member must be and have been actually engaged in producing such commodity within the state of

Washington for a period of five years and has during that period derived a substantial portion of ~~((their))~~ his/her income therefrom and who is not primarily engaged in business, directly or indirectly, as a handler or other dealer. The qualification of members of the board as herein set forth must continue during their terms of office.

(4) Term of office.

(a) The term of office for members of the board shall be three years ~~((unless the marketing order is terminated earlier))~~. One-third of the membership as nearly as possible shall be appointed or elected each year.

~~((b))~~ ~~((Membership positions on the board shall be designated numerically as follows: Affected producers shall have positions one through six and, the member appointed by the director shall have position seven.~~

~~((e))~~) The term of office for the initial board members shall be as follows:

Positions one and four shall be for one year from the date of first election or until the first subsequent annual election is held.

Positions two and five shall be for two years from the date of first election or until the second subsequent annual election is held.

Positions three and six shall be for three years from the date of first election or until the third subsequent annual election is held.

(c) To accomplish the transition to a commodity board structure where the director appoints a majority of the board members, the names of the currently elected board members in positions one, two, and three shall be forwarded to the director for appointment within thirty days of the effective date of this amended marketing order.

(5) Nominations ~~((for election))~~ of elected or director-appointed board members. Each year the director shall call ~~((for))~~ a nomination meeting for elected or director-appointed affected producer board members. ~~((Such))~~ The meeting(s) shall be held at least thirty days in advance of the date set by the director for the election or advisory vote of board members.

(a) Notice of every ((such)) nomination meeting shall be published in a newspaper of general circulation ((in Western Washington)) within the affected area defined in this marketing order not less than ten days in advance of the date of ((such)) the meeting; and, in addition, written notice of every ((such)) meeting shall be given to all affected producers according to the list maintained by the ((director pursuant to RCW 15.65.200)) board pursuant to RCW 15.65.295.

(b) Nonreceipt of notice by any interested person shall not invalidate the proceedings at such nomination meeting.

(c) Any qualified affected producer may be nominated orally for membership on the board at a nomination meeting. Nominations may also be made within five days after ((any such)) the meeting by written petition filed with the director signed by not less than five affected producers ((entitled to have participated in said meeting)).

(d) If the board moves and the director approves that the nomination meeting procedure be deleted, the director shall give notice of the ((vacaney)) open commission position(s) by mail to all affected producers. The notice shall call for nominations in accordance with this marketing order and

shall give the final date for filing nominations which shall not be less than twenty days after the notice was mailed.

(e) When only one nominee is nominated by the affected producers for any position ~~((on the board the director shall deem that said nominee satisfies the requirements of the position and then it shall be deemed that said nominee has been duly elected)),~~ RCW 15.65.250 shall apply.

(6) Election or advisory vote of board members.

(a) ~~((The members of the board shall be elected by secret mail ballot held during the month of February of each year))~~ An election or advisory vote shall be conducted by secret ballot under the supervision of the director. Each affected producer shall be entitled to one vote.

(b) Elected affected producer members of the board shall be elected during the month of February of each year by a majority of the votes cast by the affected producers. ~~((Each affected producer shall be entitled to one vote.~~

(b)) If a nominee does not receive a majority of the votes on the first ballot, a run-off election shall be held by mail in a similar manner between the two candidates for such position receiving the largest number of votes.

(c) An advisory vote shall be conducted for affected producer board members appointed by the director under the provisions of RCW 15.65.243 during the month of January of each year. The names of the two candidates receiving the most votes in the advisory vote shall be forwarded to the director for potential appointment to the board. In the event there are only two candidates nominated for a board position, an advisory vote may not be held and the candidates' names shall be forwarded to the director for potential appointment.

(d) Notice of every election or advisory vote for board membership shall be published in a newspaper of general circulation within the affected area defined in this marketing order not less than ten days in advance of the date of ~~((such))~~ the election or advisory vote. Not less than ten days prior to every election or advisory vote for board membership, the director shall mail a ballot of the candidates to each affected producer entitled to vote whose name appears upon the list ~~((thereof compiled and))~~ of such affected producers maintained by the ~~((director in accordance with RCW 15.65.200))~~ board pursuant to RCW 15.65.295. Any other producer entitled to vote may obtain a ballot by application to the director upon establishing his/her qualifications.

(e) Nonreceipt of a ballot by any person entitled to vote shall not invalidate the election or advisory vote of a board member.

(7) ~~((Removal of board members. A board member may be removed by a vote of the board if that member fails to attend any three consecutive meetings of the board, duly noticed.~~

(8)) Vacancies ~~((prior to election)).~~

(a) In the event of a vacancy on the board in an elected position, the board shall appoint a qualified person to fill the unexpired term. The appointment shall be made at the board's first or second meeting after the position becomes vacant.

(b) In the event of a vacancy in a director-appointed position, the position shall be filled as specified in RCW 15.65.270.

~~((9))~~ (8) Quorum. A majority of the members shall constitute a quorum for the transaction of all business and the carrying out of all duties of the board.

~~((10))~~ (9) Board compensation. No member of the board shall receive any salary or other compensation, but each member may be compensated for each day in actual attendance at or traveling to and from meetings of the board or on special assignment for the board in accordance with RCW 43.03.230 together with travel expenses in accordance with RCW 43.03.050 and 43.03.060. The board may adopt, by resolution, provisions for reimbursement of actual travel expenses incurred by members of the board in carrying out the provisions of this marketing order pursuant to RCW 15.65.270. A board member may, in the discretion of the board, serve and be compensated as an employee of the commission.

~~((11))~~ (10) Powers and duties of the board. The board shall have the following powers and duties:

(a) To administer, enforce, and control the provisions of this order as the designee of the director;

(b) To elect a chairperson and ~~((such))~~ other officers as it deems advisable;

(c) To employ and discharge at its discretion such assistance and personnel ~~((including attorneys engaged in private practice of law, subject to the approval and supervision of the attorney general,))~~ as the board determines necessary and proper to carry out the purpose of the order and to effectuate the policies of the act;

(d) To pay from moneys collected as assessments or advances thereon the costs arising in connection with the formulation, issuance, administration, and enforcement of the order and rules adopted under the order. ~~((Such))~~ Expenses may be paid by check, draft, or voucher in such form and in such manner and upon the signature of ~~((such))~~ the person as the board may prescribe;

(e) To reimburse any applicant who has deposited funds with the director in order to defray the costs of formulating the order;

(f) To establish a fund to be deposited in a bank or banks or financial institution or institutions, approved for the deposit of state funds, in which all money received by the board, except the amount of petty cash for each day's needs, not to exceed one hundred dollars, shall be deposited each day;

(g) To keep or cause to be kept in accordance with accepted standards of good accounting practice, accurate records of all assessments, disbursements, moneys, and other financial transactions made and done pursuant to this order. ~~((Such))~~ Records, books, and accounts shall be audited as provided in the act subject to procedures and methods lawfully prescribed by the state auditor. ~~((Such))~~ Books and accounts shall be closed as of the last day of each fiscal year. A copy of ~~((such))~~ the audit shall be delivered within thirty days after the completion thereof to the governor, the director, the state auditor, and each member of the board;

(h) To require bond of board members and employees of the board in positions of trust in an amount the board deems necessary. Premiums for ~~((such))~~ a bond or bonds shall be paid by the board from assessments collected. ~~((Such))~~ A bond shall not be necessary if any ~~((such))~~ board member or

employee is covered by any blanket bond covering officials or employees of the state of Washington;

(i) To prepare a budget or budgets covering anticipated income and expenses to be incurred in carrying out the provisions of the order during each fiscal year. At least sixty days prior to the beginning of its fiscal year, the board shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget;

(j) To establish by resolution, a headquarters which shall continue as such unless and until so changed by the board. All records, books, and minutes of board meetings shall be kept at such headquarters;

(k) To recommend to the director, administrative rules, orders and amendments thereto for the exercise of ~~(his or her)~~ the director's power in connection with this marketing order;

(l) To carry out the provisions of RCW 15.65.510 covering the obtaining of information necessary to effectuate the provisions of this marketing order and the act, along with the necessary authority and procedure for obtaining such information;

(m) To bring actions or proceedings upon joining the director as a party for specific performance, restraint, injunction, or mandatory injunction against any person who violates or refuses to perform the obligations or duties imposed upon the person by the act or this order;

(n) To confer with and cooperate with the legally constituted authorities of other states of the United States for the purpose of obtaining uniformity in the administration of federal and state marketing regulations, licenses, agreements, or orders;

~~(o) ((To authorize the members of the commodity board, or their agents or designees, to participate in federal or state hearings or other proceedings concerning regulation of the manufacture, distribution, sale, or use of any pesticide as defined in RCW 15.38.030(1) or any agricultural chemical which is of use or potential use in producing the affected commodity, and may authorize the expenditure of commission funds for this purpose;~~

~~(p))~~ To carry out any other grant of authority or duty provided designees and not specifically set forth in this section;

~~((q))~~ (p) To sue or be sued;

~~((r))~~ (q) To borrow money and incur indebtedness;

(r) To work cooperatively with other local, state, and federal agencies; universities; and national organizations for the purposes provided in this order;

(s) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local. Personal service contracts must comply with chapter 39.29 RCW;

(t) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies;

(u) To enter into contracts or agreements for research in the production, processing, transportation, marketing, use, or distribution of Puget Sound gillnet salmon;

(v) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the

commission. The retention of a private attorney is subject to review by the office of the attorney general;

(w) To engage in appropriate fund-raising activities for the purpose of supporting activities authorized by this marketing order;

(x) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, manufacture, regulation, transportation, distribution, sale, or use of Puget Sound gillnet salmon including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission;

(y) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments under the provisions of this marketing order and data on the value of each affected producer's production for a minimum three-year period pursuant to RCW 15.65.280;

(z) To maintain a list of the names and addresses of persons who handle Puget Sound gillnet salmon within the affected area and data on the amount and value of the Puget Sound gillnet salmon handled for a minimum three-year period by each person pursuant to RCW 15.65.280;

(aa) To maintain a list of names and addresses of all affected persons who produce Puget Sound gillnet salmon and the amount, by unit, of Puget Sound gillnet salmon produced during the past three years pursuant to RCW 15.65.295;

(bb) To maintain a list of all persons who handle Puget Sound gillnet salmon and the amount of Puget Sound gillnet salmon handled by each person during the past three years pursuant to RCW 15.65.295;

(cc) To establish a foundation using commission funds as grant money for the purposes established in this marketing order pursuant to RCW 15.65.043.

~~((12))~~ (11) Procedures for board.

(a) The board shall hold regular meetings, at least semi-annually, and such meetings shall be held in accordance with chapter 42.30 RCW (Open Public Meetings Act). Notice of the time and place of regular meetings shall be published on or before January of each year in the Washington State Register. Notice of any change to the meeting schedule shall be published in the state register at least twenty days prior to the rescheduled meeting date.

(b) The board shall hold an annual membership meeting, at which time an annual report will be presented. The proposed budget shall be presented for discussion at the meeting. Notice of the annual meeting shall be given by the board at least ten days prior to the meeting by written notice to each producer and by notifying the regular news media.

(c) The board shall establish by resolution, the time, place, and manner of calling special meetings of the board with reasonable notice to the board members and affected producers. Notice for special meetings shall be in compliance with chapter 42.30 RCW.

**AMENDATORY SECTION** (Amending WSR 95-15-102, filed 7/19/95, effective 8/19/95)

**WAC 16-585-040 Assessments and collections.** (1) ~~The assessment on ((all commercial gillnet salmon))~~ the affected commodity harvested in the production area shall be as follows: Two percent of the landed value of Puget Sound gillnet salmon shall be assessed to the producer.

(2) For the purpose of collecting assessments, the board may require the person subject to the assessment or the person responsible for collection of producer assessments to give adequate assurance or security for its collection ~~((and/))~~ or payment.

(3) ~~((For the purpose of assuring and verifying compliance with the recordkeeping and reporting requirements of this order and the act, the director and the board through its duly authorized employees, shall have access to and the authority to audit and examine such records.))~~ All persons subject to the provisions of this marketing order shall make and render reports and furnish information to the director or the board as required under the act or this marketing order. Any financial and commercial information and records obtained by the director or commission are exempt from public disclosure under the provisions of RCW 15.65.203 and 42.17.31907, but shall not be disclosed to any other person save to a person with like right to obtain the same or any attorney employed by the director or the commission to give legal advice thereon or by court order.

(4) ~~((All reports and records furnished or submitted by producers, handlers or processors to, or obtained by, the board or employees of the board which contain data or information constituting a trade secret or disclosing the trade position, financial condition, or business operations of the particular producer or handler or processor from whom received, shall be treated as confidential, and the reports shall not be disclosed to board members and shall at all times be kept in the custody and under the control of one or more employees of the board who shall not disclose such information to any person other than the director, or his authorized agents. Disclosure of compilations of general reports from data and information submitted by producers is authorized subject to the prohibition of revealing individual producers' or handlers' identities or operations.))~~ For the purpose of assuring and verifying compliance with the recordkeeping and reporting requirements of this order and the act, the director and the board through its duly authorized employees, shall have access to and the authority to audit and examine such reports or information.

(5) Any moneys collected or received by the board pursuant to the provisions of this marketing order during or with respect to any year, may be refunded on a pro rata basis at the close of ~~((such))~~ each year or at the close of ~~((such))~~ a period as the board determines to be reasonably adapted to effectuate the declared policies of the act and the purposes of this marketing order, to all persons from whom such moneys were collected or received or may be carried over into and used with respect to the next succeeding year.

(6) Any due and payable assessment herein levied in ~~((such))~~ a specified amount as provided under the act and this marketing order and any assessment which is required hereunder to be collected, shall constitute a personal debt of every

person so assessed, responsible for collection, or who otherwise owes the same, and the same shall be due and payable to the board when payment is called for by it. In the event any person fails to pay the board the full amount of ~~((such))~~ assessment or ~~((such))~~ other sum on or before the date due, the board may, and is hereby authorized to, add to ~~((such))~~ the unpaid assessment or sum an amount not exceeding ten percent of the same to defray the cost of enforcing the collecting of the ~~((same))~~ unpaid assessment. In the event of failure of ~~((such))~~ a person or persons to pay any ~~((such))~~ due and payable assessment or other ~~((such))~~ sum, the board may bring a civil action against ~~((such))~~ a person or persons in a state court of competent jurisdiction for the collection thereof, together with the above specified ten percent plus the costs and expenses of suit and a reasonable attorney's fee therein, and ~~((such))~~ the action shall be tried and judgment rendered as in any other cause of action for debt due and payable.

(7) Assessments may, with the ~~((concurrence))~~ consent of the affected producer, be collected prospectively.

**AMENDATORY SECTION** (Amending WSR 95-15-102, filed 7/19/95, effective 8/19/95)

**WAC 16-585-050 Time—Place—Method for payment and collection of assessments—Landing reports.** The following procedure is established for the reporting and paying of assessments:

(1) At the time of Puget Sound gillnet salmon landing, first sale ~~((and/))~~ or completion of a Washington department of fish and wildlife landing receipt (fish ticket), the producer shall pay and the handler shall collect and deduct from the price paid to the producer the producer's two percent assessment on the landed value of the Puget Sound gillnet salmon. This collection and deduction shall be accurately reported on the fish ticket.

(2) No later than thirty days from the last day of any month in which any Puget Sound gillnet salmon has been obtained by a handler, each such handler shall:

(a) Remit to the board all sums required to be collected and deducted from affected producers upon their landings during that month for a total of two percent of the landed value of Puget Sound gillnet salmon obtained by that handler during that month.

(b) Provide to the board with such remittance a report indicating the full name, address, and commercial salmon fishing license number of each affected producer from whom the said handler has purchased or obtained affected commodity during the said month and for each such affected producer, indicate the landed value of the Puget Sound gillnet salmon purchased or obtained, and the amount of the producer's two percent assessment which has been collected from that producer.

(3) The board may require cold storage facilities storing Puget Sound gillnet salmon to file with the board information and reports regarding the amount of the affected commodity in storage, the date of receipt, and the name, address, and commercial salmon fishing license number of each such owner, and may require that such Puget Sound gillnet salmon not be shipped from a cold storage facility until the facility



has been notified by the commission that the commodity owner has paid the commission for any assessments imposed by this marketing order.

(4) All assessments due from affected producers under this order shall be payable at the time of completion of a Washington department of fish and wildlife landing receipt (fish ticket) and shall be paid by the producer and collected by the handler at that time and shall be remitted to the board as provided in this order.

(5) Producer-handlers shall pay the producer assessments and shall fulfill all the responsibilities of handlers and producers under this order including the collection, record-keeping, reporting, and remittance of assessments.

(6) When, in the judgment of the board, a particular handler or producer-handler has demonstrated its unreliability to make the collection or remittance of the producer assessments called for in this order, the board may require that said handler or producer-handler not transport, carry, ship, sell, market or otherwise handle or dispose of any of the affected commodity until every due and payable assessment provided for under this order has been paid to the board and the receipt issued.

**AMENDATORY SECTION** (Amending WSR 95-15-102, filed 7/19/95, effective 8/19/95)

**WAC 16-585-060 Obligations of the board.** Obligations incurred by the board or employees or agents thereof pertaining to their performance or nonperformance or misperformance of any matters or things authorized, required, or permitted them by the act or this order, and any other liabilities or claims against them or any of them shall be enforced in the same manner as if the whole organization under this order were a corporation. No liability for the debts or actions of the board, employees, or agents incurred in their official capacity under this order shall exist either against the board, officers, employees, ~~(and)~~ or agents in their individual capacity, nor against the state of Washington or any subdivision or instrumentality thereof nor against any other organization, administrator, or board (or employee or agent thereof) established pursuant to this act or the assets thereof. The board, and its agents and employees, shall not be held responsible individually in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such person or employee shall be held responsible individually for any act or omission of any other board, member of the board, or other person. The liability of the members of the board shall be several and not joint and no member shall be liable for the default of any other member.

**AMENDATORY SECTION** (Amending WSR 95-15-102, filed 7/19/95, effective 8/19/95)

**WAC 16-585-070 Termination of this order.** ~~((This order shall be terminated if the director finds that fifty one percent by number and fifty one percent by volume of production of the affected producers assent to such action. The director may ascertain without compliance with RCW 15.65.050 through 15.65.130 of the act whether such termi-~~

~~nation is assented to whenever twenty percent by number or twenty percent by volume of production of the affected producers file written applications with the director for termination. The termination shall become effective at the end of the fiscal year.)) Termination shall be accomplished pursuant to RCW 15.65.183 through 15.65.193.~~

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-585-030 Marketing order purposes.

#### WSR 05-13-029

#### PERMANENT RULES

#### DEPARTMENT OF

#### SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 3, 2005, 4:14 p.m., effective July 4, 2005]

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

Purpose: To adopt new WAC 388-450A-0010 Can my subsidized income be garnished?, in order to prevent TANF (temporary assistance to needy families) subsidized wages from being garnished per RCW 74.04.280 and to encourage participation by TANF parents in working TANF subsidized jobs.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Other Authority: RCW 74.04.280.

Adopted under notice filed as WSR 05-07-133 on March 22, 2005.

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

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

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

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

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

Date Adopted: June 1, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

#### NEW SECTION

**WAC 388-450A-0010 Can my subsidized income be garnished?** (1) Your subsidized income cannot be garnished. Subsidized income is income that is partly or entirely paid from temporary assistance for needy families (TANF) funds.

Examples of subsidized income are community jobs and WorkFirst work study.

(2) For how your subsidized income affects your benefits, see WAC 388-450-0035 or 388-450-0050.

**WSR 05-13-030**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)

[Filed June 3, 2005, 4:16 p.m., effective July 4, 2005]

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

Purpose: This amendment to WAC 388-310-1400 WorkFirst—Community service, will add a new activity, job preparation, to community services to better prepare parents for a successful job search.

Citation of Existing Rules Affected by this Order: Amending WAC 388-310-1400.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Adopted under notice filed as WSR 05-08-121 on April 5, 2005.

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

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

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

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

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

Date Adopted: June 1, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 00-06-062, filed 3/1/00, effective 3/1/00)

**WAC 388-310-1400 WorkFirst—Community service.** (1) **What is community service?**

Community service includes two types of activities for mandatory participants:

(a) Unpaid work (such as the work performed by volunteer workers) that you perform for a charitable nonprofit organization, federal, state, local or tribal government or district; or

(b) An activity approved by your case manager which benefits you, your family, your community or your tribe. These activities may include traditional activities that perpetuate tribal culture and customs.

(2) **What type of community service[s] activities benefit me, my family, my community or my tribe and might be included in my individual responsibility plan?**

The following types of community service activities benefit you, your family, your community or your tribe and might be included in your individual responsibility plan:

(a) Caring for a disabled family member;

(b) Caring for a child, if you are fifty-five years old or older and receiving TANF or SFA assistance for the child as a relative (instead of as the child's parent);

(c) Providing childcare for another WorkFirst participant who is doing community service;

(d) Actively participating in a drug or alcohol assessment or treatment program which is certified or contracted by the state under chapter 70.96A RCW;

(e) Participating in family violence counseling or drug or alcohol treatment that will help you become employable or keep your job (this is called "specialized services" in state law); ~~(and/or)~~

(f) Participating in the pregnancy to employment pathway; ~~and/or~~

(g) Job preparation.

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

**WSR 05-13-038**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)

[Filed June 6, 2005, 4:29 p.m., effective July 7, 2005]

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

Purpose: This WAC revision updates and clarifies existing policy regarding vision care services; clarifies client and program eligibility and scope of coverage of vision care services; and clarifies payment limitations and incorporates policy changes related to bringing MAA's vision care services program into closer alignment with industry standards and safety.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-544-0200; and amending WAC 388-544-0050, 388-544-0100, 388-544-0150, 388-544-0250, 388-544-0300, 388-544-0350, 388-544-0400, 388-544-0450, 388-544-0500, 388-544-0550, and 388-544-0600.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.510, and 74.09.520.

Other Authority: 42 C.F.R. 440.120 and 440.225.

Adopted under notice filed as WSR 05-08-092 on April 1, 2005.

Changes Other than Editing from Proposed to Adopted Version: A few spelling errors were fixed. Also, under WAC 388-544-0350(2), the following wording was added (underlined): "MAA allows bifocal lenses to be replaced with single vision or trifocal lenses or trifocal lenses to be replaced with bifocal or single vision lenses when all of the following apply:"

A final cost-benefit analysis is available by contacting Marlene Black, Vision Care, Medical Assistance Administration, Division of Medical Management, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1577, fax (360) 586-8827, e-mail blackml@dshs.wa.gov.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 2, Amended 11, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 2, Amended 11, Repealed 1.

Date Adopted: June 1, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

#### NEW SECTION

**WAC 388-544-0010 Vision care - general.** (1) The medical assistance administration (MAA) covers the vision care listed in this chapter only, subject to the exceptions, restrictions, and limitations listed in this chapter when they are:

(a) Within the scope of the eligible client's medical care program (see chapter 388-529 WAC); and

(b) Medically necessary as defined in WAC 388-500-0005.

(2) MAA evaluates a request for any service that is listed as noncovered in this chapter under the provisions of WAC 388-501-0160.

(3) MAA evaluates requests for covered services that are subject to limitations or other restrictions and approves such services beyond those limitations or restrictions when medically necessary, under the standards for covered services in WAC 388-501-0165.

(4) MAA evaluates a request for a service that is in a covered category, but has been determined to be experimental or investigational under WAC 388-531-0550, under the provisions of WAC 388-501-0165.

**AMENDATORY SECTION** (Amending WSR 01-01-010, filed 12/6/00, effective 1/6/01)

**WAC 388-544-0050 Vision care - definitions** (~~(for vision care services)~~). The following definitions (~~(and abbreviations)~~) and those found in WAC 388-500-0005 apply to this chapter. (~~(Defined words and phrases are bolded the first time they are used in the text.)~~) Unless otherwise defined in this chapter, medical terms are used as commonly defined within the scope of professional medical practice in the state of Washington.

**"Blindness"** - A diagnosis of visual acuity for distance vision of twenty/two hundred or worse in the better eye with best correction or a limitation of the client's visual field (widest diameter) subtending an angle of less than twenty degrees from central.

**"Conventional soft contact lenses"** or **"rigid gas permeable contact lenses"** - FDA-approved contact lenses that do not have a scheduled replacement (discard and replace with new contacts) plan. The soft lenses usually last one year, and the rigid gas permeable lenses usually last two years. Although some of these lenses are designed for extended wear, MAA generally approves only those lenses that are designed to be worn as daily wear (remove at night).

**"Disposable contact lenses"** - FDA-approved contact lenses that have a planned replacement schedule (e.g., daily, every two weeks, monthly, quarterly). The contacts are then discarded and replaced with new ones as scheduled. Although many of these lenses are designed for extended wear, MAA generally approves only those lenses that are designed to be worn as daily wear (remove at night).

**"Extended wear soft contacts"** - Contact lenses that are designed to be worn for longer periods than daily wear (remove at night) lenses. These can be conventional soft contact lenses or disposable contact lenses designed to be worn for several days and nights before removal.

**"Hardware"** - Eyeglass frames and lenses and contact lenses.

**"Specialty contact lens design"** - Custom contact lenses that have a more complex design than a standard spherical lens. These specialty contact lenses (e.g., lenticular, aspheric, or myodisc) are designed for the treatment of specific disease processes, such as keratoconus, or are required due to high refractive errors. This definition of specialty contact lens does not include lenses used for surgical implantation.

**"Stable visual condition"** (~~(means that)~~) - A client's eye condition has no acute disease or injury; or the client has reached a point after any acute disease or injury where the variation in need for refractive correction has diminished or steadied. The client's vision condition has stabilized to the extent that eyeglasses or contact lenses are appropriate and that any prescription for refractive correction is likely to be sufficient for one year or more.

**"Visual field exams or testing"** (~~(means)~~) - A process to determine defects in the field of vision and test(~~(s)~~) the function of the retina, optic nerve and optic pathways. The process may include simple confrontation to increasingly complex studies with sophisticated equipment.

**AMENDATORY SECTION** (Amending WSR 01-01-010, filed 12/6/00, effective 1/6/01)

**WAC 388-544-0100 Vision care - eligible clients** (~~(eligibility for vision care services)~~). (1) (~~(The medical assistance administration (MAA) covers vision care services for clients eligible for the following "scope of care" designations (see WAC 388-529-0100))~~) Clients who receive services under the following medical assistance programs are eligible for covered vision care:

(a) Categorically needy program ((e.g.,) CN or CNP (~~(, CHIP, children's health)~~));

(b) (~~Medically needy (MNP); and~~) Categorically needy program - Children's health insurance program (CNP-CHIP);

(c) (~~Medical care services (MCS or GAU/ADATSA))~~) Limited casualty program - medically needy program (LCP-MNP);

(d) General assistance (GA-U/ADATSA) (within Washington state or designated border cities); and

(e) Emergency medical only programs when the services are directly related to an emergency medical condition only.

(2) (~~MAA does not cover vision care services for clients with the following program designations:~~

(a) Medically indigent (MIP) unless the qualifying emergency medical condition is related to the eye(s);

(b) Family planning only;

(c) Any program designated "emergency medical only";  
or

(d) Any other program that does not meet the conditions of subsection (1) of this section)) Clients who are enrolled in an MAA managed care plan are eligible under fee-for-service for covered vision care services that are not covered by their plan, subject to the provisions of chapter 388-544 WAC and other applicable WAC.

AMENDATORY SECTION (Amending WSR 01-01-010, filed 12/6/00, effective 1/6/01)

WAC 388-544-0150 Vision care - provider requirements (~~(for vision care providers)~~). (1) (~~The following providers are eligible to enroll/contract with MAA to provide and bill for vision care services furnished to eligible clients:~~

(a) Ophthalmologists/MD or DO.

(b) Optometrists; and

(c) Opticians)) Enrolled/contracted eye care providers must:

(a) Meet the requirements in chapter 388-502 WAC;

(b) Provide only those services that are within the scope of the provider's license;

(c) Obtain all hardware and contact lenses for MAA clients from MAA's contracted supplier; and

(d) Return all unclaimed hardware and contact lenses to MAA's contracted supplier using a postage-paid envelope furnished by the contractor.

(2) (~~Enrolled/contracted eye care providers must:~~

(a) Meet the requirements in chapter 388-502 WAC;

(b) Provide only those services that are within the scope of the provider's license; and

(c) Obtain all hardware and contact lenses from MAA's contract suppliers)) The following providers are eligible to enroll/contract with MAA to provide and bill for vision care services furnished to eligible clients:

(a) Ophthalmologists;

(b) Optometrists;

(c) Opticians; and

(d) Ocularists.

AMENDATORY SECTION (Amending WSR 01-01-010, filed 12/6/00, effective 1/6/01)

WAC 388-544-0250 Vision care - covered eye services (~~MAA does not cover without MAA's prior authorization~~) (examinations and refractions). (1) (~~MAA evaluates a request for any service that is listed as nonecovered in this chapter under the provisions of WAC 388-501-0165.~~

(2) ~~MAA evaluates a request for a service that is in a covered category, but has been determined to be experimental or investigational under WAC 388-531-0550, under the provisions of WAC 388-501-0165 which relate to medical necessity.~~

(3) ~~MAA evaluates a request for a covered service that is subject to limitation(s) or other restriction(s), and approves such a service beyond those specific limitations or restrictions when the service is medically necessary, under the standards for covered services in WAC 388-501-0165.~~

(4) ~~The vision care services that MAA does not cover without MAA's prior authorization include, but are not limited to:~~

(a) ~~Any of the following types of contact lenses:~~

(i) ~~Disposable lenses;~~

(ii) ~~Extended wear soft lenses; or~~

(iii) ~~Extended wear soft toric lenses.~~

(b) ~~Any eye service or hardware that MAA considers not to be medically necessary;~~

(c) ~~Any eyeglasses (frames and/or lenses) or contact lenses upgraded at private expense to avoid MAA's contract limitations (e.g., frames that are not available through MAA's contract or noncontract frames or lenses for which the client or other person pays the difference between MAA's payment and the total cost) (see WAC 388-544-0300(7) and 388-544-0350(3));~~

(d) ~~Bifocal additions to eyeglasses with bifocal correction of less than 1.0 diopter;~~

(e) ~~Both eyeglasses and contact lenses in a two-year period for any client (see WAC 388-544-0200 (3)(b) for backup eyeglass exceptions);~~

(f) ~~Eyeglasses or contact lenses when the prescribed need does not meet the minimum corrections described in this chapter;~~

(g) ~~Eyeglasses or contact lenses when the prescription is over two years old;~~

(h) ~~Group vision screening for eyeglasses;~~

(i) ~~Lens replacements for a refractive change when the client does not have a stable visual condition as defined in WAC 388-544-0050 (see WAC 388-544-0350(1));~~

(j) ~~Other vision services or hardware for persons enrolled in MAA's managed care program (Healthy Options) when the requirements of that program have not been met;~~

(k) ~~Orthoptics and visual training therapy;~~

(l) ~~Plano lenses (no refractive correction) for both eyes, except as provided in WAC 388-544-0350 (12)(a);~~

(m) ~~Progressive additions lenses, including blended bifocals;~~

(n) ~~Refractive surgery of any type (e.g., Radial Keratotomy or laser resurfacing);~~

(o) ~~Separate charges for eye exams conducted in combination with emergency or operating room procedures;~~

~~(p) Strabismus surgery for a client eighteen years of age or older, unless the client meets MAA's established prior authorization criteria for correctable double vision;~~

~~(q) Sunglasses or colored/tinted lenses requested for cosmetic or other nonmedical reasons;~~

~~(r) Two pairs of eyeglasses (e.g., instead of one pair of multifocals); and~~

~~(s) Other services or hardware that do not meet the requirements in this chapter)) The medical assistance administration (MAA) covers eye examinations and refraction services for asymptomatic clients under the following conditions and limitations, unless the circumstances in subsections (2) or (3) of this section apply:~~

~~(a) For clients twenty-one years of age or older, once every twenty-four months;~~

~~(b) For clients twenty years of age or younger, once every twelve months; or~~

~~(c) For clients with developmental disabilities, regardless of age, once every twelve months.~~

~~(2) MAA covers eye examinations and refraction services as often as medically necessary when:~~

~~(a) The provider is diagnosing or treating the client for a medical condition that has symptoms of vision problems or disease; or~~

~~(b) The client is on medication that affects vision.~~

~~(3) MAA covers eye examinations/refractions outside the time limitations in subsection (1) of this section when the eye examination/refraction is necessary due to lost or broken eyeglasses/contacts. In this situation, MAA does not require authorization for children. To receive payment for an adult client, providers must:~~

~~(a) Follow the expedited prior authorization process; and~~

~~(b) Document the following in the client's file:~~

~~(i) The eyeglasses or contacts are lost or broken; and~~

~~(ii) The last examination was at least eighteen months ago.~~

~~(4) MAA covers visual field exams for the diagnosis and treatment of abnormal signs, symptoms, or injuries. To receive payment, providers must document all of the following in the client's record:~~

~~(a) The extent of the testing;~~

~~(b) Why the testing was reasonable and necessary for the client; and~~

~~(c) The medical basis for the frequency of testing.~~

**AMENDATORY SECTION** (Amending WSR 01-01-010, filed 12/6/00, effective 1/6/01)

**WAC 388-544-0300 ((~~Eye~~glasses and service)) Vision care - covered eyeglasses (frames and/or lenses) and repair services.** (1) The medical assistance administration (MAA) covers ~~((pre-approved eyeglass frames through MAA's contracted supplier))~~ eyeglasses for asymptomatic clients:

~~(a) Under the following conditions and limitations:~~

~~(i) For clients twenty-one years of age or older, once every twenty-four months;~~

~~(ii) For clients twenty years of age or younger, once every twelve months; or~~

~~(iii) For clients with developmental disabilities, regardless of age, once every twelve months.~~

~~(b) When:~~

~~(i) The client has a stable visual condition;~~

~~(ii) The client's treatment is stabilized;~~

~~(iii) The prescription is less than eighteen months old; and~~

~~(iv) One of the following minimum correction needs in a least one eye is documented in the client's file:~~

~~(A) Sphere power equal to, or greater than, plus or minus 0.50 diopter;~~

~~(B) Astigmatism power equal to, or greater than, plus or minus 0.50 diopter; or~~

~~(C) Add power equal to, or greater than, 1.0 diopter for bifocals and trifocals.~~

~~(2) MAA covers ((~~eyeglass frames, with specific time limits, for eligible clients who:~~~~

~~(a) Are twenty-one years of age and older, once every twenty-four months;~~

~~(b) Are twenty years of age and younger, once every twelve months;~~

~~(c) Are identified on the MAID card as being developmentally disabled (adults or children), once every twelve months;~~

~~(d) Have been unable to adjust to contact lenses after thirty days. The provider must document the client's inability to adjust and the client must return the contact lenses to the provider)) eyeglasses and/or lenses for clients who are twenty years of age or younger with a diagnosis of accommodative esotropia or any strabismus correction. In this situation, the client is not subject to the requirements in subsection (1)(b) of this section.~~

~~(3) MAA covers ((~~preapproved special~~)) selected frames called "durable ((~~and~~))" or "flexible" frames((~~"~~)) through MAA's contracted supplier when a client((~~:~~~~

~~(a) Is diagnosed with a seizure disorder that results in frequent falls; or~~

~~(b)) has a diagnosed medical condition that has ((~~resulted in~~)) contributed to two or more broken eyeglass frames in a twelve-month period ((~~e.g., Tourette's syndrome~~)). To receive payment, providers must follow the expedited prior authorization process.~~

~~(4) MAA covers ((~~replacement eyeglass frames that have been lost, broken, or stolen:~~~~

~~(a) For adults, only with MAA's prior authorization (see WAC 388-501-0165); and~~

~~(b) Without MAA's prior authorization for clients who are either:~~

~~(i) Twenty years of age or younger; or~~

~~(ii) Identified on the MAID card as being developmentally disabled, regardless of the client's age)) the cost of coating contact eyeglass frames to make the frames nonallergenic if the client has a medically diagnosed and documented allergy to the materials in the available eyeglass frames.~~

~~(5) MAA ((~~eovers~~)) pays for incidental repairs to a client's eyeglass frames when ((~~both~~)) all of the following apply:~~

~~(a) The ((~~repair or adjustment is not typically provided to the public at no cost; and~~)) provider typically charges the general public for the repair or adjustment;~~

(b) The contractor's one year warranty period has expired; and

(c) The cost of the repair does not exceed MAA's cost for replacement frames. ((MAA's reimbursement for repairs does not exceed its payment level for replacement frames.))

(6) ((If the client has a medically diagnosed allergy to the materials in the available eyeglass frames, MAA covers the cost of coating the contract eyeglass frames to make the frames nonallergenic)) MAA covers replacement eyeglass frames and/or lenses that have been lost or broken. To receive payment, providers must follow the expedited prior authorization process for clients twenty-one years of age and older. MAA does not require authorization for clients who are twenty years of age and younger or for clients with developmental disabilities, regardless of age. (See WAC 388-544-0350 for additional coverage of lens replacement.)

(7) MAA ((does not allow clients to upgrade eyeglass frames and pay only the upgrade costs in order to avoid MAA's contract limitations (see WAC 388-544-0250 (1)(e) and 388-544-0350(3)))) covers one pair of back-up eyeglasses when contact lenses are medically necessary and the contact lenses are the client's primary visual correction aid as described in WAC 388-544-0400(1). MAA limits coverage for back-up eyeglasses as follows:

(a) For clients twenty-one years of age and older, once every six years;

(b) For clients twenty years of age or younger, once every two years; or

(c) For clients with developmental disabilities, regardless of age, once every two years.

AMENDATORY SECTION (Amending WSR 01-01-010, filed 12/6/00, effective 1/6/01)

WAC 388-544-0350 Vision care - covered plastic scratch-resistant eyeglass lenses and services. (1) The medical assistance administration (MAA) covers ((medically necessary eyeglass lenses to correct a client's vision if both of the following apply:

(a) The condition requiring correction is a stable visual condition as defined in WAC 388-544-0050; and

(b) The prescription is less than two years old.

(2) MAA covers)) the following ((types of medically necessary)) plastic scratch-resistant eyeglass lenses:

(a) Single vision lenses;

(b) Round or flat top D-style bifocals;

(c) Flat top trifocals ((that are twenty-five or twenty-eight millimeters)); and

(d) Slab-off and prism lenses (including Fresnel lenses)((; and

(e) Glass lenses fifty-four millimeters and smaller)).

(2) MAA allows bifocal lenses to be replaced with single vision or bifocal lenses or trifocal lenses to be replaced with bifocal or single vision lenses when all of the following apply:

(a) A client has attempted to adjust to the bifocals or trifocals for at least sixty days;

(b) The client is unable to make the adjustment; and

(c) The bifocal or trifocal lenses being replaced are returned to the provider.

(3) ((For clients who own their own serviceable eyeglass frames and request lenses only, MAA covers these requests if the lenses are medically necessary and the size and style of the required lens(es) meet MAA's contract requirements)) MAA covers high index lenses for clients who require one of the following in at least one eye:

(a) A spherical refractive correction of plus or minus eight diopters or greater; or

(b) A cylinder correction of plus or minus eight diopters or greater.

To receive payment, providers must follow the expedited prior authorization process.

(4) MAA covers ((medically necessary lens replacements without regard to time limits when (a), (b), and (c) of this subsection apply:

(a) One of the following caused the vision change:

(i) Eye surgery;

(ii) The effect(s) of prescribed medication; or

(iii) One or more diseases;

(b) Both the eye condition and the treatment have stabilized as defined in WAC 388-544-0050, Stable visual condition; and

(c) The lens correction has at least one diopter difference between the old and new prescriptions.

(5) MAA covers lens replacement for lost or broken lenses according to the same standards as frames in WAC 388-544-0300 (2) and (4).

(6) MAA allows bifocal lenses to be replaced with single vision lenses or trifocal lenses to be replaced with bifocals or single vision lenses when all of the following apply:

(a) A client has attempted to adjust to the bifocals or trifocals for at least sixty days;

(b) The client is unable to make the adjustment; and

(c) The bifocal or trifocal lenses being replaced are returned to the provider.

(7) MAA covers plastic executive bifocals or trifocals only for clients who are diagnosed with:

(a) Accommodative esotropia; or

(b) Strabismus.

(8) MAA covers high index lenses when the client requires a refractive correction of plus or minus eight diopters or greater.

(9) MAA covers the tinting of plastic lenses when:

(a) The client's medical need is diagnosed and documented as a chronic eye condition causing photophobia; and

(b) The tinting is done by MAA's contracted lens supplier.

(10) MAA covers glass photochromatic lenses when the client's medical need is diagnosed and documented as related to either (a) or (b) of this subsection:

(a) Ocular albinism; or

(b) Blindness, defined as:

(i) Visual acuity for distance vision of twenty-two hundred or worse in the better eye with best correction; or

(ii) A limitation of the client's visual field (widest diameter) subtending an angle of less than twenty degrees from central.

(11) MAA covers treating plastic lenses for scratch resistance only when the client is either:

(a) Twenty years of age or younger; or

~~(b) Identified on the MAID card as being developmentally disabled.~~

~~(12) MAA covers polycarbonate lenses when a client is any of the following:~~

~~(a) Blind in one eye as defined in subsection (10) of this section and the client needs protection for the other eye, regardless of whether a vision correction is required;~~

~~(b) Twenty years of age or younger and diagnosed with strabismus or amblyopia; or~~

~~(e) Identified on the MAID card as being developmentally disabled)) the tinting of plastic lenses through MAA's contracted lens supplier. The client's medical need must be diagnosed and documented as one or more of the following chronic (expected to last longer than three months) eye conditions causing photophobia:~~

~~(a) Blindness;~~

~~(b) Chronic corneal keratitis;~~

~~(c) Chronic iritis, iridocyclitis;~~

~~(d) Diabetic retinopathy;~~

~~(e) Fixed pupil;~~

~~(f) Glare from cataracts;~~

~~(g) Macular degeneration;~~

~~(h) Migraine disorder;~~

~~(i) Ocular albinism;~~

~~(j) Optic atrophy and/or optic neuritis;~~

~~(k) Rare photo-induced epilepsy conditions; or~~

~~(l) Retinitis pigmentosa.~~

~~(5) MAA covers plastic photochromatic lenses when the client's medical need is diagnosed as relating to ocular albinism or retinitis pigmentosa.~~

~~(6) MAA covers polycarbonate lenses as follows:~~

~~(a) For clients who are blind in one eye and need protection for the other eye, regardless of whether a vision correction is required;~~

~~(b) Infants and toddlers with motor ataxia;~~

~~(c) For clients twenty years of age or younger who are diagnosed with strabismus or amblyopia; or~~

~~(d) For clients with developmental disabilities.~~

~~(7) MAA covers requests for lenses only when the client owns frames not purchased by MAA, when:~~

~~(a) The eyeglass frames are serviceable (MAA and MAA's contractor do not accept responsibility for these frames); and~~

~~(b) The size and style of the required lenses meet MAA's contract requirements.~~

~~(8) MAA covers replacement lenses as follows:~~

~~(a) Due to lost or broken lenses according to WAC 388-544-0300(6); and~~

~~(b) Due to refractive changes, without regard to time limits, when caused by one of the following:~~

~~(i) Eye surgery, the effects of prescribed medication, or one or more diseases affecting vision. In this case, all of the following must be documented in the client's file:~~

~~(A) The client has a stable visual condition;~~

~~(B) The client's treatment is stabilized;~~

~~(C) The lens correction must have a 1.0 or greater diopter change between the sphere or cylinder correction in at least one eye; and~~

~~(D) The previous and new refraction.~~

(ii) Headaches, blurred vision, or difficulty with school or work. In this case, all of the following must be documented in the client's file:

(A) Copy of current prescription (less than eighteen months old);

(B) Date of last dispensing, if known;

(C) Absence of a medical condition that is known to cause temporary visual acuity changes (e.g., diabetes, pregnancy, etc.); and

(D) A refractive change of at least .75 diopter or greater between the sphere or cylinder correction in at least one eye.

(c) To receive payment for replacement lenses, providers must follow the expedited prior authorization process.

AMENDATORY SECTION (Amending WSR 01-01-010, filed 12/6/00, effective 1/6/01)

WAC 388-544-0400 Vision care - covered contact lenses and services. (1) The medical assistance administration (MAA) covers ~~((gas permeable or daily wear soft contact lenses as the client's primary refractive correction method if a client has a vision correction of plus or minus 6.0 diopters or greater.~~

~~(2) MAA does not cover contact lenses if the client's ocular condition makes it medically inadvisable (contraindicated) for the client to use contact lenses.~~

~~(3) MAA covers contact lens replacements:~~

~~(a) Once every twelve months for normal replacement; or~~

~~(b) When the contact lenses are lost or damaged, with the following limitations:~~

~~(i) The prescription must not be over seventeen months old; and~~

~~(ii) The date of dispensing for the lost or damaged lenses must not be within the past eleven months.~~

~~(4) MAA does not cover contact lenses for a patient who has received MAA covered eyeglasses within the past two years unless the provider:~~

~~(a) Documents the medical necessity to MAA's satisfaction; and~~

~~(b) Receives prior authorization from MAA.~~

~~(5) MAA covers soft toric contact lenses (daily wear) for clients with astigmatism requiring a correction equal to or greater than one diopter (plus or minus):~~

~~(6) MAA covers lenticular, aspheric and myodisc contact lenses when the client has one or more of the following:~~

~~(a) Multiple cataract surgeries on the same eye;~~

~~(b) Aphakia;~~

~~(c) Keratoconus with refractive error of plus or minus ten diopters; or~~

~~(d) Corneal softening (e.g., bullous keratopathy).~~

~~(7) MAA covers contact lenses when:~~

~~(a) The client has high anisometropia (the eyes have refractive errors that differ, left to right, by plus or minus three diopters or greater); and~~

~~(b) Eyeglasses cannot reasonably correct the refractive errors)) the following types of contact lenses as the client's primary refractive correction method when a client has a spherical correction of plus or minus 6.0 diopters or greater in at least one eye. In order to qualify for the spherical correc-~~

tion, the prescription may be from either the glasses or the contact lenses prescriptions and/or written in either "minus cyl" or "plus cyl" form. See subsection (2) of this section for exception to the plus or minus 6.0 diopter criteria.

(a) Conventional soft contact lenses or rigid gas permeable contact lenses that are prescribed for daily wear; or

(b) Disposable contact lenses that are prescribed for daily wear and have a monthly or quarterly planned replacement schedule, as follows:

(i) Twelve pairs of monthly replacement contact lenses;  
or

(ii) Four pairs of three-month replacement contact lenses.

(2) For clients diagnosed with high anisometropia, MAA covers the contact lenses in subsection (1) of this section when the client's refractive error difference between the two eyes is plus or minus 3.0 diopters and eyeglasses cannot reasonably correct the refractive errors.

(3) A client who qualifies for contact lenses as the primary refractive correction method must choose one style of contact lenses from those listed in subsection (1) of this section for each twelve-month period of coverage.

(4) MAA covers soft toric contact lenses for clients with astigmatism requiring a cylinder correction of plus or minus 1.0 diopter in at least one eye and the client also meets the spherical correction listed in subsection (1) of this section.

(5) MAA covers specialty contact lens designs for clients who are diagnosed with one or more of the following:

(a) Aphakia;

(b) Keratoconus; or

(c) Corneal softening.

(6) MAA covers replacement contact lenses as follows:

(a) Once every twelve months for lost or damaged contact lenses; or

(b) As often as medically necessary when all of the following apply:

(i) One of the following caused the vision change:

(A) Eye surgery;

(B) The effect(s) of prescribed medication; or

(C) One or more diseases affecting vision.

(ii) The client has a stable visual condition;

(iii) The client's treatment is stabilized; and

(iv) The lens correction has a 1.0 or greater diopter change in at least one eye between the sphere or cylinder correction. The previous and new refraction must be documented in the client's record.

(c) To receive payment for adults, providers must follow the expedited prior authorization process. Prior authorization is not required for children or for clients with developmental disabilities.

(7) MAA covers therapeutic contact bandage lenses only when needed immediately after eye injury or eye surgery.

**AMENDATORY SECTION** (Amending WSR 01-01-010, filed 12/6/00, effective 1/6/01)

**WAC 388-544-0450** (~~Therapeutic contact bandage lenses~~) **Vision care - prior authorization.** (~~The medical assistance administration (MAA) covers therapeutic contact bandage lenses only when needed immediately after;~~)

~~(1) ((Eye injury; or))~~ The medical assistance administration (MAA) requires a provider to follow the prior authorization and expedited prior authorization (EPA) process for certain vision care services as identified in this chapter.

~~(2) ((Eye surgery))~~ For prior authorization (PA), a provider must call or fax MAA using the appropriate telephone or fax number listed in MAA's published vision care billing instructions.

(3) For expedited prior authorization (EPA), a provider must create an EPA number. The process and criteria used to create this authorization number are explained in MAA's published vision care billing instructions. The EPA number must be used when the provider bills MAA.

(4) MAA denies payment for vision care submitted without the required PA or EPA number, or the appropriate diagnosis or procedure code as indicated by the EPA number.

(5) Upon request, a provider must provide documentation to MAA showing how the client's condition met the criteria for PA or EPA.

(6) MAA may recoup any payment made to a provider under this chapter if MAA later determines that the service was not properly authorized or did not meet the EPA criteria. Refer to WAC 388-502-0100 (1)(c).

(7) When a client's situation does not meet the EPA criteria for vision care, or a requested service or item exceeds the limit indicated in this chapter, a provider must follow the requirements of WAC 388-501-0165.

(8) MAA evaluates a request for any service that is listed as noncovered in this chapter under the provisions of WAC 388-501-0160.

#### NEW SECTION

**WAC 388-544-0475 Vision care - noncovered services, eyeglasses, and contact lenses.** The medical assistance administration (MAA) does not cover the following:

- (1) Executive style eyeglass lenses;
- (2) Bifocal contact lenses;
- (3) Daily and two week disposable contact lenses;
- (4) Extended wear soft contact lenses, except when used as therapeutic contact bandage lenses or for aphakic clients;
- (5) Services for cosmetic purposes only;
- (6) Glass lenses including those that darken when exposed to light;
- (7) Group vision screening for eyeglasses;
- (8) Nonglare or anti-reflective lenses;
- (9) Orthoptics and visual training therapy;
- (10) Progressive lenses;
- (11) Refractive surgery of any type that changes the eye's refractive error. The intent of the refractive surgery procedure is to reduce or eliminate the need for eyeglass or contact lens corrections. This does not include intraocular lens implantation following cataract surgery.
- (12) Sunglasses and accessories that function as sunglasses (e.g., "clip-ons");
- (13) Upgrades at private expense to avoid MAA's contract limitations (e.g., frames that are not available through MAA's contract or noncontract frames or lenses for which the client or other person pays the difference between MAA's payment and the total cost).



**AMENDATORY SECTION** (Amending WSR 01-01-010, filed 12/6/00, effective 1/6/01)

**WAC 388-544-0500 Vision care - ocular prosthetics.**  
The medical assistance administration (MAA) covers medically necessary ocular prosthetics (~~(which are medically necessary and)~~) when provided by any of the following:

- (1) An ophthalmologist;
- (2) An ocularist; or
- (3) An optometrist who specializes in orthotics.

**AMENDATORY SECTION** (Amending WSR 01-01-010, filed 12/6/00, effective 1/6/01)

**WAC 388-544-0550 (~~(Cataract)~~) Vision care - surgery.** (1) The medical assistance administration (MAA) covers cataract surgery when:

- (a) It is included in the scope of care for the client's medical program;
- (b) It is medically necessary as defined in subsection (2) of this section; and
- (c) The provider clearly documents the need in the client's record.

(2) MAA considers (~~(the)~~) cataract surgery to be medically necessary when the client has:

- (a) Correctable visual acuity in the affected eye at 20/50 or worse, as measured on the Snellen test chart; or
- (b) One or more of the following conditions:
  - (i) Dislocated or subluxated lens;
  - (ii) Intraocular foreign body;
  - (iii) Ocular trauma;
  - (iv) Phacogenic glaucoma;
  - (v) Phacogenic uveitis; (~~(or)~~)
  - (vi) Phacoanaphylactic endophthalmitis; or
  - (vii) Increased ocular pressure in a person who is blind and is experiencing ocular pain.

(3) ~~MAA covers (cataract surgery as a nonemergent procedure under any of its medical coverage programs, unless the client is diagnosed as being statutorily blind as defined in WAC 388-544-0350 (10)(b). If the client is blind, the need for cataract surgery is emergent and the cataract surgery is covered by MAA, even if the client is eligible only for medically indigent coverage (MIP))~~ strabismus surgery as follows:

(a) For clients seventeen years of age and younger, when medically necessary. The provider must clearly document the need in the client's record.

(b) For clients eighteen years of age and older when:

- (i) The client has double vision; and
- (ii) The surgery is not performed for cosmetic reasons.

(c) To receive payment for clients eighteen years of age and older, providers must follow MAA's expedited prior authorization process listed in WAC 388-544-0450. MAA does not require authorization for clients seventeen years of age and younger.

(4) MAA covers blepharoplasty or blepharoptosis surgery for noncosmetic reasons when:

(a) The excess upper eyelid skin impairs the vision by blocking the superior visual field; and

(b) The vision is blocked to within ten degrees of central fixation using a central visual field test.

**AMENDATORY SECTION** (Amending WSR 01-01-010, filed 12/6/00, effective 1/6/01)

**WAC 388-544-0600 Vision care - payment methodology.** (1) In order to receive payment, vision care providers must bill the medical assistance administration (MAA) according to the conditions of payment under WAC 388-502-0020 (1)(a) through (c) and WAC 388-502-0100 and MAA's published billing instructions.

(2) (~~The medical assistance administration (MAA)~~) MAA covers one hundred percent of the MAA contract price for eyeglass frames, lenses, and contact lenses when these items are obtained through MAA's approved contract(s).

(~~(2)~~) (3) See WAC 388-531-1850 for professional fee payment methodology.

### **REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 388-544-0200	Vision care services MAA covers without MAA's prior authorization.
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### **WSR 05-13-045**

#### **PERMANENT RULES**

#### **DEPARTMENT OF**

#### **RETIREMENT SYSTEMS**

[Filed June 9, 2005, 1:25 p.m., effective July 10, 2005]

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

Purpose: This rule clarifies that members may not earn more than one service credit in a calendar month in any one, or twelve service credits for a given year, in any one retirement plan.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 05-10-009 on April 25, 2005.

Changes Other than Editing from Proposed to Adopted Version: Corrected the dates in the example.

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

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

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

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

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

Date Adopted: June 8, 2005.

S. J. Matheson  
Director

### NEW SECTION

**WAC 415-02-180 Is it possible to receive more than one month of service credit in a single retirement plan for a calendar month?** You may not receive more than one month of service credit for a calendar month, or twelve months of service credit during a service credit year, in any one retirement plan.

This includes, but is not limited to, receiving more than one month of service credit during a calendar month for:

- (1) Working in two or more positions covered by the same retirement system;
- (2) Military service and service as an employee in the same month;
- (3) Purchasing service credit for a period of paid or unpaid leave that occurred during the same month you earned service credit for service as an employee;
- (4) Serving as an elected or appointed official during the same month you earned service credit for service as an employee; or
- (5) Working more than the minimum number of hours required to earn one month of service credit.

**EXAMPLE:** Mary, a PERS 1 member, worked full time for the department of retirement systems continuously for five years from January 1, 1996, through December 31, 2000. During the same period, she worked evenings and Saturdays (full time) in a PERS eligible position for the department of licensing. Mary earned a total of five years of service credit, which is the maximum service credit a member may earn in a five-year period.

**WSR 05-13-059**  
**PERMANENT RULES**  
**SECRETARY OF STATE**  
(Address Confidentiality Program)

[Filed June 9, 2005, 3:54 p.m., effective July 10, 2005]

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

Purpose: To comply with the federal Help America Vote Act; to correct references to Title 29A RCW; to clarify, streamline and simplify agency procedures.

Citation of Existing Rules Affected by this Order: Amending WAC 434-840-005, 434-840-020, 434-840-030, 434-840-040, 434-840-070, 434-840-080, 434-840-110, 434-840-310, 434-840-320, and 434-840-330.

Statutory Authority for Adoption: RCW 40.24.090.

Adopted under notice filed as WSR 05-02-001 on December 22, 2004.

A final cost-benefit analysis is available by contacting Melissa Deinlein, P.O. Box 257, Olympia, 98507, phone (360) 753-2972, fax (360) 586-4388, e-mail mdeinlein@sec-state.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 4, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 9, Repealed 0.

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

Date Adopted: April 1, 2005.

Melissa Deinlein  
Program Manager

**AMENDATORY SECTION** (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

**WAC 434-840-005 Definitions.** For the purposes of this chapter:

(1) "Address confidentiality program (ACP)" means the agency employee designated by the secretary of state with responsibility for developing and administering the program that implements the provisions of chapter 40.24 RCW.

(2) "Agency" means an office, department, division, bureau, board, commission, or other statutory unit of state or local government or any functional subdivision of that agency.

(3) "Application assistant" means an employee of a state or local agency, or of a nonprofit program that provides advocacy, counseling, referral, or shelter services to victims of sexual assault (~~(or)~~), domestic violence, or stalking who has been designated by the respective agency, and has been accepted (~~(and registered)~~) by the secretary of state to assist individuals (~~(in)~~) with threat assessment, safety planning, determining whether the program's services can help keep the victim safe, and the completion and submission of ((program participation)) the ACP application((s)).

(4) "Authorization card form" means the incomplete form for an authorization card on which no identifying program participant information has been entered.

(5) "Authorized personnel" means an employee of a county auditor's office, a county recording office, the Washington state department of health, or the office of the secretary of state who has been designated by the chief executive officer of the respective agency, to process and have access to voter application, voting records, marriage applications and records pertaining to program participants.

(6) "Bona fide statutory or administrative requirement" means that without possession of an individual's actual residential address the agency is (~~(unable to fulfill)) incapable of fulfilling~~ its statutory duties and obligations.

(7) "Protected records voter" means a program participant who has applied and qualified as a service voter, as provided under RCW 29A.04.163, with ongoing absentee ballot voter status, as provided under RCW (~~(29A.40.040)) 29A.40.140~~.

(8) "Record" means any information relating to the conduct or performance of a governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(9) "Substitute mailing address" means the mailing address designated by the secretary of state which shall not be the program participant's residential address as documented on her or his application for program participation.

(10) "Residential address" means the physical location where the participant resides for which the participant is requesting confidentiality.

**AMENDATORY SECTION** (Amending WSR 98-19-063, filed 9/16/98, effective 10/17/98)

**WAC 434-840-020 Exercise of program participant's privileges.** (1) At the time any state or local government agency creates a new record or updates an existing record, a program participant may request that the agency use the substitute mailing address as the participant's residence, work and/or school address.

(2) A program participant shall show her or his authorization card to the agency official creating a new record and request address confidentiality through the use of the substitute mailing address as it appears on the authorization card, in lieu of her or his actual location.

(3) The agency official creating a new record may make a file photocopy of the authorization card and shall immediately return the authorization card to the program participant. The agency official may call the program to verify an individual's current participation status in the program.

(4) An agency shall accept the substitute mailing address unless the agency has received a written exemption from the secretary of state pursuant to RCW 40.24.050 and WAC 434-840-070.

**AMENDATORY SECTION** (Amending WSR 98-19-063, filed 9/16/98, effective 10/17/98)

**WAC 434-840-030 Certification renewal.** (1) A program participant may renew her or his program certification by filing with the address confidentiality program: (a) Her or his current authorization card; (b) a properly completed (~~certification~~) renewal application form; and (c) a new authorization card form. The program participant shall provide all the information required on the (~~certification~~) renewal application form and date and sign the form.

(2) The address confidentiality program shall: (a) Certify a program participant, who has filed a properly completed (~~certification~~) renewal application form, to participate in the program for an additional four year term unless the certification is withdrawn or invalidated before that date; (b) issue to the program participant a new authorization card which includes the program participant's name, authorization code, substitute mailing address, certification expiration date, and signature (~~;- (c) if the participant is a protected records voter, notify in writing the authorized personnel of the appropriate county auditor's office; and (d) if the participant has a protected marriage license, notify in writing the authorized personnel of the department of health and the appropriate county auditor's office~~)).

**AMENDATORY SECTION** (Amending WSR 98-19-063, filed 9/16/98, effective 10/17/98)

**WAC 434-840-040 Certification withdrawal, invalidation, expiration, and termination.** (1) A program participant may withdraw from program participation by submitting to the address confidentiality program: Written notification of withdrawal and her or his current authorization card. Certification shall be terminated on the date of receipt of this notification. If the program participant requests cancellation but does not return her or his current authorization card and/or does not submit written notification of the request, the secretary of state may, at his/her discretion, cancel program participation based solely on the verbal request.

(2) The address confidentiality program shall terminate a program participant's certification and invalidate her or his authorization card if: (a) The program participant's certification term has expired and certification renewal has not been completed; (b) the address confidentiality program has determined that false information was used in the application process; or (c) the program participant (~~obtains a legal name change~~) fails to respond to the program's request for verification of the participant's residential address.

(3) The address confidentiality program may terminate a program participant's certification and invalidate her or his authorization card if: (a) The program participant no longer resides at the residential address (~~listed~~) on (~~the application~~) file, and has not provided (~~seven~~) at least two days' prior notice in writing of a change of address; (~~or~~) (b) first class mail, certified mail, or a service of process document forwarded to the program participant by the address confidentiality program is returned as nondeliverable, refused, or unclaimed; or (c) the program participant obtains a legal change of identity.

(4) (~~If termination is a result of subsection (2) or (3) of this section;~~) The address confidentiality program shall send written notification of the termination to the participant's last known mailing or residential address. The program participant shall have five business days in which to appeal the termination under procedures developed by the secretary of state.

(5) The address confidentiality program shall notify the appropriate authorized personnel when a participant has been terminated from the program. The authorized personnel shall transmit to the address confidentiality program all appropriate administrative records pertaining to the participant. The transmitting agency is no longer responsible for maintaining record confidentiality for a terminated program participant under chapter 40.24 RCW.

~~((a) If the terminated participant had a protected marriage record, the address confidentiality program shall notify in writing authorized personnel of the department of health and the appropriate county auditor's office of the participant's termination.~~

~~(b) If the terminated participant was a protected records voter, the address confidentiality program shall notify in writing authorized personnel of the county auditor's office of the participant's termination.)~~

**AMENDATORY SECTION** (Amending WSR 98-19-063, filed 9/16/98, effective 10/17/98)

**WAC 434-840-070 Agency exemption request.** (1) An agency requesting an exemption under RCW 40.24.050, must provide in writing to the secretary of state: (a) Identification of the statute or administrative rule which demonstrates the agency's bona fide requirement and authority for the use of the actual address of an individual; (b) identification and description of the specific record or record series for which the exemption is requested; (c) identification of the individuals who will have access to the record; (d) explanation of how the agency's acceptance of a substitute address will prevent the agency from meeting its obligations under the statute or rule identified above; and (e)(i) explanation of why the agency cannot meet its statutory or administrative obligations by a change in its internal procedures; and, where appropriate, (ii) description of any agency procedural change(s) that could be made that would allow it to accept the substitute address and meet its statutory or administrative obligations and an estimate of implementation time needed.

(2) The secretary of state shall file and review an agency's request for an exemption.

(3) During the review, evaluation and appeal of an agency's exemption request, the agency shall accept the use of a program participant's substitute address.

(4) The secretary of state's determination to grant or withhold a requested exemption shall be based on, but not limited to, an evaluation of the information provided under subsection (1) of this section in conformance with the statutory standard of a bona fide statutory or administrative requirement for the use of a program participant's actual address.

(5) If the secretary of state determines that an agency has a bona fide statutory or administrative requirement for the use of a program participant's actual address information and that the actual address information will be used only for those statutory and administrative purposes, the secretary may issue a written exemption for the agency. When granting an exemption, the secretary may include: (a) An agency's obligation to maintain the confidentiality of a program participant's address information; (b) limitations on use and access to that address information; (c) term during which the exemption is authorized for the agency; (d) designation of the record format on which the address information may be maintained; (e) designation of an address information disposition date after which the agency may no longer maintain a record of the address information; and (f) any other provisions and qualifications determined appropriate by the secretary of state.

(6) When a program participant requests use of the substitute address in a record, and the agency has received an exemption for that record, the agency shall immediately provide a copy of the written exemption to the requesting program participant. The agency shall notify the address confidentiality program of the occurrence and denial of the program participant's request.

(7) The secretary of state's denial of an agency exemption request shall be made in writing and include a statement of the specific reasons (~~(therefor)~~ therefore).

(8) An agency may appeal the denial of its request by resubmitting its written request together with additional data, information, and an explanation of corrective action taken to alleviate concerns and considerations included in the secretary of state's denial determination.

**AMENDATORY SECTION** (Amending WSR 98-19-063, filed 9/16/98, effective 10/17/98)

**WAC 434-840-080 Service of process.** (1) The secretary of state shall be an agent of the program participant upon whom any summons, writ, notice, demand, or process may be served.

(2) Service on the secretary of state of any such summons, writ, demand, notice, or process shall be made by mailing to the substitute address or by delivering to the secretary of state at his/her office in ~~((the Legislative Building,))~~ Olympia, WA: (a) Two copies of the summons, writ, notice, demand, or process; and (b) twenty-five dollars service-of-process fee for each action or document filed.

(3) If a summons, writ, notice, demand, or process is served on the secretary of state, the secretary of state shall immediately forward a copy to the program participant at the participant's current mailing address shown on the records.

(4) The secretary of state shall maintain in the program participant's file, a record of all summonses, writs, notices, demands, and processes served upon the secretary of state for that participant under RCW 40.24.030 (1)(b), which shall include the date of such service and the secretary of state's action.

**AMENDATORY SECTION** (Amending WSR 98-19-063, filed 9/16/98, effective 10/17/98)

**WAC 434-840-110 Proof of program participant's authority.** (1) When a program participant requests name and address confidentiality for marriage or voting records, authorized personnel shall check the authorization card to confirm that the term of program participation has not expired and that the program participant's signature on the authorization card matches that on the acknowledgement form.

(2) Authorized personnel may make a photocopy of the program participant's authorization card. The authorization card shall be immediately returned to the program participant. The photocopy shall be kept with the confidential marriage or voting records for this program participant during the time the records are filed and maintained by the county auditor or county recording officer. The authorized personnel may call the program to verify an individual's current participation status in the program.

**AMENDATORY SECTION** (Amending WSR 98-19-063, filed 9/16/98, effective 10/17/98)

**WAC 434-840-310 Protected records voter application.** (1) A program participant shall notify the appropriate county authorized personnel of her or his request for confidentiality in voting records by appearing in person before the appropriate county authorized personnel. The program participant shall: (a) Present her or his program authorization

card; (b) cancel any previously existing voter registration; and (c) apply to vote by providing all the information required on the address confidentiality program ongoing absentee ballot application.

(2) The program participant shall disclose to the authorized personnel the actual address of her or his residence only for the purpose of determining proper precinct and district designations.

(3) An application for protected records voter status and an absentee ballot to be issued to the participant in person, may be made no later than the day before an election. An application for protected records voter status and an absentee ballot to be mailed to the substitute mailing address shall be made no later than twenty working days before the first election in which the program participant wishes to vote.

**AMENDATORY SECTION** (Amending WSR 98-19-063, filed 9/16/98, effective 10/17/98)

**WAC 434-840-320 Maintaining protected records voter information.** All records pertaining to a protected records voter shall be maintained in a manner ensuring that these records are accessible only to authorized personnel. ~~((A protected records voter shall not be included in any registered voter list, absentee ballot list, tape, label, or poll book. Information pertaining to))~~ Location information (including, but not limited to, residential address, county, precinct, taxing district, legislative or congressional district) for a protected records voter shall not be ((publicly accessible regardless)) maintained on any voter registration data base and shall not be publicly accessible regardless of the type of records management system except as provided by RCW 40.24.060.

**AMENDATORY SECTION** (Amending WSR 98-19-063, filed 9/16/98, effective 10/17/98)

**WAC 434-840-330 Mailing protected records voter ballots.** At least twenty days before every special, primary, or general election, authorized personnel shall review all protected records voter files and forward the appropriate ongoing absentee ballot for each protected records voter via the substitute mailing address.

The county authorized personnel shall maintain a record of ballots sent to protected records voters and a record of ballots returned. This record shall be maintained in accordance with WAC 434-840-320.

**WSR 05-13-077**  
**PERMANENT RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**

[Filed June 14, 2005, 8:40 a.m., effective July 15, 2005]

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

Purpose: WAC 139-10-540 Basic institutional corrections counselor academy curriculum, the Adult Services Academy was divided into three separate tracks: County probation, state DOC community corrections officers, and state institutional counselors. Changes in WAC 139-10-210 have

reconfigured these academies. As a result, the specific curriculum for each of these academies will be defined.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 05-08-077 on April 1, 2005.

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

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

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

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

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

Date Adopted: June 8, 2005.

Michael D. Parsons  
Executive Director

**NEW SECTION**

**WAC 139-10-540 Basic institutional corrections counselor academy curriculum.** The basic institutional corrections counselor academy curriculum of the commission must be at least eighty instructional hours in length and will include, but not be limited to, the following subject matter areas:

- (1) Core skills
  - (a) Assessment
  - (b) Motivation
  - (c) Goal setting/action planning
  - (d) Monitoring and intervention
- (2) Key skills
  - (a) Interpersonal skills
  - (b) Interviewing
  - (c) Classification
  - (d) Supervision and discipline
  - (e) Offense prevention
- (3) Related skills
  - (a) Dealing with aggressive and resistive behavior
  - (b) Legal issues
  - (c) Report writing
  - (d) Counseling techniques
  - (e) Managing information.

**WSR 05-13-078**  
**PERMANENT RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**

[Filed June 14, 2005, 8:42 a.m., effective July 15, 2005]

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

Purpose: WAC 139-10-530 Basic community corrections officers academy curriculum, the Adult Services Academy was divided into three separate tracks: County probation, state DOC community corrections officers, and state institutional counselors. Changes in WAC 139-10-210 have reconfigured these academies. As a result, the specific curriculum for each of these academies will be defined.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 05-08-076 on April 1, 2005.

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

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

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

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

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

Date Adopted: June 8, 2005.

Michael D. Parsons  
Executive Director

#### NEW SECTION

**WAC 139-10-530 Basic community corrections officers academy curriculum.** The basic community corrections officers academy curriculum of the commission must be at least eighty instructional hours in length and will include, but not be limited to, the following subject matter areas:

- (1) Core skills
  - (a) Assessment
  - (b) Motivation
  - (c) Goal setting/action planning
  - (d) Monitoring and intervention
  - (e) Arrest and search procedures
- (2) Key skills
  - (a) Interpersonal skills
  - (b) Interviewing
  - (c) Classification
  - (d) Offense prevention
- (3) Related skills
  - (a) Dealing with aggressive and resistive behavior
  - (b) Legal issues
  - (c) Counseling techniques
  - (d) Managing information
  - (e) Defensive tactics and security management.

#### WSR 05-13-079

#### PERMANENT RULES CRIMINAL JUSTICE TRAINING COMMISSION

[Filed June 14, 2005, 8:44 a.m., effective July 15, 2005]

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

Purpose: WAC 139-10-235 Basic misdemeanor probation/classification academy curriculum, the Adult Services Academy was divided into three separate tracks: County probation, state DOC community corrections officers, and state institutional counselors. Changes in WAC 139-10-210 have reconfigured these academies. As a result, the specific curriculum for each of these academies will be defined.

Statutory Authority for Adoption: RCW 43.101.080.

Adopted under notice filed as WSR 05-08-075 on April 1, 2005.

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

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

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

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

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

Date Adopted: June 8, 2005.

Michael D. Parsons  
Executive Director

AMENDATORY SECTION (Amending WSR 00-17-017, filed 8/4/00, effective 9/4/00)

**WAC 139-10-235 Basic (~~adult services~~) misdemeanant probation/classification academy curriculum.** The basic (~~adult correctional services~~) misdemeanant probation/classification academy curriculum of the (~~Washington state criminal justice training~~) commission (~~shall be~~) must be at least eighty instructional hours in length and (~~shall~~) will include, but not be limited to, the following subject matter areas:

- (1) Core skills
  - (a) Assessment
  - (b) Motivation
  - (c) Goal setting/action planning
  - (d) Monitoring and intervention
- (2) Key skills
  - (a) Interpersonal skills
  - (b) Interviewing
  - (c) Classification
  - (d) Supervision and discipline
  - (e) Offense prevention
- (3) Related skills
  - (a) Dealing with aggressive and resistive behavior

- (b) Legal issues
- (c) Report writing
- (d) Counseling techniques
- (e) Managing information.

**WSR 05-13-104**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**NATURAL RESOURCES**

[Filed June 17, 2005, 8:30 a.m., effective July 18, 2005]

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

Purpose: For clarification and to bring existing rules up-to-date with current technology. The proposal changes the coordinate system adjustment required for the horizontal control network in Washington from NAD 83(1991) and allow for the reporting of the specific adjustment used.

Citation of Existing Rules Affected by this Order: Amending chapter 332-130 WAC.

Statutory Authority for Adoption: Chapter 58.24 RCW.

Adopted under notice filed as WSR 05-08-067 on March 31, 2005.

A final cost-benefit analysis is available by contacting Gwen Roy, PLS, Department of Natural Resources, P.O. Box 47060, Olympia, WA 98504-7060, phone (360) 902-1181, fax (360) 902-1191, e-mail gwen.roy@wadnr.gov.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

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

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

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

Date Adopted: June 7, 2005.

Bruce Mackey  
Lands Steward

**AMENDATORY SECTION** (Amending Order 617, filed 2/25/94, effective 3/28/94)

**WAC 332-120-040 Monument removal or destruction.** (1) All land boundary survey monuments that are removed or destroyed shall be replaced or witness monuments shall be set to perpetuate the survey point.

(2) A land boundary survey corner shall be referenced to the Washington Coordinate System of 1983, (~~adjusted in 1991,~~) prior to removal or destruction. See WAC (~~332-130-060, Geodetic control~~) 332-130-070(2), land boundary survey standards.

An applicant may request a variance from this referencing requirement by so noting in the applicant information section on the permit and providing the justification on the back of the form. The department shall note whether the variance is approved or not approved and shall provide the reason for not approving the request.

**AMENDATORY SECTION** (Amending Order 597, filed 1/3/92, effective 2/3/92)

**WAC 332-130-020 Definitions.** The following definitions shall apply to this chapter:

(1) **Local geodetic control surveys:** Surveys for the specific purpose of establishing control points for extending the National Geodetic Survey horizontal and vertical control nets, (~~establishing plane coordinate values on boundary monuments within the requirements of the Washington coordinate system, and determining the vertical elevations of boundary monuments~~) also known as the National Spatial Reference System (NSRS), but not submitted to the National Geodetic Survey for inclusion in the NSRS.

(2) **GLO and BLM:** The General Land Office and its successor, the Bureau of Land Management.

(3) **Land boundary surveys:** All surveys, whether made by individuals, entities or public bodies of whatever nature, for the specific purpose of establishing, reestablishing, laying out, subdividing, defining, locating and/or monumenting the vertical or horizontal boundary of any easement, right of way, lot, tract, or parcel of real property or which reestablishes or restores General Land Office or Bureau of Land Management survey corners.

(4) **Land corner record:** The record of corner information form as prescribed by the department of natural resources in WAC 332-130-025.

(5) **Land description:** A description of real property or of rights associated with real property.

(6) **Land surveyor:** Any person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW.

(7) **NAD83 (~~((1991)))~~):** North American Datum of 1983 (~~(adjusted in 1991)~~) as designated by chapter 58.20 RCW.

(8) **Parcel:** A part or portion of real property including but not limited to GLO and BLM segregations, easements, rights of way, aliquot parts of sections or tracts.

(9) **Survey Recording Act:** The law as established and designated in chapter 58.09 RCW.

(10) **Washington coordinate system:** The system of plane coordinates as established and designated by chapter 58.20 RCW.

**AMENDATORY SECTION** (Amending Order 581, filed 9/9/91, effective 10/10/91)

**WAC 332-130-060 Local geodetic control survey standards.** The following standards shall apply to local geodetic control surveys:

~~((4))~~ The datum for the horizontal control network in Washington shall be NAD83 (~~((1991)))~~ as officially adjusted and published by the National Geodetic Survey of the United States Department of Commerce or as established in accor-

dance with chapter 58.20 RCW. The datum (~~(adjustment)~~ tag and coordinate epoch date (if pertinent) shall be (~~(identified)~~ reported on all (~~(geodetic control referenced)~~ documents prepared, which show local geodetic control; (i.e.) e.g., NAD83 (1991), NAD83 (CORS) (2002.00), NAD83 (NSRS) (2005.50) and other future standards.

~~(2) Horizontal and vertical control work must meet or exceed those accuracy and specification standards as published by the Federal Geodetic Control Committee, September 1984, in the bulletin titled, "Standards and Specifications for Geodetic Control Networks" or any subsequently published bulletins modifying such class standards. The class of control surveys shall be shown on documents prepared.~~

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.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending Order 568, filed 3/1/90, effective 4/1/90)

**WAC 332-130-070 Land boundary survey standards.** The following standards shall apply to land boundary surveys:

(1) The accuracy or precision of field work may be determined and reported by either relative accuracy procedures or field traverse standards, provided that the final result shall meet or exceed the standards contained in WAC 332-130-090.

(2) The datum when using the Washington Coordinate System shall be NAD83 as officially adjusted and published by the National Geodetic Survey of the United States Department of Commerce or as established in accordance with chapter 58.20 RCW. The datum tag and the coordinate epoch date (if pertinent) shall be reported on all documents prepared which reference the Washington Coordinate System, e.g., NAD83 (1991), NAD83 (CORS) (2002.00), NAD83 (NSRS) (2005.50) and other future standards.

## WSR 05-13-118

### PERMANENT RULES

#### DEPARTMENT OF LICENSING

[Filed June 20, 2005, 2:42 p.m., effective July 21, 2005]

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

Purpose: Drivers licensing offices have an old paper version of the transit permit that is no longer used by vehicle licensing offices. Current transit permits are issued through the vehicle licensing system. We are discontinuing the old paper version in an effort to have better control over this inventory.

Citation of Existing Rules Affected by this Order: Amending WAC 308-96A-026 Vehicle transit permits.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 05-08-096 on April 4, 2005.

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

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

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

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

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

Date Adopted: June 20, 2005.

Elizabeth A. Luce  
Director

AMENDATORY SECTION (Amending WSR 04-08-002, filed 3/24/04, effective 4/24/04)

**WAC 308-96A-026 Vehicle transit permit. (1) What is a vehicle transit permit?**

A vehicle transit permit is a document that authorizes an individual to operate a vehicle on a public highway of this state solely for the purpose of obtaining necessary documentation to complete an application for a Washington certificate of ownership or registration. Use of the vehicle is restricted to the reason(s) indicated on the permit.

**(2) How may a vehicle transit permit be used?**

A vehicle transit permit may be used to obtain:

- (a) A Washington state patrol inspection;
- (b) A scale weight slip;
- (c) An emission test; or
- (d) Any other purpose that the department deems necessary.

**(3) Where do I obtain a vehicle transit permit?**

You may obtain a vehicle transit permit from(~~(~~ **(a))** Washington vehicle licensing offices(~~(~~ **(b)** ~~Washington drivers services licensing services offices)).~~

**(4) How long is the vehicle transit permit valid?**

The permit is valid only for the days shown on the permit and may not exceed two days. The two days do not need to be consecutive.

**(5) What information is required to issue the vehicle transit permit?**

- (a) Description of the vehicle for which the permit is issued, which may include make, model, model year, and vehicle identification number;
- (b) Name and address of person obtaining the permit;
- (c) Specific purpose for which the permit is issued;
- (d) The date or dates on which the permit is valid, for a maximum of two days;
- (e) Applicant's signature; and
- (f) Signature of vehicle licensing agent or issuing authority.



**(6) How much does a vehicle transit permit cost?**

There is no fee for the vehicle transit permit, however vehicle-licensing subagents charge a service fee.

**WSR 05-13-141****PERMANENT RULES****BOARD OF TAX APPEALS**

[Filed June 21, 2005, 8:25 a.m., effective August 1, 2005]

Effective Date of Rule: August 1, 2005.

Purpose: Chapters 456-09 and 456-10 WAC set forth the rules of practice and procedure for all proceedings before the Board of Tax Appeals.

Citation of Existing Rules Affected by this Order: Repealing WAC 456-09-160, 456-09-170, 456-09-320, 456-09-350, 456-09-355, 456-09-365, 456-09-410, 456-09-420, 456-09-430, 456-09-440, 456-09-610, 456-09-615, 456-09-620, 456-09-625, 456-09-635, 456-09-640, 456-09-645, 456-09-650, 456-09-655, 456-09-705, 456-09-710, 456-09-715, 456-09-720, 456-09-725, 456-09-730, 456-09-732, 456-09-735, 456-09-760, 456-09-770, 456-09-775, 456-09-935, 456-09-940, 456-09-945, 456-09-950, 456-10-130, 456-10-170, 456-10-180, 456-10-320, 456-10-340, 456-10-345, 456-10-355, 456-10-360, 456-10-420, 456-10-430, 456-10-440, 456-10-525, 456-10-535, 456-10-570, 456-10-720, 456-10-735, 456-10-740, 456-10-745 and 456-10-750; and amending WAC 456-09-010, 456-09-110, 456-09-120, 456-09-130, 456-09-140, 456-09-210, 456-09-220, 456-09-310, 456-09-315, 456-09-325, 456-09-330, 456-09-335, 456-09-340, 456-09-345, 456-09-510, 456-09-520, 456-09-530, 456-09-540, 456-09-550, 456-09-560, 456-09-570, 456-09-740, 456-09-742, 456-09-745, 456-09-750, 456-09-755, 456-09-765, 456-09-910, 456-09-915, 456-09-920, 456-09-925, 456-09-930, 456-09-955, 456-09-960, 456-10-010, 456-10-110, 456-10-140, 456-10-150, 456-10-160, 456-10-210, 456-10-220, 456-10-310, 456-10-315, 456-10-325, 456-10-330, 456-10-335, 456-10-410, 456-10-505, 456-10-510, 456-10-515, 456-10-530, 456-10-540, 456-10-545, 456-10-547, 456-10-550, 456-10-555, 456-10-560, 456-10-565, 456-10-710, 456-10-725, 456-10-730, and 456-10-755.

Statutory Authority for Adoption: RCW 82.03.170.

Adopted under notice filed as WSR 05-09-125 on April 20, 2005.

Changes Other than Editing from Proposed to Adopted Version:

- Added the term "in writing" regarding the election that an appeal be held under formal procedures, WAC 456-09-010 and 456-10-010.
- Changed the date and time of the public meeting from the 9 a.m. second Thursday to 9:30 a.m. second Friday, WAC 456-09-140 and 456-10-160.
- Did not strike the word "strictly" with respect to procedures for filing a notice of appeal by fax or electronically, WAC 456-09-325 and 456-10-325.
- Added sentence clarifying that amendments to the notice of appeal do not extend jurisdictional limitations, WAC 456-09-330 and 456-10-330.

- Allowed that the time for submitting briefs and reply briefs be fifteen and ten days respectively, rather than ten and five, WAC 456-09-550 and 456-10-505.
- Allowed rescheduling of the initially scheduled hearing and prehearing dates and clarified provisions for requesting continuances, WAC 456-09-560 and 456-10-515.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 15, Amended 62, Repealed 53.

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 15, Amended 62, Repealed 53.

Date Adopted: June 21, 2005.

Anne Solwick  
Executive Director

**INTRODUCTION****NEW SECTION**

**WAC 456-09-001 Purpose and application of chapter.** (1) This chapter concerns administrative matters of the board of tax appeals (board) and explains how adjudicative proceedings are conducted before the board in accordance with the Administrative Procedure Act, chapter 34.05 RCW. This chapter augments but does not supplant the provisions of chapter 82.03 RCW.

(2) The rules of practice and procedure contained in this chapter govern the conduct of formal hearings before the board and will be construed to secure the just, speedy, and economical determination of every action.

(3) To the extent these rules of practice and procedure differ from the model rules adopted by the chief administrative law judge pursuant to RCW 34.05.250 and found in chapter 10-08 WAC, these rules shall prevail.

(4) Where procedures are not covered by this chapter and chapter 10-08 WAC, the board may, upon its own motion or upon written application by any party, refer to and apply any rule provided for in the superior court civil rules.

**AMENDATORY SECTION** (Amending WSR 94-07-044, filed 3/10/94, effective 4/10/94)

**WAC 456-09-010 Distinction between formal((s)) and informal hearing((—Distinction)) and converting an appeal.** ((All persons appealing to the board of tax appeals may request that their appeal be heard either as a formal or informal hearing. Formal hearings are requested by parties wishing to carry the record of their appeals to court and are

conducted pursuant to the Administrative Procedure Act. Judicial review of a board decision made in a formal hearing is limited to the record made of the proceedings before the board of tax appeals. All parties in formal hearings are normally represented by attorneys although taxpayers may represent themselves in such proceedings. A verbatim record is made of all formal hearings.

Informal hearings are requested by a majority of parties appearing before the board of tax appeals. Decisions entered in an informal appeal may not be appealed to court. Courts may have jurisdiction, however, to hear a timely filed action pursuant to RCW 82.32.180 or 84.68.020 (see RCW 82.03.180.)

(1) In all appeals over which the board has jurisdiction, a party (~~taking~~) making an appeal may elect in writing, with its notice of appeal, either a formal or informal hearing ((pursuant to RCW 82.03.140)). Formal hearings are conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW, and the rules of practice and procedure of this chapter. Informal hearings are conducted pursuant to chapter 456-10 WAC. Failure to elect in writing a formal or informal hearing at the time of ((filing)) submitting the notice of appeal shall result in the proceeding being conducted as informal.

(a) A formal decision of the board is subject to judicial review pursuant to RCW 34.05.570. Judicial review is limited to the record made of the proceedings before the board. The record made of the proceedings includes a verbatim account of the hearings together with the evidence, pleadings, and documents submitted to the board by the parties. In appeals from a decision of a board of equalization, the record includes the decision of that board together with the evidence submitted thereto.

(b) Decisions entered in an informal appeal are not subject to judicial review as authorized under the Administrative Procedure Act, chapter 34.05 RCW.

(c) Aggrieved parties may have avenues of further appeal allowed by law which are not pertinent to the statutory authority granted to the board and are not discussed herein.

(2) The appeal may be converted from a formal to an informal proceeding as provided below.

(a) The respondent, as a party to an appeal pursuant to RCW 84.08.130 (appeal from a decision by a board of equalization) may, within twenty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of intention that the hearing be a formal hearing.

(b) In appeals under RCW 82.03.190, the department of revenue may, within thirty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of its intention that the hearing be a formal hearing.

(c) In appeals under RCW 82.03.130 (1)(e), the department of revenue may, within ten calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of its intention that the hearing be a formal hearing.

(d) At any time up to thirty days prior to the date of the hearing, the parties may submit to the clerk of the board a notice signed by all parties of intention to convert the proceedings to either a formal or informal hearing.

AMENDATORY SECTION (Amending Order 95-01, filed 2/8/95, effective 3/1/95)

**WAC 456-09-110 Definitions.** As used in this chapter, the following terms shall have the following meaning:

(1) "Board" means the board of tax appeals as described in chapter 82.03 RCW and chapters 456-09 and 456-10 WAC. Where appropriate, the term "board" also refers to the designated hearing officers or agents of the board of tax appeals.

(2) "Presiding officer" or "hearing officer" shall mean any member of the board, tax referee, (~~administrative law judge,~~) or any person who is assigned to conduct a conference or hearing by the board. The presiding officer shall have authority as provided by WAC 10-08-200 and chapter 34.05 RCW.

(3) "Appellant" means a person, natural or otherwise, who appeals any order or decision to the board of tax appeals.

(4) "Respondent" means a person, natural or otherwise, who is named as a responding party in any appeal before the board of tax appeals.

(5) "Formal hearing" means a proceeding conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW and this chapter.

(6) "Informal hearing" means a proceeding governed by those rules specified in chapter 456-10 WAC.

(7) "Decision" means a written judgment or ruling, including orders, issued by the board of tax appeals or the designated hearing officers or agents of the board of tax appeals.

(8) "Party" means any person who in a proceeding before the board is an appellant, respondent, or an intervenor as allowed in WAC 456-09-340.

(9) "To submit" means to present or to deliver. Submissions to the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to submit" and "to file" are used interchangeably.

(10) "To file" means to present or to deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to file" and "to submit" are used interchangeably.

AMENDATORY SECTION (Amending Order 89-02, filed 5/2/89)

**WAC 456-09-120 ((~~Formal rules—Procedure governed~~)) Organization and office.** (~~These rules shall govern all practice and procedure for formal hearings before the board.~~) The board consists of three members, one of whom is elected chair. Members of the board are appointed by the governor with the consent of the senate and serve on a full-time basis.

The board offices are open each day for the transaction of business from 8:00 a.m. to 5:00 p.m., excluding Saturdays, Sundays, and legal holidays. All submissions, requests, and communications shall be sent to the board at its principal office at 910 5th Avenue S.E., Post Office Box 40915, Olympia, Washington 98504-0915. The phone number of the board office is 360-753-5446; its fax number is 360-586-

9020; its electronic mail address is [bta@bta.state.wa.us](mailto:bta@bta.state.wa.us). Information about the board is available at its web site at <http://bta.state.wa.us>.

**AMENDATORY SECTION** (Amending Order 95-01, filed 2/8/95, effective 3/11/95)

**WAC 456-09-130** (~~Organization and office~~) **Quorum**. (~~The board consists of three members, one of whom is elected chair. Members of the board are appointed by the governor with the consent of the senate and serve on a full-time basis.~~

~~The board offices are open each day for the transaction of business from 8:00 a.m. to 5:00 p.m., excluding Saturdays, Sundays, and legal holidays. All submissions, requests, and communications shall be sent to the board at its principal office at 910 5th Avenue S.E., Post Office Box 40915, Olympia, Washington 98504-0915.~~) Two members of the board shall constitute a quorum for making orders or decisions or for promulgating rules and regulations relating to its procedures and may act although one position on the board may be vacant. One member or designated hearing officer may hold hearings and take testimony. The findings of such member or hearing officer shall not become final until approved by a majority of the board in accordance with WAC 456-09-925 and 456-09-930.

**AMENDATORY SECTION** (Amending Order 89-02, filed 5/2/89)

**WAC 456-09-140** (~~Quorum~~) **Meetings of the board**. (~~Two members of the board shall constitute a quorum for making orders or decisions or for promulgating rules and regulations relating to its procedures and may act although one position on the board may be vacant. One member or designated hearing officer may hold hearings and take testimony. The findings of such member or hearing officer shall not become final until approved by a majority of the board in accordance with WAC 456-09-940 or 456-09-950.~~) Regular public meetings of the board will be held at its principal office or such other place as the board designates at 9:30 a.m. on the second Friday of each month.

**AMENDATORY SECTION** (Amending Order 91-01, filed 3/15/91, effective 4/15/91)

**WAC 456-09-210** **Appearance and practice before the board**(~~Who may appear~~). Practice before the board in formal proceedings shall be limited to the following:

- (1) Taxpayers who are natural persons representing themselves;
  - (2) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;
  - (3) An authorized officer, partner, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation; ~~and~~)
  - (4) County assessors or their duly authorized representative;
  - (5) Certified public accountants licensed in Washington;
- and

(6) Other persons permitted by law.

**NEW SECTION**

**WAC 456-09-215** **Notice of appearance by representatives**. Persons who represent parties in their appeal before the board must submit a notice of appearance to the other parties and an original and three copies to the board. The notice must include the name of the parties, the docket number if known, the representative's name, address, phone number, fax number, and e-mail address.

**AMENDATORY SECTION** (Amending Order 89-02, filed 5/2/89)

**WAC 456-09-220** **Rules of professional conduct**. All persons appearing in proceedings before the board, whether on their own behalf or in a representative capacity, shall conform to the rules of professional conduct (RPC) required of attorneys before the courts of Washington. (~~If any such person does not conform to such rules, the board may decline to permit such person to appear in a representative capacity in any proceeding before the board. For example, representatives must observe rules concerning conflict of interests.~~)

**NEW SECTION**

**WAC 456-09-300** **Commencing the appeal**. (1) Persons wishing to make an appeal must submit to the board an original notice of appeal and a copy of the order or determination that is being appealed. The board will transmit a copy of the notice of appeal and a copy of the order or determination that is being appealed to the respondent(s) within thirty days of its receipt by the board.

(2) The board will acknowledge to the appellant in writing receipt of a notice of appeal.

**AMENDATORY SECTION** (Amending WSR 98-22-039, filed 10/29/98, effective 11/29/98)

**WAC 456-09-310** **Contents of notice of appeal**(~~Forms~~—~~Contents~~). (1) For all appeals, an appellant (~~may file~~) must submit to the board a notice of appeal (~~using forms provided by the board~~).

(2) ~~In the alternative, an appellant may file a notice of appeal~~) that (~~shall~~) substantially contains the following:

(a) (~~A caption in the following form:~~

~~BEFORE THE BOARD OF TAX APPEALS~~  
STATE OF WASHINGTON

Appellant,	}	Name of county in which property is located (if applicable)
-	}	Docket No. ....
v.	}	
Respondent	}	NOTICE OF APPEAL
.....	}	Re: (Type of tax, e.g., excise, property)

In all cases the appellant shall be the party appealing to the board. The respondent shall be the government agency or the property owner, as the case may be.

(b) Numbered paragraphs stating:

PERMANENT

((i)) Appellant's name, mailing address, telephone number, and that of the representative, if any.

((ii)) (b) Name of the respondent together with respondent's mailing address.

When the respondent is a government agency or agencies, the board may add respondents in order to ensure that all necessary persons are a party to the appeal.

(c) The date of the order or determination from which the appeal is taken together with a copy of the order, decision, or application appealed from.

((iii)) (d) The nature of the tax~~(, and (A)).~~

(i) In excise tax cases, the amount of the tax in controversy and the period covered thereby;

~~((B))~~ (ii) In property tax cases, (a legal description of) the parcel number of the property under appeal, the year for which the valuation has been determined, the full value as determined by the local board of equalization, and a declaration of true and fair value as alleged by the appellant; and

~~((C))~~ (iii) In property tax exemption cases, (a legal description and/or) the parcel number of the property under appeal, the year(s) for which the exemption is at issue, the basis under which exempt status should be granted or denied, and the use of the property.

~~((iv))~~ (e) Specification of the issue to be decided by the board.

(f) A clear, separate, and concise assignment of each error alleged and a short statement of facts upon which the appellant relies to sustain each contention~~(, and the issue to be adjudicated in the proceeding).~~

~~((v))~~ (g) A notice of intention that the hearing be held pursuant to the Administrative Procedure Act.

~~((vi))~~ (h) The relief sought.

~~((e) A statement that the appellant has read the notice and believes the contents to be true, followed by the party's signature and/or signature of their attorney or qualified representative, if any. The signature of a party, attorney, or qualified representative constitutes a certificate that the pleading has been read and that to the best personal knowledge, information, and belief, there is good ground to support it, and that it is not interposed for delay. If determined by the board that a pleading is not signed or is signed with the intent to defeat the purpose of this section, it may be stricken and the action may proceed as though the pleading had not been served.)~~ (i) The signature of the appellant or the appellant's representative.

(2) The board may, upon motion of a party or upon its own motion, require a more complete statement of the claim or defense or any matter stated in any notice of appeal.

AMENDATORY SECTION (Amending WSR 90-11-105, filed 5/22/90, effective 6/22/90)

WAC 456-09-315 Deadlines for submitting the notice of appeal~~(—Timeliness of filing)~~. (1) The jurisdiction of the board to hear an appeal is limited to those appeals submitted within the deadlines stated in this section. Any appeal to the board shall be ~~(filed)~~ submitted within the time required by the statute governing the respective agency or proceeding

involved. All time periods set forth below are expressed in calendar days including, but not limited to the following:

~~((1))~~ (a) Appeals taken pursuant to RCW 82.03.190, thirty days from the mailing of the determination.

~~((2))~~ (b) Appeals from a county board of equalization pursuant to RCW 84.08.130, thirty days from the mailing of the decision.

~~((3))~~ (c) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, thirty days from the mailing of the determination.

~~((4))~~ (d) Appeals by an assessor or owner of an inter-county public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapters 84.12 and 84.16 RCW, thirty days from the mailing of the order.

~~((5))~~ (e) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075, fifteen days after the mailing of the certification.

~~((6))~~ (f) Appeals from the decisions of sale price of second class shorelands on navigable lakes by the department of natural resources pursuant to RCW 79.94.210, thirty days from the mailing of the notification.

~~((7))~~ (g) Appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060, thirty days from the mailing of the ordinance.

~~((8))~~ (h) Appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065, thirty days after the publication of the rate.

~~((9))~~ (i) Appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091, on or before the sixtieth day after the date of final adoption.

~~((10))~~ (j) Appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850, thirty days from the mailing of the determination.

(2) If the last date for submitting the notice of appeal falls upon a Saturday, Sunday or legal holiday, the submission shall be considered timely if performed on the next business day.

(3) Any party may, by motion, challenge the jurisdiction of the board in any appeal. The board may, upon its own motion, raise such jurisdictional issues.

AMENDATORY SECTION (Amending WSR 98-22-039, filed 10/29/98, effective 11/29/98)

WAC 456-09-325 Date ~~(of filing— Filing via facsimile machine or electronic mail transmission)~~ and manner of submitting the notice of appeal. (1) The date of ~~(filing of)~~ submitting a notice of appeal shall be the date of actual receipt by the board at its Olympia office if the appeal is ~~((to be))~~ hand delivered. The board's date stamp placed thereon shall be evidence of the date of receipt. If ~~((the filing of))~~ the

notice of appeal is ~~((by mail))~~ mailed, the postmark will control and shall be evidence of the date of ~~((filing))~~ submission.

(2) All documents may be ~~((filed))~~ submitted with the board via ~~((facsimile))~~ fax machine or electronic mail transmission. However, ~~((filing))~~ the submission will not be deemed complete and the board will not acknowledge receipt of the notice of appeal as provided in WAC 456-09-300 unless the following procedures are strictly observed:

(a) ~~((A facsimile))~~ Documents received by fax machine or electronic mail ~~((document))~~ will ~~((only))~~ be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped "received" on the following business day. The date and time indicated by the board's ~~((facsimile))~~ fax machine or computer shall be evidence of the date and time of receipt of transmission.

(b) The original notice of appeal must be ~~((filed with))~~ mailed and postmarked or otherwise submitted to the board ~~((within ten business days from))~~ on or before the date of fax or electronic transmission.

(c) All fax or electronic transmissions are sent at the risk of the sender.

AMENDATORY SECTION (Amending Order 95-01, filed 2/8/95, effective 3/11/95)

WAC 456-09-330 ((Acknowledgement of) Amendments to notice of appeal. ((The board will acknowledge receipt of a notice of appeal.)) A notice of appeal may be amended as a matter of right within thirty days from the date the notice of appeal was received by the board. Thereafter, a party may amend the notice of appeal upon agreement in writing by the adverse party or when granted by the board. Motions to amend the notice of appeal shall be freely granted and may be denied only upon a showing by the adverse party of unreasonable and unavoidable hardship. Motions to amend must comply with WAC 456-09-555 and 456-09-345.

Amendments to the notice of appeal shall not extend any applicable jurisdictional deadline for appeal to the board.

AMENDATORY SECTION (Amending Order 89-02, filed 5/2/89)

WAC 456-09-335 ((Computation of time.)) Response. ((In computing any period of time prescribed or allowed by any applicable statute or rule, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.)) The respondent may submit an original and three copies of a response to the notice of appeal with the board at least ten business days prior to hearing, unless otherwise ordered by the board, together with proof of service pursuant to WAC 456-09-345.

AMENDATORY SECTION (Amending Order 95-01, filed 2/8/95, effective 3/11/95)

WAC 456-09-340 ((Jurisdiction—Issue raised by board—Procedure.)) Intervention. ((1) Any party may, by motion, challenge the jurisdiction of the board in any appeal. The board may, upon its own motion, raise such jurisdictional issues.

~~(2) When the board determines that an appeal has been untimely filed, an order of dismissal will be mailed to all parties. An exception to the order of dismissal may be filed within twenty calendar days after mailing of such order. The exception shall be filed with the board and a copy served upon all other parties.))~~ (1) Any person or agency whose interest may be substantially affected by an appeal may petition the board to be granted status as an intervenor in the appeal.

(2) In determining whether a petitioner qualifies as an intervenor, the presiding officer shall apply the rules of the superior courts of this state.

(3) If the petitioner qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

(c) Requiring two or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

(4) The presiding officer may timely grant or deny each petition and specify conditions, if any.

AMENDATORY SECTION (Amending Order 89-02, filed 5/2/89)

WAC 456-09-345 ((Amendments to notice of appeal)) Service of papers on parties and proof of service. ((Except as provided in WAC 456-09-705 a notice of appeal may be amended as a matter of right until thirty days after filing have elapsed.

~~Thereafter any amendments can only be made after approval of the board. Amendments shall be freely granted and may be denied only upon a showing by the adverse party of unreasonable and unavoidable hardship. The board may, upon motion of a party or upon its own motion, require a more complete statement of the nature of the claim or defense or any matter stated in any pleading.))~~ (1) All notices, pleadings, exhibits, correspondence specific to an appeal, and other papers submitted to the board shall be served upon all counsel and representatives of record and to unrepresented parties or upon their agents designated by them or by law.

(a) Service shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by fax and same-day mailing of copies; or by commercial delivery company.

(b) Service by mail shall be regarded as completed upon deposit in the United States mail, as evidenced by the postmark, properly stamped and addressed. Service by fax shall be regarded as completed upon production by the fax machine of confirmation of transmission and deposit on the same day in United States mail. Service by commercial parcel delivery shall be regarded as completed upon delivery to the parcel delivery company, properly addressed with charges prepaid.

(2) Where proof of service is required by statute or rule, receipt of the papers by the board, together with one of the following, shall constitute proof of service:

(a) An acknowledgment of service.

(b) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names).

(c) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Transmitting a copy thereof by fax, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

(iii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial delivery company.

#### ((DISCOVERY AND SUBPOENA)) PREHEARING AND HEARING PROCEDURE

AMENDATORY SECTION (Amending Order 89-02, filed 5/2/89)

WAC 456-09-510 ((Prehearing procedures—Discovery)) Limitation on discovery. (1) Insofar as applicable and not in conflict with this chapter, the statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used. Such statutes and rules shall include but shall not be limited to those rules pertaining to discovery of evidence by parties to civil actions.

(2) The board may limit discovery upon motion by any party.

(3) The board may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 37 of the superior court civil rules. The board may condition use of discovery on a showing of necessity and unavailability of other means. In exercising such discretion, the board will consider the criteria set forth in RCW 34.05.446.

AMENDATORY SECTION (Amending WSR 90-11-105, filed 5/22/90, effective 6/22/90)

WAC 456-09-520 Subpoena((—Issuance)). Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 34.05.446. ((Every subpoena shall identify the party causing its issuance. Subpoenas may be issued by the board or by an attorney of record. The person issuing shall sign the subpoena. Parties desiring subpoenas to be signed by

the board shall make a showing of relevance and reasonable scope of the testimony or evidence sought and shall prepare the subpoenas for issuance, send them to the board's Olympia office for signature and, upon return, shall make arrangements for service.)) Parties wishing to issue a subpoena must comply with the rules in WAC 10-08-120.

AMENDATORY SECTION (Amending WSR 90-11-105, filed 5/22/90, effective 6/22/90)

WAC 456-09-530 ((Subpoena—Form)) Settlement conference. ((Every subpoena shall name the board of tax appeals and the title of the proceedings and shall command the person to whom it is directed to attend and give testimony or produce designated books, documents, or things under that person's control at a specified time and place.)) (1) At any time prior to hearing, the board may, upon its own motion or upon written application by a party, order a settlement conference. The conference shall be scheduled with not less than fourteen days' notice to each party at a time and place fixed by the board and conducted in a form and manner prescribed by the board with notice to the parties.

(2) In the event the appeal does not settle, hearing on the matter shall be set. The presiding officer of the hearing will not be the person who conducts the settlement conference.

AMENDATORY SECTION (Amending Order 95-01, filed 2/8/95, effective 3/1/95)

WAC 456-09-540 ((Subpoena—Service)) Prehearing conference. ((Service of subpoenas shall be made by delivering a copy of the subpoena to such person and tendering on demand, where entitled to make a demand, the fees for one day's attendance and the mileage allowed by law. All costs, which include the cost of producing records, shall be paid by the party requesting issuance of the subpoena. A subpoena may be served by any suitable person at least eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at his or her abode. Proof of service shall be made when service is made by a person other than an officer authorized to serve process.)) (1) The board, upon its own motion or upon request of a party, may conduct a prehearing conference or conferences to consider:

(a) Simplification of issues;

(b) The necessity or desirability of amendments to the pleadings;

(c) The possibility of obtaining stipulations, admissions of fact and admissions of the genuineness of documents which will avoid unnecessary proof;

(d) Limitations on the number and consolidation of the examination of witnesses;

(e) Procedural matters;

(f) Dates by which the parties must provide documentary evidence to the board and to other parties;

(g) The method for identifying exhibits and other attachments to briefs, motions, and other pleadings;

(h) The number of copies of documentary evidence, briefs, motions and other pleadings to be submitted to the board; and

(i) Such other matters as may aid in the disposition or settlement of the proceeding.

(2) Prehearing conferences may be held by teleconference or at a time and place specified by the presiding officer.

(3) Following the prehearing conference, the board shall issue an order reciting the action taken at the conference, and the agreements made by the parties concerning all of the matters considered. The order shall control the subsequent course of the proceeding unless modified for good cause by subsequent order.

(4) Documentary evidence not submitted in accordance with the prehearing conference order may not be received in evidence in the absence of a clear showing that the offering party had good cause for the failure to comply with the order.

(5) Nothing in this rule shall be construed to limit the right of the parties to attempt settlement at any time.

#### NEW SECTION

**WAC 456-09-545 Summary judgment.** A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Motions for summary judgment must comply with WAC 456-09-555.

**AMENDATORY SECTION** (Amending Order 89-02, filed 5/2/89)

**WAC 456-09-550** ~~((Subpoena—Proof of service.))~~ **Time in which evidence, briefs, and replies must be submitted.** ~~((Proof of service and the required return affidavit shall be filed with the board.))~~ **In the absence of a prehearing order, evidence, briefs, and other documents must be submitted to the board within the times stated below.**

(1) Documentary evidence which is to be introduced at hearing shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least ten business days prior to hearing. Each page of documentary evidence shall indicate whether it is submitted by the appellant or respondent and shall be numbered. Failure to comply may be grounds for exclusion of such evidence or dismissal in accordance with WAC 456-09-750.

(2) An original and three copies of briefs, if any, shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least fifteen calendar days prior to hearing.

(3) An original and three copies of reply briefs, if any, shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 at least ten calendar days prior to hearing.

(4) Documentary evidence submitted to a board of equalization and forwarded to this board is excepted from the requirements of this provision.

#### NEW SECTION

**WAC 456-09-552 Amicus.** (1) Any person whose interest may be substantially affected by a proceeding before the board may by motion request status as an amicus in the case.

The motion must comply with WAC 456-09-555 and 456-09-345.

(2) The motion requesting amicus status must include a statement of the following:

(a) Applicant's interest, or the interest of the person or group represented by applicant, in the proceeding before the board;

(b) Applicant's familiarity with the issues involved in the proceeding before the board and with the scope of the arguments presented or to be presented by the parties;

(c) Specific issues to which the amicus curiae brief will be directed; and

(d) Applicant's reason for believing that additional argument is necessary on these specific issues.

(3) The brief of amicus curiae may be filed with the motion but must be filed no later than the time set for the filing of the brief for the party whose position the amicus supports.

(4) The board, on its own motion and with notice to the parties, may request a brief of amicus curiae from any person deemed to be substantially affected by a proceeding before the board.

#### NEW SECTION

**WAC 456-09-555 Motions.** (1) Any application for an order or ruling or a request for relief from any provision of this chapter is a motion. Every motion, unless made during hearing, shall be in writing and shall include the following:

(a) A statement of the relief or order sought;

(b) The reason for the relief or order;

(c) A statement that the moving party has made a good faith effort to confer with the other party to resolve the subject matter of the motion;

(d) The amount of time needed for argument;

(e) Whether court reporting services are requested; and

(f) Shall include proof of service pursuant to WAC 456-09-345.

(2) All motions shall be properly captioned and signed by the party or their representative.

(3) At the discretion of the board, the hearing on motion may be by teleconference or in person.

(4) A response to the motion shall be submitted to the board together with proof of service pursuant to WAC 456-09-345 within ten business days following the date of service of the motion.

**AMENDATORY SECTION** (Amending Order 89-02, filed 5/2/89)

**WAC 456-09-560** ~~((Subpoena—Quash or modification.))~~ **Postponement, continuance, and extensions of time.** ~~((If the subpoena issued is unreasonable or requires evidence not relevant to any matter in issue, the board may quash or modify the subpoena. The person to whom the subpoena was issued must bring a motion to quash or modify at or before the time specified in the subpoena for compliance and upon notice to the party for whom the subpoena was issued.))~~ **(1) Postponements, continuances, and extensions of time may be ordered by the board on its own motion.**

(2) Requests to postpone, continue, extend the time, or reschedule the prehearing conference, if any, and the initially scheduled hearing date of an appeal will be freely granted provided such request is made within the time specified in the board's letter setting the prehearing conference, if any, and the initial hearing date.

(3) Other requests for a postponement, continuance, or extension of time must be timely, in writing, and comply with WAC 456-09-555 and 456-09-345. The board shall promptly schedule a conference to hear argument and rule on the request. Requests for continuance will not be granted absent a showing of good cause.

(4) This section shall not extend any applicable time for appeal to this board.

#### NEW SECTION

**WAC 456-09-565 Teleconference proceeding.** (1) At the discretion of the board, and where the rights of the parties will not be prejudiced thereby, all or part of the hearing, prehearing, or settlement conference may be conducted by telephone, television, or other electronic means. Each party in the proceeding must have an opportunity to participate effectively in, to hear, and if technically and economically feasible, to see the entire proceeding while it is taking place.

(2) The board may require documentary evidence to be submitted sufficiently in advance of the proceeding.

**AMENDATORY SECTION** (Amending Order 89-02, filed 5/2/89)

**WAC 456-09-570 ((Subpoena—Geographical scope)) Notice of hearing.** ~~((Attendance of witnesses and production of evidence may be required from any place in the state of Washington at any designated place of hearing.))~~ (1) Notice of a hearing will be mailed to all parties and to all persons having submitted written petitions to intervene not less than twenty calendar days before the hearing date unless a different period is required by law. The notice shall include the information specified in RCW 34.05.434 and if the hearing is to be conducted by teleconference call the notice shall so state.

(2) The notice shall state that if a limited-English speaking or hearing-impaired party or witness needs an interpreter, a qualified interpreter will be appointed and that there will be no cost to the party or witness. The notice shall also state that persons with disabilities may request reasonable accommodations to allow their participation in the hearing. The notice shall include a form for a party to indicate if an interpreter is needed and identification of the primary language, or if a participant is hearing impaired; or to describe the reasonable accommodations requested.

(3) Defects in notice may be waived if the waiver is knowing and voluntary.

#### NEW SECTION

**WAC 456-09-575 Notice of hearing to limited-English speaking parties.** (1) When an agency is notified or otherwise made aware that a limited-English-speaking per-

son is a party, all notices concerning the hearing, including notices of hearing, continuance, and dismissal, either:

(a) Shall be written in the primary language of the party; or

(b) Shall include a notice in the primary language of the party which describes the significance of the notice and how the party may receive assistance in understanding and responding to the notice.

(2) For purposes of this chapter, the term "limited-English-speaking person" means any person involved in a legal proceeding who cannot readily speak or understand the English language. The term has the same meaning as "non-English-speaking person" as defined in RCW 2.43.020.

**AMENDATORY SECTION** (Amending WSR 90-11-105, filed 5/22/90, effective 6/22/90)

**WAC 456-09-740 Testimony under oath** ~~((—Interpreters))~~. (1) All testimony to be considered by the board shall be sworn, and each person shall swear or affirm that the testimony to be given shall be the truth, the whole truth, and nothing but the truth, or according to the provisions of chapter 5.28 RCW ((5.28.020 through 5.28.060)).

(2) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the ~~((agency conducting the proceedings))~~ board, in the English language, to the best of the interpreter's skill and judgment.

**AMENDATORY SECTION** (Amending WSR 90-11-105, filed 5/22/90, effective 6/22/90)

**WAC 456-09-742 ((Hearings—Reporting—Recording—)) Recording devices.** (1) All hearings shall be officially recorded by manual, electronic, or other type of recording device.

(2) Photographic and recording equipment of others shall be permitted at hearings; however, the presiding officer may impose such conditions upon their use as deemed necessary to prevent disruption of the hearing, or when a statute or law limits such use.

**AMENDATORY SECTION** (Amending Order 89-02, filed 5/2/89)

**WAC 456-09-745 Failure to attend** ~~((—Default or dismissal—Setting aside))~~ and hearing on the record. (1) When a party to these proceedings has, after notice, failed to attend a hearing, a motion for default or dismissal may be sought by any party to the proceedings or raised by the board upon its own motion. Any such order shall include a statement of the grounds for the order and shall be served upon all parties to the proceeding.

~~((2))~~ Within ten business days after service of the default order or dismissal under ~~((subsection (1) of))~~ this section, the party against whom the order was entered may ~~((file))~~ submit to the board together with proof of service pursuant to WAC 456-09-345 a written objection requesting that



the order be vacated and stating the specific grounds relied upon. The board may, for good cause, set aside an entry of dismissal, default, or final order.

(2) Upon stipulation by both parties, an appeal may be submitted to the board on the record and the attendance of a party may be excused. However, the board in its discretion may require attendance for argument.

AMENDATORY SECTION (Amending Order 89-02, filed 5/2/89)

**WAC 456-09-750 Dismissal, stipulation, and withdrawal of actions.** Any action may be dismissed by the board((:)) for any of the following reasons.

(1) When all parties so stipulate((:)). Stipulations on the value of property shall contain the parcel number, assessment year, the agreed upon value of the subject property, and a brief statement supporting the agreed upon value.

(2) As a matter of right when the appellant requests in writing to withdraw the appeal prior to the scheduled hearing.

(3) Upon motion of the appellant at the hearing prior to the presentation of the respondent's case((:(3))).

(4) Upon motion by the respondent alleging that the appellant has failed to prosecute the case, failed to comply with this chapter, or failed to follow any order of the board((: or(4))).

(5) Upon the board's own motion for failure by the parties to comply with applicable rules or any order of the board.

AMENDATORY SECTION (Amending Order 89-02, filed 5/2/89)

**WAC 456-09-755 ((Waiver of parties' appearance)) Rules of evidence and admissibility criteria.** ((Upon stipulation by both parties that no facts are at issue, an appeal may be submitted to the board with or without oral argument. However, the board in its discretion may require appearance for argument.)) (1) All relevant evidence, including hearsay evidence, is admissible if, in the opinion of the board, the offered evidence is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The board may exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The board may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) The board's experience, technical knowledge, competency, and specialized knowledge may be used in evaluation of evidence.

(3) If not inconsistent with subsection (1) of this section, the board may refer to, but shall not be bound by, the Washington rules of evidence.

(4) Documentary evidence may be submitted in the form of copies or excerpts, or by incorporation by reference.

AMENDATORY SECTION (Amending Order 89-02, filed 5/2/89)

**WAC 456-09-765 Official notice((—Matters of law)).** ((The board may officially notice:

(1) Federal law. The Constitution; congressional acts, resolutions, records, journals, and committee reports; decisions of federal courts and administrative agencies; executive orders and proclamations; and all rules, orders, and notices published in the Federal Register.

(2) State law. The Constitution of the state of Washington; decisions of the state courts; acts of the legislature, resolutions, records, journals, and committee reports; decisions of administrative agencies of the state of Washington; executive orders and proclamations by the governor; and all rules, orders, and notices filed with the code reviser.

(3) Counties and cities. Ordinances and resolutions enacted by cities, counties, or other municipal subdivisions of the state of Washington.

(4) Governmental organization. Organization, territorial limitations, officers, departments and general administration of the government of the state of Washington, the United States, the several states, and foreign nations.

(5) Agency organization. The department, commission, or board organization, administration, officers, personnel, official publications, and practitioners before its bar.)) (1) The board may take official notice of the following:

(a) Any judicially cognizable facts;

(b) Any matter of public record;

(c) Technical or scientific facts within the agency's specialized knowledge; and

(d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

(2) If any decision is stated to rest in whole or in part upon official notice of a fact which the parties have not had a prior opportunity to controvert, any party may controvert such fact by petition for review if such notice is taken in an initial decision pursuant to WAC 456-09-930 or by a petition for reconsideration if notice of such fact is taken in a final decision pursuant to WAC 456-09-955. Such controversion shall concisely and clearly set forth the sources, authority, and other data relied upon to show the existence or nonexistence of the fact assumed or denied in the decision.

(3) A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

AMENDATORY SECTION (Amending Order 89-02, filed 5/2/89)

**WAC 456-09-910 Assistance to board.** (1) The board may obtain assistance concerning the appeal of any case within the scope of RCW 82.03.130((2)) (1)(b) (appeals from a county board of equalization) from the staff of the department of revenue as provided by RCW 82.03.160. The board will notify the parties of its intent to seek such assistance and the matters sought to be investigated before contacting the department of revenue. Parties may recommend an alternative to the board to achieve the same objectives without contacting the department of revenue.

(2) Any evidence from the department of revenue concerning assistance requested under this section shall only be presented in open hearing after notice to all parties.

AMENDATORY SECTION (Amending Order 89-02, filed 5/2/89)

**WAC 456-09-915 Presentation of posthearing evidence.** Unless requested by the board, no posthearing evidence will be accepted unless such evidence could not reasonably have been anticipated or discovered prior to hearing. The board may request that the parties submit posthearing briefing or proposed findings of fact and conclusions of law.

AMENDATORY SECTION (Amending Order 89-02, filed 5/2/89)

**WAC 456-09-920** ~~((Proposed findings and conclusions—Submission.))~~ **Initial or final decision.** ~~((At the discretion of the board, parties may file proposed findings of fact and conclusions of law. Proposed findings of fact and conclusions of law shall be filed within the time period set by the board.))~~ Every decision, whether initial or final, shall:

- (1) Be correctly captioned as to the name of the board and name of the proceeding;
- (2) Designate all parties and representatives participating in the proceeding;
- (3) Include a concise statement of the nature and background of the proceeding;
- (4) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;
- (5) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;
- (6) Contain an initial or final decision disposing of all contested issues; and
- (7) Contain a statement describing the available post-hearing remedies.

AMENDATORY SECTION (Amending WSR 90-11-105, filed 5/22/90, effective 6/22/90)

**WAC 456-09-925 Initial decision.** (1) An initial decision shall be prepared when:

- ~~((1))~~ (a) An appeal has been heard by only one member of the board;
- ~~((2))~~ (b) An appeal has been heard by only two members of the board at a time when there is no vacancy on the board and the two members cannot agree on a conclusion;
- ~~((3))~~ (c) An appeal has been heard by a hearing officer; or
- ~~((4))~~ (d) The board shall otherwise elect to do so.

(2) If a petition for review as provided in WAC 456-09-930 is not submitted to the board within twenty calendar days of the date of mailing of the initial decision, the initial decision shall be deemed the final decision of the board unless the decision specifies otherwise.

AMENDATORY SECTION (Amending Order 95-01, filed 2/8/95, effective 3/11/95)

**WAC 456-09-930** ~~((Initial or final decision.))~~ **Petition for review of an initial decision, replies, and disposition.** ~~((Every decision, whether initial or final, shall:~~

- ~~(1) Be correctly captioned as to the name of the board and name of the proceeding;~~

~~(2) Designate all parties and representatives participating in the proceeding;~~

~~(3) Include a concise statement of the nature and background of the proceeding;~~

~~(4) Contain appropriate numbered findings of fact meeting the requirements in RCW 34.05.461;~~

~~(5) Contain appropriate numbered conclusions of law, including citations of statutes and rules relied upon;~~

~~(6) Contain an initial or final decision disposing of all contested issues;~~

~~(7) Contain a statement describing the available post-hearing remedies.))~~ (1) Any party to an adjudicative proceeding may make a petition for review of an initial decision.

(2) The petition for review shall be made, by mail or otherwise, with the board within twenty calendar days of the date of mailing of the initial decision unless the decision specifies otherwise together with proof of service pursuant to WAC 456-09-345.

(3) The petition for review shall specify the portions of the initial decision to which exception is taken and shall refer to the evidence of record which is relied upon to support the petition.

(4) Any party may make a reply to a petition for review. The reply shall be made, by mail or otherwise, with the board together with proof of service pursuant to WAC 456-09-345 within ten business days of the date of the letter acknowledging receipt by the board of the petition for review.

(5) The disposition may be in the form of a written order denying the petition and adopting the initial decision as the final decision, granting the petition and issuing a final decision, or granting the petition and setting the matter for further hearing. The board may require the parties to submit written briefs or statements of position or to appear and present oral argument regarding the matters on which review was sought, within such time and on such terms as may be prescribed.

AMENDATORY SECTION (Amending Order 95-01, filed 2/8/95, effective 3/11/95)

**WAC 456-09-955 Petition for reconsideration of a final decision.** (1) After a final decision has been issued, any party may ~~((file))~~ submit a petition for reconsideration with the board as provided by RCW 34.05.470. Such petition must be made, by mail or otherwise, within ten business days from the mailing of the final decision, and shall state the specific grounds upon which relief is requested. The petition for reconsideration shall be ~~((filed with))~~ submitted to the board and served upon all parties and representatives of record in compliance with WAC 456-09-345. The board may require ~~((that))~~ or a party may at its own option, within ten business days of the date of the letter acknowledging receipt by the board of the petition for reconsideration, submit to the board a response ~~((be made and served in the same manner))~~ together with proof of service pursuant to WAC 456-09-345. ~~((The board may deny the petition, modify its decision, or reopen the hearing.))~~

(2) The petition shall be deemed denied if, within twenty calendar days from the date the petition is received by the board, the board does not either~~((+(-)))~~ dispose of the peti-

tion; or ~~((2) serve))~~ provide the parties with a written notice specifying the date by which it will act on the petition.

(3) The disposition shall be in the form of a ~~((decision))~~ written order denying the petition, granting the petition and dissolving or modifying the final decision, or granting the petition and setting the matter for further hearing. The board may require the parties to submit written briefs or statements of position or to appear and present oral argument within such time and on such terms as may be prescribed.

**AMENDATORY SECTION** (Amending WSR 90-11-105, filed 5/22/90, effective 6/22/90)

**WAC 456-09-960 Record on appeal.** (1) When an appeal is taken to superior court from a decision of the board rendered in a formal proceeding, the appealing party is responsible for ordering and paying for the transcript of the testimony from the court reporter.

(2) If a petition for judicial review of a final order is made, by stipulation the parties may agree to shorten the record to be filed with the court. Either party unreasonably refusing to stipulate to such a limitation, including shortening or selecting only portions of a transcript, may be ordered to pay the additional costs involved as allowed in RCW 34.05.566.

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 456-09-160 Form and size of documents.
- WAC 456-09-170 Docket number.
- WAC 456-09-320 Notice of appeal—Filing and service.
- WAC 456-09-350 Notice of appeal—Response.
- WAC 456-09-355 Parties in exemption appeals.
- WAC 456-09-365 Conversion of hearing.
- WAC 456-09-410 Service of papers.
- WAC 456-09-420 Method of service.
- WAC 456-09-430 Service of papers—When complete.
- WAC 456-09-440 Proof of service—Certificate.
- WAC 456-09-610 Conferences—Two types.
- WAC 456-09-615 Settlement conference—Purpose.
- WAC 456-09-620 Settlement conference—When held.
- WAC 456-09-625 Settlement conference—Agreements.
- WAC 456-09-635 Prehearing conference—When held.

- WAC 456-09-640 Prehearing conference—Documentary evidence.
- WAC 456-09-645 Prehearing conference—Excerpts from documentary evidence.
- WAC 456-09-650 Prehearing conference—Failure to supply prehearing information.
- WAC 456-09-655 Prehearing conference—Agreements.
- WAC 456-09-705 Advance submission of evidence—Delivery to adverse party.
- WAC 456-09-710 Hearing—Setting of time and place.
- WAC 456-09-715 Continuance—Extensions of time.
- WAC 456-09-720 Teleconference proceeding.
- WAC 456-09-725 Briefs.
- WAC 456-09-730 Hearing—Notice of hearing—Time—Contents.
- WAC 456-09-732 Hearing—Notice to limited-English speaking parties.
- WAC 456-09-735 Hearing—Standard and scope of review.
- WAC 456-09-760 Rules of evidence—Admissibility criteria.
- WAC 456-09-770 Official notice—Material facts.
- WAC 456-09-775 Motions—Application—Requirements.
- WAC 456-09-935 Petition for review and replies.
- WAC 456-09-940 Finality of initial decision.
- WAC 456-09-945 Final decision following initial decision—Record.
- WAC 456-09-950 Final decision—Precedential decisions.

**INTRODUCTION**

**NEW SECTION**

**WAC 456-10-001 Purpose and application of chapter.** (1) This chapter explains how informal hearings are conducted before the board of tax appeals (board). Although informal hearings are available to all parties, the informal process is helpful for persons who are not represented by counsel. In the informal process a taxpayer does not need to possess legal expertise in order to pursue an appeal. These rules of practice and procedure will be liberally construed to

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secure the just, speedy, and economical determination of every action.

(2) Where procedures are not covered by this chapter, the board may, upon its own motion or upon written application by any party, refer to and apply any rule provided for in chapter 456-09 - Formal Hearings—Practice and Procedure, chapter 10-08 Washington Administrative Code (WAC) - Model Rules of Procedure, or the superior court civil rules. This chapter augments but does not supplant the provisions of chapter 82.03 RCW.

(3) The superior court civil rules, rules of professional conduct, the Washington Administrative Code (WAC), and the Revised Code of Washington (RCW) referred to herein are available in public libraries and on-line at various web sites.

**AMENDATORY SECTION** (Amending WSR 94-07-043, filed 3/10/94, effective 4/10/94)

**WAC 456-10-010 Distinction between formal and informal hearing**~~((—Distinction))~~ **and converting an appeal.** ~~((All persons appealing to the board of tax appeals may request that their appeal be heard either as a formal or informal hearing. Formal hearings are requested by parties wishing to carry the record of their appeals to court and are conducted pursuant to the Administrative Procedure Act. Judicial review of a board of tax appeals decision made in a formal hearing is limited to the record made of the proceedings before the board of tax appeals. All parties in formal hearings are normally represented by attorneys although taxpayers may represent themselves in such proceedings. A verbatim record is made of all formal hearings.~~

Informal hearings are requested by a majority of parties appearing before the board of tax appeals. Decisions entered in an informal appeal may not be appealed to court. Courts may have jurisdiction, however, to hear a timely filed action pursuant to RCW 82.32.180 or 84.68.020 (see RCW 82.03.180).

~~In all appeals over which the board has jurisdiction, a party taking an appeal may elect, with its notice of appeal, either a formal or informal hearing pursuant to RCW 82.03.140. Failure to elect a formal or informal hearing at the time of filing shall result in the proceeding being conducted as informal.)~~ **(1) A party making an appeal may elect in writing, with its notice of appeal, either a formal or informal hearing. Informal hearings are conducted pursuant to the rules of practice and procedure set forth in this chapter. Formal hearings are conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW, and the rules of practice and procedure of chapter 456-09 WAC. Failure to elect in writing a formal or informal hearing at the time of submitting the notice of appeal shall result in the proceeding being conducted as informal.**

**(a) A formal decision of the board is subject to judicial review pursuant to RCW 34.05.570. Judicial review is limited to the record made of the proceedings before the board. The record made of the proceedings includes a verbatim account of the hearings together with the evidence, pleadings, and documents submitted to the board by the parties. In appeals from a decision of a board of equalization, the record**

**includes the decision of that board together with the evidence submitted thereto.**

**(b) Decisions entered in an informal appeal are not subject to judicial review as authorized under the Administrative Procedure Act, chapter 34.05 RCW.**

**(c) Aggrieved parties may have avenues of further appeal allowed by law which are not pertinent to the statutory authority granted to the board and are not discussed herein.**

**(2) The appeal may be converted from an informal to a formal proceeding as provided below.**

**(a) The respondent, as a party to an appeal pursuant to RCW 84.08.130 (appeal from a decision by a board of equalization) may, within twenty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of intention that the hearing be a formal hearing.**

**(b) In appeals under RCW 82.03.190, the department of revenue may, within thirty calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of its intention that the hearing be a formal hearing.**

**(c) In appeals under RCW 82.03.130 (1)(e), the department of revenue may, within ten calendar days from the date of the board's mailing of the acknowledgment of the notice of appeal, submit to the clerk of the board a notice of its intention that the hearing be a formal hearing.**

**(d) At any time up to thirty days prior to the date of the hearing, the parties may submit to the clerk of the board a notice signed by all parties of intention to convert the proceedings to either a formal or informal hearing.**

**AMENDATORY SECTION** (Amending Order 95-02, filed 2/8/95, effective 3/11/95)

**WAC 456-10-110 Definitions.** As used in this chapter, the following terms shall have the following meaning:

(1) "Board" means the board of tax appeals as described in chapter 82.03 RCW and chapters 456-09 and 456-10 WAC. Where appropriate, the term "board" also refers to the designated hearing officers or agents of the board of tax appeals.

(2) "Presiding officer" or "hearing officer" shall mean any member of the board, tax referee, ~~((administrative law judge;))~~ or any person who is assigned to conduct a conference or hearing by the board. The presiding officer shall have authority as provided by WAC 10-08-200 and chapter 34.05 RCW.

(3) "Appellant" means a person, natural or otherwise, who appeals any order or decision to the board of tax appeals.

(4) "Respondent" means a person, natural or otherwise, who is named as a responding party in any appeal before the board of tax appeals.

(5) "Formal hearing" means a proceeding conducted pursuant to the Administrative Procedure Act, chapter 34.05 RCW and chapter 456-09 WAC.

(6) "Informal hearing" means a proceeding governed by those rules specified in chapter 456-10 WAC.

(7) "Decision" means a written judgment or ruling, including orders, issued by the board of tax appeals or the

designated hearing officers or agents of the board of tax appeals.

(8) "Party" means any person who in a proceeding before the board is an appellant or respondent.

(9) "To submit" means to present or to deliver. Submissions to the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to submit" and "to file" are used interchangeably.

(10) "To file" means to present or to deliver. Filings with the board may be delivered personally, by mail, by commercial delivery service, or by fax or electronic transmission as provided in these rules. As used herein, the terms "to file" and "to submit" are used interchangeably.

AMENDATORY SECTION (Amending Order 89-03, filed 5/2/89)

WAC 456-10-120 ((Informal rules—Procedure governed.)) **Alternative procedures.** ((This chapter shall govern all practice and procedure for informal hearings before the board. Formal proceedings shall be governed by those rules specified in chapter 456-09 WAC.)) The board may, from time to time, offer expedited or abbreviated procedures for certain informal hearings in order to resolve appeals in an economic and efficient manner.

AMENDATORY SECTION (Amending Order 95-02, filed 2/8/95, effective 3/11/95)

**WAC 456-10-140 Organization and office.** The board consists of three members, one of whom is elected chair. Members of the board are appointed by the governor with the consent of the senate and serve on a full-time basis.

The board offices are open each day for the transaction of business from 8:00 a.m. to 5:00 p.m., excluding Saturdays, Sundays, and legal holidays. All submissions, requests, and communications shall be sent to the board at its principal office at 910 5th Avenue S.E., Post Office Box 40915, Olympia, Washington 98504-0915. The phone number of the board office is 360-753-5446; its fax number is 360-586-9020; its electronic mail address is [bta@bta.state.wa.us](mailto:bta@bta.state.wa.us). Information about the board is available at its web site at <http://bta.state.wa.us>.

AMENDATORY SECTION (Amending Order 89-03, filed 5/2/89)

**WAC 456-10-150 Quorum.** Two members of the board shall constitute a quorum for making orders or decisions or for promulgating rules and regulations relating to its procedures and may act although one position on the board may be vacant. One member or designated hearing officer may hold hearings and take testimony. The findings of such member or hearing officer shall become final in accordance with WAC ~~((456-10-740))~~ 456-10-725 or 456-10-730.

AMENDATORY SECTION (Amending WSR 90-11-106, filed 5/22/90, effective 6/22/90)

**WAC 456-10-160 Meetings of the board.** Regular public meetings of the board will be held at its principal office or such other place as the board designates at ~~((10:00))~~ 9:30 a.m. on the second ((Thursday)) Friday of each ((March, June, September, and December)) month.

AMENDATORY SECTION (Amending Order 89-03, filed 5/2/89)

**WAC 456-10-210 Appearance and practice before the board**~~((—Who may appear)). ((The right to))~~ Practice before the board in informal proceedings shall be limited to the following:

(1) Taxpayers who are natural persons representing themselves;

(2) Attorneys at law duly qualified and entitled to practice in the courts of the state of Washington;

~~(3) ((Attorneys at law entitled to practice before the highest court of record of any other state, if attorneys licensed in the state of Washington are permitted to appear before the courts of such other state in a representative capacity, and if not otherwise prohibited by state law;~~

~~(4))~~ (4) Public officials in their official capacity;  
~~((5))~~ (4) Certified public accountants ~~((and licensed public accountants entitled to practice accountancy))~~ licensed in the state of Washington;

~~((6))~~ (5) A duly authorized director, officer, or full-time employee of an individual firm, association, partnership, or corporation who appears for such firm, association, partnership, or corporation;

~~((7))~~ (6) Partners, joint venturers, or trustees representing their respective partnerships, joint venturers, or trusts; and

~~((8))~~ (7) Other persons designated by a taxpayer with approval of the board.

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**WAC 456-10-215 Notice of appearance by representatives.** Persons who represent parties in their appeal before the board must submit to the board and to the other parties a notice of appearance. The notice must include the name of the parties, the docket number if known, the representative's name, address, phone number, fax number, and electronic mail address.

AMENDATORY SECTION (Amending Order 89-03, filed 5/2/89)

**WAC 456-10-220 Rules of professional conduct.** All persons appearing in proceedings before the board, whether on their own behalf or in a representative capacity, shall conform to the rules of professional conduct (RPC) required of attorneys before the courts of Washington. ~~((If any such person does not conform to such rules, the board may decline to permit such person to appear in a representative capacity in any proceeding before the board. For example, representatives must observe rules concerning conflict of interests.))~~

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**WAC 456-10-300 Commencing the appeal.** (1) Persons wishing to make an appeal must submit to the board an original notice of appeal and a copy of the order or determination that is being appealed. The board will transmit a copy of the notice of appeal and a copy of the order or determination that is being appealed to the respondent(s) within thirty days of its receipt by the board.

(2) The board will acknowledge to the appellant in writing receipt of a notice of appeal.

AMENDATORY SECTION (Amending WSR 98-22-040, filed 10/29/98, effective 11/29/98)

**WAC 456-10-310 Contents of notice of appeal**~~(Forms—Contents)~~. (1) For ~~((alt))~~ informal appeals, an appellant may ~~((file))~~ submit a notice of appeal using forms provided by the board.

(2) In the alternative, an appellant may ~~((file))~~ submit a notice of appeal that ~~((shall))~~ substantially contains the following:

(a) ~~((A caption in the following form:~~

**BEFORE THE BOARD OF TAX APPEALS  
STATE OF WASHINGTON**

Appellant:		Name of county in which property is located (if applicable)
—		Docket No. ....
+		
		<b>NOTICE OF APPEAL</b>
Respondent:		Re: (Type of tax, e.g., excise, prop- erty)
.....		

~~In all cases the appellant shall be the party appealing to the board. The respondent shall be the government agency or the property owner, as the case may be.~~

~~(b) Numbered paragraphs stating:~~

~~((i)) Appellant's name, mailing address, telephone number, and that of the representative, if any.~~

~~((ii)) (b) Name of the respondent together with respondent's mailing address.~~

~~When the respondent is a government agency or agencies, the board may add respondents in order to ensure that all necessary persons are a party to the appeal.~~

~~(c) The date of the order or determination from which the appeal is taken, together with a copy of the order, decision, or application appealed from.~~

~~((iii)) (d) The nature of the tax((, and: (A)).~~

~~(i) In excise tax cases, the amount of the tax in controversy and the period covered thereby;~~

~~((B)) (ii) In property tax cases, ((a legal description of) the parcel number of the property under appeal, the year for which the valuation has been determined, the full value as determined by the local board of equalization, and a declaration of true and fair value as alleged by the appellant; and~~

~~((C)) (iii) In property tax exemption cases, ((a legal description and/or) the parcel number of the property under appeal, the year(s) for which the exemption is at issue, the basis under which exempt status should be granted or denied, and the use of the property.~~

~~((iv)) (e) Specification of the issue to be decided by the board.~~

~~(f) A clear, separate, and concise assignment of each error alleged and a short statement of facts upon which the appellant relies to sustain each contention.~~

~~((v)) (g) The relief sought.~~

~~((e) A statement that the appellant has read the notice and believes the contents to be true, followed by the party's signature and/or signature of their attorney or qualified representative, if any. The signature of a party, attorney, or qualified representative constitutes a certificate that the pleading has been read and that to the best personal knowledge, information, and belief, there is good ground to support it, and that it is not interposed for delay. If determined by the board that a pleading is not signed or is signed with the intent to defeat the purpose of this section, it may be stricken and the action may proceed as though the pleading had not been served.)~~

~~(h) The signature of the appellant or the appellant's representative.~~

~~(3) The board may, upon motion of a party or upon its own motion, require a more complete statement of the claim or defense or any matter stated in any notice of appeal.~~

AMENDATORY SECTION (Amending WSR 90-11-106, filed 5/22/90, effective 6/22/90)

**WAC 456-10-315 Deadlines for submitting the notice of appeal**~~(—Timeliness of filing)~~. (1) The jurisdiction of the board to hear an appeal is limited to those appeals submitted within the deadlines stated in this section. Any appeal to the board shall be ~~((filed))~~ submitted within the time required by the statute governing the respective agency or proceeding involved ~~((including, but not limited to the following:~~

~~((1)) All time periods set forth below are expressed in calendar days.~~

~~(a) Appeals taken pursuant to RCW 82.03.190, thirty days from the mailing of the determination.~~

~~((2)) (b) Appeals from a county board of equalization pursuant to RCW 84.08.130, thirty days from the mailing of the decision.~~

~~((3)) (c) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, thirty days from the mailing of the determination.~~

~~((4)) (d) Appeals by an assessor or owner of an inter-county public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapters 84.12 and 84.16 RCW, thirty days from the mailing of the order.~~

~~((5)) (e) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075, fifteen days after the mailing of the certification.~~

~~((6)) (f) Appeals from the decisions of sale price of second class shorelands on navigable lakes by the department of natural resources pursuant to RCW 79.94.210, thirty days from the mailing of the notification.~~

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~~((7))~~ (g) Appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060, thirty days from the mailing of the ordinance.

~~((8))~~ (h) Appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065, thirty days after the publication of the rate.

~~((9))~~ (i) Appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091, on or before the sixtieth day after the date of final adoption.

~~((10))~~ (j) Appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850, thirty days from the mailing of the determination.

(2) If the last date for submitting the notice of appeal falls upon a Saturday, Sunday or legal holiday, the submission shall be considered timely if performed on the next business day.

(3) Any party may, by motion, challenge the jurisdiction of the board in any appeal. The board may, upon its own motion, raise such jurisdictional issues.

**AMENDATORY SECTION** (Amending WSR 98-22-040, filed 10/29/98, effective 11/29/98)

**WAC 456-10-325 Date ~~((of filing—Filing via facsimile machine or electronic mail transmission))~~ and manner of submitting the notice of appeal.** (1) The date of ~~((filing of))~~ submitting a notice of appeal shall be the date of actual receipt by the board at its Olympia office if the appeal is ~~((to be))~~ hand delivered. The board's date stamp placed thereon shall be evidence of the date of receipt. If the ~~((filing of the))~~ notice of appeal is ~~((by mail))~~ mailed, the postmark will control and shall be evidence of the date of ~~((filing))~~ submission.

(2) All documents may be ~~((filed with))~~ submitted to the board via ~~((facsimile machine))~~ fax or electronic mail transmission. However, ~~((filing))~~ submission will not be deemed complete and the board will not acknowledge receipt of the notice of appeal as provided in WAC 456-10-300 unless the following procedures are strictly observed:

(a) ~~((A facsimile machine))~~ Documents received by fax or electronic mail ~~((document))~~ will ~~((only))~~ be stamped "received" by the board between the hours of 8:00 a.m. and 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped "received" on the following business day. The date and time indicated by the board's ~~((facsimile machine))~~ fax or computer shall be evidence of the date and time of receipt of transmission.

(b) The original notice of appeal must be ~~((filed with))~~ mailed and postmarked or otherwise submitted to the board ~~((within ten business days from))~~ on or before the date of fax or electronic transmission.

(c) All fax or electronic transmissions are sent at the risk of the sender.

**AMENDATORY SECTION** (Amending Order 95-02, filed 2/8/95, effective 3/11/95)

**WAC 456-10-330 ~~((Acknowledgement of))~~ Amendments to notice of appeal.** ~~((The board will acknowledge receipt of a notice of appeal.))~~ A notice of appeal may be amended as a matter of right within thirty days from the date the notice of appeal was received by the board. Thereafter, a party may amend the notice of appeal upon agreement in writing by the other party or when granted by the board. Motions to amend the notice of appeal shall be freely granted and may be denied only upon a showing by the adverse party of unreasonable and unavoidable hardship. Motions to amend must comply with WAC 456-10-510 and 456-10-410.

Amendments to the notice of appeal shall not extend any applicable jurisdictional deadline for appeal to the board.

**AMENDATORY SECTION** (Amending Order 89-03, filed 5/2/89)

**WAC 456-10-335 ~~((Computation of time.))~~ Response.** ~~((In computing any period of time prescribed or allowed by any applicable statute or rule, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.))~~ The respondent may submit a response to the notice of appeal with the board. The response, if any, must be submitted to the board at least ten business days prior to hearing, unless otherwise ordered by the board, together with proof of service pursuant to WAC 456-10-410.

**AMENDATORY SECTION** (Amending WSR 98-22-040, filed 10/29/98, effective 11/29/98)

**WAC 456-10-410 Service of papers on parties and proof of service.** ~~((1) Copies of all documents, exhibits, and papers filed with the board shall be served upon all counsel or representatives of record and upon parties not represented. Provided, That this shall not apply to the notice of appeal.~~

~~((2) Such service upon the representative shall be considered valid service for all purposes upon the party represented.~~

~~((3) Decisions or orders of the board shall be served upon both the party and their counsel or representative of record, if any.))~~ (1) All notices, pleadings, exhibits, correspondence specific to an appeal, and other papers submitted to the board shall be served upon all counsel and representatives of record and upon unrepresented parties or upon their agents designated by them or by law.

(a) Service shall be made personally or, unless otherwise provided by law, by first-class, registered, or certified mail; by fax and same-day mailing of copies; or by commercial delivery company.

(b) Service by mail shall be regarded as completed upon deposit in the United States mail, as evidenced by the postmark, properly stamped and addressed. Service by fax shall be regarded as completed upon production by the fax machine of confirmation of transmission and deposit on the same day in the United States mail. Service by commercial

delivery shall be regarded as completed upon delivery to the delivery company, properly addressed with charges prepaid.

(2) Proof of service. Where proof of service is required by statute or rule, receipt of the papers by the board, together with one of the following, shall constitute proof of service:

(a) An acknowledgement of service.

(b) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by delivering a copy thereof in person to (names).

(c) A certificate that the person signing the certificate served the papers upon all parties of record in the proceeding by:

(i) Mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent; or

(ii) Transmitting a copy thereof by fax, and on the same day mailing a copy, to each party to the proceeding or his or her attorney or authorized agent; or

(iii) Depositing a copy thereof, properly addressed with charges prepaid, with a commercial delivery company.

### **PREHEARING AND HEARING PROCEDURE**

#### **NEW SECTION**

**WAC 456-10-500 Prehearing conference.** The board, upon its own motion or upon request of a party, may conduct a prehearing conference or conferences. Such prehearing conference will be conducted in accordance with the provisions of WAC 456-09-540.

#### **NEW SECTION**

**WAC 456-10-501 Limitation on discovery.** (1) Insofar as applicable and not in conflict with this chapter, the statutes and court rules regarding pretrial procedures in civil cases in superior courts of the state of Washington shall be used. Such statutes and rules shall include, but shall not be limited to, those rules pertaining to discovery of evidence by parties to civil actions.

(2) The board may limit discovery upon motion by any party.

(3) The board may decide whether to permit the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 37 of the superior court civil rules. The board may condition use of discovery on a showing of necessity and unavailability of other means. In exercising such discretion, the board will consider the criteria set forth in RCW 34.05.446.

#### **NEW SECTION**

**WAC 456-10-503 Summary judgment.** A motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Motions for summary judgment must comply with WAC 456-10-510.

**AMENDATORY SECTION** (Amending Order 95-02, filed 2/8/95, effective 3/11/95)

**WAC 456-10-505** (~~Advance submission of evidence—Delivery to adverse party.~~) **Time in which evidence, briefs, and replies must be submitted.** In the absence of a prehearing order, evidence, briefs, and other documents must be submitted to the board within the times stated below.

(1) Documentary evidence which is to be introduced at hearing shall be submitted to the board together with proof of service pursuant to WAC 456-10-410 at least ten business days prior to hearing. Failure to comply may be grounds for exclusion of such evidence or dismissal in accordance with WAC 456-10-555.

(2) (~~Evidence of comparable sales, listed in the notice of appeal, which are subsequently changed, shall conform to this section and will be excepted from the requirements of WAC 456-10-345 (Amendments of notice of appeal).~~)

(3) ~~All correspondence and all subsequent pleadings or papers filed with the board shall indicate that copies have been mailed or delivered to the attorney or representative of record or the adverse party if not represented.~~

(4) ~~An acknowledgement of service or certificate of mailing as provided in WAC 456-10-440 shall be filed with the board together with the advance submission of documentary evidence as required in subsection (1) of this section.~~ **Briefs or other supporting statements, if any, shall be submitted to the board together with proof of service pursuant to WAC 456-10-410 at least fifteen calendar days prior to hearing.**

(3) Reply briefs or other supporting statements, if any, shall be submitted to the board together with proof of service pursuant to WAC 456-10-410 at least ten calendar days prior to hearing.

(4) Documentary evidence submitted to a board of equalization and forwarded to this board is excepted from the requirements of this provision.

#### **NEW SECTION**

**WAC 456-10-507 Amicus.** (1) Any person whose interest may be substantially affected by a proceeding before the board may by motion request status as an amicus in the case. The motion must comply with WAC 456-10-510 and 456-10-410.

(2) The motion requesting amicus status must include a statement of the following:

(a) Applicant's interest, or the interest of the person or group represented by applicant, in the proceeding before the board;

(b) Applicant's familiarity with the issues involved in the proceeding before the board and with the scope of the arguments presented or to be presented by the parties;

(c) Specific issues to which the amicus curiae brief will be directed; and

(d) Applicant's reason for believing that additional argument is necessary on these specific issues.

(3) The brief of amicus curiae may be filed with the motion but must be filed no later than the time set for the fil-



ing of the brief for the party whose position the amicus supports.

(4) The board, on its own motion and with notice to the parties, may request a brief of amicus curiae from any person deemed to be substantially affected by a proceeding before the board.

**AMENDATORY SECTION** (Amending Order 95-02, filed 2/8/95, effective 3/11/95)

**WAC 456-10-510** (~~(Hearing—Setting of time and place.)~~) **Motions.** (~~(The board will set a time and place for hearing. The parties shall, upon request of the board, submit written estimates of the time that will be required to hear the matter.)~~) (1) Any application for an order or ruling or a request for relief from any provision of this chapter is a motion. Every motion, unless made during hearing, shall be in writing and shall include the following:

- (a) A statement of the relief or order sought;
- (b) The reason for the relief or order;
- (c) A statement that the moving party has made a good faith effort to confer with the other party to resolve the subject matter of the motion;
- (d) The amount of time needed for argument; and
- (e) Shall include proof of service pursuant to WAC 456-10-410.

(2) All motions shall contain the docket number assigned to the appeal by the board and be signed by the party or the representative.

(3) At the discretion of the board, the hearing on motion may be by teleconference or in person.

(4) A response to the motion shall be submitted to the board together with proof of service pursuant to WAC 456-10-410 within ten business days following the date of service of the motion.

**AMENDATORY SECTION** (Amending Order 89-03, filed 5/2/89)

**WAC 456-10-515** **Postponement, continuance(—), and extensions of time.** (1) (~~Continuances and extensions of time may be ordered on timely request of any party. The request shall show good cause and shall be served upon all other parties.~~)

(2) Postponements, continuances, and extensions of time may be ordered by the board on its own motion.

(2) Requests to postpone, continue, extend the time, or reschedule the prehearing conference, if any, and the initially scheduled hearing date of an appeal will be freely granted provided such request is made within the time specified in the board's letter setting the prehearing conference, if any, and the initial hearing date.

(3) Other requests for a postponement, continuance, or extension of time must be timely, in writing, and comply with WAC 456-10-510 and 456-10-410. The board shall promptly schedule a conference to hear argument and to rule on the request. Requests for continuance will not be granted absent a showing of good cause.

(4) This section shall not extend any applicable time for appeal to this board (~~(nor extend the time for providing notice of appeal to any named party)~~).

**AMENDATORY SECTION** (Amending Order 95-02, filed 2/8/95, effective 3/11/95)

**WAC 456-10-530** (~~(Hearing—)~~) **Notice of hearing** (~~(—Time—Contents)~~). (1) (~~(Time.)~~) Notice of a hearing shall be mailed to all parties not less than twenty calendar days before the hearing date. The twenty-day notice provision may be waived by agreement of all parties.

(2) Contents. The notice shall contain:

- (a) The names and mailing addresses of the parties and their representatives, if any;
- (b) The docket number and name of the proceeding;
- (c) The name, official title, mailing address, and telephone number of the presiding officer, if known;
- (d) A statement of the time, place, date, and general nature of the proceeding (e.g., excise, property, etc.);
- (e) A statement that the hearing is held pursuant to this chapter and chapter 82.03 RCW;

(f) (~~(A statement of the issues or matters asserted and the particular sections of the statutes or rules involved as stated in the notice of appeal and responsive pleading, if any;~~)

(g) ~~(A statement that a party who fails to attend or participate at a hearing may be held in default in accordance with WAC 456-10-550; and~~

(h) A statement that, if a limited-English speaking or hearing-impaired party or witness needs an interpreter, a qualified interpreter will be appointed at no cost to the party or witness. The notice shall also state that persons with disabilities may request reasonable accommodations to allow their participation in the hearing. The notice shall include a form for a party to indicate if an interpreter is needed and identification of the primary language, or if a participant is hearing impaired; or to describe the reasonable accommodations requested.

**AMENDATORY SECTION** (Amending Order 89-03, filed 5/2/89)

**WAC 456-10-540** **Hearing(—) procedure.** Unless otherwise ordered by the board, hearings will be conducted in accordance with the following format:

- (1) Administering of oath;
- (2) Appellant's opening statement;
- (3) Respondent's opening statement;
- (4) Appellant's case in chief:
  - (a) Direct examination of witness;
  - (b) Cross-examination by respondent;
  - (c) (~~(Questions by board or presiding officer;~~)
  - (d) Redirect examination by appellant;
  - (e) Recross examination;
  - (f) The above procedure is followed for each witness.
- (5) Respondent's case in chief:
  - (a) Direct examination of witness;
  - (b) Cross-examination by appellant;
  - (c) (~~(Questions by board or presiding officer;~~)
  - (d) Redirect examination by respondent;
  - (e) Recross examination;
  - (f) The above procedure is followed for each witness.
- (6) Appellant's closing argument;

- (7) Respondent's closing argument;  
 (8) Appellant's closing rebuttal;  
 (9) The board may pose questions to the parties, their representatives, and any witness at any time during the hearing.

AMENDATORY SECTION (Amending WSR 90-11-106, filed 5/22/90, effective 6/22/90)

**WAC 456-10-545 Testimony under oath**~~((Interpreters))~~. (1) All testimony to be considered by the board shall be sworn, and each person shall swear or affirm that the testimony to be given shall be the truth, the whole truth, and nothing but the truth.

(2) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the ~~((agency conducting the proceedings))~~ board, in the English language, to the best of the interpreter's skill and judgment.

AMENDATORY SECTION (Amending Order 91-02, filed 3/15/91, effective 4/15/91)

**WAC 456-10-547** ~~((Hearings—Reporting—Recording—))~~ **Recording devices.** (1) All hearings shall be recorded by manual, electronic, or other type of recording device.

(2) Photographic and recording equipment shall be permitted at hearings; however, the presiding officer may impose such conditions upon their use as deemed necessary to prevent disruption of the hearing, or when a statute or law limits such use.

AMENDATORY SECTION (Amending Order 89-03, filed 5/2/89)

**WAC 456-10-550 Failure to attend**~~((Default or dismissal—Setting aside))~~ **and hearing on the record.** (1) When a party to these proceedings has, after notice, failed to attend a hearing and has not notified the board and the opposing party of the intention to not attend, a motion for default or dismissal may be sought by any party to the proceedings, or raised by the board upon its own motion. Any such order shall include a statement of the grounds for the order and shall be served upon all parties to the proceeding.

~~((2))~~ Within ten business days after service of the default order or dismissal under subsection (1) of this section, the party against whom the order was entered may ~~((file))~~ submit to the board together with proof of service pursuant to WAC 458-10-410 a written objection requesting that the order be vacated and stating the specific grounds relied upon. The board may, for good cause, set aside an entry of dismissal, default, or final order.

(2) Upon stipulation by both parties, an appeal may be submitted to the board on the record and attendance of a party may be excused. However, the board in its discretion may require attendance for argument.

AMENDATORY SECTION (Amending Order 89-03, filed 5/2/89)

**WAC 456-10-555 Dismissal, stipulations, and withdrawal of actions.** Any action may be dismissed by the board~~((s))~~ for any of the following reasons.

(1) When all parties so stipulate~~((s))~~.

Stipulations on the value of property shall contain the parcel number, assessment year, the agreed upon value of the subject property, and a brief statement supporting the agreed upon value.

(2) As a matter of right when the appellant requests orally or in writing to withdraw the appeal prior to the scheduled hearing.

(3) Upon motion of the appellant at the hearing prior to the presentation of the respondent's case~~((s-3))~~.

(4) Upon motion by the respondent alleging that the appellant has failed to prosecute the case, failed to comply with this chapter, or failed to follow any order of the board~~((s or 4))~~.

(5) Upon the board's own motion for failure by the parties to comply with applicable rules or any order of the board.

AMENDATORY SECTION (Amending Order 89-03, filed 5/2/89)

**WAC 456-10-560** ~~((Waiver of parties' appearance.))~~ **Rules of evidence and admissibility criteria.** ~~((Upon stipulation by both parties that no facts are at issue, an appeal may be submitted to the board with or without oral argument. However, the board in its discretion may require appearance for argument.))~~ (1) All relevant evidence, including hearsay evidence, is admissible if, in the opinion of the board, the offered evidence is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The board may exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The board may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(2) The board's experience, technical knowledge, competency, and specialized knowledge may be used in evaluation of evidence.

(3) Documentary evidence may be submitted in the form of copies or excerpts.

(4) If not inconsistent with subsection (1) of this section, the board may refer to, but shall not be bound by, the Washington rules of evidence.

AMENDATORY SECTION (Amending Order 89-03, filed 5/2/89)

**WAC 456-10-565** ~~((Rules of evidence—Admissibility criteria.))~~ **Official notice.** ~~((1) All relevant evidence, including hearsay evidence, is admissible if, in the opinion of the board, the offered evidence is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. The board shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of~~

this state. The board may exclude evidence that is irrelevant, immaterial, or unduly repetitious.

~~(2) The board's experience, technical knowledge, competency, and specialized knowledge may be used in evaluation of evidence.~~

~~(3) Documentary evidence may be submitted in the form of copies or excerpts.)~~ (1) The board may take official notice of the following:

(a) Any judicially cognizable facts;

(b) Any matter of public record;

(c) Technical or scientific facts within the agency's specialized knowledge; and

(d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association.

(2) If any decision is stated to rest in whole or in part upon official notice of a fact to which the parties have not had a prior opportunity to controvert, any party may controvert such fact by exception pursuant to WAC 456-10-730 if such notice is taken in a proposed decision or by a petition for reconsideration if notice of such fact is taken in a final decision pursuant to WAC 456-10-755. Such controversion shall concisely and clearly set forth the sources, authority, and other data relied upon to show the existence or nonexistence of the fact assumed or denied in the decision.

(3) A party proposing that official notice be taken may be required to produce a copy of the material to be noticed.

AMENDATORY SECTION (Amending Order 89-03, filed 5/2/89)

**WAC 456-10-710 Assistance to board.** The board may obtain assistance concerning the appeal of any case within the scope of RCW 82.03.130~~((2))~~ (1)(b) (appeals from a county board of equalization) from the staff of the department of revenue as provided by RCW 82.03.150. The board will notify the parties of its intent to seek such assistance and the matters sought to be investigated before contacting the department of revenue. Parties may recommend an alternative to the board to achieve the same objectives without contacting the department of revenue. If the department of revenue supplies the requested assistance, the parties will be apprised of any information provided by the department of revenue and will be given an opportunity to respond.

AMENDATORY SECTION (Amending Order 89-03, filed 5/2/89)

**WAC 456-10-725 Proposed decision.** (1) A proposed decision shall be prepared when:

~~((1))~~ (a) An appeal has been heard by only one member of the board;

~~((2))~~ (b) An appeal has been heard by only two members of the board and the two members cannot agree on a conclusion;

~~((3))~~ (c) An appeal has been heard by a hearing officer; or

~~((4))~~ (d) The board shall otherwise elect to do so.

(2) If an exception as provided in WAC 456-10-730 is not submitted to the board within twenty calendar days of the date of mailing of the proposed decision, the proposed deci-

sion shall be deemed the final decision of the board unless the decision specifies otherwise.

AMENDATORY SECTION (Amending Order 95-02, filed 2/8/95, effective 3/11/95)

**WAC 456-10-730 Exceptions to proposed decision, replies, and disposition.** (1) ~~((Time for filing:))~~ Any party may make, by mail or otherwise, a written exception with the board within twenty calendar days from the date of mailing of the proposed decision or, upon timely application, within such further time as the board may allow. The statement of exceptions ~~((shall be filed with the board, and a copy))~~ shall be served on all other parties pursuant to WAC 456-10-410.

~~((Contents:))~~ Exceptions shall contain the specific factual and legal grounds upon which the exception is based. No new evidence may be introduced in the written exception; nor may the party or parties raise an argument in the exception that was not raised at the hearing. The party or parties making the exception shall be deemed to have waived all objections or irregularities not specifically set forth. ~~((The statement of exceptions may contain the exceptor's proposed findings of fact and/or conclusions of law addressing the factual and legal issues to which exceptions are being taken.~~

~~((3) Failure of a party to comply with the requirements for exceptions may result in the board issuing a decision adopting the proposed decision as the final decision of the board on the ground that no legally sufficient statement of exceptions had been made.))~~ (3) Any party may make a reply to a written exception. The reply, together with proof of service pursuant to WAC 456-10-410, shall be submitted to the board within ten business days of the date of the letter acknowledging receipt by the board of the written exception.

(4) The disposition may be in the form of a written order denying the exception and adopting the proposed decision as the final decision, granting the exception and issuing a final decision, or granting the exception and setting the matter for further hearing. The board may require the parties to submit written briefs or statements of position or to appear and present oral argument regarding the matters on which exceptions were taken, within such time and on such terms as may be prescribed.

AMENDATORY SECTION (Amending Order 95-02, filed 2/8/95, effective 3/11/95)

**WAC 456-10-755 Petition for reconsideration of a final decision.** ~~((After))~~ (1) A petition for reconsideration is not available where a proposed decision was first issued.

(2) Where a final decision has been issued and no proposed decision was first issued, any party may ~~((file))~~ submit a petition for reconsideration with the board ~~((Such petition must be made, by mail or otherwise.))~~ together with proof of service pursuant to WAC 456-10-410 within ten business days from the mailing of the final decision. ~~((The petition for reconsideration shall be filed with the board and served upon all parties and representatives of record.))~~ The board may require ~~((that a response be made and served in the same manner))~~ or any party may at its own option, within ten business days of the date of the letter acknowledging receipt by the board of the petition for reconsideration, submit to the

board a response together with proof of service pursuant to WAC 456-10-410.

(3) The ~~((filing))~~ submitting of a petition for reconsideration shall suspend the final decision until action by the board. The board may deny the petition, modify its decision, or reopen the hearing. ~~((A petition for reconsideration is not available where a proposed decision was first issued.))~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 456-10-130	Use of formal rules in informal proceedings.
WAC 456-10-170	Form and size of documents.
WAC 456-10-180	Docket number.
WAC 456-10-320	Notice of appeal—Filing and service.
WAC 456-10-340	Jurisdiction—Issue raised by board—Procedure.
WAC 456-10-345	Amendments to notice of appeal.
WAC 456-10-355	Parties in exemption appeals.
WAC 456-10-360	Conversion of hearing.
WAC 456-10-420	Method of service.
WAC 456-10-430	Service of papers—When complete.
WAC 456-10-440	Proof of service—Certificate.
WAC 456-10-525	Briefs.
WAC 456-10-535	Hearing—Standard and scope of review.
WAC 456-10-570	Motions—Application—Requirements.
WAC 456-10-720	Proposed findings and conclusions—Submission.
WAC 456-10-735	Reply to exceptions.
WAC 456-10-740	Finality of proposed decision.
WAC 456-10-745	Final decision following proposed decision.
WAC 456-10-750	Final decision—Precedential decisions.

#### WSR 05-13-151

#### PERMANENT RULES

#### DEPARTMENT OF

#### LABOR AND INDUSTRIES

[Filed June 21, 2005, 1:31 p.m., effective July 22, 2005]

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

Purpose: Public records, chapter 296-06 WAC, the public records rules have been written. Outdated information and language was replaced to enhance public and department usability. An indexing system has been established to assist the public in accessing L&I public records.

Citation of Existing Rules Affected by this Order: Amending WAC 296-06-010 through 296-06-150 and [new section] 296-06-175.

Statutory Authority for Adoption: For WAC 296-06-010 is chapter 43.17 RCW, RCW 42.17.250, [42.17].251, 51.04.020, 51.04.030; for WAC 296-06-020 is chapter 43.17 RCW, RCW 42.17.250 (1)(a), 51.04.020, 51.04.030; for WAC 296-06-030 is chapter 43.17 RCW, RCW 42.17.250, 42.17.290, 51.04.020, 51.04.030; for WAC 296-06-040 is chapter 43.17 RCW, RCW 42.17.250 (1)(a) and (c), 42.17.290, 51.04.020, 51.04.030; for WAC 296-06-050 is RCW 42.17.250 (1)(b) and (c), 42.17.290; for WAC 296-06-080 is RCW 51.28.070, 51.16.070; for WAC 296-06-090 is RCW 43.17.060, 51.04.020, 51.04.030; for WAC 296-06-100 is RCW 42.17.270, [42.17].280, [42.17].290; for WAC 296-06-110 is RCW 42.17.260(1), 42.17.320, 42.17.290; for WAC 296-06-120 is RCW 42.17.260 (7) and (8), 42.17.270, 42.17.280, 42.17.290, 42.17.300, 42.17.305; for WAC 296-06-130 is RCW 42.17.260(1), 42.17.320; for WAC 296-06-140 is RCW 42.17.290, 42.17.320, 42.17.325; for WAC 296-06-150 is RCW 42.17.290; and for WAC 296-06-175 is RCW 42.17.260 (5), (6).

Other Authority: Chapter 483, Laws of 2005 (2SHB 1758).

Adopted under notice filed as WSR 05-09-058 on April 19, 2005.

Changes Other than Editing from Proposed to Adopted Version: WAC 269-06-170 renumbered as WAC 296-06-175.

The note in WAC 296-06-110(1) was revised with respect to oral requests.

Language compliant with section 1, chapter 483, Laws of 2005, was added to the note in WAC 296-06-110(2).

Language compliant with section 2, chapter 483, Laws of 2005, was added to the text of WAC 296-06-120.

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

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 3, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 13, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 13, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 21, 2005.

Gary Weeks  
Director

**AMENDATORY SECTION** (Amending WSR 90-07-004, filed 3/9/90, effective 4/9/90)

**WAC 296-06-010 Purpose.** The department of labor and industries (~~L&I~~) is ~~((a department))~~ an agency of state government created by RCW 43.17.010. ~~((It shall hereafter))~~ In this chapter it shall be referred to as the "department." Where appropriate, "department" also refers to its staff and employees. The ~~((department promulgates))~~ purpose of this chapter is to ensure compliance with the public records provisions of chapter 42.17 RCW ~~((, and in particular with sections of that act dealing with public records)).~~

**AMENDATORY SECTION** (Amending WSR 90-07-004, filed 3/9/90, effective 4/9/90)

**WAC 296-06-020 Description of department organization** ~~((of the department))~~. (1) **Central organization.** The chief executive officer of the department is the director of labor and industries, ~~((hereinafter called))~~ referred to here as "director." ~~((He or she))~~ The director is appointed by the governor with the consent of the senate ~~((to hold office))~~ and serves at the pleasure of the governor. The department is organized in six regions across five divisions: ~~((Industrial insurance, industrial safety and health, industrial relations, apprenticeship, and building and construction safety inspection services.))~~ Insurance services, WISHA (Washington Industrial Safety and Health Act) services, specialty compliance services, operations, and field services. Each region and division is responsible to a deputy director or assistant director appointed by the director ~~((, although the industrial relations and apprenticeship divisions both report to one assistant director, whose appointment as the head of apprenticeship must be confirmed by the Washington state apprenticeship and training council, the members of which are also appointed by the director. This combined industrial relations and apprenticeship division, which includes a section to administer the Crime Victims Act, chapter 7.68 RCW, is known as the employment standards, apprenticeship and crime victims compensation division)).~~ Major policy decisions, rule-making, and the primary administrative functions of the department are carried out by the department's central organizations in Olympia.

(2) **Field ~~((organization))~~ services.**

~~((a))~~ The department maintains service locations, or major field offices, in ~~((seventeen))~~ many cities ~~((other than Olympia)).~~ These service locations are grouped into six regions throughout the state, each ~~((of which is))~~ headed by a regional ~~((field service manager. In addition, certain programs operate field offices in other cities, but these are not complete service locations and are not required to keep complete policy manuals and other records available for public inspection.~~

~~((b) The department's rehabilitation center in Tukwila is headed by a superintendent))~~ administrator.

**AMENDATORY SECTION** (Amending WSR 90-07-004, filed 3/9/90, effective 4/9/90)

**WAC 296-06-030 Locations ~~((of established places))~~ where information about the department may be obtained and the department** ~~((s))~~ public records inspected and copied. (1) ~~((Olympia))~~ Tumwater office.

~~((a))~~ The office of the director, the administrative office of the department, the main offices of the divisions ~~((of industrial insurance)),~~ and the office of the public records officer are in the ~~((General Administration Building, Olympia))~~ Labor and Industries headquarters building, Tumwater, Washington. ~~((The main offices of the other divisions are located at the following places: Industrial Safety and Health at 805 Plum Street S.E., Olympia, Washington; Apprenticeship, Employment Standards, and Crime Victims Compensation at 925 Plum Street S.E., Olympia, Washington; and Building and Construction Safety Inspection Services at 406 Legion Way S.E., Olympia, Washington.))~~ General information about the department and its divisions may be obtained at ~~((these places))~~ this location, and on the internet at [www.lni.wa.gov](http://www.lni.wa.gov).

(2) **Field offices.**

(a) General information about the department may also be obtained at its service locations, or ~~((major))~~ field offices, at the ~~((following places:~~

Aberdeen, P.O. Box 66,  
2700 Simpson Avenue 98520-0013

Bellingham, P.O. Box 608,  
2500 Elm Street, Suite F, 98227

Bremerton, 4841 Auto Center Way,  
Suite 201, 98312-3440

Ephrata,  
21 "C" Street, Southwest, 98823-1895

Everett, P.O. Box 67,  
8625 Evergreen Way, Suite 250, 98206

Kelso,  
711 Vine Street, 98626-2621

Kennewick, 500 North Morain,  
Suite 1110, 99336

Mount Vernon,  
1220 Memorial Highway, 98273-3262

Okanogan, P.O. Box 632,  
1234 2nd Avenue South, 98840

Port Angeles,  
1026 East First Street, Suite 1, 98362

Seattle,  
300 West Harrison, 98119

Spokane,  
TAF C33, E. 3901 Main, 99220

PERMANENT

Tacoma, Room 305, Public Service Building,  
1305 Tacoma Avenue South, 98402-1988

Vancouver,  
10401 N.E., 4th Plain, 98662

Walla Walla,  
1815 Portland Avenue, Suite 2, 99362

Wenatchee,  
123 Ohme Garden Road, 98801

Yakima,

1716 South 16th Avenue, 98902-5713)) addresses listed on the internet at [www.lni.wa.gov](http://www.lni.wa.gov) and/or found on the state government pages of local area telephone directories.

(b) ~~((Information about the extended care services offered injured workers, including physical therapy, special instruction, or vocational counseling, may be obtained from the department's Rehabilitation Center at 12806 Gateway Drive, Tukwila, Washington 98168.))~~ Requests for public records containing confidential information will be processed only through the Tumwater office, unless the requestor is authorized to access them.

**AMENDATORY SECTION** (Amending WSR 90-07-004, filed 3/9/90, effective 4/9/90)

**WAC 296-06-040 Operations and procedures.** The general ~~((course and method of channeling and determining the))~~ operations ~~((of the five divisions))~~ and procedures of the department's ~~((and the nature of requirements of all formal and informal procedures connected therewith))~~ five divisions are summarized ~~((in the following subsections:))~~ below. For more information, go to: [www.lni.wa.gov](http://www.lni.wa.gov).

(1) ~~((Industrial insurance. This division administers medical care and payment of disability compensation for workers (or their dependents or survivors) sustaining job injuries or occupational diseases. Virtually all employers in the state must provide this industrial insurance coverage. The medical program of the state fund is funded through payments by employers and employees. The disability payments by the state fund are funded by premiums collected from employers. Descriptions of procedures to be followed by employers and employees are outlined in department publications entitled Employers' Guide to Industrial Insurance and Workers' Guide to Industrial Insurance Benefits.~~

~~In order to ensure that premium costs are equitably distributed, the division sets rates, determines classifications, rates individual firms based on claims experience, and periodically audits businesses to ensure accurate reporting and premium payment. Information about the records required during an industrial insurance audit can be found in the department publication Preparing for Your Audit.~~

~~The division also provides guidance to individual employers and groups of employers in controlling industrial insurance premiums through better claims management, return to work efforts, and effective safety programs, as well as through a financial incentive program known as retrospective rating. Further information is available in Guide to Loss Control and Retrospective Rating.~~

~~The department also certifies certain employers to become "self insured," which means that they are permitted to pay the legally defined industrial insurance benefits from their own funds. After the department certifies an employer as a self insurer, it monitors all claims for injury benefits to make certain employees receive all rightful benefits. Descriptions of procedures to be followed by self insured employers and their employees are outlined in Employers' Guide to Self Insurance and Employees of Self insured Businesses: Guide to Industrial Insurance Benefits.~~

~~(2) Industrial safety and health. This division endeavors to prevent job injuries and illnesses by adopting and enforcing safety and health standards and by training employers and employees in safe working procedures. It administers the Washington Industrial Safety and Health Act (WISHA), operating under a state plan agreement with the federal Occupational Safety and Health Administration (OSHA). Employer and employee procedures and responsibilities are outlined in the department's publications, A Guide to WISHA and Workplace Safety and Health Standards. Information about voluntary consultations to improve workplace safety can be found in Free, No Fault, No Hassle., and reporting workplace accidents to OSHA is outlined in Injury and Illness Recordkeeping Requirements.~~

~~(3) Employment standards, apprenticeship and crime victims compensation. The industrial relations, or employment standards, portion of this division administers the laws regulating wages, hours, and working conditions. It also enforces the minimum wage and family care laws and may assist in the collection of claims for unpaid wages. The industrial statistician determines the "prevailing rate of wage" on public works contracts and gathers information on wages and conditions of labor in the state, the consumer price index, standard family budgets, and manpower data on the labor force, employment, unemployment, and earnings. The section headed by the supervisor of employment standards administers the state employment standard designed to protect the health, safety, and welfare of the vast majority of employees. This section also issues minor work permits designed to protect young workers from exploitation and hazardous environments. More information on this subject can be found in Youth in the Job Force: A Guide for Employers and Minor Workers. Industrial relations agents investigate complaints of violations of employment standards, the minimum wage law and other wage laws; hold conferences between employees and employers; inspect records; make investigations to determine whether or not there have been violations of statutes, rules, or regulations; and suggest remedial actions.~~

~~The apprenticeship portion of this division, with the Washington state apprenticeship and training council, administers the apprenticeship training law for those persons desiring to become skilled in any one of various trades, crafts, and services. Local joint apprenticeship committees and program sponsors throughout the state are responsible for the actual training. This division acts as a liaison between these committees and the council to make certain that the policies of the council are followed uniformly. The division also administers on the job training programs for those persons training in~~

occupations other than occupations in which apprenticeship is an option.

The crime victims compensation section of this division pays medical and disability benefits to innocent victims (or to their dependents or survivors) who sustain injuries as a result of criminal acts. Benefit payments and procedures are outlined in the department's publication Help for Crime Victims. This section also certifies local prosecutor-based victim witness units.

(4) Building and construction safety inspection services. This division administers programs designed to protect the life, health, and property of the general public. The various sections of this division issue licenses; promulgate rules and regulations; certify standards; and ensure compliance. The division conducts electrical inspections; registers electrical contractors; inspects and regulates the use of boilers and pressure vessels; inspects elevators; ensures compliance with the standards for the manufacture, lease, and sale of mobile homes and recreational vehicles; enforces the statutes, rules, and regulations governing factory built structures; reviews electrical plans for health care facilities, plans for elevators and other conveyances, and plans for factory assembled structures; tests and licenses plumbers and electricians; and registers general and specialty contractors.)) Insurance services.

This division administers Washington's workers' compensation program—medical care and disability benefits for workers who are injured on the job. Every business with employees must provide this coverage. L&I administers the "state fund," which covers the majority of the state's workers. Through its self-insurance program, it also monitors coverage offered by large companies that choose to self-insure and manage their own claims.

This division includes all of the workers' compensation programs that:

- Manage injured worker claims;
- Bill employers for their required quarterly premiums;
- Pay health care (and other) providers for their services.

The division also:

- Sets workers' compensation rates;
- Helps employers control their premiums through a variety of financial incentive, claims management, return-to-work and safety programs;
- Administers the department's crime victims compensation program, which covers those who are injured as a result of criminal acts.

More information is available at [www.LNI.wa.gov/ClaimsIns](http://www.LNI.wa.gov/ClaimsIns).

## (2) WISHA services.

This division administers the Washington Industrial Safety and Health Act (WISHA), under a state plan agreement with the federal Occupational Safety and Health Administration (OSHA). It aids in the prevention of job injuries and illnesses by adopting and enforcing safety and health standards and by training employers and employees in safe working procedures.

Through the RCW, the legislature has directed L&I to administer and enforce three additional programs. These programs are also handled by WISHA:

- Asbestos, including certifications and notifications of asbestos projects;
- Explosives, regulating the possession, handling, and use of explosives or explosive devices;
- Worker and community right to know, which provides a way of communicating information regarding hazardous substances in the workplace and the community.

Employer and employee procedures and responsibilities, and information about voluntary consultations to improve workplace safety can be found on the internet at [www.lni.wa.gov/FormPublications](http://www.lni.wa.gov/FormPublications). Information about reporting workplace accidents to OSHA can be found on the internet at <http://www.osha.gov/pls/publications/pubindex.list>.

## (3) Specialty compliance services.

This division encompasses several diverse programs related to the construction trades, workplace rights, and apprenticeship. Its programs' duties include:

- Registering contractors to ensure they are bonded and insured.

- Licensing electrical contractors and elevator mechanics.

- Certifying plumbers and electricians.

- Regulating and inspecting:

– Electrical installations.

– Boilers and pressure vessels.

– Factory assembled structures.

– Elevators and other conveyances.

Employment standards program:

Develops and enforces rules regulating wages (including prevailing wages for public works projects) and hours, and working conditions, including those for teenagers.

Apprenticeship program:

Administers the state's apprenticeship training laws and policies.

## (4) Operations.

This area includes several internal support divisions including administrative services, information services, the office of human resources, and fraud prevention and compliance.

Fraud prevention and compliance:

This division encompasses several diverse programs related to the prevention of abuse in the workers' compensation system. Its programs include:

- Audit.
- Collections.
- Detection and tracking.
- Firm appeals.
- Investigations.
- Significant employer cases.

## (5) Field services.

This division provides the agency with local department program service throughout its service locations in six geographic regions of Washington.

AMENDATORY SECTION (Amending Order 76-27, filed 9/28/76)

WAC 296-06-050 ((~~Rules of procedure, substantive rules, general policy statements, and interpretations of general applicability.~~) Department rules. The depart-

ment's rules (~~(of procedures, substantive rules of general applicability, and statements of general policy and interpretations of general applicability)~~), adopted as authorized by law, are (~~(contained)~~) in Title 296 WAC.

**AMENDATORY SECTION** (Amending WSR 90-07-004, filed 3/9/90, effective 4/9/90)

**WAC 296-06-080 Authorization (~~(for)~~) to release (~~(of)~~) information.** (~~(Any person having a right of privacy in any public records of the department may authorize the inspection and copying of any such records by persons not otherwise so authorized by providing the department with a signed and dated written authorization describing the records covered by the authorization, and naming the person or persons authorized to inspect and copy. In the event that a department file contains information related to a disease or condition usually transmitted through sexual contact, or to testing for the presence of such a disease, the authorization to release information must be specific to sexually transmitted disease. A general authorization to release information is not adequate for the release of information related to sexually transmitted disease. The department shall make a record of all authorizations to release information. The authorizations shall be immediately attached to such files and records and shall become a part thereof. No such authorization shall be valid until submitted to the department.)~~) Some public records are protected from inspection and/or copying by state and/or federal law. You may access these records by either:

- Being the person legally authorized to access them; or
- Getting a notarized written authorization from the person with legal access. This authorization must:
  - Include a description of the records.
  - State the name of the person or persons authorized to inspect and copy the records.
  - Be signed and dated by the person with legal access to the records.

**Note:** If the records contain information about a disease or a condition usually transmitted through sexual contact, the release authorization must specifically mention sexually transmitted disease.

Authorizations to release information, once submitted to the department, become a part of the public record and the department's files.

**AMENDATORY SECTION** (Amending WSR 90-07-004, filed 3/9/90, effective 4/9/90)

**WAC 296-06-090 Public records officer.** (~~(The department's public records officer shall have charge of its public records. He or she shall have an office in the administrative office of the department at Olympia, Washington. He or she shall be responsible for the enforcement of the department's rules and regulations regarding the release of public records, and shall ensure compliance and cooperation of the department's staff with the public records disclosure requirements of chapter 42.17 RCW. He or she may choose such designees as may be necessary.)~~) The department will designate a public records officer to be in charge of its public records. This officer will have an office at the department's Tumwater headquarters. They are responsible for the enforcement of

the department's rules and regulations regarding the release of public records, and for making sure the department's staff cooperates and complies with the public disclosure requirements of chapter 42.17 RCW. They may appoint delegates to help with the work as necessary.

**AMENDATORY SECTION** (Amending WSR 90-07-004, filed 3/9/90, effective 4/9/90)

**WAC 296-06-100 Office hours.** (~~(The customary office hours of the department's Olympia offices and complete service locations, for the purpose of inspection and copying of any of the department's public records as provided by this chapter, shall be from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. The only exceptions to this are the Okanogan and Walla Walla service locations, where the customary office hours shall be from 8:00 a.m. to noon and from 1:00 p.m. to 5:00 p.m.)~~) Inspecting and copying the department's public records will be allowed only during regular office hours, which are 8:00 a.m. through 5:00 p.m. Monday through Friday, not including legal holidays.

**AMENDATORY SECTION** (Amending WSR 90-07-004, filed 3/9/90, effective 4/9/90)

**WAC 296-06-110 (~~(Requests for)~~) Requesting public records.** (~~(Persons requesting opportunity to copy or inspect the department's public records shall follow these procedures:~~

(1) ~~Informal oral requests may be made to any of the department's full service locations or its office in Olympia.~~

(2) ~~The department may require a person who has made an informal request to submit a formal written request.~~

(3) ~~All formal requests shall be submitted by mail or personally to the deputy director or assistant director who heads the division or the section from which records are being requested. If such a request is misdirected, department staff shall forward it to the proper person.~~

(4) ~~Each formal request shall include the following information:~~

(a) ~~The name of the person or persons making the request;~~

(b) ~~The time of day and calendar date on which the request is made;~~

(c) ~~The nature of the request, including description of the requested records by title, subject matter, date, and other means of enabling the staff of the department to identify the requested records and make them available.~~

(d) ~~A signed statement that the material will not be used for commercial purposes, in the event that a list of any type is included in the material being requested.~~

(5) ~~The staff of the department shall assist any person making a request, whether formal or informal, in identifying the requested record or records but in the event the records cannot be identified, the department shall so advise the person making the request, and, in the case of formal requests, return the formal request for resubmission with additional description of the requested records.~~

(6) ~~When any request is made to inspect and copy material in files and public records where a right of privacy is involved, or when such files and records are exempt by any~~



other provision of law, inspection and copying shall not be permitted until the authorization described in WAC 296-06-080, together with a formal request, is presented to the department.) (1) You can request an inspection or copy of the department's public records by either:

- Making a request at any of the department's service locations; or
- Sending a written request to the L&I public disclosure unit at:

Department of Labor & Industries  
Public Disclosure Unit  
Post Office Box 44632  
Olympia, WA 98504-4632

**Note:** If you make an oral request, the department may put your request in writing and give or send a copy of it to you for confirmation or written correction.

(2) Written requests must include the following:

- The requestor's name.
- The date the request is being made.
- A description of the requested records, including the title, subject matter, date the records were made, and any other identifying information.
- A signed statement that the material will not be used for commercial purposes, if the requested material includes a list of individuals.

**Note:** Department staff will assist the requestor in identifying records if needed. If the request is not clear, the department will ask for clarification. If no clarification is received, the department will not respond. The department shall not deny a request for identifiable public records solely on the basis that the request is overbroad.

(3) Records that are protected by an individual's rights to privacy will not be released until the authorization described in WAC 296-06-080 is submitted, with the written request, to the department.

**AMENDATORY SECTION** (Amending WSR 90-07-004, filed 3/9/90, effective 4/9/90)

**WAC 296-06-120 Copying ((and)) fees.** ((Where copies of public records are requested, the department may charge a fee, to be set by the public records officer, for reimbursement of its actual costs incident to such a request. The fees the contractor registration section charges for copies of material from a contractor's file are set out in WAC 296-200-900. Whenever copies of public records are mailed to the person making the request, the department may require reimbursement for postage costs. All copies made at the request of persons desiring copies on copy equipment of the department will be made by department staff at times when the making of such copies will not unreasonably disrupt the operations of the department. If the records to be copied contain information that would violate any right of personal privacy, the department staff member shall prevent such information from appearing on any copy. Where the use of such equipment does not harm the public records or impede the normal work of the department, those requesting copies of public records may use their own copying equipment and paper without charge, but in such event the department staff will supervise the copying at all times.)) The department may charge the requestor a fee for reimbursement of actual copying costs and

postage costs. The department may require a deposit of up to ten percent of the estimated cost of all copies. If the department delivers a public records request on a partial or installment basis, it may charge for each part of the request as it is provided. If an installment of a records request is not claimed or reviewed within thirty days, subject to a case-by-case consideration, the department is not obligated to complete the balance of the request. Requestors may make their own copies at a department location, under the supervision of a department staff member, if the records will not be harmed and it will not interfere with the normal work of the department.

**Note:** Copying charges for various media are found on the internet at [www.lni.wa.gov](http://www.lni.wa.gov). The contractor registration section and electrical program charge separate fees for copies of material from a contractor's or an electrician's files. These fees are in WAC 296-200-900 and 296-46B-910.

**AMENDATORY SECTION** (Amending WSR 90-07-004, filed 3/9/90, effective 4/9/90)

**WAC 296-06-130 Denials of ((requests for public)) records requests.** ((Only the public records officer or his or her designee shall have the power to deny a request for public records. Action on all such requests shall be prompt. In cases of informal requests, any member of the department's staff to whom an informal request is made may require the person making the request to submit a formal request or such staff member may bring the matter to the attention of the assistant director or his designee of the division from which records are being requested.

A decision on a formal request may be deferred for a reasonable time but immediate written notice of such deferral shall be given. All denials of requests for public records shall be in written form. All denials shall include a statement specifying the reason for the denial, a statement of any exemption authorizing withholding the record and a brief explanation of how the exemption applies to the record withheld, and the signature of the public records officer or his or her designee.)) The public records officer and his or her designees have the power to deny a request for public records. Denials must include:

- The reason for the denial.
- A statement of any exemption that authorizes the denial of the record.
- A brief explanation of how the exemption applies to the withheld record.
- The signature of the public records officer or their designee.

**AMENDATORY SECTION** (Amending WSR 90-07-004, filed 3/9/90, effective 4/9/90)

**WAC 296-06-140 ((Review)) Appeal of denial((s)) of requests ((for inspection or copying of public records)).** ((After any request for inspection or copying is denied, any person may petition the department to review its denial. Any such petition for review must be made in writing to the public records officer prior to the end of the second business day following the denial. Such petition shall specifically refer to the denial and shall contain a brief statement or any reasons for

~~reconsideration of the denial. Any such petition shall be immediately referred to the director or such persons as he or she may designate to review such petitions. The person reviewing such petitions shall review and reconsider the matter and either affirm or reverse the denial and communicate the decision to the person submitting the petition prior to the end of the second business day following the petition for review.))~~ After a request for inspection or copying of public records is denied, the requestor may ask the department to review the denial. The request for review must:

- Be made in writing.
- Be sent to the public records officer or his/her designee after receiving the denial.
- Specifically refer to the denial.
- Contain a brief statement that gives reasons for reconsideration of the denial.

AMENDATORY SECTION (Amending WSR 90-07-004, filed 3/9/90, effective 4/9/90)

WAC 296-06-150 Protection of public records. ((The department shall protect public records from damage or disorganization and prevent excessive interference with other essential functions of the department. All inspections of public records shall be supervised by a department staff member. Any staff member supervising public records inspection may decline to act upon the requests of person who are intoxicated, violent, abusive, threatening, or disruptive, and may terminate the inspection or copying of public records by such persons. Any staff member supervising public records inspection will at all times ensure that those inspecting the department's public records do not tear, mutilate, mark, or otherwise harm such records and shall terminate the inspection or copying of public records by any person who has harmed such records. The staff member may limit inspection and copying to any extent necessary to prevent such activity from unreasonably disrupting the department's operations. Any staff member supervising public records inspection shall at all times provide full, prompt, courteous assistance to persons requesting the inspection and copying of the department's public records.)) The department will protect its public records from damage or disorganization. Public records requests will not be allowed to interfere with essential functions of the department.

All inspections of public records will be supervised by a department staff member. Staff members will not allow records to be inspected or copied by anyone who is intoxicated, violent, abusive, threatening, or otherwise disruptive. Anyone who displays these characteristics during a records inspection may have the inspection terminated by department staff.

Staff members who are supervising the inspection or copying of public records will make sure of the following:

- Records are not torn, mutilated, marked, or otherwise harmed by the requestor.
- Inspection and copying activities do not disrupt the department's operations.
- Full, prompt, and courteous assistance is provided to the requestor.

## NEW SECTION

**WAC 296-06-175 Records index.** The department of labor and industries will maintain a current index as required by RCW 42.17.260. The index will consist of record types and/or descriptions, their locations, and availabilities. These records will be made available according to public disclosure law. The agency records index is accessible online at [www.lni.wa.gov](http://www.lni.wa.gov). The index will be updated as needed. Copies of the index will be provided upon request by the public disclosure unit.

**WSR 05-13-152  
PERMANENT RULES  
DEPARTMENT OF  
LABOR AND INDUSTRIES**

[Filed June 21, 2005, 1:32 p.m., effective August 1, 2005]

Effective Date of Rule: August 1, 2005.

Purpose: The department recently adopted chapter 296-849 WAC, Benzene. During that rule making, the department rewrote the requirements relating to benzene in plain language. The purpose of this rule making is to make house-keeping changes and add a requirement that will make WISHA's safety and health rules at-least-as-effective-as the federal equivalent. In addition, we will be repealing the benzene requirements in WAC 296-62-07523, since those requirements were all moved into the new chapter. There are not anticipated effects.

Amended Sections:

WAC 296-849-100 Scope.

- Corrected an incorrect reference.
- Added an omitted word "apply" to Step 2b.

WAC 296-849-11030 Exposure evaluations.

- Corrected bulleting errors in Step 6.

WAC 296-849-12010 Periodic exposure evaluations.

- Added an omitted requirement in Table 3, Periodic Exposure Evaluation Frequencies, to provide consistency with the federal OSHA requirement in C.F.R. 1910.1028 (e)(3)(ii).

WAC 296-849-12030 Medical evaluations.

- Clarified bulleting by adding two additional "and" statements in Table 5, Medical Follow-up Requirements.

WAC 296-849-13045 Respirators.

- Corrected bulleting errors under the first primary bullet.

Repealed Section:

WAC 296-62-07523 Benzene.

Citation of Existing Rules Affected by this Order: See Purpose above.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060.

Adopted under notice filed as WSR 05-07-123 on March 22, 2005.

Changes Other than Editing from Proposed to Adopted Version: A sentence was removed from the exemption in WAC 296-849-100 Scope. There were no additional changes between the proposal from adoption.

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

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 5, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 5, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 21, 2005.

Gary Weeks  
Director

**AMENDATORY SECTION** (Amending WSR 05-01-172, filed 12/21/04, effective 3/1/05)

**WAC 296-849-100 Scope.** This chapter applies to all occupational exposure to benzene.

**Definition:**

*Exposure* is the contact an employee has with benzene, whether or not protection is provided by respirators or other personal protective equipment (PPE). Exposure can occur through various routes of entry such as inhalation, ingestion, skin contact, or skin absorption.

**Exemptions:** This chapter does not apply to any of the following:

- Liquids, vapors, mixtures in containers or pipelines, and gas in natural gas processing plants when benzene content is 0.1% or less.
- Gasoline and other fuels containing benzene once they leave the final bulk wholesale facility and are being:

- Transported;
  - Sold;
  - Distributed;
  - Stored;
  - Dispensed either:
    - Outdoors;
- OR
- Indoors four hours or less a day.

- Used as a fuel.

~~(- Laboratories subject to the requirements in hazardous chemicals in laboratories, WAC 296-62-400, the General occupational health standards, chapter 296-62-WAC.)~~

- Oil and gas drilling, production, and servicing operations.
- Solid materials that contain only trace amounts of benzene.
- Coke ovens.

All requirements in this chapter will not apply to every workplace with an occupational exposure. The following will show you which requirements apply to your workplace.

**Step 1:** If any of your work tasks are listed in Table 1, follow Table 1.

- Go to Step 2a if you have additional work tasks or other exposures that are not covered in Table 1.

**Table 1**  
**Requirements that Apply to Specific Tasks**

If employees do any of the following:	Then the only requirements in this chapter that apply to those tasks are:
Load and unload benzene at bulk storage facilities that use vapor control systems for all loading and unloading operations.	<ul style="list-style-type: none"> <li>• The labeling requirement found in Preventive practices, WAC 296-849-11010.</li> </ul>
Perform tasks around sealed transport pipelines carrying gasoline, crude oil, or other liquids containing more than 0.1% benzene.	<ul style="list-style-type: none"> <li>• This requirement found in Training, WAC 296-849-11050:</li> <li>- Make sure training and information includes specific information on benzene for each hazard communication training topic. For the list of hazard communication training topics, go to the Safety and health core rules, chapter 296-800 WAC, and find Inform and train your employees about hazardous chemicals in your workplace, WAC 296-800-17030.</li> </ul>
Work with, or around, sealed containers of liquids containing more than 0.1% benzene.	<ul style="list-style-type: none"> <li>• Emergency requirements found in Medical evaluations, WAC 296-849-12030.</li> <li>• Requirements found in Medical records, WAC 296-849-12080.</li> <li>• Respirator requirements found in Respirators, WAC 296-849-13045.</li> </ul>

**Step 2a:** Follow requirements in the basic rules sections, WAC 296-849-11010 through 296-849-11090, for tasks not listed in Table 1.

- This includes completing an exposure evaluation, as specified in Exposure evaluations, WAC ~~((296-849-11060))~~ 296-849-11030, to:
  - Obtain employee fifteen-minute and eight-hour exposure monitoring results of airborne benzene;

AND

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- Determine if employee exposure monitoring results are above, at, or below these values:
  - Eight-hour time-weighted average (TWA<sub>8</sub>). . . . . 1 parts per million (ppm).
  - Fifteen-minute short-term exposure limit (STEL). . . . . 5 ppm.
  - Eight-hour action level (AL). . . . . 0.5 ppm.

**Step 2b:** Use employee exposure monitoring results from Step 2a and follow Table 2 to find out which additional sections of this chapter apply to your workplace.

**Table 2**  
**Section Application**

<b>If employee exposure monitoring results are:</b>	<b>Then continue to follow the basic rules, and these additional requirements:</b>
<ul style="list-style-type: none"> <li>• Above the TWA<sub>8</sub> or STEL</li> </ul>	<ul style="list-style-type: none"> <li>• Exposure and medical monitoring, WAC 296-849-12005 through 296-849-12080;</li> <li>AND</li> <li>• Exposure control areas, WAC 296-849-13005 through 296-849-13045.</li> </ul>
<ul style="list-style-type: none"> <li>• At or below the TWA<sub>8</sub> or STEL;</li> <li>AND</li> <li>• At or above AL</li> </ul>	<ul style="list-style-type: none"> <li>• Exposure and medical monitoring, WAC 296-849-12005 through 296-849-12080.</li> </ul>
<ul style="list-style-type: none"> <li>• Below the AL and STEL</li> </ul>	<ul style="list-style-type: none"> <li>• No additional requirements apply.</li> </ul>

**AMENDATORY SECTION** (Amending WSR 05-01-172, filed 12/21/04, effective 3/1/05)

**WAC 296-849-11030 Exposure evaluations.**

**IMPORTANT:**

• When you conduct an exposure evaluation in a workplace where an employee uses a respirator, the protection provided by the respirator is not considered.

• Following this section will fulfill the requirements to identify and evaluate respiratory hazards found in another chapter, Respiratory hazards, chapter 296-841 WAC.

**You must:**

• Conduct an employee exposure evaluation to accurately determine airborne concentrations of benzene by completing Steps 1 through 7 of the exposure evaluation process, each time any of the following apply:

- No evaluation has been conducted.
  - You have up to thirty days to complete an evaluation once benzene is introduced into your workplace.
  - Changes have occurred in any of the following areas that may result in new or increased exposures:
    - Production.
    - Processes.
    - Exposure controls such as ventilation systems or work practices.
    - Personnel.

- You have any reason to suspect new or increased exposure may occur.

- Spills, leaks, or other releases have been cleaned up.

**Note:** As part of your exposure evaluation after cleanup, you will make sure exposure monitoring results have returned to prerule levels.

**Exposure evaluation process.**

**IMPORTANT:**

• If you are evaluating employee exposures during cleaning and repair of barges and tankers that contained benzene:

- Collect samples that effectively measure benzene concentrations that employees may be exposed to;

AND

- Skip to Step 7.

• Following the exposure evaluation process is not necessary when you have documentation conclusively demonstrating benzene exposures for a particular operation and material cannot exceed the action level (AL) during any conditions reasonably anticipated.

- Documentation can be based on data or qualitative information, such as information about:

- The material.
- How the material is handled.
- The work conditions.

- Retain this documentation for as long as you rely on it.

**Step 1:** Identify all employees who have potential airborne exposure to benzene in your workplace.

**Step 2:** Identify operations where fifteen-minute exposures could exceed benzene's short-term exposure limit (STEL) of 5 parts per million (ppm).

• Include operations where it is reasonable to expect high, fifteen-minute exposures, such as operations where:

- Tanks are opened, filled, unloaded, or gauged.
- Containers or process equipment are opened.
- Benzene is used as a solvent for cleaning.

**Note:** You may use monitoring devices such as colorimetric indicator tubes or real-time monitors to screen for activities where employee exposure monitoring results could be high.

**Step 3:** Select employees from those working in the operations you identified in Step 2 who will have their fifteen-minute exposures measured.

**Step 4:** Select employees from those identified in Step 1 who will have their eight-hour exposures monitored.

• Make sure the exposures of the employees selected represent eight-hour exposures for all employees identified at Step 1, including each job classification, work area, and shift.

**Note:** A written description of the procedure used for obtaining representative employee exposure monitoring results needs to be kept as part of your exposure records required by this chapter in Exposure records, WAC 296-849-11090. This description can be created while completing Steps 3 through 6 of this exposure evaluation process.

**Step 5:** Determine how you will obtain employee monitoring results.

• Select and use a method that is accurate to ±25%, with a confidence level of 95%.

**Note:** Here are examples of methods that meet this accuracy requirement:  
- OSHA Method 12 for air samples, found by going to <http://www.osha.gov/dts/sltc/methods/toc.html>.

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– NIOSH Method 1500, found by going to <http://www.cdc.gov/niosh/homepage.html> and link to the *NIOSH Manual of Analytical Methods*.

shift with higher exposures and use results to represent all employees performing the operation on other shifts.

**Step 6:** Obtain employee exposure monitoring results by collecting air samples representing employees identified at Step 1.

(–) • Collect fifteen-minute samples from employees selected at Step 3.

(–) • Sample at least one shift representative of the eight-hour exposure for each employee selected at Step 4.

• Make sure samples are collected from each selected employee's breathing zone.

• Collecting area samples is permitted after emergency releases.

**Note:** • You may use any sampling method that meets the accuracy specified in Step 5. Examples of these methods include:

– Real-time monitors that provide immediate exposure monitoring results.

– Equipment that collects samples that are sent to a laboratory for analysis.

• The following are examples of methods of monitoring representative of eight-hour exposures:

– Collect one or more continuous samples, for example, a single eight-hour sample or four two-hour samples.

– Take a minimum of five brief samples, such as fifteen-minute samples, during the work shift and at times selected randomly.

• For work shifts longer than eight hours, monitor the continuous eight-hour portion of the shift expected to have the highest average exposure concentration.

**Step 7:** Have the samples you collected analyzed to obtain monitoring results representing eight-hour and fifteen-minute exposures.

• Go to the scope of this chapter, WAC 296-849-100, and compare employee exposure monitoring results to the values found in Step 2a and follow Step 2b to determine if additional sections of this chapter apply.

**Note:** • You may contact your local WISHA consultant for help:  
– Interpreting data or other information.  
– Obtaining eight-hour or fifteen-minute employee exposure monitoring results.

• To contact a WISHA consultant:  
– Go to another chapter, the Safety and health core rules, chapter 296-800 WAC, and find the resources section, and under "other resources," find service location for labor and industries.

**AMENDATORY SECTION** (Amending WSR 05-01-172, filed 12/21/04, effective 3/1/05)

**WAC 296-849-12010 Periodic exposure evaluations.**

**Exemption:** Periodic exposure evaluations aren't required if exposure monitoring results conducted to fulfill requirements in Exposure evaluation, WAC 296-849-11030, are below the action level (AL) and short-term exposure limit (STEL).

**You must:**

• Obtain employee exposure monitoring results as specified in Table 3, by repeating Steps 3, 4, 6, and 7 of the exposure evaluation process found within this chapter, in Exposure evaluations, WAC 296-849-11030.

**Note:** If you document that one work shift consistently has higher exposure monitoring results than another for a particular operation, then you can limit sample collection to the work

**Table 3**

**Periodic Exposure Evaluation Frequencies**

<b>If exposure monitoring results</b>	<b>Then</b>
Are between the: – AL of 0.5 ppm AND – Eight-hour time-weighted average (TWA <sub>8</sub> ) of 1 ppm	Conduct additional exposure evaluations at least every twelve months for the employees represented by the monitoring results.
<u>Are above the TWA<sub>8</sub></u>	<u>Conduct additional exposure evaluations at least every six months for the employees represented by the monitoring results.</u>
Have decreased to a concentration between the AL and TWA <sub>8</sub> ; AND The decrease is demonstrated by two consecutive exposure evaluations, made at least seven days apart.	You may decrease your evaluation frequency to every twelve months for employees represented by the monitoring results.
Are above the short-term exposure limit (STEL) of 5 ppm	Repeat as often as necessary to evaluate employee exposure.
Have decreased to below the AL and the STEL AND The decrease is demonstrated by two consecutive evaluations, made at least seven days apart.	You may stop periodic exposure evaluations for employees represented by the monitoring results.

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**AMENDATORY SECTION** (Amending WSR 05-01-172, filed 12/21/04, effective 3/1/05)

**WAC 296-849-12030 Medical evaluations.**

**IMPORTANT:**

Medical evaluations conducted under this section will satisfy the medical evaluation requirement found in Respirators, chapter 296-842 WAC.

**You must:**

• Provide the relevant medical follow-up specified in Tables 4 and 5 to any employee exposed to benzene during an emergency.

• Make medical evaluations available to current employees who meet the following criteria:

– Potential or actual exposure to benzene at or above the action level (AL) for at least thirty days in any twelve-month period.

– Potential or actual exposure to benzene at or above either permissible exposure limit (PEL) for at least ten days in a twelve-month period.

– Past exposure to concentrations above 10 ppm benzene for at least thirty days in a twelve-month period before November 11, 1988.

– Current or past work as a tire building machine operator using solvents containing more than 0.1% benzene during tire building operations.

**You must:**

• Make medical evaluations available at no cost to employees.

– Pay all costs, including travel costs and wages associated with any time spent outside of the employee's normal work hours;

• Make medical evaluations available at reasonable times and places;

• Make medical evaluations available by completing Steps 1 through 6 of the medical evaluation process for each employee covered.

**Note:**

• Employees who wear respirators need to be medically evaluated to make sure the respirator will not harm them, before they are assigned work in areas requiring respirators. Employees who decline to receive medical examination and testing to monitor for health effects caused by benzene are not excluded from receiving a separate medical evaluation for a respirator use.

• If employers discourage participation in medical monitoring for health effects caused by benzene, or in any way interfere with an employee's decision to continue with this program, this interference may represent unlawful discrimination under RCW 49.17.160, Discrimination against employee filing, instituting proceeding, or testifying prohibited—Procedure—Remedy.

**Helpful tool:**

**Declination form for nonemergency related medical evaluations.**

• You may use this optional form to document employee decisions to decline participation in the medical evaluation process for exposure to benzene.

**Medical evaluation process:**

**Step 1:** Identify employees who qualify, as stated above, for medical evaluations.

**Step 2:** Make medical evaluations available for employees identified in Step 1 at the following times:

• Initially, before the employee starts a job or task assignment where benzene exposure will occur.

• Every twelve months from the initial medical evaluation.

• Whenever the employee develops signs or symptoms commonly associated with toxic benzene exposure.

• After benzene exposure from an emergency.

**Step 3:** Select a licensed health care professional (LHCP) who will conduct or supervise medical evaluations and make sure:

• Individuals who conduct pulmonary function tests have completed a training course in spirometry sponsored by an appropriate governmental, academic, or professional institution, if they are not licensed physicians;

**AND**

• Your LHCP uses an accredited laboratory, such as one accredited by a nationally or state-recognized organization, to conduct laboratory tests.

**Step 4:** Make sure the LHCP receives all of the following before the medical evaluation is performed:

• A copy of:

– This chapter.

– The following information found in the General occupational health standards, chapter 296-62 WAC:

■ Appendix A, the substance safety data sheet—benzene, found in WAC 296-62-07525.

■ Appendix B, the substance technical guidelines—benzene, found in WAC 296-62-07527.

■ Appendix C, the medical surveillance guidelines for benzene, found in WAC 296-62-07529.

• A description of the duties of the employee being evaluated and how these duties relate to benzene exposure.

• The anticipated or representative exposure monitoring results for the employee being evaluated.

• A description of the personal protective equipment (PPE) each employee being evaluated uses or will use.

• Information from previous employment-related examinations when this information is not available to the examining LHCP.

• Instructions that the written opinions the LHCP provides, be **limited** to the following information:

– Specific records, findings, or diagnosis relevant to the employee's ability to work around benzene.

– The occupationally relevant results from examinations and tests.

– A statement about whether or not medical conditions were found that would increase the employee's risk for impairment from exposure to benzene.

– Any recommended limitations for benzene exposure.

– Whether or not the employee can use respirators and any recommended limitations for respirator or other PPE use.

– A statement that the employee has been informed of medical results and medical conditions caused by benzene exposure requiring further explanation or treatment.

**Step 5:** Provide the medical evaluation to the employee. Make sure it includes the content listed in Table 4, Content of medical evaluations, and Table 5, Medical follow-up requirements.

**Step 6:** Obtain the LHCP's written opinion for each employee's medical evaluation and give a copy to the employee within fifteen days of the evaluation date.

• Make sure the written opinion is limited to the information specified for written opinions in Step 4.

**Note:** If the written opinion contains specific findings or diagnoses unrelated to occupational exposure, send it back and obtain a revised version without the additional information.

**IMPORTANT:**

These tables apply when conducting medical evaluations, including medical follow-up for employees exposed to benzene during emergencies.

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**Table 4**  
**Content of Medical Evaluations**

When conducting	Include
An initial evaluation	<ul style="list-style-type: none"> <li>• A detailed history including:                             <ul style="list-style-type: none"> <li>– Past work exposure to benzene or other hematological toxins;</li> <li>– Exposure to marrow toxins outside of current employment;</li> <li>– Exposure to ionizing radiation;</li> <li>– Family history of blood dyscrasias including hematological neoplasms;</li> <li>– History of blood dyscrasias including genetic hemoglobin abnormalities, bleeding abnormalities, and abnormal function of formed blood elements;</li> <li>– History of renal or liver dysfunction;</li> <li>– History of medications routinely taken.</li> </ul> </li> <li>• A complete physical examination:                             <ul style="list-style-type: none"> <li>– Include a pulmonary function test and specific evaluation of the cardiopulmonary system if the employee is required to use a respirator for at least thirty days a year.</li> </ul> </li> <li>• A complete blood count including a:                             <ul style="list-style-type: none"> <li>– Leukocyte count with differential;</li> <li>– Quantitative thrombocyte count;</li> <li>– Hematocrit;</li> <li>– Hemoglobin;</li> <li>– Erythrocyte count and indices (MCV, MCH, MCHC).</li> </ul> </li> <li>• Additional tests the examining LHCP determines are necessary based on alterations in the components of the blood or other signs that may be related to benzene exposure.</li> <li>• <b>Medical follow-up as required in Table 5.</b></li> </ul>

When conducting	Include
Annual evaluations	<ul style="list-style-type: none"> <li>• An updated medical history covering:                             <ul style="list-style-type: none"> <li>– Any new exposure to potential marrow toxins;</li> <li>– Changes in medication use;</li> <li>– Any physical signs associated with blood disorders.</li> </ul> </li> <li>• A complete blood count including a:                             <ul style="list-style-type: none"> <li>– Leukocyte count with differential;</li> <li>– Quantitative thrombocyte count;</li> <li>– Hematocrit;</li> <li>– Hemoglobin;</li> <li>– Erythrocyte count and indices (MCV, MCH, MCHC).</li> </ul> </li> <li>• Additional tests that the examining LHCP determines necessary, based on alterations in the components of the blood or other signs that may be related to benzene exposure.</li> <li>• A pulmonary function test and specific evaluation of the cardiopulmonary system every three years if the employee is required to use a respirator for at least thirty days a year.</li> <li>• <b>Medical follow-up as required in Table 5.</b></li> </ul>
Evaluations triggered by employee signs and symptoms commonly associated with the toxic effects of benzene exposure	<ul style="list-style-type: none"> <li>• An additional medical examination that addresses elements the examining LHCP considers appropriate.</li> </ul>
Evaluations triggered by employee exposure during an emergency	<ul style="list-style-type: none"> <li>• A urinary phenol test performed on the exposed employee's urine sample within seventy-two hours of sample collection.                             <ul style="list-style-type: none"> <li>– The urine sample must be collected at the end of the work shift associated with the emergency;</li> <li>– The urine specific gravity must be corrected to 1.024.</li> </ul> </li> </ul>

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When conducting	Include
	<ul style="list-style-type: none"> <li>• <b>Medical follow-up as required in Table 5.</b></li> </ul> <p><b>Reference:</b> Employees who are not covered by medical evaluation requirements in this chapter may be covered by medical evaluation requirements in other chapters such as Emergency response, chapter 296-824 WAC.</p>

**Table 5**  
**Medical Follow-up Requirements**

If	Then
<ul style="list-style-type: none"> <li>• The complete blood count test result is normal.</li> </ul>	<ul style="list-style-type: none"> <li>• No further evaluation is required.</li> </ul>
<ul style="list-style-type: none"> <li>• The complete blood count test shows any of the following abnormal conditions:                             <ul style="list-style-type: none"> <li>- A leukocyte count less than 4,000 per mm<sup>3</sup> or an abnormal differential count;</li> </ul> </li> </ul> <p style="text-align: center;"><b>OR</b></p> <ul style="list-style-type: none"> <li>- A thrombocyte (platelet) count that is either:                             <ul style="list-style-type: none"> <li>■ More than 20% below the employee's most recent values;</li> </ul> </li> </ul> <p style="text-align: center;"><b>OR</b></p> <ul style="list-style-type: none"> <li>■ Outside the normal limit (95% C.I.) according to the laboratory;</li> </ul> <p style="text-align: center;"><b>OR</b></p>	<ul style="list-style-type: none"> <li>• Repeat the complete blood count within two weeks:                             <ul style="list-style-type: none"> <li>- If the abnormal condition persists, refer the employee to a hematologist or an internist for follow-up medical examination and evaluation, unless the LHCP has good reason to believe it is unnecessary;</li> <li>- The hematologist or internist will determine what follow-up tests are necessary;</li> </ul> </li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>• Follow the requirements found in Medical removal, WAC 296-849-12050.</li> </ul>

If	Then
<ul style="list-style-type: none"> <li>- The hematocrit or hemoglobin level is either of the following, and can not be explained by other medical reasons:                             <ul style="list-style-type: none"> <li>■ Below the normal limit (outside the 95% C.I.), as determined by the laboratory for the particular geographical area;</li> </ul> </li> </ul> <p style="text-align: center;"><b>OR</b></p> <ul style="list-style-type: none"> <li>■ Persistently decreasing compared to the employee's preexposure levels.</li> </ul>	
Results from the <b>urinary phenol test</b> conducted during an emergency evaluation show phenol levels less than 75 mg/L.	<ul style="list-style-type: none"> <li>• No further evaluation is required.</li> </ul>
Results from the <b>urinary phenol test</b> conducted during an emergency evaluation show phenol levels equal or more than 75 mg/L.	<ul style="list-style-type: none"> <li>• Provide a complete blood count monthly for three months. Include a:                             <ul style="list-style-type: none"> <li>- Leukocyte count with differential;</li> <li>- Thrombocyte count;</li> <li>- Erythrocyte count;</li> </ul> </li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>• If any of the abnormal conditions previously listed in this table for complete blood count results are found:                             <ul style="list-style-type: none"> <li>- Provide the employee with periodic examinations, if directed by the LHCP;</li> </ul> </li> </ul> <p style="text-align: center;"><b>AND</b></p> <ul style="list-style-type: none"> <li>- Refer the employee to a hematologist or an internist for follow-up medical examination and evaluation unless the LHCP has good reason to believe a referral is unnecessary;</li> </ul> <p style="text-align: center;"><b>AND</b></p>

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If	Then
	<ul style="list-style-type: none"> <li>- Follow the requirements found in Medical removal, WAC 296-849-12050;</li> </ul> <p style="text-align: center;">AND</p> <ul style="list-style-type: none"> <li>- The hematologist or internist will determine what follow-up tests are necessary.</li> </ul>

AND  
 - A licensed health care professional's (LHCP's) written opinion allows this type of respirator.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 296-62-07523 Benzene.

**AMENDATORY SECTION** (Amending WSR 05-01-172, filed 12/21/04, effective 3/1/05)

**WAC 296-849-13045 Respirators.**

**IMPORTANT:**

These requirements are in addition to the requirements found in other chapters:

- Respiratory hazards, chapter 296-841 WAC;
- Respirators, chapter 296-842 WAC.

**You must:**

• Provide respirators and require that employees use them in circumstances where exposure is above either permissible exposure limit (PEL) for benzene, including any of the following circumstances:

- Employees are in an exposure control area;
- Feasible exposure controls are being put in place;
- Where you determine that exposure controls are not feasible;

- Feasible exposure controls do not reduce exposures to, or below, a PEL((-));

((\*)) = Emergencies.

• Meet these requirements to protect employees from benzene exposure above a PEL:

- Limit selection of escape respirators to either:

- A full-facepiece organic vapor gas mask;

OR

- A full-facepiece self-contained breathing apparatus (SCBA);

OR

- A hood-style SCBA that operates in positive-pressure mode.

• Make sure respirator cartridges or canisters are replaced at the beginning of each work shift, or sooner if their service life has expired.

• Make sure canisters on gas masks and powered air-purifying respirators (PAPRs) have a minimum service life of four hours when tested under these conditions:

- A benzene concentration of 150 ppm;
- A temperature of 25°C;
- A relative humidity of 85%;
- A flow rate of one of the following:

- 64 liters per minute (lpm) for nonpowered air-purifying respirators;

- 115 lpm for tight-fitting PAPRs;

- 170 lpm for loose-fitting PAPRs.

• Provide an employee a respirator with low breathing resistance, such as a PAPR or an air-line respirator when the:

- Employee cannot use a negative-pressure respirator;

**WSR 05-13-154**

**PERMANENT RULES**

**SUPERINTENDENT OF PUBLIC INSTRUCTION**

[Filed June 21, 2005, 2:02 p.m., effective July 22, 2005]

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

Purpose: These rules are being revised in response to a number of developments: A legislative bill requiring the Office of Superintendent of Public Instruction to develop rules encompassing digital learning programs; a preliminary report from Joint Legislative Audit and Review Committee on the digital learning programs; the rapid growth and diversity of programs operating under these rules; and uncertainty about a school district's oversight role in alternative learning programs.

Citation of Existing Rules Affected by this Order: Amending WAC 392-121-182.

Statutory Authority for Adoption: RCW 28A.150.290 and SSB 5828.

Adopted under notice filed as WSR 05-09-088 on April 19, 2005.

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

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

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

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

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

Date Adopted: June 21, 2005.

Marty Daybell  
 for Dr. Terry Bergeson  
 Superintendent of  
 Public Instruction

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AMENDATORY SECTION (Amending Order 99-01, filed 3/25/99, effective 4/25/99)

**WAC 392-121-182 Alternative learning experience requirements.** (1) An alternative learning experience may be counted as a course of study. ((An alternative learning experience is an individualized course of study for a student who is not home based pursuant to RCW 28A.225.010(4), a private school student pursuant to RCW 28A.225.010 (1)(a), or an adult education student. The alternative learning experience is provided in accordance with a written alternative learning experience plan that is implemented pursuant to the school district board's policy for alternative learning experiences. The school district board policy must have been adopted in a public meeting. The alternative learning experience may be conducted in part outside of the regular classroom. A portion of the alternative learning experience may be provided by the student's parent(s) or guardian under supervision by school staff. As used in this section "school staff" means staff of the school district or a contractor pursuant to WAC 392-121-188. Alternative learning experience may be counted as a course of study pursuant to WAC 392-121-107 if the following requirements are met:

(1) School district board policies for alternative learning experiences — Effective January 1, 1996, each school district claiming basic education funding for alternative learning experiences shall have written policies on file that:

(a) Require a written plan for each student participating in an alternative learning experience that meets the minimum criteria pursuant to subsection (2) of this section;

(b) Require that all alternative learning experience curriculum and course requirements be approved by the school district;

(c) Describe how student performance will be supervised, evaluated, and recorded by school staff;

(d) Require that each student's educational progress will be reviewed at least once during the first twenty school days and afterwards at least once every forty five school days and that the results of each evaluation shall be communicated to the student and if the student is in grades K-8, the student's parent or guardian. If the school staff determines that a student is not substantially successful in completing the learning activities described in the written alternative learning experience plan, a revised written plan may be implemented. Any revised written plan shall be designed to enable the student to be substantially successful in completing the learning activities described in the revised written plan within ninety school days from the date that the school staff first determines that the student is not substantially successful in completing the assigned learning activities included in the original written plan. If the school staff determines that the student is still not substantially successful in completing their assigned learning activities after ninety school days from the date that the district first determines that the student is not substantially successful in completing the learning activities included in the original written plan, or sooner at the discretion of the school staff, a plan to remove the student from the alternative program shall be devised. Such plan shall specify that the student shall be removed from the alternative program no later than the end of the current school year for a period of at least one school term. Students removed from the alternative program

shall be offered the opportunity to enroll in another course of study as defined in WAC 392-121-107;

(e) A requirement that the alternative learning experience plan for each student and all records of enrollment, attendance, and total hours of participation in educational activities for the student are maintained and available for audit in the appropriate school building; and

(f) At the discretion of the school district board, the policy may describe responsibilities of the student's parent(s) or guardian including, but not limited to:

(i) Approval of the written alternative learning experience plan;

(ii) Responsibility for the parent(s) or guardian to provide or supervise a portion of the student's alternative learning experience if the parent(s) or guardian agrees; and

(iii) Requirements to meet with school staff for purposes of evaluating the student's performance and/or receiving instructions on assisting with the student's alternative learning experience. The school district board may also prescribe requirements for appointing a person to provide or supervise a portion of the student's alternative learning experience in the event the student's parent(s) or guardian will not or can not be a participant in the student's alternative learning experience;

(2) A written alternative learning experience plan is developed — Effective January 1, 1996, the alternative learning experience plan for a student shall be a written plan of instruction designed to meet the individual needs of the student, and shall be approved by a school official and any other person(s) as required or allowed by school district policy. The written plan shall include, but not be limited to, the following elements:

(a) A schedule of the duration of the program, including beginning and ending dates;

(b) A description of the learning activities the student is expected to successfully complete. Such description shall be sufficient in detail to guide and advise the student of the expectations;

(c) A description of the teaching component(s) of the program, including where and when teaching activities will be conducted by school staff;

(d) A description of the responsibilities of the student including a requirement that if, on average, the student attends school less than five hours a week, the student shall meet one on one with qualified school staff for an average minimum of sixty minutes every five school days for instruction, review of the student's assignments, testing, and/or other learning activities. If more than one student meets with a qualified school staff member at one time, the required time is increased proportionately, for example, the requirement becomes one hundred twenty minutes if two 1.0 full time equivalent students meet with the staff member at one time; and

(e) A reasonably accurate estimate of the average number of hours per month that the student will be engaged in learning activities to meet the requirements of the alternative learning experience plan. This estimate may be used in reporting enrollment in compliance with subsection (3) of this section and must be based upon the criteria in subsection (3)(a)(i) of this section;

(3) Reporting enrollment — Effective beginning with the 1995-96 school year the full-time equivalency of students enrolled in alternative learning experiences shall be determined based upon both (a) and (b) of this subsection as follows:

(a) Using the definition of a full-time equivalent student in WAC 392-121-122 and the number of hours that each student engages in learning activities as determined by either (a)(i) or (ii) of this subsection as follows:

(i) The total number of hours that the student engages in learning activities pursuant to the written alternative learning experience plan including:

(A) Those hours that meet the criteria in WAC 392-121-107(1)(a);

(B) Those hours of work based learning calculated in accordance with WAC 392-121-107(1)(f);

(C) Those hours of learning activity other than those specified in (a)(i)(A), (B) and (D) of this subsection that are provided by the student's parent(s) or guardian, or other person as designated by the written plan, under the direct supervision of the school's qualified instructional staff; and

(D) Those hours that the student participates in learning activities other than those specified in (a)(i)(A), (B) and (C) of this subsection. Such learning activity shall be pursuant to the student's alternative learning experience plan and if the student is in grades K-8, only includes those hours the student is supervised by the student's parent(s) or guardian or other person designated by the written alternative learning experience plan;

(ii) The district may use the estimated average hours per month the student is engaged in learning activities as stated in the alternative learning experience plan which meet the requirements of (a)(i) of this subsection. Provided, That for any count date on which the student has averaged, for the immediate two prior months during the current school year, a number of hours engaged in learning activities that differ by more than five hours a week from the alternative learning experience plan estimate pursuant to subsection (2)(c) of this section, the full-time equivalency of the student for such count date shall be adjusted to the lesser of 1.0 or the full-time equivalency calculated using the two month average;

(b) The enrollment count shall exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not met with appropriate school staff for twenty consecutive school days. Any such student shall not be counted as an enrolled student until the student has met with appropriate school staff and resumed participation in their alternative learning experience or participated in another course of study as defined in WAC 392-121-107;

(4) Documentation required — Effective with the 1995-96 school year the district shall keep on file in the appropriate school building and have available for audit, documentation of all hours of learning activities used to determine the student's full-time equivalency including documentation of the following:

(a) For students in grades K-8, written statements from the student's parent(s) or guardian or other person as designated by the written alternative learning experience plan. Such statements shall be submitted to the district on a monthly basis or more often at the discretion of the district

and shall list those hours that the student has engaged in planned learning activities while not in the presence of school staff. Reported hours shall be used to determine the full-time equivalency of the student pursuant to subsection (3) of this section; and

(b) For students in grades 9-12, the student shall submit written statements on a monthly basis or more often at the discretion of the school staff. Such statements shall list those hours that the student has engaged in planned learning activities while not in the presence of school staff. Reported hours shall be used to determine the full-time equivalency of the student pursuant to subsection (3) of this section;

(5) Effective with the 1995-96 school year the school district shall either:

(a) Maintain a ratio of full-time equivalent certificated instructional staff serving the annual average full-time equivalent students reported for basic education funding pursuant to this section which is at least equal to the district's basic education funding ratio for the grade band of the students being reported for basic education funding pursuant to this section; or

(b) Separately account for, document, and have available for audit, evidence that the district expends during the school year at least seventy percent of the basic education entitlement claimed for students enrolled in alternative learning experiences during the school year. Such expenditures shall be direct expenditures in the following programs as defined in the Accounting Manual for Public School Districts in Washington State for the school year:

(i) Program 01, Basic Education; and/or

(ii) Program 31, Vocational, Basic, State; and/or

(iii) Program 45, Skills Center, Basic, State.)

A school district alternative learning experience may make use of digital and/or on-line curricula, and may be delivered over the internet or using other electronic means. A school district alternative learning experience may also include significant participation by students, parents, and families in the design and implementation of a student's learning experience. This section provides an alternative method of determining full-time equivalent enrollment and claiming state funding for public school learning experiences that are:

(a) Individual courses of study for students who meet the definition for enrollment specified by WAC 392-121-106. Students may enroll part-time in alternative learning experiences. Such enrollment shall be subject to the provisions of RCW 28A.150.350 and chapter 392-134 WAC;

(b) Supervised, monitored, assessed, and evaluated by school staff. As used in this section, "school staff" means certificated instructional staff of the school district according to the provisions of chapter 180-82 WAC, or a contractor pursuant to WAC 392-121-188;

(c) Provided in accordance with a written alternative learning experience plan that is implemented pursuant to the school district board's policy for alternative learning experiences; and

(d) Provided in whole or part, outside the regular classroom setting, including those learning experiences provided digitally via the internet or other electronic means.

This section sets forth the standards, procedures, and requirements for state funded alternative learning experi-

ences. This section is not intended to prevent or limit alternative education programs provided by a school district with federal or local resources.

An alternative learning experience may be counted as a course of study pursuant to WAC 392-121-107 if the following requirements are met:

**(2) School district board policies for alternative learning experiences:** The board of directors of a school district claiming state funding for alternative learning experiences shall adopt and annually review written policies for each alternative learning experience program and program provider that:

(a) Require a written plan for each student participating in an alternative learning experience that meets the minimum criteria pursuant to subsection (4) of this section;

(b) Require that the overall ratio of certificated instructional staff to full-time equivalent students enrolled in alternative learning experience programs and courses, including those that rely primarily on digital curriculum, be identified and approved by the school district board of directors in a public meeting;

(c) Describe how student performance will be supervised, monitored, assessed, evaluated, and recorded by school staff. Such description shall include methods for periodic grade reporting, if different from existing school district policy;

(d) Require each student enrolled in an alternative learning experience to have direct personal contact with school staff at least weekly, until the student completes the course objectives or the requirements of the learning plan. Direct personal contact shall be for the purposes of instruction, review of assignments, testing, reporting of student progress, or other learning activities. Direct personal contact means a face-to-face meeting with the student and, where appropriate, the student's parent or guardian. In establishing policies for alternative learning experience programs and program providers, the school district board of directors may determine that direct personal contact can be accomplished through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication, instead of a face-to-face meeting, if in the judgment of the board such contact methods do not compromise educational quality, student health and safety, or the fiscal integrity of the district;

(e) Require that each student's educational progress be reviewed at least monthly and that the results of each review be communicated to the student and if the student is in grades K-8, the student's parent or guardian;

(f) At the discretion of the school district board, the policy may describe responsibilities of the student's parent(s) or guardian including, but not limited to:

(i) Approval of the written alternative learning experience plan;

(ii) Responsibility for the parent(s) or guardian to provide or implement a portion of the student's alternative learning experience under the supervision of school staff, if the parent(s) or guardian agrees; and

(iii) Requirements to meet with school staff for purposes of evaluating the student's performance and/or receiving instructions on assisting with the student's alternative learn-

ing experience. The school district board may also prescribe requirements for appointing a person to provide or supervise a portion of the student's alternative learning experience in the event the student's parent(s) or guardian will not or cannot be a participant in the student's alternative learning experience;

(g) Designate one or more school district official(s) responsible for approving specific alternative learning experience programs or courses, monitoring compliance with this section, and reporting at least annually to the school district board of directors on the program. This annual report shall include at least the following:

(i) Documentation of alternative learning experience student headcount and full-time equivalent enrollment claimed for basic education funding;

(ii) A description of how certificated and classified staff are assigned program management and instructional responsibilities that maximize student learning, including the ratio of certificated instructional staff to full-time equivalent students;

(iii) A description of how a written student learning plan pursuant to subsection (4) of this section, is developed, and student performance supervised and evaluated, by certificated staff;

(iv) A description of how the program supports the district's overall goals and objectives for student academic achievement; and

(v) Results of any self-evaluations conducted pursuant to subsection (7) of this section;

(h) Satisfy the state board of education's requirements for courses of study and equivalencies (chapter 180-50 WAC);

(i) For alternative learning experience courses offering credit, or for alternative learning experience programs issuing a high school diploma, satisfy the state board of education's high school graduation requirements (chapter 180-51 WAC); and

(j) Identify what, if any, expenditures which are directly related to the written student learning plan and are paid by participants of an alternative learning experience may be subject to reimbursement by the district.

**(3) Alternative learning experience implementation standards:**

(a) Alternative learning experiences shall be accessible to all students, including those with disabilities. Alternative learning experiences for special education students shall be provided in accordance with chapter 392-172 WAC.

(b) It is the responsibility of the school district or school district contractor to ensure that students have all curricula, course content, instructional materials, and other learning resources essential to successfully complete the requirements of the written student learning plan. Curricula, course content, instructional materials, and other learning resources for alternative learning experiences shall at minimum be consistent in quality with those available to the district's overall student population. Instructional materials shall be provided in accordance with RCW 28A.320.230.

(c) Work-based learning as a component of an alternative learning experience course of study shall be subject to the provisions of WAC 180-50-315 and 392-121-124.

(d) Contracting for alternative learning experiences shall be subject to the provisions of WAC 392-121-188 and RCW 28A.150.305.

(e) A school district that provides one or more alternative learning experiences to a student shall provide the parent(s) or guardian of the student, prior to the student's enrollment, with a description of the difference between home-based instruction pursuant to chapter 28A.200 RCW and the enrollment option selected by the student. The parent or guardian shall sign documentation attesting to his or her understanding of the difference and the documentation shall be retained by the district and made available for audit.

(f) The school district shall institute reliable methods to verify a student is doing his or her own work. The methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district.

(g) State funded public schools or public school programs whose primary purpose is to provide alternative learning experiences using digital or on-line means shall be accredited through the state accreditation program or through the regional accreditation program.

(4) Written student learning plan: Each student enrolled in an alternative learning experience course of study shall have a written student learning plan designed to meet the student's individual educational needs. The written student learning plan may be developed in partnership with the student, the student's parents, and other interested parties, with recognition that school staff has the primary responsibility and accountability for the plan, including supervision and monitoring, and evaluation and assessment of the student's progress. The written student learning plan shall include, but not be limited to, the following elements:

(a) A beginning and ending date for the learning experience;

(b) An estimate of the average number of hours per week that the student will engage in learning activities to meet the requirements of the student learning plan. This estimate may be used in reporting enrollment in compliance with subsection (5) of this section and must be based upon the criteria in subsection (6) of this section;

(c) A description of how weekly contact requirements will be fulfilled;

(d) A description of the specific learning goals and performance objectives of the alternative learning experience. This requirement may be met through the use of course syllabi or other similarly detailed descriptions of learning requirements. The description shall clearly identify the requirements a student must meet to successfully complete the course or program;

(e) Identification of instructional materials essential to successful completion of the learning plan; and

(f) A description of the timelines and methods for evaluating student progress toward the learning goals and performance objectives specified in the learning plan.

The written student learning plan shall identify whether the alternative learning experience meets one or more of the state essential academic learning requirements or any other academic goals, objectives, and learning requirements

defined by the school district. For a high school alternative learning experience, the plan shall specify whether the experience meets state and district graduation requirements.

(5) Enrollment reporting: Effective the 2005-06 school year, the full-time equivalency of students enrolled in alternative learning experience programs shall be determined as follows:

(a) Using the definition of full-time equivalent student in WAC 392-121-122 and the number of hours the student is expected to engage in learning activities as follows:

(i) On the first enrollment count date on or after the start date specified in the written student learning plan, the estimated average weekly hours of learning activity described in the written student learning plan;

(ii) On subsequent monthly count dates, if the student's progress review pursuant to subsection (6) of this section indicates satisfactory progress, the student's full-time equivalent shall be based on the estimated average weekly hours of learning activity identified in the student learning plan;

(iii) If the student's progress review indicates a lack of satisfactory progress, the student's full-time equivalent shall be based on the estimated average weekly hours of learning activity described in the student learning plan, and the actual number of hours the student engages in learning activity pursuant to the written student learning plan shall be documented during the ensuing month. Documented hours shall encompass only time spent on those learning activities intended to accomplish the learning goals and performance objectives identified in the written student learning plan, shall meet the following criteria and shall be verified by district staff:

(A) Those hours of classroom instruction provided by school staff;

(B) Those hours of work based learning calculated in accordance with WAC 392-121-107 (1)(f);

(C) Those hours of learning activity other than those specified in (a)(iii)(A), (B) and (D) of this subsection that are conducted and supervised by the student's parent(s) or guardian, or other person as designated by the written plan; and

(D) Those hours that the student participates in learning activities other than those specified in (a)(iii)(A), (B) and (C) of this subsection. If the student is in grades K-8, such learning activity shall be supervised by the student's parent(s) or guardian or other person designated by the written student learning plan;

(iv) On subsequent monthly count dates, if the student's progress review indicates a lack of satisfactory progress, the student's full-time equivalent shall be based on the actual average weekly hours of learning activity documented during the prior month;

(v) Enrollment of part-time students shall be subject to the provisions of RCW 28A.150.350, and shall generate the pro rata share of full-time funding.

(b) The enrollment count shall exclude students meeting the definition of enrollment exclusions in WAC 392-121-108 or students who have not had direct personal contact with school staff for twenty consecutive school days. Any such student shall not be counted as an enrolled student until the student has met with appropriate school staff and resumed participation in their alternative learning experience or partic-

ipated in another course of study as defined in WAC 392-121-107;

(c) School districts providing alternative learning experiences to nonresident students shall document the district of the student's physical residence, and shall establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate.

**(6) Accountability for student performance:**

(a) At minimum, students enrolled in alternative learning experiences shall have their educational performance evaluated according to the following process and schedule:

(i) Each student's educational progress shall be reviewed at least once per month. The progress review shall be based on the learning goals and performance objectives defined in the written student learning plan.

(ii) The progress review shall be conducted by school staff and shall include direct personal contact with the student. If allowed by district policy, direct personal contact may include the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication. The results of the review shall be communicated to the student and, where possible, the student's parent(s) or guardian.

(iii) Based on the progress review, school staff shall determine and document whether the student is making satisfactory progress in completing the learning activities and reaching the learning goals and performance objectives defined in the written plan.

(iv) If the student fails to make satisfactory progress for no more than two consecutive evaluation periods or if the student fails to follow the written student learning plan, an intervention plan designed to improve student progress shall be developed and implemented. This intervention plan shall be developed by school staff in conjunction with the student and, for students in grades K-8, the student's parent(s) or guardian.

(v) If, after no more than three subsequent evaluation periods, the student still is not making satisfactory progress, a plan designed to more appropriately meet the student's educational need shall be developed and implemented by school staff in conjunction with the student and, for students in grades K-8, the student's parent(s) or guardian.

(b) The educational progress of students enrolled in alternative learning experiences shall be assessed at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district. Part-time students shall also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW.

(c) Students enrolled full-time in nonresident alternative learning experience schools, programs, or courses shall have the opportunity to participate in any required annual state assessments at the district of residence, subject to that district's planned testing schedule. It is the responsibility of the enrolling district to facilitate all necessary coordination with

the district of residence and with the student and, where appropriate, the student's parent(s) or guardian to fulfill this requirement. Such coordination may include arranging for appropriate assessment booklets, student notification of assessment administration schedules, arrangements for forwarding of completed assessment booklets to the enrolling district for submission for scoring and reporting, and other steps as may be necessary. Assessment results for students assessed according to these provisions shall be included in the enrolling district's accountability measurements, and not in the district of residence's accountability measurements.

(7) Program evaluation: School districts offering alternative learning experiences shall engage in periodic self-evaluation of these learning experiences in a manner designed to objectively measure their effectiveness, including the impact of the experiences on student learning and achievement. Self-evaluation shall follow a continuous improvement model, and may be implemented as part of the school district's school improvement planning efforts.

(8) Annual reporting: Each school district offering alternative learning experiences shall report annually to the superintendent of public instruction on the types of programs and course offerings subject to this section, including student headcount and full-time equivalent enrollment claimed for basic education funding. The report shall identify the ratio of certificated instructional staff to full-time equivalent students enrolled in alternative learning experience courses or programs. The report shall separately identify alternative learning experience enrollment of students provided under contract pursuant to RCW 28A.150.305 and WAC 392-121-188.

(9) Documentation: In accordance with required records retention schedules, a school district claiming state funding for alternative learning experiences shall maintain the following written documentation available for audit:

(a) School board policy for alternative learning experiences pursuant to this section;

(b) Annual reports to the school district board of directors as required by subsection (2)(g) of this section;

(c) Annual reports to the superintendent of public instruction as required by subsection (8) of this section;

(d) The written student learning plans required by subsection (4) of this section, including documentation of required weekly direct personal contact;

(e) Student progress reviews, evaluations, and assessments required by subsection (6) of this section;

(f) Student enrollment detail substantiating full-time equivalent enrollment reported to the state, including estimated total hours of participation in educational activities, and any actual documentation of hours of learning for those students failing to make satisfactory progress; and

(g) Signed parent enrollment disclosure documents required by subsection (3)(e) of this section.

WSR 05-13-155

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed June 21, 2005, 2:53 p.m., effective July 22, 2005]

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

**WSR 05-13-156**

**PERMANENT RULES**

**EMPLOYMENT SECURITY DEPARTMENT**

[Filed June 21, 2005, 2:55 p.m., effective July 22, 2005]

**Purpose:** Repeal rules which deal with timber retraining benefits. The statute authorizing these benefits was repealed effective June 30, 2001. All participants in the program have completed their approved training and the regulations are no longer necessary.

**Citation of Existing Rules Affected by this Order:** Repealing WAC 192-32-010, 192-32-035, 192-32-050, 192-32-085, 192-32-095, 192-32-100, 192-32-115, 192-32-130, and 192-32-135.

**Statutory Authority for Adoption:** RCW 50.12.010, 50.12.040.

Adopted under notice filed as WSR 05-07-143 on March 23, 2005.

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

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

**Number of Sections Adopted on the Agency's Own Initiative:** New 0, Amended 0, Repealed 9.

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

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

Date Adopted: June 10, 2005.

Karen T. Lee  
Commissioner

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

192-32-010	Definitions
192-32-035	Residence in rural natural resources impact area at time of last separation from work
192-32-050	Benefits payable only to workers enrolled in approved training
192-32-085	Full-time training
192-32-095	Certification of satisfactory progress
192-32-100	Modifying a training plan
192-32-115	Out-of-state training
192-32-130	Five weeks for work search following training
192-32-135	Thirteen weeks for remedial training

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

**Purpose:** The rules clarify how the agency will make decisions concerning unemployment benefits of individuals who quit work to protect themselves or a member of their immediate family from domestic violence are [and/or] stalking. The rules define terms, list the factors the department will consider in deciding eligibility for benefits, clarify suitable work for these individuals, and explains their job search requirements.

**Statutory Authority for Adoption:** RCW 50.12.010, 50.12.040, 50.12.042, and 50.20.010.

Adopted under notice filed as WSR 05-07-144 on March 23, 2005.

**Changes Other than Editing from Proposed to Adopted Version:** "Siblings" is added to the definition of "immediate family" for purposes of these rules only. The rule explaining the claimants' job search requirements has been modified to add the statement that claimants are generally expected to make three contacts per week.

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

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

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

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

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

Date Adopted: June 6, 2005.

Karen T. Lee  
Commissioner

**NEW SECTION**

**WAC 192-150-112 Definitions—Domestic violence and stalking—RCW 50.20.050 (2)(b)(iv).** To constitute good cause for leaving work, your job separation must have been necessary to protect yourself or a member of your immediate family from domestic violence or stalking.

(1) **Immediate family** is defined in WAC 192-150-055 and means your spouse, children (including your unborn children), stepchildren, foster children, or parents of either spouse, whether living with you or not, and other relatives who temporarily or permanently reside in your household. In addition, for purposes of this section only, the term shall also include your siblings.

(2)(a) **Domestic violence** is defined in RCW 26.50.010. It includes the following acts committed between family or household members:

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(i) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault;

(ii) Sexual assault; or

(iii) Stalking.

(b) The perpetrator of domestic violence must be a family or household member, which means:

(i) Spouses and former spouses,

(ii) Persons who have a child in common regardless of whether they have been married or have lived together at any time,

(iii) Adult persons related by blood or marriage,

(iv) Adult persons who are presently residing together or who have resided together in the past,

(v) Persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship,

(vi) Persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and

(vii) Persons who have a biological or legal parent-child relationship, including stepparents, stepchildren, grandparents, and grandchildren.

(c) "Dating relationship" means a social relationship of a romantic nature.

(3) **Stalking** is defined by RCW 9A.46.110. It means:

(a) Intentionally and repeatedly harassing or following another person; and

(b) Placing the person being harassed or followed in fear of injury to self or property, or to another person or the property of another person; and

(c) Intending to frighten, intimidate, or harass the other person; or

(d) Knowing or having reason to know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

(i) "Harass" means a knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose.

(ii) "Repeatedly" means on two or more separate occasions.

(iii) "Follows" means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person's home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

(iv) "Contact" includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

#### NEW SECTION

**WAC 192-150-113 Domestic violence or stalking—RCW 50.20.050 (2)(b)(iv).** (1) As a condition of eligibility

for benefits, you are not required to exhaust reasonable alternatives prior to leaving work.

(2) The amount of notice you provide to your employer will not be a factor in evaluating whether you had good cause to leave work under this section. You will not be penalized for:

(a) Failing to provide notice to your employer prior to leaving work;

(b) Providing several weeks advance notice because you are making preparations to leave the situation;

(c) Not disclosing the domestic violence or stalking to your employer;

(d) Enduring domestic violence or stalking for an extended period of time before the job separation; or

(e) Leaving work when there has not been a recent act of domestic violence or stalking, provided you had a reasonable fear of future domestic violence or stalking.

(3) The following factors will be considered in evaluating whether you had good cause to leave work under this section:

(a) Domestic violence or stalking is the primary reason you left work, even if you gave a different reason for separation to your employer;

(b) Your separation was necessary which, for purposes of this section, means you had a good faith belief that you needed to leave work based upon:

(i) Your fear of domestic violence or stalking;

(ii) Avoiding domestic violence or stalking; or

(iii) The consequences of domestic violence or stalking, including but not limited to legal proceedings, health care, counseling, child custody, or child protection matters.

#### NEW SECTION

**WAC 192-170-060 Suitable work factors—Domestic violence or stalking—RCW 50.20.050 (2)(b)(iv).** When the department decides you left work for good cause due to domestic violence or stalking, you are required to be available for suitable work to receive benefits. Suitable work is work that is in keeping with your prior experience, employment or training. Suitability of work must also include consideration of your need to address the physical, psychological, legal and other effects of domestic violence or stalking. A job is not considered suitable when it would require you to be available on a day or at a specific time that conflicts with your need to address the effects of the domestic violence or stalking.

#### NEW SECTION

**WAC 192-180-014 Requirements of individuals who leave work due to domestic violence or stalking—RCW 50.20.010 (1)(c).** If you are allowed benefits because the department decides you left work for good cause due to domestic violence or stalking, each week you claim benefits you must demonstrate an attachment to the labor market by being able to work, available for work, and actively seeking suitable work. In general, claimants are required to make at least three job search contacts each week. You may make the number of contacts that are consistent with your need to address issues raised by domestic violence or stalking as long



as you meet the requirements of RCW 50.20.010 (1)(c) by making at least one job search contact each week you claim benefits. You may substitute participation in an approved job search activity at the WorkSource Office or local employment center for the required job search contact.

**WSR 05-13-188**  
**PERMANENT RULES**  
**DEPARTMENT OF HEALTH**

[Filed June 22, 2005, 8:47 a.m., effective July 23, 2005]

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

Purpose: With the passage of SSB 6554 (chapter 262, Laws of 2004), eliminating credentialing barriers for health professions, the amended statute has changed the requirements for clinical training for individuals applying for an acupuncture license. This amended rule revises the current clinical training requirements to reflect SSB 6554. This rule amendment will allow more applicants from out-of-state to be licensed in Washington.

Citation of Existing Rules Affected by this Order: Amending WAC 246-802-060 and 246-802-130.

Statutory Authority for Adoption: RCW 18.06.160.

Other Authority: RCW 18.06.050.

Adopted under notice filed as WSR 05-06-120 on March 2, 2005.

Changes Other than Editing from Proposed to Adopted Version: The amended rule has not been changed from the proposed language filed with the CR-102.

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

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

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

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

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

Date Adopted: June 21, 2005.

M. C. Selecky  
Secretary

**AMENDATORY SECTION** (Amending Order 121, filed 12/27/90, effective 1/31/91)

**WAC 246-802-060 Clinical training.** ~~((+))~~ A student must complete a minimum of ~~((one))~~ five hundred hours ~~((or nine quarter credits))~~ of supervised clinical training ~~((shall consist))~~ consisting of up to one hundred hours of observation which ~~((shall))~~ includes case presentation and discussion.

~~((2))~~ Supervised practice consists of at least four hundred separate patient treatments involving a minimum of one hundred patients. Twenty-nine quarter credits of supervised practice shall be completed over a minimum period of one academic year.

~~((a))~~ (1) A qualified instructor must observe and provide guidance to the student ~~((during the first one hundred patient treatments))~~ as appropriate, and must be available within the clinical facility to provide consultation and assistance to the student for patient treatments ~~((performed subsequently))~~. ~~((In the case of each and every))~~ Prior to initiation of each treatment, the instructor must have knowledge of and approve the diagnosis and treatment plan ~~((prior to the initiation of treatment))~~.

~~((b))~~ (2) "Patient treatment" ~~((shall))~~ includes:

~~((i))~~ (a) Conducting a patient intake interview concerning the patient's past and present medical history;

~~((ii))~~ (b) Performing ~~((traditional))~~ acupuncture examination and diagnosis;

~~((iii))~~ (c) Discussion between the instructor and the student concerning the proposed diagnosis and treatment plan;

~~((iv))~~ (d) Applying acupuncture treatment principles and techniques ~~((a minimum of three hundred sixty patient treatments involving point location, insertion and withdrawal of all needles must be performed))~~; and

~~((v))~~ (e) Charting of patient conditions, evaluative discussions and findings, and concluding remarks.

~~((e))~~ Supervised practice shall consist of a reasonable time per patient treatment and a reasonable distribution of patient treatment over one or more academic years so as to facilitate the student's learning experience. If the department is not satisfied that the time per patient treatment and distribution of treatments over one or more academic years facilitates the student's learning experience, it may require detailed documentation of the patient treatments.)

**AMENDATORY SECTION** (Amending Order 295B, filed 8/13/92, effective 9/13/92)

**WAC 246-802-130 Application exhibits required.** ~~((Every application shall be accompanied by))~~ An applicant must submit:

(1) The application fee required under WAC 246-802-990;

(2) Verification of academic or educational study and training at a school or college which may include the following:

(a) Photostatic copy of diploma, certificate, or other certified documents and original copy of school transcript from a school or college evidencing completion of a program and a copy of the curriculum in the areas of study involved in the school or college forwarded directly from the issuing agency/organization; or

(b) Notarized affidavit or statement bearing the official school seal and signed by an officer of the school or training program certifying the applicant's satisfactory completion of the academic and clinical training and designating the subjects and hours; or

(c) ~~((If, for good cause shown, the school is no longer existent, an applicant may submit a sworn affidavit so stating~~

~~and shall name the school, its address, dates of enrollment and curriculum completed, and such other information and documents as the department may deem necessary; or~~

~~(d))~~ Certified copies of licenses issued by the applicants jurisdiction which must be forwarded directly to the department of health from the issuing licensing and/or translation agency rather than the applicant.

(d) If the school no longer exists, an applicant may submit a sworn affidavit stating the name of the school and that it no longer exists. The applicant must also provide the school's address, dates of enrollment and curriculum completed, and other information and documents as requested by the department.

(3) Verification of clinical training. The applicant shall submit a ~~((certification))~~ verification of clinical training form. The form must be signed by ((the instructor(s) under oath)) an officer of the approved program and must state that the applicant completed a course of supervised clinical training ((under the direction of the instructor which shall)). The verification form must include:

- (a) The location(s) of the training site(s).
- (b) The inclusive dates of training.
- (c) A statement that the supervised ((practice included a minimum of four hundred patient treatments involving a minimum of one hundred different patients)) clinical training meets the requirements of WAC 246-802-060.

~~((d) One hundred hours of observation including case presentation and discussion:))~~

- (4) Certified verification of successful completion of:
  - (a) The national written examination((:));
  - (b) Practical examination of point location skills; and ((approved))

(c) A clean needle technique course ((from)) approved by the National Certification Commission for ((Certification of Acupuncturists)) Acupuncture and Oriental Medicine (NCCAOM).

(5) If required by WAC 246-802-090(3), certified verification of a successful score of at least 550 on the test of English as a foreign language (TOEFL) ((if required by WAC 246-802-090(3))). The applicant shall have a copy of his/her official score records sent directly to the department from the testing service. The department may grant an exemption to this requirement if the department determines there is good cause.

**WSR 05-13-189  
PERMANENT RULES  
DEPARTMENT OF HEALTH**

[Filed June 22, 2005, 8:48 a.m., effective July 23, 2005]

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

Purpose: These rule changes implement within I-601 fee increases for WAC 246-329-990 Child birth centers, 246-360-990 Transient accommodations and 246-380-990 State institutional survey. The fee increases will allow these programs to continue their current level of public health activities such as licensing, surveys and complaint investigations during fiscal year 2006. This also implements for an initial applicant to request, prior to licensure, options for with-

drawal of an application and refund (for WAC 246-329-990 and 246-360-990).

Citation of Existing Rules Affected by this Order: Amending WAC 246-329-990, 246-360-990, and 246-380-990.

Statutory Authority for Adoption: RCW 43.70.250.

Adopted under notice filed as WSR 05-10-064 on May 2, 2005.

Changes Other than Editing from Proposed to Adopted Version: The refund language for initial licensure was deleted from WAC 246-380-990. These fees are billed and collected after completion of an on-site survey. There is no "initial licensure."

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 3, Repealed 0.

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

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

Date Adopted: June 10, 2005.

M. C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 03-22-020, filed 10/27/03, effective 11/27/03)

**WAC 246-380-990 Fees.** An annual health and sanitation survey fee for community colleges, ferries, and other state of Washington institutions and facilities shall be assessed as follows:

~~((Annual Fee Per Facility))~~ Fee

(1) Food Service

- (a) As defined in WAC ~~((246-215-009))~~ 246-215-011(12) food service establishments or concessions in community colleges, ferries, or any other state of Washington facility preparing potentially hazardous foods. This shall include dockside food establishments directly providing food for the Washington state ferry system. ~~\$(567.60)~~  
583.60

- (b) Food service establishments or concessions that do not prepare potentially hazardous foods. ~~\$(284.80)~~  
292.80

PERMANENT

~~((Annual Fee Per Facility))~~ Fee

- (c) The health and sanitation survey fee referenced in subsection (a) and (b) of this section may be waived provided there is an agreement between the department of health and the local jurisdictional health agency for the local health agency to conduct the food service establishments surveys.
- (2) State institutions or facilities.
  - (a) Institutions or facilities operating a food service: The annual fee shall be nine dollars and twenty-five cents times the population count plus five hundred ~~((sixty-seven))~~ eighty-three dollars and sixty cents. The population count shall mean the average daily population for the past twelve months (January through December).
  - (b) Institutions or facilities that do not operate a food service: The annual fee shall be nine dollars and twenty-five cents times the population count.
  - (c) The population count for a new institution shall mean the average projected daily population for the first twelve months of operation.

**AMENDATORY SECTION** (Amending WSR 05-05-072, filed 2/15/05, effective 3/18/05)

**WAC 246-360-990 Fees.** (1) The licensee or applicant must submit:

(a) An annual fee according to the following schedule:

NUMBER OF LODGING UNITS	FEE
3 - 10	\$ <del>((154.50))</del> <u>158.80</u>
11 - 49	\$ <del>((307.10))</del> <u>315.70</u>
50 - over	\$ <del>((618.20))</del> <u>635.60</u>

(b) A late fee of ~~((fifty-one))~~ fifty-two dollars and ~~((fifty))~~ ninety cents, in addition to the full license renewal fee, if the full license renewal fee is not received by the department on the expiration date (see RCW 70.62.260);

(c) An additional fee of ~~((fifty-one))~~ fifty-two dollars and ~~((fifty))~~ ninety cents for an amended license due to changing the number of lodging units or the name of the transient accommodation.

(2) The department shall refund fees ~~((only when all the following conditions are met:~~

- ~~(a) A prospective new owner applies for initial licensure prior to taking ownership as required by WAC 246-360-020;~~
- ~~(b) Transfer of ownership is not finalized;~~
- ~~(c) The applicant requests a refund in writing; and~~
- ~~(d) The department receives the fee and the request for refund in the same biennium))~~ paid by the applicant for initial licensure as follows:

(a) If an application has been received but no on-site survey or technical assistance has been performed by the department, two-thirds of the fees paid, less a fifty dollar processing fee.

(b) If an application has been received and an on-site survey or technical assistance has been performed by the department, one-third of the fees paid, less a fifty dollar processing fee.

(c) No fees paid by the applicant will be refunded if any of the following applies:

(i) More than one on-site visit for any purpose has been performed by the department;

(ii) One year has elapsed since an initial licensure application is received by the department, but no license is issued because applicant failed to complete requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.

**AMENDATORY SECTION** (Amending WSR 04-19-141, filed 9/22/04, effective 10/23/04)

**WAC 246-329-990 Fees.** (1) Childbirth centers licensed under chapter 18.46 RCW shall submit an annual fee of five hundred ~~((sixty-four))~~ eighty dollars and ~~((forty))~~ thirty cents to the department unless a center is a charitable, nonprofit, or government-operated institution under RCW 18.46.030.

(2) The department shall refund fees paid by the applicant for initial licensure as follows:

(a) If an application has been received but no on-site survey or technical assistance has been performed by the department, two-thirds of the fees paid, less a fifty dollar processing fee.

(b) If an application has been received and an on-site survey or technical assistance has been performed by the department, one-third of the fees paid, less a fifty dollar processing fee.

(c) No fees paid by the applicant will be refunded if any of the following applies:

(i) More than one on-site visit for any purpose has been performed by the department;

(ii) One year has elapsed since an initial licensure application is received by the department, but no license is issued because applicant failed to complete requirements for licensure; or

(iii) The amount to be refunded as calculated by (a) or (b) of this subsection is ten dollars or less.



**WSR 05-12-026****EMERGENCY RULES  
DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed May 23, 2005, 4:16 p.m., effective May 23, 2005]

Effective Date of Rule: Immediately.

Purpose: The Division of Developmental Disabilities has received initial approval from the federal Centers for Medicare and Medicaid Services (CMS) to implement four home and community based service (HCBS) waivers, which replace the current community alternatives program (CAP) waiver.

These rules will clarify eligibility, service array, utilization, provider qualifications, client appeal rights and access to services. This filing includes a new chapter 388-845 WAC.

These rules extend the emergency rules filed as WSR 05-04-020 while the division awaits final approval from CMS necessary to file the proposed rules for adoption on a permanent basis.

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

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest; and that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The initial approval of the HCBS waivers by CMS required the department to implement new rules by April 1, 2004, to protect the health and welfare of eligible clients by ensuring no interruption in services to current participants in the CAP waiver occurs, and to ensure a continuation of federal matching funds under 42 C.F.R. 441, Subpart G - Home and Community Based Services - Waiver Requirements. Emergency rules were originally filed as WSR 04-08-020, and were extended as WSR 04-16-019, 04-20-018, and 05-04-020. The department has filed a notice of intent to adopt permanent rules as WSR 03-20-103. Ongoing negotiations with CMS have delayed the filing of proposed rules for adoption on a permanent basis until the negotiations are completed and CMS grants final approval.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 131, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 131, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 131, Amended 0, Repealed 0.

Date Adopted: May 19, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**Chapter 388-845 WAC****DDD HOME AND COMMUNITY BASED SERVICES  
WAIVERS****NEW SECTION****WAC 388-845-0001 Definitions.**

"ADSA" means the aging and disability services administration, an administration within the department of social and health services.

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

"CAP waiver" means the Community Alternatives Program waiver.

"CARE" means the Comprehensive Assessment and Reporting Evaluation.

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

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

"Employment/Day Program Services" means a combination of services subject to the dollar limitations in the Basic and Basic Plus waivers.

"HCBS Waivers" means home and community based waivers.

"ICF/MR" means an Intermediate Care Facility for the Mentally Retarded.

"Plan of Care (POC)" means the primary tool DDD uses to determine and document your needs and to identify services to meet those needs.

"Providers" means individual or agency licensed, certified and/or contracted to provide services to you.

"Respite Assessment" means a series of questions about you and your caregiver used to determine the amount of respite care available to you.

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

"SSP" means State Supplementary Payment, a benefit administered by the department intended to augment an individual's SSI.

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

**NEW SECTION**

**WAC 388-845-0005 What are home and community based services (HCBS) waivers?** (1) Home and community based services (HCBS) waivers are services approved by the

Centers For Medicare and Medicaid Services (CMS) under section 1915 (c) of the Social Security Act as an alternative to intermediate care facility for the mentally retarded (ICF/MR) care.

(2) Certain federal regulations are "waived" enabling the provision of services in the home and community to individuals who would otherwise require the services provided in an ICF/MR as defined in chapters 388-835 and 388-837 WAC.

#### NEW SECTION

**WAC 388-845-0010 What is the purpose of HCBS waivers?** The purpose of HCBS waivers is to provide services in the community to individuals with ICF/MR level of need to prevent their placement in an ICF/MR.

#### NEW SECTION

**WAC 388-845-0015 What HCBS waivers are provided by the division of developmental disabilities (DDD)?** DDD is replacing its community alternatives program (CAP) waiver with four HCBS waivers:

- (1) Basic waiver;
- (2) Basic Plus waiver;
- (3) CORE waiver; and
- (4) Community Protection waiver.

#### NEW SECTION

**WAC 388-845-0020 When were these four HCBS waivers effective?** The four DDD HCBS waivers were effective April 1, 2004.

#### NEW SECTION

**WAC 388-845-0025 Does this change in waivers affect the waiver services I am currently receiving?** Your services will not be disrupted with this transfer to new waivers.

#### NEW SECTION

**WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services?** You meet criteria for DDD HCBS waiver funded services if you meet all of the following:

- (1) You have been determined eligible for DDD services per RCW 71A.10.020(3).
- (2) You have been determined to meet ICF/MR level of care per WAC 388-845-0070 through 388-845-0090.
- (3) You meet disability criteria established in the Social Security Act.
- (4) You meet financial eligibility requirements as defined in WAC 388-515-1510.
- (5) You choose to receive services in the community rather than in an ICF/MR facility.
- (6) You have a need for waiver services as identified in your plan of care.
- (7) You are not residing in hospital, jail, prison, nursing facility, ICF/MR, or other institution.

#### NEW SECTION

**WAC 388-845-0035 Am I guaranteed placement on a waiver if I meet waiver criteria?** If you are not currently on a waiver, meeting criteria for the waiver does not guarantee access to or receipt of waiver services.

#### NEW SECTION

**WAC 388-845-0040 Is there a limit to the number of people who can be on each HCBS waiver?** Each waiver has a limit on the number of people who can be served in a waiver year. In addition, DDD has the authority to limit access to the waivers based on availability of funding for new waiver participants.

#### NEW SECTION

**WAC 388-845-0041 What is DDD's responsibility to provide my services under the waivers administered by DDD?** If you are enrolled in an HCBS waiver administered by DDD, DDD must meet your assessed needs for health and welfare.

- (1) DDD must address your assessed health and welfare needs in your plan of care, as specified in WAC 388-845-3055.
- (2) You have access to DDD paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and WAC 388-845-0115.
- (3) DDD will provide waiver services you need and qualify for within your waiver.
- (4) DDD will not deny or limit your waiver services based on a lack of funding.

#### NEW SECTION

**WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDD determine who will be added?** When there is capacity on a waiver and available funding for new waiver participants, DDD may add people to a waiver based on the following priority considerations.

- (1) First priority will be given to current waiver participants assessed to require a different waiver because their needs have increased and these needs cannot be met within the scope of their current waiver.
- (2) DDD may also consider any of the following populations:
  - (a) Priority populations as identified and funded by the legislature.
  - (b) Persons DDD has determined to be in immediate risk of ICF/MR admission due to unmet health and safety needs.
  - (c) Persons identified as a risk to the safety of the community.
  - (d) Persons currently receiving services through state-only funds.
  - (e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.
- (3) For the Basic waiver only, DDD may consider persons who need the waiver services available in the Basic waiver to maintain them in their family's home.

**NEW SECTION**

**WAC 388-845-0050** How do I request to be enrolled in a waiver? You can contact DDD and request to be enrolled in a waiver at any time.

(1) Your request for waiver enrollment will be documented by DDD in a statewide database if DDD determines that you:

(a) Meet the criteria for a priority populations in WAC 388-845-0045, and

(b) Have ICF/MR level of care needs per WAC 388-845-0070 through 388-845-0090.

(2) When there is capacity available to enroll additional people in a waiver, WAC 388-845-0045 describes how DDD will determine who will be added.

**NEW SECTION**

**WAC 388-845-0051** How will I be notified of the decision by DDD to enroll me in a waiver? DDD will notify you in writing of your enrollment on the data base.

**NEW SECTION**

**WAC 388-845-0055** How do I remain eligible for the waiver? If you are already on a HCBS waiver, you must continue to meet eligibility criteria.

(1) DDD completes a reassessment at least every twelve months to determine if you continue to meet all of the eligibility requirements in WAC 388-845-0030.

(2) You must receive a waiver service at least once in every thirty consecutive days, as specified in WAC 388-513-1320 (3)(b).

(3) Your plan of care, CARE assessment/reassessment and respite assessment/reassessment must be done in person.

**NEW SECTION**

**WAC 388-845-0060** Can my waiver eligibility be terminated? DDD may terminate your waiver eligibility if DDD determines that your health and safety needs cannot be met in your current waiver or for one of the following reasons:

(1) You no longer meet one of the requirements listed in WAC 388-845-0030;

(2) You no longer need waiver services;

(3) You do not use a waiver service at least once in every thirty consecutive days;

(4) You are in the Community Protection waiver and choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

(5) You choose to disenroll from the waiver;

(6) You reside out of state;

(7) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;

(8) You refuse to participate with DDD in:

(a) Service planning,

(b) Required quality assurance and program monitoring activities, or

(c) Accepting services agreed to in your plan of care as necessary to meet your health and safety needs.

(9) You are residing in hospital, jail, prison, nursing facility, ICF/MR, or other institution and remain in residence at least one full calendar month, and are still in residence:

(a) At the end of the twelfth month following the effective date of your current plan of care, as described in WAC 388-845-3060; or

(b) On March 31st, the end of the waiver fiscal year, whichever date occurs first.

(10) Your needs exceed the maximum funding level or scope of services under the Basic or Basic Plus waiver as specified in WAC 388-845-3080.

(11) Your needs exceed what can be provided under the CORE or Community Protection waiver as specified in WAC 388-845-3085.

**NEW SECTION**

**WAC 388-845-0065** What happens if I am terminated or choose to disenroll from a waiver? If you are terminated from a waiver or choose to disenroll from a waiver, DDD will notify you.

(1) DDD cannot guarantee continuation of your current services, including Medicaid eligibility.

(2) Your eligibility for nonwaiver DDD services is based upon availability of funding and program eligibility for a particular service.

**NEW SECTION**

**WAC 388-845-0070** What determines if I need ICF/MR level of care? DDD determines if you need ICF/MR level of care based on your need for waiver services. To reach this decision, DDD uses its department-approved assessment and/or other information.

**NEW SECTION**

**WAC 388-845-0075** How is a child age twelve or younger assessed for ICF/MR level of care? If you are age twelve or younger, DDD assesses you for ICF/MR level of care using the "child's assessment of ICF/MR level of care—current support needs" form. You must have support needs exceeding what is expected of others of the same age.

**NEW SECTION**

**WAC 388-845-0080** What score indicates ICF/MR level of care if I am age twelve or younger? (1) If you are age five or younger you need major or moderate support in five of nine tasks;

(2) If you are age six through twelve, you need major or moderate support in seven of nine of the following tasks.

(3) The form indicates certain tasks that require major support and which require moderate or major support.

(a) Major support for:

(i) Dressing and grooming self,

(ii) Toileting self.

(b) Major or moderate support for:

(i) Eating,

- (ii) Mobility,
- (iii) Communication,
- (iv) Making choices and taking responsibility,
- (v) Exploring one's environment,
- (vi) Supports needed to meet therapy and health needs
- (vii) Family/caregiver support required to maintain the child at home.

**NEW SECTION**

**WAC 388-845-0085** If I am age twelve or younger, what if my score on the current needs assessment does not indicate ICF/MR level of care? For children age twelve or younger:

(1) If you do not have a qualifying score for determining ICF/MR level of care using the department approved assessment, you may provide DDD other current information that provides evidence of your need for waiver services.

(2) This additional information may include occupational therapy (OT), physical therapy (PT), psychological, nursing, social work, speech and hearing, or other professional evaluations that reflect current needs.

**NEW SECTION**

**WAC 388-845-0090** How is a person age thirteen or older assessed for ICF/MR level of care? If you are age thirteen or older, DDD assesses you for ICF/MR level of care using the "assessment of ICF/MR level of care—current support needs" form.

**NEW SECTION**

**WAC 388-845-0095** What score indicates ICF/MR level of care if I am age thirteen or older? If you are age thirteen or older, you must have a qualifying score of at least forty in responses to twenty questions assessing your residential, school or employment, and social support needs.

**NEW SECTION**

**WAC 388-845-0096** If I am age thirteen or older, what if my score on the current needs assessment does not indicate ICF/MR level of care? If you are age thirteen or older and your current needs assessment does not indicate ICF/MR level of care, you are not eligible for an HCBS waiver.

**NEW SECTION**

**WAC 388-845-0100** What determines which waiver I am assigned to? DDD will assign you to a waiver based on the following criteria:

(1) If you were on the CAP waiver as of March 2004, your initial assignment to the Basic, Basic Plus, CORE, or Community Protection waiver is based on:

- (a) Services you received from DDD in October 2002 through September 2003; and
- (b) Services you were authorized to receive in October, November and December 2003.

(2) If you are new to a waiver since April 1, 2004, assignment is based on your assessment and service plan.

(3) Additional criteria apply to the assignment to the Community Protection waiver.

**NEW SECTION**

**WAC 388-845-0105** What criteria determine assignment to the Community Protection waiver? DDD may assign you to the Community Protection waiver only if you are at least eighteen years of age, not currently residing in a hospital, jail or other institution, and meet the following criteria:

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

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

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

(c) You have been convicted of or charged with a sexually violent offense and/or predatory act, and may constitute a future danger as determined by a qualified professional;

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

(e) You have committed one or more violent crimes.

(2) You receive or agree to receive residential services from certified residential community protection provider-intensive supported living services (CP-ISLS); and

(3) You comply with the specialized supports and restrictions in your:

(a) Plan of care (POC);

(b) Individual instruction and support plan (IISP); and/or

(c) Treatment plan provided by DDD approved certified individuals and agencies.

**NEW SECTION**

**WAC 388-845-0110** Are there limitations to the waiver services I can receive? There are limitations to waiver services. In addition to the limitations to your access to nonwaiver services cited for specific services in WAC 388-845-0115, the following limitations apply:

(1) A service must be offered in your waiver and authorized in your plan of care.

(2) Mental health stabilization services may be added to your plan of care after the services are provided.

(3) Waiver services are limited to services required to prevent ICF/MR placement.

(4) The cost of your waiver services cannot exceed the average daily cost of an ICF/MR.

(5) Waiver services cannot replace or duplicate other available paid and unpaid supports and services, including payments authorized to you by DDD to purchase a service directly.



(6) Waiver funding cannot be authorized for treatments determined by DSHS to be experimental.

(7) The Basic and Basic Plus waivers have yearly limits on some services and combinations of services. The combination of services is referred to as aggregate services or employment/day program services.

(8) Your choice of qualified providers and services is limited to the most cost effective option that meets your assessed needs.

(9) Services out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations.

(a) You may receive services in a recognized out-of-state bordering city on the same basis as in-state services.

(b) The only recognized bordering cities are:

(i) Coeur d'Alene, Moscow, Sandpoint, Priest River and Lewiston, Idaho; and

(ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater and Astoria, Oregon.

(10) Other out-of-state waiver services require an approved exception to rule before DDD can authorize payment.

**NEW SECTION**

**WAC 388-845-0115 Does my waiver eligibility limit my access to DDD nonwaiver services?** If you are enrolled in a DDD HCBS waiver:

(1) You are not eligible for state-only funding for DDD services.

(2) You are not eligible for Medicaid personal care.

**NEW SECTION**

**WAC 388-845-0120 Will I continue to receive state supplementary payments (SSP) if I am on the waiver?** Your participation in the new waivers does not affect your continued receipt of SSP from DDD.

**NEW SECTION**

**WAC 388-845-0200 What waiver services are available to me?** Each of the four HCBS waivers has a different scope of service and your service plan defines the waiver services available to you.

**NEW SECTION**

**WAC 388-845-0205 Basic waiver services.**

BASIC WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Specialized medical equipment/supplies	May not exceed \$1425 per year on any combination of these services

BASIC WAIVER	SERVICES	YEARLY LIMIT
	Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed \$6500 per year
	Sexual Deviancy Evaluation	Limits are determined by DDD
	Respite care	Limits are determined by respite assessment
	Personal care	Limits are determined by CARE assessment
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits are determined by mental health or DDD
	Emergency assistance is only for services contained in the Basic waiver	\$6000 per year; Preauthorization required

**NEW SECTION**

**WAC 388-845-0210 Basic Plus waiver services.**

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$6070 per year on any combination of these services
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed \$9500 per year
	Adult foster care (adult family home) Adult residential care (boarding home)	Determined per department rate structure

EMERGENCY

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	<b>MENTAL HEALTH STABILIZATION SERVICES:</b> Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by mental health or DDD
	Personal care	Limits determined by the CARE assessment
	Respite care	Limits are determined by respite assessment
	Sexual Deviancy Evaluation	Limits are determined by DDD
	Emergency assistance in only for services contained in the Basic Plus waiver	\$6000 per year; Pre-authorization required

**NEW SECTION**

**WAC 388-845-0220 Community protection waiver services.**

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community transition Environmental accessibility adaptations Occupational therapy Physical therapy Sexual deviancy evaluation Skilled nursing Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	Determined by the Plan of Care, not to exceed the average cost of an ICF/MR for any combination of services
	Residential habilitation	
	Person-to-person Prevocational services Supported employment	Limits determined by mental health or DDD
	<b>MENTAL HEALTH STABILIZATION SERVICES:</b> Behavioral management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	

**NEW SECTION**

**WAC 388-845-0215 CORE waiver services.**

CORE WAIVER	SERVICES	YEARLY LIMIT
	Behavior management and consultation Community guide Community transition Environmental accessibility adaptations Occupational therapy Respite care Sexual deviancy evaluation Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	Determined by the Plan of Care, not to exceed the average cost of an ICF/MR for any combination of services
	Residential habilitation	
	Community access Person-to-person Prevocational services Supported employment	Limits determined by mental health or DDD
	<b>MENTAL HEALTH STABILIZATION SERVICES:</b> Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	
	Personal care	Limited by CARE assessment

**WAIVER SERVICES DEFINITIONS**

**NEW SECTION**

**WAC 388-845-0300 What are adult family home (AFH) services?** Per RCW 70.128.010 an adult family home (AFH) is a regular family abode in which a person or persons provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the service. Adult family homes (AFH) may provide residential care to adults in the Basic Plus waiver.

**NEW SECTION**

**WAC 388-845-0305 Who is a qualified provider of AFH services?** The provider of AFH services must be licensed and ADSA contracted as an AFH who has successfully completed the DDD specialty training provided by the department.

EMERGENCY

NEW SECTION

**WAC 388-845-0310** Are there limits to the AFH services I can receive? Adult family homes services are limited by the following:

(1) AFH services are defined and limited per chapter 388-106 and 388-71 WAC governing Medicaid personal care and the comprehensive assessment and reporting evaluation (CARE) or the legacy comprehensive assessment.

(2) Rates are determined by and limited to department published rates for the level of care generated by CARE or the legacy comprehensive assessment.

(3) AFH reimbursement cannot be supplemented by other department funding.

NEW SECTION

**WAC 388-845-0400** What are adult residential care (ARC) services? Adult residential care (ARC) facilities may provide residential care to adults. This service is available in the Basic Plus waiver.

(1) An ARC is a licensed boarding home for seven or more unrelated adults.

(2) Services include, but are not limited to, individual and group activities; assistance with arranging transportation; assistance with obtaining and maintaining functional aids and equipment; housework; laundry; self-administration of medications and treatments; therapeutic diets; cuing and providing physical assistance with bathing, eating, dressing, locomotion and toileting; stand-by one person assistance for transferring.

NEW SECTION

**WAC 388-845-0405** Who is a qualified provider of ARC services? The provider of ARC services must:

- (1) Be a licensed boarding home;
- (2) Be contracted with ADSA to provide ARC services; and
- (3) Have completed the required and approved DDD specialty training.

NEW SECTION

**WAC 388-845-0410** Are there limits to the ARC services I can receive? ARC services are limited by the following:

(1) ARC services are defined and limited by boarding home licensure and rules and chapter 388-106 and 388-71 WAC governing Medicaid personal care and the comprehensive assessment and reporting evaluation (CARE) or the legacy comprehensive assessment.

(2) Rates are determined and limited to department published rates for the level of care generated by CARE or the legacy comprehensive assessment.

(3) ARC reimbursement cannot be supplemented by other department funding.

NEW SECTION

**WAC 388-845-0500** What is behavior management and consultation? (1) Behavior management and consultation may be provided to persons on any of the four HCBS waivers and include the development and implementation of programs designed to support waiver participants using:

(a) Strategies for effectively relating to caregivers and other people in the waiver participant's life; and

(b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling).

(2) Behavior management and consultation may also be provided as a mental health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

NEW SECTION

**WAC 388-845-0505** Who is a qualified provider of behavior management and consultation? The provider of behavior management and consultation must be one of the following licensed, registered, or certified professionals contracted with DDD to provide this service:

(1) Marriage and family therapist (chapter 246-809 WAC);

(2) Mental health counselor (chapter 246-809; 246-810 WAC);

(3) Psychologist (chapter 246-924 WAC);

(4) Sex offender treatment provider (chapter 246-930 WAC);

(5) Social worker (chapter 246-809 WAC);

(6) Registered nurse (RN) or licensed practical nurse (LPN);

(7) Psychiatrist;

(8) Psychiatric advanced registered nurse practitioner (ARNP);

(9) Physician assistant working under the supervision of a psychiatrist; or

(10) Polygrapher.

NEW SECTION

**WAC 388-845-0510** Are there limits to the behavior management and consultation I can receive? The following limits apply to your receipt of behavior management and consultation:

(1) DDD and the treating professional will determine the need and amount of service you will receive, subject to the limitations in subsection (2) below.

(2) The dollar limitations for aggregate services in your Basic and Basic Plus waiver limit the amount of service unless provided as a mental health stabilization service.

(3) DDD reserves the right to require a second opinion from a department-selected provider.

(4) Behavior management and consultation not provided as a mental health stabilization service requires prior approval by DDD.

NEW SECTION

**WAC 388-845-0600 What is community access?** Community access is a service provided in the community to enhance or maintain the person's competence, integration, physical or mental skills.

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

(2) This service is available to adults in the Basic, Basic Plus, and CORE waiver.

NEW SECTION

**WAC 388-845-0605 Who is a qualified provider of community access?** The provider of community access must be a county or person or agency contracted with a county or DDD.

NEW SECTION

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

(1) You must be age sixty-two or older.

(2) You cannot be authorized to receive community access services if you receive pre-vocational services or supported employment services.

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

NEW SECTION

**WAC 388-845-0700 What is a community guide service?** Community guide service increases access to informal community supports. Services are short-term and designed to develop creative, flexible and supportive community resources for individuals with developmental disabilities. This service is available in Basic, Basic Plus and CORE waivers.

NEW SECTION

**WAC 388-845-0705 Who is a qualified community guide?** Any individual or agency contracted with DDD as a "community guide" is qualified to provide this service.

NEW SECTION

**WAC 388-845-0710 Are there limitations to the community guide services I can receive?** (1) You may not receive community guide services if you are receiving residential habilitation services because your residential provider can meet this need.

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

NEW SECTION

**WAC 388-845-0750 What are community transition services?** (1) Community transition services are reasonable costs (necessary expenses in the judgement of the state for an individual to establish his or her basic living arrangement) associated with moving from an institutional setting to a community setting.

(2) Community transition services include:

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

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

(c) Moving expenses required to occupy and use a community domicile;

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

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

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

NEW SECTION

**WAC 388-845-0755 Who are qualified providers of community transition services?** (1) Providers of community transition services for individuals in the CORE waiver must meet the requirements as a provider of residential habilitation services contained in WAC 388-845-1505.

(2) Providers of community transition services for individuals in the Community Protection waiver must meet the requirements as a provider of residential habilitation services contained in WAC 388-845-1510.

NEW SECTION

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

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

(b) Computers whose use is primarily diversional or recreational.

(2) Community transition services are available only to individuals that are moving from an institution to a community setting and are enrolled in either the CORE or Community Protection waiver.

NEW SECTION

**WAC 388-845-0800 What is emergency assistance?** Emergency assistance is a temporary increase to the yearly dollar limit specified in the Basic and Basic Plus waiver when additional waiver services are required to prevent ICF/MR placement. These additional services are limited to the services provided in your waiver.

**NEW SECTION**

**WAC 388-845-0805 Who is a qualified provider of emergency assistance?** The provider of the service you need to meet your emergency must meet the provider qualifications for that service.

**NEW SECTION**

**WAC 388-845-0810 How do I qualify for emergency assistance?** You qualify for emergency assistance only if you have used all of your waiver funding and your current situation meets one of the following criteria:

- (1) You involuntarily lose your present residence for any reason either temporary or permanent;
- (2) You lose your present caregiver for any reason, including death;
- (3) There are changes in your caregiver's mental or physical status resulting in the caregiver's inability to perform effectively for the individual;
- (4) There are significant changes in your emotional or physical condition that requires a temporary increase in the amount of a waiver service.

**NEW SECTION**

**WAC 388-845-0820 Are there limits to my use of emergency assistance?** All of the following limitations apply to your use of emergency assistance:

- (1) Prior authorization is required based on a reassessment of your plan of care to determine the need for emergency services;
- (2) Payment authorizations are reviewed every thirty days and cannot exceed six thousand dollars per twelve months based on the effective date of your current plan of care (POC);
- (3) Emergency services are limited to the scope of services in your waiver;
- (4) Emergency Assistance may be used for interim services until:
  - (a) The emergency situation has been resolved; or
  - (b) You are transferred to alternative supports that meet your assessed needs; or
  - (c) You are transferred to an alternate waiver that provides the service you need.

**NEW SECTION**

**WAC 388-845-0900 What are environmental accessibility adaptations?** (1) Environmental accessibility adaptations are available in all of the HCBS waivers and provide the physical adaptations to the home required by the individual's plan of care needed to:

- (a) Ensure the health, welfare and safety of the individual; or
  - (b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home.
- (2) Environmental accessibility adaptations may include the installation of ramps and grab bars, widening of doorways, modification of bathroom facilities, or installing spe-

cialized electrical and/or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

**NEW SECTION**

**WAC 388-845-0905 Who is a qualified provider for building these environmental accessibility adaptations?** The provider making these environmental accessibility adaptations must be a registered contractor per chapter 18.27 RCW and contracted with DDD.

**NEW SECTION**

**WAC 388-845-0910 What limitations apply to environmental accessibility adaptations?** The following service limitations apply to environmental accessibility adaptations:

- (1) Prior approval by DDD is required.
- (2) Environmental accessibility adaptations or improvements to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc.
- (3) Environmental accessibility adaptations cannot add to the total square footage of the home.
- (4) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

**NEW SECTION**

**WAC 388-845-1000 What are extended state plan services?** Extended state plan services refer to physical therapy; occupational therapy; and speech, hearing and language services available to you under Medicaid without regard to your waiver status. They are "extended" services when the waiver pays for more services than is provided under the state Medicaid plan. These services are available under all four HCBS waivers.

**NEW SECTION**

**WAC 388-845-1010 Who is a qualified provider of extended state plan services?** Providers of extended state plan services must be certified, registered or licensed therapists as required by law and contracted with DDD for the therapy they are providing.

**NEW SECTION**

**WAC 388-845-1015 Are there limits to the extended state plan services I can receive?** (1) Additional therapy may be authorized as a waiver service only after you have accessed what is available to you under Medicaid and any other private health insurance plan;

- (2) The department does not pay for treatment determined by DSHS to be experimental;
- (3) The department and the treating professional determine the need for and amount of service you can receive:
  - (a) The department reserves the right to require a second opinion from a department-selected provider.

(b) The department will require evidence that you have accessed your full benefits through Medicaid and private insurance before authorizing this waiver service.

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

#### NEW SECTION

**WAC 388-845-1100 What are mental health crisis diversion bed services?** Mental health crisis diversion bed services are temporary residential and behavioral services that may be provided in a client's home or licensed or certified setting. These services are available to eligible clients who are at risk of serious decline of mental functioning and who have been determined to be at risk of psychiatric hospitalization. These services are available in all four HCBS waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160

#### NEW SECTION

**WAC 388-845-1105 Who is a qualified provider of mental health crisis diversion bed services?** Providers of mental health crisis diversion bed services must be:

- (1) DDD certified residential agencies per Chapter 388-820 WAC; or
- (2) Other department licensed or certified agencies.

#### NEW SECTION

**WAC 388-845-1110 What are the limits of mental health crisis diversion bed services?** (1) Mental health crisis diversion bed services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a mental health professional and/or DDD.

(2) These services are available in all four HCBS waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

(3) The costs of mental health crisis diversion bed services do not count toward the dollar limits for aggregate services in the Basic and Basic Plus waivers.

#### NEW SECTION

**WAC 388-845-1150 What are mental health stabilization services?** Mental health stabilization services assist persons who are experiencing a mental health crisis. These services are available in all four waivers to adults determined by mental health professionals or DDD to be at risk of institutionalization in a psychiatric hospital without one of more of the following services.

- (1) Behavior management and consultation,
- (2) Skilled nursing services,
- (3) Specialized psychiatric services,
- (4) Mental health crisis diversion bed services.

#### NEW SECTION

**WAC 388-845-1155 Who are qualified providers of mental health stabilization services?** Providers of these mental health stabilization services are listed in the rules in this chapter governing the specific services listed in WAC 388-845-1150.

#### NEW SECTION

**WAC 388-845-1160 Are there limitations to the mental health stabilization services that I can receive?** (1) Mental health stabilization services are intermittent and temporary. The duration and amount of services you need to stabilize your crisis is determined by a mental health professional and/or DDD.

(2) The costs of mental health stabilization services do not count toward the dollar limitations for aggregate services in the Basic and Basic Plus waiver.

(3) Mental health stabilization services require prior approval by DDD or its designee.

#### NEW SECTION

**WAC 388-845-1200 What is a "person-to-person" service?** "Person-to-person" is a day program service intended to assist participants to progress toward employment goals through individualized planning, skill instruction, information and referral, and one to one relationship building. This service may be provided in addition to community access, prevocational services, or supported employment. This service is available to adults in all four HCBS waivers.

#### NEW SECTION

**WAC 388-845-1205 Who is a qualified provider of person-to-person services?** The provider of "person-to-person" services must be a county or an individual or agency contracted with a county or DDD.

#### NEW SECTION

**WAC 388-845-1210 Are there limits to the person-to-person service I can receive?** (1) You must be age twenty-one and graduated from high school or age twenty-two or older to receive person-to-person services.

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

#### NEW SECTION

**WAC 388-845-1300 What are personal care services?** Personal care services are the provision of assistance with personal care tasks as defined in WAC 388-71-0202, personal care services. These services are available in the Basic, Basic Plus, and CORE waivers.

#### NEW SECTION

**WAC 388-845-1305 Who are the qualified providers of personal care services?** (1) Qualified providers of per-

sonal care services may be individuals or licensed homecare agencies contracted with DDD.

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

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

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

#### NEW SECTION

**WAC 388-845-1310 Are there limits to the personal care services I can receive?** (1) You must meet the programmatic eligibility for Medicaid personal care in chapter 388-106 and 388-71 WAC governing Medicaid personal care (MPC) using the current department approved assessment form: Comprehensive assessment reporting evaluation (CARE), legacy comprehensive assessment, or children's comprehensive assessment.

(2) The maximum hours of personal care you may receive are determined by the approved department assessment for Medicaid personal care services.

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

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

#### NEW SECTION

**WAC 388-845-1400 What are prevocational services?** Prevocational services prepare an adult for paid or unpaid employment through the teaching of such concepts as compliance, attendance, task completion, problem solving and safety. These services are available in all four HCBS waivers.

#### NEW SECTION

**WAC 388-845-1405 Who are the qualified providers of prevocational services?** Providers of prevocational services must be a county or an individual or agency contracted with a county or DDD.

#### NEW SECTION

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

(1) You must be age twenty-one and graduated from high school or age twenty-two or older.

(2) You are not expected to be competitively employed within one year (excluding supported employment programs).

(3) You cannot be authorized to receive prevocational services if you receive community access services or supported employment services.

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

#### NEW SECTION

**WAC 388-845-1500 What are residential habilitation services?** Residential habilitation services (RHS) are available in the CORE and Community Protection waivers.

(1) Residential habilitation services include assistance:

(a) With personal care and supervision; and

(b) To learn, improve or retain social and adaptive skills necessary for living in the community.

(2) Residential habilitation services may provide instruction and support addressing one or more of the following outcomes:

(a) Health and safety;

(b) Personal power and choice;

(c) Competence and self-reliance;

(d) Positive recognition by self and others;

(e) Positive relationships; and

(f) Integration into the physical and social life of the community.

#### NEW SECTION

**WAC 388-845-1505 Who are qualified providers of residential habilitation services for the CORE waiver?** Providers of residential habilitation services for participants in the CORE waiver must be one of the following:

(1) Individuals contracted with DDD to provide residential support as a "companion home" provider;

(2) Individuals contracted with DDD to provide training as an "alternative living provider";

(3) Agencies contracted with DDD and certified per chapter 388-820 WAC;

(4) State-operated living alternatives (SOLA);

(5) Licensed and contracted group care homes, group training homes, foster homes, child placing agencies, staffed residential homes or adult residential rehabilitation centers per WAC 246-325-0012.

#### NEW SECTION

**WAC 388-845-1510 Who are qualified providers of residential habilitation services for the Community Protection waiver?** Providers of residential habilitation services for participants of the Community Protection waiver are limited to state-operated living alternatives (SOLA) and supported living providers who:

(1) Are contracted with DDD and certified under chapter 388-820 WAC as a residential community protection provider-intensive supported living services (CP-ISLS); and

(2) Meet the additional standards in DDD Policy 15.04 (Standards for community protection intensive supported living services).

#### NEW SECTION

**WAC 388-845-1515 Are there limits to the residential habilitation services I can receive?** (1) You may only receive one type of residential habilitation service at a time.

(2) None of the following can be paid for under the CORE or Community Protection waiver:

(a) Room and board;

(b) The cost of building maintenance, upkeep, improvement, modifications or adaptations required to assure the health and safety of residents, or to meet the requirements of the applicable life safety code;

(c) Activities or supervision already being paid for by another source;

(d) Services provided in your parent's home unless you are receiving alternative living services for a maximum of six months to transition you from your parent's home into your own home.

(3) The following persons cannot be paid providers for your service:

(a) Your spouse;

(b) Your natural, step, or adoptive parents if you are a child age seventeen or younger;

(c) Your natural, step, or adoptive parent unless your parent is certified as a residential agency per chapter 388-820 WAC or is employed by a certified or licensed agency qualified to provide residential habilitation services.

#### NEW SECTION

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

#### NEW SECTION

**WAC 388-845-1605 Who is eligible to receive respite care?** The person providing your care is eligible to receive respite care if you are in the Basic, Basic Plus or CORE waiver and:

(1) You live in a private home with an unpaid caregiver;

or

(2) You live with a paid caregiver who is:

(a) A natural, step or adoptive parent;

(b) A contracted companion home provider; or

(c) A licensed children's foster home provider.

#### NEW SECTION

**WAC 388-845-1606 Can DDD approve an exception to the requirements in WAC 388-845-1605?** DDD may approve an exception to WAC 388-845-1605 above only through June 30, 2006 if all of the following conditions exist:

(1) Your live-in caregiver is a relative as defined in WAC 388-825-345(2);

(2) You were living with this caregiver in January 2005;

(3) Your relative caregiver was receiving payment from the department as your caregiver in January 2005; and

(4) You were enrolled in the Basic, Basic Plus, or CORE Waiver in January 2005.

#### NEW SECTION

**WAC 388-845-1610 Where can respite care be provided?** Respite care can be provided in the following location(s):

(1) Individual's home or place of residence;

(2) Relative's home;

(3) Licensed children's foster home;

(4) Licensed, contracted and DDD certified group home;

(5) State operated living alternative (SOLA) and other DDD certified supported living settings;

(6) Licensed boarding home contracted as an adult residential center;

(7) Adult residential rehabilitation center;

(8) Licensed and contracted adult family home;

(9) Children's licensed group home, licensed staffed residential home, or licensed childcare center;

(10) Other community settings such as camp, senior center, or adult day care center.

#### NEW SECTION

**WAC 388-845-1615 Who are qualified providers of respite care?** Providers of respite care can be any of the following individuals or agencies contracted with DDD for respite care:

(1) Individuals meeting the provider qualifications under chapter 388-825 WAC;

(2) Homecare/home health agencies, licensed under chapter 246-335 WAC, Part 1;

(3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes and foster group care homes;

(4) Licensed and contracted AFH;

(5) Licensed and contracted ARC;

(6) Licensed and contracted adult residential rehabilitation center under WAC 246-325-012;

(7) Licensed childcare center under chapter 388-151 WAC;

(8) Licensed child daycare center under chapter 388-151 WAC;

(9) Adult day care centers contracted with DDD;

(10) Certified provider per chapter 388-820 WAC when respite is provided within the DDD contract for certified residential services; or

(11) Other DDD contracted providers such as community center, senior center, parks and recreation, summer programs, adult day care.

#### NEW SECTION

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

(1) If you are in the Basic or Basic Plus waiver, a respite care assessment will determine how much respite you can receive per WAC 388-845-3005 through WAC 388-845-3050.

(2) If you are in the CORE waiver, the POC, not the respite assessment, will determine the amount of respite care you can receive.

(3) Prior approval by DDD is required to exceed fourteen days per month.

(4) Respite cannot replace:

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



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

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

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

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

(6) Your caregiver cannot provide paid respite services for you or other persons during your respite care hours.

(7) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the Basic Plus waiver, skilled nursing services are limited to the dollar limits of your aggregate services per WAC 388-845-0210. The dollar limit governing aggregate services does not apply to skilled nursing services provided as part of mental health stabilization services per WAC 388-845-1100(2).

#### NEW SECTION

**WAC 388-845-1650 What are sexual deviation evaluations?** Sexual deviation evaluations are professional evaluations of sexual deviancy to determine the need for psychological, medical or therapeutic services. Sexual deviancy evaluations are available in all four waivers.

#### NEW SECTION

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

(1) A certified sexual offender treatment provider (SOTP); and

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

#### NEW SECTION

**WAC 388-845-1660 Are there limitations to the sexual deviation evaluations I can receive?** (1) The evaluations must meet the standards contained in WAC 246-930-320 (standards for SSOSA and SSODA assessment and evaluation reports).

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

#### NEW SECTION

**WAC 388-845-1700 What is skilled nursing?** (1) Skilled nursing is continuous, intermittent, or part time nursing services. These services are available in the Basic Plus, CORE, and Community Protection waivers.

(2) Services include nurse delegation services provided by a registered nurse, including the initial visit, follow-up instruction, and/or supervisory visits.

(3) These services are available in all four HCBS waivers administered by DDD as mental health stabilization services in accordance with WAC 388-845-1150 through 388-845-1160.

#### NEW SECTION

**WAC 388-845-1705 Who is a qualified provider of skilled nursing services?** The provider of skilled nursing services must be a licensed practical nurse (LPN) or registered nurse (RN) acting within the scope of the Nurse Practice Act chapter 246-845 WAC and contracted with DDD to provide this service.

#### NEW SECTION

**WAC 388-845-1710 Are there limitations to the skilled nursing services I can receive?** The following limitations apply to your receipt of skilled nursing services:

(1) Skilled nursing services require prior approval by DDD.

(2) The department and the treating professional determine the need for and amount of service.

(3) The department reserves the right to require a second opinion by a department-selected provider.

(4) Skilled nursing services provided as a mental health stabilization service require prior approval by DDD or its designee.

(5) The dollar limitation for aggregate services in your Basic Plus waiver limit the amount of skilled nursing services unless provided as a mental health stabilization service.

#### NEW SECTION

**WAC 388-845-1800 What are specialized medical equipment and supplies?** (1) Specialized medical equipment and supplies are services to help individuals with their activities of daily living or to better participate in their environment. These services are available in all four HCBS waivers.

(2) Included are devices, controls, appliances, and items necessary for life support; ancillary supplies and equipment necessary to the proper functioning of such items; and durable and nondurable medical equipment not available through Medicaid under the Medicaid state plan.

#### NEW SECTION

**WAC 388-845-1805 Who are the qualified providers of specialized medical equipment and supplies?** The provider of specialized medical equipment and supplies must be a medical equipment supplier contracted with DDD.

**NEW SECTION**

**WAC 388-845-1810** Are there limitations to my receipt of specialized medical equipment and supplies? The following limitations apply to your receipt of specialized medical equipment and supplies:

- (1) Prior approval by the department is required for each authorization.
- (2) The department reserves the right to require a second opinion by a department-selected provider.
- (3) Items reimbursed with waiver funds shall be in addition to any medical equipment and supplies furnished under the Medicaid state plan.
- (4) Items must be of direct medical or remedial benefit to the individual and necessary as a result of the individual's disability.
- (5) Medications, prescribed or nonprescribed, and vitamins are excluded.
- (6) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

**NEW SECTION**

**WAC 388-845-1900** What are specialized psychiatric services? (1) Specialized psychiatric services are specific to the individual needs of persons with developmental disabilities who are experiencing mental health symptoms. These services are available in all four HCBS waivers.

- (2) Service may be any of the following:
  - (a) Psychiatric evaluation,
  - (b) Medication evaluation and monitoring,
  - (c) Psychiatric consultation.
- (3) These services are also available as a mental health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

**NEW SECTION**

**WAC 388-845-1905** Who are qualified providers of specialized psychiatric services? Providers of specialized psychiatric services must be one of the following licensed or registered, and contracted healthcare professionals:

- (1) Psychiatrist;
- (2) Psychiatric advanced registered nurse practitioner (ARNP); or
- (3) Physician assistant working under the supervision of a psychiatrist.

**NEW SECTION**

**WAC 388-845-1910** Are there limitations to the specialized psychiatric services I can receive? (1) Specialized psychiatric services are excluded if they are available through other Medicaid programs.

- (2) The dollar limitations for aggregate service in your Basic and Basic Plus waiver limit the amount of specialized psychiatric services unless provided as a mental health stabilization service.

- (3) Specialized psychiatric services provided as a mental health stabilization service require prior approval by DDD or its designee.

**NEW SECTION**

**WAC 388-845-2000** What is staff/family consultation and training? (1) Staff/family consultation and training is professional assistance to families or direct service providers to help them better meet the needs of the waiver person. This service is available in all four HCBS waivers.

- (2) Consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of the waiver participant as outlined in the individual's plan of care, including:
  - (a) Health and medication monitoring;
  - (b) Positioning and transfer;
  - (c) Basic and advanced instructional techniques;
  - (d) Positive behavior support; and
  - (e) Augmentative communication systems.

**NEW SECTION**

**WAC 388-845-2005** Who is a qualified provider of staff/family consultation and training? To provide staff/family consultation and training, a provider must be one of the following licensed, registered or certified professionals and be contracted with DDD:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech/language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American Sign Language instructor;
- (13) Nutritionist; or
- (14) Certified dietician.

**NEW SECTION**

**WAC 388-845-2010** Are there limitations to the staff/family consultation and training I can receive? (1) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff/family consultation and training.

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

**NEW SECTION**

**WAC 388-845-2100** What is supported employment? Supported employment provides intensive ongoing individual or group support in a work setting to adults with develop-

mental disabilities. This service is available in all four HCBS waivers.

(1) Supported employment includes activities needed to sustain paid work by individuals receiving waiver services, including supervision and training.

(2) Supported employment is conducted in a variety of settings; particularly work sites in which persons without disabilities are employed.

#### NEW SECTION

**WAC 388-845-2105 Who is a qualified provider of supported employment?** A supported employment provider must be a county, or agencies or individuals contracted with a county or DDD.

#### NEW SECTION

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

(1) You must be age twenty-one and graduated from high school or age twenty-two or older.

(2) Payment will be made only for the adaptations, supervision, training, and support with the activities of daily living you require as a result of your disabilities.

(3) Payment is excluded for the supervisory activities rendered as a normal part of the business setting.

(4) You cannot be authorized to receive supported employment services if you receive community access services or prevocational services.

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

#### NEW SECTION

**WAC 388-845-2200 What are transportation services?** Transportation services provide reimbursement to a provider when the transportation is required and specified in the waiver plan of care. This service is available in all four HCBS waivers.

(1) Transportation provides the person access to waiver services, specified by the plan of care.

(2) Whenever possible, the person will use family, neighbors, friends, or community agencies that can provide this service without charge.

#### NEW SECTION

**WAC 388-845-2205 Who is qualified to provide transportation services?** The provider of transportation services can be an individual or agency contracted with DDD.

#### NEW SECTION

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

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

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

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

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

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

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

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

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

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

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

### ASSESSMENT AND PLAN OF CARE

#### NEW SECTION

**WAC 388-845-3000 What is the process for determining the services I need?** Your service needs are determined through an assessment and service planning process.

(1) You receive an initial and annual assessment of your needs using a department-approved form.

(a) The "comprehensive assessment reporting evaluation (CARE)" will determine your eligibility and amount of personal care services.

(b) If you are in the Basic or Basic Plus waiver, a DDD respite assessment will determine the amount of respite care available to you.

(2) From the assessment, DDD develops your waiver plan of care (POC) with you and/or your legal representative and others who are involved in your life such as your parent or guardian, advocate and service providers.

#### NEW SECTION

**WAC 388-845-3005 What is the waiver respite assessment?** The waiver respite assessment is a series of questions about you and your primary caregiver that will determine the amount of respite care available to you.

#### NEW SECTION

**WAC 388-845-3010 Who must have a waiver respite assessment?** If you are in the Basic or Basic Plus waiver and are interested in receiving respite care, and are eligible for respite care per WAC 388-845-1605, a respite assessment will determine the amount of respite care available to you.

NEW SECTION

**WAC 388-845-3015 How is the waiver respite assessment administered?** The waiver respite assessment is administered by department staff during an in-person interview with you if you choose to be present, and at least one other person with knowledge of you, such as your primary caregiver.

NEW SECTION

**WAC 388-845-3020 Who can be the respondent for the waiver respite assessment?** The respondent for your waiver respite assessment must be an adult who is well acquainted with you and can provide the information needed to complete the assessment, such as your primary caregiver.

(1) You cannot be the respondent for your own respite assessment.

(2) The department may select and interview additional respondents as needed to get complete and accurate information.

NEW SECTION

**WAC 388-845-3025 How often is this waiver respite assessment completed?** Your waiver respite assessment must be completed at the time of your CARE assessment/reassessment.

NEW SECTION

**WAC 388-845-3030 What items are assessed to determine my respite allocation?** The waiver respite assessment documents information about you and your caregiver. Information must reflect what is currently happening, not what may occur in the future or what has occurred more than thirty days ago. The information documented includes:

(1) The level of monitoring you require, above and beyond what is typically required for persons of similar age;

(2) Circumstances in your primary caregiver's life that may impact his/her care giving ability;

(3) The effect of your disability on other household members;

(4) Your primary caregiver's care giving responsibilities for others;

(5) How many parents, legal representatives and/or primary caregivers live in the same household as you;

(6) Availability of others to provide your care; and

(7) Your disability related emotional or behavior issues and how that affects your caregiver; the frequency and severity of these issues; and what a caregiver does to help you manage these behaviors.

NEW SECTION

**WAC 388-845-3035 How is the waiver respite assessment scored?** The responses to the waiver respite assessment are converted to a respite lid.

(1) The respite lid represents the maximum number of respite hours you are authorized to receive in a twelve-month period.

(2) You may use as many respite hours as you need, up to your assessed respite lid.

NEW SECTION

**WAC 388-845-3040 When will the new respite assessment go into effect?** The new respite assessment will be effective at the time of your next CARE assessment/reassessment.

NEW SECTION

**WAC 388-845-3045 How will I know the results of my respite assessment?** Your respite care allocation will be written into your plan of care as a separate, authorized service.

NEW SECTION

**WAC 388-845-3050 What is the effective date of my respite allocation?** Your respite care allocation is effective when your respite assessment is completed and authorized in your annual or amended POC.

NEW SECTION

**WAC 388-845-3055 What is a waiver plan of care (POC)?** (1) The plan of care is the primary tool DDD uses to determine and document your needs and to identify the services to meet those needs.

(2) Your plan must include:

(a) The services that you and DDD have agreed are necessary for you to receive in order to address your health and welfare needs;

(b) Both paid and unpaid services you receive or need;

(c) How often you will receive each waiver service; how long you will need it; and who will provide it; and

(d) Your signature on the plan indicating your agreement.

(3) You may choose any qualified provider for the service, who meets all of the following:

(a) Is able to meet your needs within the scope of their contract, licensure and certification;

(b) Is reasonably available;

(c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and

(d) Agrees to provide the service at department rates.

NEW SECTION

**WAC 388-845-3060 When is my plan of care effective?** Your plan of care is effective the date DDD signs and approves it.

NEW SECTION

**WAC 388-845-3065 How long is my plan effective?** Your plan of care is effective through the last day of the twelfth month following the effective date.

NEW SECTION

**WAC 388-845-3070 What happens if I do not sign my plan of care?** If DDD is unable to obtain the necessary signature on the plan of care from you or your legal representative, DDD will take one or more of the following actions:

(1) DDD will continue providing services as identified in your most current POC for up to thirty days from the date you were notified of the plan to implement your most current POC.

(2) After thirty days, unless you file an appeal, DDD will assume consent and implement the new POC without your signature or the signature of your legal representative.

(3) You will be provided written notification and appeal rights to this action to implement the new POC.

(4) Your appeal rights are in WAC 388-825-120 through 388-825-165.

NEW SECTION

**WAC 388-845-3075 What if my needs change?** You may request a review of your plan of care at any time by calling your case manager. If there is a significant change in your condition or circumstances, DDD must reassess your plan of care with you and amend the plan to reflect any significant changes. This reassessment does not affect the end date of your annual plan of care.

NEW SECTION

**WAC 388-845-3080 What if my needs exceed the maximum yearly funding limit or the scope of services under the Basic or Basic Plus waiver?** (1) If you are on the Basic or Basic Plus waiver and your assessed need for services exceeds the maximum permitted, DDD will make the following efforts to meet your health and welfare needs:

(a) Add more available natural supports;

(b) Initiate an exception to rule to access available non-waiver services not included in the Basic or Basic Plus waiver other than natural supports;

(c) Authorize emergency services up to six thousand dollars per year if your needs meet the definition of emergency services in WAC 388-845-0800.

(2) If emergency services and other efforts are not sufficient to meet your needs, you will be offered:

(a) An opportunity to apply for an alternate waiver that has the services you need;

(b) Priority for placement on the alternative waiver when there is capacity to add people to that waiver;

(c) Placement in an ICF/MR.

(3) If none of the options in subsections (1) and (2) above is successful in meeting your health and welfare needs, DDD may terminate your waiver eligibility.

(4) If you are terminated from a waiver, you will remain eligible for nonwaiver DDD services but access is limited by availability of funding.

NEW SECTION

**WAC 388-845-3085 What if my needs exceed what can be provided under the CORE or Community Protection waiver?** (1) If you are on the CORE or Community Protection waiver and your assessed need for services exceeds the scope of services provided under your waiver, DDD will make the following efforts to meet your health and welfare needs:

(a) Add more available natural supports;

(b) Initiate an exception to rule to access available non-waiver services not included in the CORE or Community Protection waiver other than natural supports;

(c) Offer you the opportunity to apply for an alternate waiver that has the services you need, subject to WAC 388-845-0045;

(d) Offer you placement in an ICF/MR.

(2) If none of the above options is successful in meeting your health and welfare needs, DDD may terminate your waiver eligibility.

(3) If you are terminated from a waiver, you will remain eligible for nonwaiver DDD services but access is limited by availability of funding.

NEW SECTION

**WAC 388-845-3090 What if my identified health and welfare needs are less than what is provided in my current waiver?** If your identified health and welfare needs are less than what is provided in your current waiver, DDD may terminate you from your current waiver and enroll you in a waiver that meets but does not exceed your assessed need for waiver services.

NEW SECTION

**WAC 388-845-3095 Will I have to pay toward the cost of waiver services?** (1) Depending on your SSI status, Medicaid status, income and resources, you may be required to participate towards the cost of your care. DDD determines what amount, if any, you pay.

(2) If you live in a licensed facility, you participate from your earned and unearned income per rules in WAC 388-515-1510:

(a) If you have nonexempt income that exceeds the cost of your waiver services, you may keep the difference.

(b) If you are eligible for SSI, you pay only for room and board.

(c) If you are not eligible for SSI, you may be required to participate towards the cost of your waiver services in addition to your facility room and board rate.

NEW SECTION

**WAC 388-845-4000 What are my appeal rights under the waiver?** You have appeal rights under WAC 388-825-120 to the following decisions:

(1) Any denial, reductions, or termination of a service.

(2) A denial or termination of your choice of a qualified provider.

(3) Your termination from waiver eligibility.

(4) Denial of your request to receive ICF/MR services instead of waiver services.

#### NEW SECTION

**WAC 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver?** If you are not on an HCBS waiver, your appeal rights are limited to WAC 388-825-120. You have an appeal right to a denial of services or provider but you do not have an appeal right to a denial to be enrolled in a waiver.

#### NEW SECTION

**WAC 388-845-4010 How do I appeal a department action?** (1) Your rights to appeal a department decision are in RCW 71A.10.050 and WAC 388-825-120 and are limited to an applicant, recipient, or former recipient of services from the division of developmental disabilities.

(2) If you want to appeal a department action, you must request an appeal within ninety days from receipt of the department notice of the action you are disputing.

#### NEW SECTION

**WAC 388-845-4015 Will my services continue during an appeal?** Services may continue according to the provisions contained in WAC 388-825-145.

**WSR 05-13-002  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-114—Filed June 2, 2005, 10:38 a.m., effective June 2, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-24-04000V; and amending WAC 220-24-040.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation is necessary for the utilization of the commercial chinook allocation in the North of Falcon troll fishery in a manner that maximizes the economic value to the commercial fishery industry and the state of Washington. These rules are adopted at the recommendation of the Pacific Fisheries Management Council. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: May 31, 2004 [2005].

J. P. Koenings  
Director

#### NEW SECTION

**WAC 220-24-04000W All-citizen commercial salmon troll.** Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3 and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open:

June 3 through June 6, 2005.

(2) The Cape Flattery and Columbia River Control Zones are closed.

(3) Landing and possession limit of 60 chinook per boat per entire open period. Minimum size for chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

(4) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(5) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter point. Vessels fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(6) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. EEZ: and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude and west of 125°05'00" W longitude.

(7) Columbia Control Zone - An area at the Columbia River mouth, bounded on the west by a line running north-east/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" West. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line run-

ning northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(8) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon, and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(9) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279 or faxing the information to (360) 902-2949 or E-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species. The total number for each species and the total weight for each species including halibut.

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

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000V All-citizen commercial salmon troll. (05-106)

**WSR 05-13-009  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-116—Filed June 3, 2005, 2:16 p.m., effective June 4, 2005, 12:01 a.m.]

Effective Date of Rule: June 4, 2005, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900B; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The Klickitat Hatchery is expected to reach its escapement goal of spring chinook, making more adult chinook available for harvest. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 2, 2005 [2005].

J. P. Koenings  
Director  
by Larry Peck

**NEW SECTION**

**WAC 232-28-61900B Exceptions to statewide rules—Klickitat River.** Notwithstanding the provisions of WAC 232-28-619, effective June 4 through July 31, 2005, in those waters of the Klickitat River from 400 feet above the #5 fishway, upstream to the boundary markers just below the Klickitat Hatchery, special daily limit of six salmon, no more than two may be adults. Minimum size is 12 inches in length.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. August 1, 2005:

WAC 232-28-61900B Exceptions to statewide rules—Klickitat River.

**WSR 05-13-010  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-117—Filed June 3, 2005, 2:17 p.m., effective June 4, 2005]

Effective Date of Rule: June 4, 2005.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900U; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.240.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The spring chinook return in the Columbia River is projected to be 95,000 providing additional opportunity for sport fisheries in the Columbia River. Rule is consistent with joint state actions of WDFW and ODFW on June 2, 2005. The department is in the process of adopting permanent rules that are necessary to implement the personal use fishing plans agreed-to with resource coman-

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agers at the North of Falcon proceedings. These interim personal use rules are necessary to cover the time period until those permanent rules become effective.

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

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

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

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

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

Date Adopted: June 2, 2005.

J. P. Koenings  
Director  
by Larry Peck

#### NEW SECTION

**WAC 232-28-61900C Exceptions to statewide rules—Camas Slough, Columbia River Lewis River, Washougal River and Wind River.** Notwithstanding the provisions of WAC 232-28-619, it is unlawful to violate the following provisions, provided that unless otherwise amended all permanent rules remain in effect:

(1) **Camas Slough (Clark County):** Defined as those waters outside of the mouth of the Washougal River, north of Lady Island, and downstream of the Highway 14 Bridge at the upstream end of Lady Island. Same rules as Columbia River from I-5 Bridge to Bonneville Dam.

**(2) Columbia River:**

(i) In the Columbia River between Washington and Oregon, the license of either state is valid. Anglers must comply with the fishing regulations of the state in which they are fishing. This provision does not allow an angler licensed in Oregon to fish on the Washington shore, or in the sloughs or tributaries in Washington, except Camas Slough, where the license of either state is valid when fishing from a floating device.

(ii) From the Rocky Point - Tongue Point line to the I-5 Bridge: Salmon: Open June 4 until further notice. June 4 through June 15 daily limit 6 fish of which no more than 2 may be adults. Release all wild Chinook. June 16 through July 31, daily limit 6 fish of which no more than 2 may be adult salmon. Release all wild Chinook. Release sockeye. August 1 until further notice, daily limit 6 fish of which no more than 2 may be adult salmon, but not more than 1 adult chinook. Release chum, sockeye, and wild coho.

(iii) From the I-5 Bridge to the Highway 395 Bridge at Pasco: Salmon: Open June 4 until further notice. June 4 through June 15 daily limit 6 fish of which no more than 2 may be adults. Release all wild Chinook. June 16 through July 31, daily limit 6 fish of which no more than 2 may be

adult salmon. Release all wild Chinook. Release sockeye. August 1 until further notice, daily limit 6 fish of which no more than 2 may be adult salmon. Release chum and sockeye, release wild coho downstream of Bonneville Dam. August 1 until further notice, daily limit may contain not more than 1 adult chinook downstream from Bonneville Dam. Trout: June 4 until further notice, daily limit two hatchery steelhead.

(iv) From the Highway 395 Bridge at Pasco to the old Hanford townsite (wooden towers) powerline crossing, in Sec. 30, T13N, R28E except Ringold Hatchery waters: Salmon: Open June 16 through July 31 and August 16 until further notice. Daily limit 6 fish of which no more than 2 may be adult salmon. Release sockeye June 16 through July 31.

(v) From the old Hanford townsite (wooden towers) powerline crossing in Sec. 30, T13N, R28E, to Vernita Bridge, (Highway 24): Salmon: Open June 16 through July 31 and August 16 until further notice. Daily limit 6 fish of which no more than 2 fish may be adult salmon. Release sockeye June 16 through July 31.

(vi) From Vernita Bridge (Highway 24) to Priest Rapids Dam: Salmon: Open June 16 through July 31 and August 16 until further notice. Daily limit 6 fish of which no more than 2 may be adult salmon. Release sockeye June 16 through July 31.

(3) **Lewis River, North Fork (Clark/Skamania counties):** From mouth to overhead powerlines at Merwin Dam: When nonbuoyant lure restrictions are in effect, only fish hooked inside the mouth may be retained.

(4) **Washougal River (Clark County):** From mouth to bridge at Salmon Falls: When nonbuoyant lure restrictions are in effect, only fish hooked inside the mouth may be retained.

(5) **Wind River (Skamania County):** Mouth to source, including all tributaries: When nonbuoyant lure restrictions are in effect, only fish hooked inside the mouth may be retained.

#### REPEALER

The following sections of the Washington Administrative Code is repealed effective June 4, 2005:

WAC 232-28-61900U Exceptions to statewide rules—2005 North of Falcon.

**WSR 05-13-031  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-115—Filed June 3, 2005, 4:46 p.m., effective June 10, 2005, 12:01 a.m.]

Effective Date of Rule: June 10, 2005, 12:01 a.m.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900A; and amending WAC 232-28-619.



Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation is needed to eliminate premature harvest of catchable trout dedicated to a kids fishing derby. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 3, 2005.

J. P. Koenings  
Director  
by Larry Peck

#### NEW SECTION

**WAC 232-28-61900A Exceptions to statewide rules—West Evans Pond. (Asotin County)** Notwithstanding the provisions of WAC 232-28-619, effective 12:01 a.m. June 10 through 7:59 a.m. June 11, 2005, it is unlawful to fish in those waters of West Evans Pond.

#### REPEALER

The following section of the Washington Administrative Code is repealed effective 8:00 a.m. June 11, 2005:

WAC 232-28-61900A      Exceptions to statewide  
rules—West Evans Pond  
(Asotin Co.)

**WSR 05-13-035  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-118—Filed June 6, 2005, 3:44 p.m., effective June 6, 2005]

Effective Date of Rule: Immediately.  
Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 232-28-61900W; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Retention season will allow harvest of white sturgeon that is consistent with the joint state management plan concerning lower Columbia River white sturgeon management and fisheries. The cutoff date for retention of sturgeon above Bonneville Dam to The Dalles Dam was adopted because fish managers estimate that the harvest guideline of seven hundred fish will be caught by June 11. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 3, 2005.

J. P. Koenings  
Director

#### NEW SECTION

**WAC 232-28-61900D Exceptions to statewide rules—Sturgeon, Columbia and Deep rivers.** Notwithstanding the provisions of WAC 232-28-619:

(1) Columbia River

(a) Effective July 5, 2005, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River downstream of the Wauna powerline crossing at RM 40.

(b) Effective June 11, 2005 until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to the Dalles Dam.

(2) Deep River - Effective July 5, 2005 until further notice, it is unlawful to retain sturgeon caught in those waters of the Deep River

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900J Exceptions to statewide rules—Sturgeon, Columbia and Deep rivers. (05-55)

**WSR 05-13-040  
EMERGENCY RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Economic Services Administration)**

[Filed June 7, 2005, 4:15 p.m., effective June 7, 2005]

Effective Date of Rule: Immediately.

Purpose: This filing continues emergency rules filed as WSR 04-21-024, 04-14-014, 04-01-024, and 05-05-024. A notice of intent was filed as WSR 04-19-102, and the department has circulating draft rules for public review. These emergency rules are needed to implement section 9, chapter 276, Laws of 2004, that directed the department to pay a subsidy increase for working connections child care providers in region 1 during fiscal year 2005 (July 1, 2004, through June 30, 2005). The fiscal year budget 2006-2007 (ESSB 6090, 2005 legislative session) continued to include funding for these rates as well as for statewide rate increases. The rules will continue to be filed as emergencies based on new budget legislation. We will file for statewide rate increases later this year and the Spokane County rates will be included in this filing for permanent adoption.

Citation of Existing Rules Affected by this Order: Amending WAC 388-290-0200 and 388-290-0205.

Statutory Authority for Adoption: RCW 74.04.050, 74.13.085, 74.12.340.

Other Authority: Chapter 276, Laws of 2004; and ESSB 6090 for Fiscal Year 2006-2007 (2005 session).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Emergency rules are needed to adopt the legislative intent of chapter 276, Laws of 2004, the 2003-2005 omnibus operating budget (2004), and to continue with the increase per fiscal year 2006-2007 budget (ESSB 6090, 2005 session) while the department continues toward adoption of the permanent rule. Funding is specific for urban areas of region 1.

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

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

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

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

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

Date Adopted: June 1, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 04-08-021 [and 04-08-134], filed 3/29/04 [and 4/7/04], effective 5/28/04)

**WAC 388-290-0200 What daily rates does DSHS pay for child care in a licensed or certified child care center or DSHS contracted seasonal day camps?** (1) We pay the lesser of the following to a licensed or certified child care center or DSHS contracted seasonal day camp:

- (a) The provider's usual daily rate for that child; or
- (b) The DSHS maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$24.32	\$20.45	\$19.32	\$18.18
	Half-Day	\$12.16	\$10.23	\$9.66	\$9.09
<u>Spokane County</u>	<u>Full-Day</u>	<u>\$24.98</u>	<u>\$21.00</u>	<u>\$19.84</u>	<u>\$18.67</u>
	<u>Half-Day</u>	<u>\$12.49</u>	<u>\$10.51</u>	<u>\$9.92</u>	<u>\$9.34</u>
Region 2	Full-Day	\$24.55	\$20.50	\$19.00	\$16.82
	Half-Day	\$12.27	\$10.25	\$9.50	\$8.41
Region 3	Full-Day	\$32.50	\$27.09	\$23.41	\$22.73
	Half-Day	\$16.25	\$13.55	\$11.70	\$11.36
Region 4	Full-Day	\$37.82	\$31.59	\$26.50	\$23.86
	Half-Day	\$18.91	\$15.80	\$13.25	\$11.93
Region 5	Full-Day	\$27.73	\$23.86	\$21.00	\$18.64
	Half-Day	\$13.86	\$11.93	\$10.50	\$9.32
Region 6	Full-Day	\$27.27	\$23.41	\$20.45	\$20.00
	Half-Day	\$13.64	\$11.70	\$10.23	\$10.00

(2) The child care center WAC 388-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited waiver from their child care licenser in order for a child care center to provide care for a thirteen-year-old or older child.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited waiver and the child must meet the special needs requirement according to WAC 388-290-0220.

(4) Rates for Spokane County are effective July 1, 2004 and are subject to funding allocated by the Legislature specifically for this purpose in the annual state operating budget. Otherwise, the region 1 rates apply to Spokane County.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

EMERGENCY

**AMENDATORY SECTION** (Amending WSR 04-08-021 [and 04-08-134], filed 3/29/04 [and 4/7/04], effective 5/28/04)

**WAC 388-290-0205** What daily rates does DSHS pay for child care in a licensed or certified family home child care? (1) We pay the lesser of the following to a licensed or certified family home child care:

- (a) The provider's usual daily rate for that child; or
- (b) The DSHS maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 11 yrs)
Region 1	Full-Day	\$20.00	\$18.00	\$18.00	\$16.00
	Half-Day	\$10.00	\$9.00	\$9.00	\$8.00
<u>Spokane County</u>	<u>Full-Day</u>	<u>\$20.54</u>	<u>\$18.49</u>	<u>\$18.49</u>	<u>\$16.43</u>
	<u>Half-Day</u>	<u>\$10.27</u>	<u>\$9.24</u>	<u>\$9.24</u>	<u>\$8.22</u>
Region 2	Full-Day	\$20.00	\$19.00	\$17.00	\$17.00
	Half-Day	\$10.00	\$9.50	\$8.50	\$8.50
Region 3	Full-Day	\$29.00	\$25.00	\$22.00	\$20.00
	Half-Day	\$14.50	\$12.50	\$11.00	\$10.00
Region 4	Full-Day	\$30.00	\$29.67	\$25.00	\$24.00
	Half-Day	\$15.00	\$14.83	\$12.50	\$12.00
Region 5	Full-Day	\$22.00	\$20.00	\$19.00	\$17.00
	Half-Day	\$11.00	\$10.00	\$9.50	\$8.50
Region 6	Full-Day	\$22.00	\$20.00	\$20.00	\$19.00
	Half-Day	\$11.00	\$10.00	\$10.00	\$9.50

(2) The family home child care WAC 388-155-010 allows providers to care for children from birth up to and including the day before their twelfth birthday. In order for a family home provider to care for a twelve-year-old or older child, the provider must obtain a child-specific and time-limited waiver from their child care licensor. If the provider has a waiver to care for a child who has reached their twelfth birthday, the payment rate is the same as subsection (1) and the five to eleven year age range column is used for comparison.

(3) If the family home provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited waiver and the child must meet the special needs requirement according to WAC 388-290-0220.

(4) We pay family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five to eleven year age range column for comparisons.

(5) We cannot pay family home child care providers to provide care for children in their care if the provider is:

- (a) The child's biological, adoptive or step-parent;
- (b) The child's nonneedy or needy relative or that relative's spouse or partner;
- (c) The child's legal guardian or the guardian's spouse or partner; or
- (d) Another adult acting in loco parentis or that adult's spouse or partner.

(6) Rates for Spokane County are effective July 1, 2004 and are subject to funding allocated by the Legislature specifically for this purpose in the annual state operating budget. Otherwise, the region 1 rates apply to Spokane County.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

**WSR 05-13-052**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 05-121—Filed June 9, 2005, 3:08 p.m., effective June 16, 2005, 12:01 a.m.]

Effective Date of Rule: June 16, 2005, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-52-05100M; and amending WAC 220-52-051.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The 2005 state/tribal Puget Sound shrimp harvest management plans require adoption of harvest seasons, harvest reporting areas, and the prohibition on night-time fishing contained in this emergency rule. Commercial spot shrimp quotas are available in the areas opened under this rule. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 9, 2005 [2005].

J. P. Koenings  
Director  
by Larry Peck

**NEW SECTION**

**WAC 220-52-05100N** Puget Sound shrimp pot and beam trawl fishery—Season. Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

- (1) Shrimp pot gear:

EMERGENCY

(a) All waters of Shrimp Management Areas 1A, 1C, Crustacean Management Regions 2, 3, 4 and 6 outside the shrimp districts are open to the harvest of all shrimp species immediately, until further notice, except as provided for in this section:

i) It is unlawful to harvest shrimp for commercial purposes in Marine Fish/Shellfish Management and Catch Reporting Area 26D and those waters described in this section as 23A-C.

ii) The Port Townsend Shrimp District is open to the harvest of shrimp species other than spot shrimp, except those waters south of the 48.06' North latitude line, north of the 48.04' North latitude line and east of the 122.46' west longitude line are closed.

(b) Effective immediately, until 11:59 p.m. June 19, 2005, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 300 pounds, or to exceed 150 pounds from Crustacean Management Regions 2, 4 and 6.

(c) The shrimp trip limit accounting week is Monday through Sunday.

(d) Effective 12:01 a.m. June 20, 2005, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, or to exceed 300 pounds per week from Crustacean Management Regions 2, 4 and 6, except, any fisher whose weekly shrimp harvest activity is exclusively limited to Marine Fish-Shellfish Catch and Reporting Area 29, shall not be subject to the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession on board the fishing vessel spot shrimp harvested from the previous trip limit accounting week or weeks.

(e) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information.

(i) The number of pots being moved to a new area and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(f) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(e) above.

(g) For purposes of shrimp harvest allocation, fishing season, and catch reporting, Marine Fish-Shellfish Catch and Reporting Area 23A is divided into four subareas: 23A-E (east) is those waters of Catch Area 23A north of a line projected 48.22.50' °N latitude east of a line projected 122.57°W longitude. 23A-W (west) is those waters of Catch Area 23A

north of a line projected 48.22.50' °N latitude and west of a line projected 122.57°W longitude. 23A-C (central) is those waters of Catch Area 23A south of a line projected 48.22.50' °N latitude and east of a line projected 335 degrees true from the Dungeness lighthouse. 23A-S (south) is those waters of Catch Area 23A west of a line projected 335 degrees true from the Dungeness lighthouse.

(2) Shrimp beam trawl gear:

(a) Crustacean Management Region 3 outside of the shrimp districts is open immediately, until further notice.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 22A within Shrimp Management Area 1B is open immediately, until further notice.

(c) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

### REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 16, 2005:

WAC 220-52-05100M Puget Sound shrimp beam trawl fishery—Season (05-97)

### **WSR 05-13-053 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE**

[Order 05-122—Filed June 9, 2005, 3:09 p.m., effective June 11, 2005]

Effective Date of Rule: June 11, 2005.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900E; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.240.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: There are sufficient numbers of hatchery origin fish, within allowable limits for potential impacts on wild fish, to open a limited Snake River fishery. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 9, 2005.

J. P. Koenings  
Director  
by Larry Peck

**NEW SECTION**

**WAC 232-28-61900E Exceptions to statewide rules—Snake River.** Notwithstanding the provisions of WAC 232-28-619:

(1) Effective June 11 through June 30, 2005, in those waters of the Snake River from Texas Rapids boat launch upstream to the Corps of Engineers boat launch approximately one mile upstream of Little Goose Dam on the south bank of the River it is lawful to fish for and possess salmon. Daily limit of one hatchery chinook salmon, minimum size 12 inches in length.

- (a) Hooks must be single point barbless hooks when fishing for all species.
- (b) It is unlawful to use any hook larger than 5/8 inch (point of hook to shank) when fishing for all species.
- (c) Night closure is in effect.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective July 1, 2005:

WAC 232-28-61900E      Exceptions to statewide rules—Snake River.

**WSR 05-13-058  
EMERGENCY RULES  
SECRETARY OF STATE**

[Filed June 9, 2005, 3:33 p.m., effective June 9, 2005]

Effective Date of Rule: Immediately.

Purpose: Implementation of new requirements for provisional ballot envelopes pursuant to chapter 243, Laws of 2005.

Citation of Existing Rules Affected by this Order: Repealing WAC 434-240-190; and amending WAC 434-253-045.

Statutory Authority for Adoption: RCW 29A.04.611; section 6, chapter 243, Laws of 2005.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Chapter 243, Laws of 2005, establishes new requirements for election procedures, including information that must be stated on the outer envelopes for ballots. County auditors need to start printing ballots for the primary election and require further direction in terms of language that must be included on the outer envelopes for ballots.

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

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

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

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

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

Date Adopted: June 9, 2005.

Sam Reed  
Secretary of State

**AMENDATORY SECTION** (Amending WSR 05-06-035 and 05-08-065, filed 2/25/05, effective 3/28/05)

**WAC 434-253-045 Provisional ballots—Required information.** At a minimum, the following information (~~will be~~) is required to be printed on the outer provisional ballot envelope:

- (1) Name (~~and signature~~) 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) Precinct and polling place at which voter (~~has~~) voted.
- (6) Sufficient space to list disposition of the ballot after review by the county auditor.

~~((Each provisional ballot voter shall be required to sign an oath as required by the Help America Vote Act of 2002, Section 302. The oath may be located on the provisional ballot envelope or in the poll book. The voter must attest that they are:~~

- ~~(a) A registered voter in the jurisdiction in which the voter desires to vote; and~~
- ~~(b) Eligible to vote in that election.))~~ (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;

EMERGENCY

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 \_\_\_\_\_

No provisional ballot shall be rejected for lack of the information described in this section as long as the voter provides a valid signature and sufficient information to determine eligibility.

**NEW SECTION**

**WAC 434-250-050 Ballot materials.** In addition to the instructions and in addition to materials required by chapters 29A.36 and 29A.40 RCW, each absentee ballot must be accompanied by the following:

- (1) A security envelope, which may not identify the voter and must have a hole punched in the middle;
- (2) A return envelope, which must be addressed to the county auditor and have a hole punched in the middle. The return envelope must display the words "OFFICIAL BALLOT - DO NOT DELAY" prominently on the front, the words "POSTAGE REQUIRED" in the upper right-hand corner, and the following oath with a place for the voter to sign and date:

\_\_\_\_\_, 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 \_\_\_\_\_

The return envelope must conform to postal department regulations.

County auditors may use existing stock of absentee envelopes until January 1, 2006.

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 434-240-190 Absentee ballot envelopes.

**EMERGENCY RULES  
DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Medical Assistance Administration)

[Filed June 10, 2005, 12:44 p.m., effective June 10, 2005]

Effective Date of Rule: Immediately.

Purpose: To change community spouse income and family standard to \$1604, and to change the community spouse excess shelter standard to \$481. This federal change occurred April 1, 2005.

Citation of Existing Rules Affected by this Order: Amending WAC 388-513-1380 Determining a client's participation in the cost of care for long-term care (LTC) services.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.09.500, and 74.09.530.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Implementation of the April 1, 2005, federal changes to the institutional Medicaid standard and community spouse income and family allocation and excess shelter standard is required by the state in order to ensure the continued receipt of federal funds under 42 U.S.C., chapter 7.

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

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

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

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

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

Date Adopted: June 7, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 05-07-033, filed 3/9/05, effective 4/9/05)

**WAC 388-513-1380 Determining a client's participation in the cost of care for long-term care (LTC) services.** This rule describes how the department allocates income and excess resources when determining participation in the cost of care (in the post-eligibility process). The department applies rules described in WAC 388-513-1315 to define which income and resources must be used in this process.

- (1) For a client receiving institutional or hospice services in a medical facility, the department applies all subsections of this rule.

EMERGENCY

(2) For a client receiving waived services at home or in an alternate living facility, the department applies only those subsections of this rule that are cited in the rules for those programs.

(3) For a client receiving hospice services at home, the department applies rules used for the community options program entry system (COPEs).

(4) Excess resources are reduced in an amount equal to incurred medical expenses (for definition see WAC 388-519-0110(10)) that are not subject to third-party payment and for which the client is liable, including:

(a) Health insurance and Medicare premiums, deductions, and co-insurance charges;

(b) Necessary medical care recognized under state law, but not covered under the state's Medicaid plan; and

(c) The amount of excess resources is limited to the following amounts:

(i) For LTC services provided under the categorically needy (CN) program, the amount described in WAC 388-513-1315(3); or

(ii) For LTC services provided under the medically needy (MN) program, the amount described in WAC 388-513-1395 (2)(a) or (b).

(5) The department allocates nonexcluded income up to a total of the medically needy income level (MNIL) in the following order:

(a) A personal needs allowance (PNA) of:

(i) One hundred sixty dollars for a client living in a state veterans' home;

(ii) Ninety dollars for a veteran or a veteran's surviving spouse, who receives a VA improved pension and does not live in a state veterans' home; or

(iii) Forty-one dollars and sixty-two cents for all other clients in a medical facility.

(b) Federal, state, or local income taxes owed by the client.

(c) Wages for a client who:

(i) Is related to the supplemental security income (SSI) program as described in WAC 388-503-0510(1); and

(ii) Receives the wages as part of a department-approved training or rehabilitative program designed to prepare the client for a less restrictive placement. When determining this deduction employment expenses are not deducted.

(d) Guardianship fees and administrative costs including any attorney fees paid by the guardian, after June 15, 1998, only as allowed by chapter 388-79 WAC.

(6) The department allocates nonexcluded income after deducting amounts described in subsection (5) in the following order:

(a) Income garnisheed for child support:

(i) For the time period covered by the PNA; and

(ii) Not deducted under another provision in the post-eligibility process.

(b) A monthly maintenance needs allowance for the community spouse not to exceed, effective January 1, 2005, two thousand three hundred seventy-eight dollars, unless a greater amount is allocated as described in subsection (8) of this section. The monthly maintenance needs allowance:

(i) Consists of a combined total of both:

(A) An amount added to the community spouse's gross income to provide a total of one thousand ~~((five))~~ six hundred ~~((sixty-two))~~ four dollars; and

(B) Excess shelter expenses as specified under subsection (7) of this section; and

(ii) Is allowed only to the extent the client's income is made available to the community spouse.

(c) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community or institutionalized spouse who:

(i) Resides with the community spouse, equal to one-third of the amount that one thousand ~~((five))~~ six hundred ~~((sixty-two))~~ four dollars exceeds the dependent family member's income.

(ii) Does not reside with the community spouse, equal to the MNIL for the number of dependent family members in the home less the income of the dependent family members.

(iii) Child support received from noncustodial parent is the child's income.

(d) Incurred medical expenses described in subsections (4)(a) and (b) not used to reduce excess resources.

(e) Maintenance of the home of a single client or institutionalized couple:

(i) Up to one hundred percent of the one-person federal poverty level per month;

(ii) Limited to a six-month period;

(iii) When a physician has certified that the client is likely to return to the home within the six-month period; and

(iv) When social services staff documents initial need for the income exemption and reviews the client's circumstances after ninety days.

(7) For the purposes of this section, "excess shelter expenses" means the actual expenses under subsection (7)(b) less the standard shelter allocation under subsection (7)(a). For the purposes of this rule:

(a) The standard shelter allocation is four hundred ~~((sixty-nine))~~ eighty-one dollars, effective April 1, ~~((2004))~~ 2005; and

(b) Shelter expenses are the actual required maintenance expenses for the community spouse's principal residence for:

(i) Rent;

(ii) Mortgage;

(iii) Taxes and insurance;

(iv) Any maintenance care for a condominium or cooperative; and

(v) The food stamp standard utility allowance for four persons, provided the utilities are not included in the maintenance charges for a condominium or cooperative.

(8) The amount allocated to the community spouse may be greater than the amount in subsection (6)(b) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(9) A client who is admitted to a medical facility for ninety days or less and continues to receive full SSI benefits is not required to use the SSI income in the cost of care for medical services. Income allocations are allowed as described in this section from non-SSI income.

**WSR 05-13-064**  
**RESCISSION OF EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Medical Assistance Administration)

[Filed June 10, 2005, 12:46 p.m.]

Effective immediately, the Medical Assistance Administration is rescinding the emergency rule amending WAC 388-513-1300 filed as WSR 05-10-053 on April 29, 2005.

Andy Fernando, Manager  
 Rules and Policies Assistance Unit

**WSR 05-13-066**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Medical Assistance Administration)

[Filed June 10, 2005, 12:49 p.m., effective June 10, 2005]

Effective Date of Rule: Immediately.

Purpose: Codify the existing expedited hearings process for managed care clients as required by federal regulations.

Citation of Existing Rules Affected by this Order: Amending WAC 388-538-112.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Other Authority: 42 C.F.R. 431-244 (f)(2).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: This emergency rule adoption is necessary while the permanent rule-making process is being completed because current WAC does not reflect existing policy for an expedited fair hearing process for managed care clients as required by 42 C.F.R. 431.244 (f)(2).

This filing continues the emergency rule that is currently in effect under WSR 05-05-038 while MAA completes the permanent rule-making process begun under WSR 05-04-082. MAA anticipates filing the permanent rule proposal (CR-102) in the fall of 2005.

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

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

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

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

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

Date Adopted: June 8, 2005.

Andy Fernando, Manager  
 Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 05-01-066, filed 12/8/04, effective 1/8/05)

**WAC 388-538-112 The department of social and health services' (DSHS) ((fair)) hearing process for enrollee appeals of managed care organization (MCO) actions.** (1) The ((fair)) hearing process described in chapter 388-02 WAC applies to the ((fair)) hearing process described in this chapter. Where a conflict exists, the requirements in this chapter take precedence.

(2) An MCO enrollee must exhaust all levels of resolution and appeal within the MCO's grievance system prior to filing an appeal (a request for a department ((fair)) hearing) with MAA. See WAC 388-538-110 for the MCO grievance system.

(3) If an MCO enrollee does not agree with the MCO's resolution of the enrollee's appeal, the enrollee may file a request for a department ((fair)) hearing within the following time frames:

(a) For appeals regarding a standard service, within ninety calendar days of the date of the MCO's notice of the resolution of the appeal.

(b) For appeals regarding termination, suspension, or reduction of a previously authorized service, ((ex)) and the enrollee is requesting continuation of services, within ten calendar days of the date on the MCO's notice of the resolution of the appeal.

(4) The entire appeal process, including the MCO appeal process, must be completed within ninety calendar days of the date the MCO enrollee filed the appeal with the MCO, not including the number of days the enrollee took to subsequently file for a department ((fair)) hearing.

(5) Expedited hearing process:

(a) When the enrollee or the enrollee's representative requests a hearing indicating the time taken for a standard resolution of the claim could seriously jeopardize the enrollee's life or health and ability to attain, maintain, or regain maximum function, the office of administrative hearings (OAH) will approve or deny the request.

(b) When approving an expedited hearing, OAH will advise the enrollee, MCO and the department as expeditiously as the enrollee's health condition requires, but no later than three business days after receiving the case file from the MCO.

(c) When denying an expedited hearing, OAH will advise the enrollee orally within two days of request and confirm with a written decision with three business days after receiving the case file from the MCO:

(6) Parties to the ((fair)) hearing include the department, the MCO, the enrollee, and the enrollee's representative or the representative of a deceased enrollee's estate.

((6)) (7) If an enrollee disagrees with the ((fair)) hearing decision, then the enrollee may request an independent review (IR) in accordance with RCW 48.43.535.



((7)) (8) If there is disagreement with the IR decision, the department of social and health services (DSHS) board of appeals (BOA) issues the final administrative decision.

**WSR 05-13-068**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 05-120—Filed June 10, 2005, 1:20 p.m., effective June 10, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 220-24-04000W; and amending WAC 220-24-040.

Statutory Authority for Adoption: RCW 77.12.240.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation is necessary for the utilization of the commercial chinook allocation in the North of Falcon troll fishery in a manner that maximizes the economic value to the commercial fishery industry and the state of Washington. These rules are adopted at the recommendation of the Pacific Fisheries Management Council. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 9, 2005.

J. P. Koenings  
Director

**NEW SECTION**

**WAC 220-24-04000X All-citizen commercial salmon troll.** Notwithstanding the provisions of WAC 220-24-040, effective immediately until further notice it is unlawful to fish for salmon with troll gear or to land salmon taken with troll gear into a Washington port except during the seasons provided for in this section:

(1) Salmon Management and Catch Reporting Areas 1, 2, 3 and that portion of Area 4 west of 125°05'00" W longitude and south of 48°23'00" N latitude open:

June 26 through June 30, 2005.

(2) The Cape Flattery and Columbia River Control Zones are closed.

(3) Landing and possession limit of 30 chinook per vessel per entire open period. Minimum size for chinook salmon is 28 inches in length. No minimum size for pink, sockeye or chum salmon. It is unlawful to possess coho salmon.

(4) Lawful troll gear is restricted to all legal troll gear with single point, single shank barbless hooks.

(5) Fishers must land and deliver their catch within 24 hours of any closure of a fishery provided for in this section, and vessels fishing north of Leadbetter Point must land and deliver their fish within the area and North of Leadbetter point. Vessels fishing south of Leadbetter Point must land and deliver their fish within the area and south of Leadbetter Point.

(6) The Cape Flattery Control Zone is defined as the area from Cape Flattery (48°23'00" N latitude) to the northern boundary of the U.S. EEZ: and the area from Cape Flattery south to Cape Alava, 48°10'00" N latitude and west of 125°05'00" W longitude.

(7) Columbia Control Zone - An area at the Columbia River mouth, bounded on the west by a line running north-east/southwest between the red lighted Buoy #4 (46°13'35" N. Lat., 124°06'50" W. long.) and the green lighted Buoy #7 (46°15'09" N. lat., 124°06'16" W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14'00" N. lat., 124°03'07" West. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14'48" N. lat., 124°05'20" W. long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14'03" N. lat., 124°04'05" W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

(8) It is unlawful to fish in Salmon Management and Catch Reporting Areas 1, 2, 3 or 4 with fish on board taken south of Cape Falcon, Oregon, and all fish taken from Salmon Management and Catch Reporting Areas 1, 2, 3, and 4 must be landed before fishing south of Cape Falcon, Oregon.

(9) It is unlawful for wholesale dealers and trollers retailing their fish to fail to report their landing by 10:00 a.m. the day following landing. Ticket information can be telephoned in by calling 1-866-791-1279 or faxing the information to (360) 902-2949 or E-mailing to trollfishtickets@dfw.wa.gov. Report the dealer name, the purchasing location, the date of purchase, the fish ticket numbers, the gear used, the catch area, the species. The total number for each species and the total weight for each species including halibut.

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

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-24-04000W All-citizen commercial salmon troll. (05-114)

**WSR 05-13-069  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-123—Filed June 10, 2005, 4:15 p.m., effective June 12, 2005, 11:59 p.m.]

Effective Date of Rule: June 12, 2005, 11:59 p.m.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-25500V; and amending WAC 220-56-255.

Statutory Authority for Adoption: RCW 77.12.240.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The Columbia River halibut subarea is projected to achieve its quota. This regulation is necessary to implement federal rules on halibut seasons. The adoption of state rules is required to provide consistency to state and federal rules regarding halibut fishing. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 10, 2005.

J. P. Koenings  
Director  
by Larry Peck

**NEW SECTION**

**WAC 220-56-25500W Halibut—Seasons—Daily and possession limits.** (1) Notwithstanding the provisions of WAC 220-56-255, effective immediately until further notice

it is unlawful to fish for or possess halibut taken for personal use except from the areas or in excess of the amounts provided for in this section:

(a) Catch Record Card Area 1 - Closed effective 11:59 p.m. June 12, 2005.

(b) Catch Record Card Area 2 - Closed.

(c) Catch Record Card Areas 3 and 4 - Open Thursday June 16 and Saturday June 18 only. The following area southwest of Cape Flattery is closed to fishing for halibut at all times:

Beginning at 48°18' N., 125°18' W.; thence to

48°18'N., 124°59'W.; thence to

48°11'N., 124°59'W.; thence to

48°11'N., 125°11'W.; thence to

48°04'N., 125°11'W.; thence to

48°04'N., 124°59'W.; thence to

48°N., 124°59'W.; thence to

48°N., 125°18'W.; thence to point of origin.

(d) Catch Record Card Area 5 - Open through July 31, 2005, except closed to fishing for halibut 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday.

(e) Catch Record Card Areas 6 through 11 and Catch Record Card Area 13 - Open through June 20, except closed 12:01 a.m. of each Tuesday through 11:59 p.m. of each Wednesday.

(2) Daily limit one halibut.

(3) The possession limit is two daily limits of halibut in any form, except the possession limit aboard the fishing vessel is one daily limit.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 11:59 p.m. June 12, 2005:

WAC 220-56-25500V Halibut—Seasons daily and possession limits. (05-110)

**WSR 05-13-073  
EMERGENCY RULES  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES  
(Medical Assistance Administration)**

[Filed June 13, 2005, 4:22 p.m., effective June 13, 2005]

Effective Date of Rule: Immediately.

Purpose: WAC 388-538-063 is being amended to remove incorrect authorization language.

Citation of Existing Rules Affected by this Order: Amending WAC 388-538-063.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.035, and 74.09.522.

Other Authority: ESSB 5405, section 209(15), chapter 25, Laws of 2003 1st sp.s.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of

notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

**Reasons for this Finding:** This emergency rule adoption is necessary while the permanent rule-making process is being completed because the current WAC incorrectly directs the client to receive authorization from the MCO for services instead of MAA. This incorrect language causes confusion and delays in the delivery of medically necessary services and results in the loss of due process rights for the enrollee. The permanent rule-making process began under WSR 05-04-082.

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

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

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

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

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

**Date Adopted:** June 10, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 04-15-003, filed 7/7/04, effective 8/7/04)

**WAC 388-538-063 Mandatory enrollment in managed care for GAU clients.** (1) The purpose of this section is to describe the managed care requirement for general assistance unemployable (GAU) clients mandated by the Laws of 2003, chapter 25, section 209(15).

(2) The only sections of chapter 388-538 WAC that apply to GAU clients described in this section are incorporated by reference into this section.

(3) To receive medical assistance administration (MAA) paid medical care, GAU clients must enroll in a managed care plan as required by WAC 388-505-0110(7) when they reside in a county designated as a mandatory managed care plan county.

(4) GAU clients are exempt from mandatory enrollment in managed care if they:

- (a) Are American Indian or Alaska Native (AI/AN); and
- (b) Meet the provisions of 25 U.S.C. 1603 (c)-(d) for federally recognized tribal members and their descendants.

(5) In addition to subsection (4), MAA will exempt a GAU client from mandatory enrollment in managed care or end an enrollee's enrollment in managed care in accordance with WAC 388-538-130(3) and 388-538-130(4).

(6) On a case-by-case basis, MAA may grant a GAU client's request for exemption from managed care or a GAU enrollee's request to end enrollment when, in MAA's judgment:

(a) The client or enrollee has a documented and verifiable medical condition; and

(b) Enrollment in managed care could cause an interruption of treatment that could jeopardize the client's or enrollee's life or health or ability to attain, maintain, or regain maximum function.

(7) MAA enrolls GAU clients in managed care effective on the earliest possible date, given the requirements of the enrollment system. MAA does not enroll clients in managed care on a retroactive basis.

(8) Managed care organizations (MCOs) that contract with MAA to provide services for GAU clients must meet the qualifications and requirements in WAC 388-538-067 and 388-538-095 (3)(a), (b), (c), and (d).

(9) MAA pays MCOs capitated premiums for GAU enrollees based on legislative allocations for the GAU program.

(10) GAU enrollees are eligible for the scope of care as described in WAC 388-529-0200 for medical care services (MCS). Other scope of care provisions that apply:

(a) A client is entitled to timely access to medically necessary services as defined in WAC 388-500-0005;

(b) MCOs cover the services included in the managed care contract for GAU enrollees. MCOs may, at their discretion, cover services not required under the MCO's contract for GAU enrollees;

(c) MAA pays providers on a fee-for-service basis for the medically necessary, covered medical care services not covered under the MCO's contract for GAU enrollees; and

(d) ~~((Even if a service is covered by MAA on a fee-for-service basis, it is the MCO, and not MAA, from whom a GAU enrollee must obtain prior authorization before receiving the service; and~~

~~(e))~~ A GAU enrollee may obtain emergency services in accordance with WAC 388-538-100.

(11) MAA does not pay providers on a fee-for-service basis for services covered under the MCO's contract for GAU enrollees, even if the MCO has not paid for the service, regardless of the reason. The MCO is solely responsible for payment of MCO-contracted health care services that are:

- (a) Provided by an MCO-contracted provider; or
- (b) Authorized by the MCO and provided by nonparticipating providers.

(12) The following services are not covered for GAU enrollees unless the MCO chooses to cover these services at no additional cost to MAA:

- (a) Services that are not medically necessary;
- (b) Services not included in the medical care services scope of care;
- (c) Services, other than a screening exam as described in WAC 388-538-100(3), received in a hospital emergency department for nonemergency medical conditions; and
- (d) Services received from a nonparticipating provider requiring prior authorization from the MCO that were not authorized by the MCO.

(13) A provider may bill a GAU enrollee for noncovered services described in subsection (12), if the requirements of WAC 388-502-0160 and 388-538-095(5) are met.

(14) The grievance and appeal process found in WAC 388-538-110 applies to GAU enrollees described in this section.

(15) The fair hearing process found in chapter 388-02 WAC and WAC 388-538-112 applies to GAU enrollees described in this section.

**WSR 05-13-074**  
**EMERGENCY RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Medical Assistance Administration)

[Filed June 13, 2005, 4:25 p.m., effective June 13, 2005]

Effective Date of Rule: Immediately.

Purpose: To reconcile SSI-related medical program resource eligibility rules with federal law. This continues the emergency rule adopted under WSR 05-05-088 on February 15, 2005. This adoption is necessary while the permanent rule-making process begun under WSR 04-23-101 is completed.

Citation of Existing Rules Affected by this Order: Amending WAC 388-475-0550, 388-475-0700, 388-475-0800, 388-475-0820, and 388-475-0860.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500.

Other Authority: Social Security Act as amended by Public Law 108-203.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: The state must adopt rules to comply with federal Medicaid law in Public Law 108-203, Subtitle D, Sections 430, 431, and 435 in order to continue receiving federal funding.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 5, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

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

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

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

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: June 10, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

AMENDATORY SECTION (Amending WSR 04-09-004, filed 4/7/04, effective 6/1/04)

**WAC 388-475-0550 SSI-related medical—All other excluded resources.** All resources described in this section are excluded resources for SSI-related medical programs. Unless otherwise stated, interest earned on the resource amount is counted as unearned income.

(1) Resources necessary for a client who is blind or disabled to fulfill a department approved self-sufficiency plan.

(2) Retroactive payments from SSI or RSDI, including benefits a client receives under the interim assistance reimbursement agreement with the Social Security Administration, are excluded for ~~((six\*))~~ nine months following the month of receipt. This exclusion applies to:

(a) Payments received by the client, spouse, or any other person financially responsible for the client;

(b) SSI payments for benefits due for the month(s) before the month of continuing payment;

(c) RSDI payments for benefits due for a month that is two or more months before the month of continuing payment; and

(d) Proceeds from these payments as long as they are held as cash, or in a checking or savings account. The funds may be commingled with other funds, but must remain identifiable from the other funds for this exclusion to apply. This exclusion does not apply once the payments have been converted to any other type of resource.

(3) All resources specifically excluded by federal law, such as those described in subsections (4) through (11) as long as such funds are identifiable.

(4) Payments made under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(5) Payments made to Native Americans as listed in 20 CFR 416.1182, Appendix to subpart K, section IV, paragraphs (b) and (c), and in 20 CFR 416.1236.

(6) The following Native American/Alaska Native funds are excluded resources:

(a) Resources received from a Native Corporation under the Alaska Native Claims Settlement Act, including:

(i) Shares of stock held in a regional or village corporation;

(ii) Cash or dividends on stock received from the Native Corporation up to two thousand dollars per person per year;

(iii) Stock issued by a native corporation as a dividend or distribution on stock;

(iv) A partnership interest;

(v) Land or an interest in land; and

(vi) An interest in a settlement trust.

(b) All funds contained in a restricted Individual Indian Money (IIM) account.

(7) Restitution payment and any interest earned from this payment to persons of Japanese or Aleut ancestry who were relocated and interned during war time under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act.

(8) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims.

(9) Payments or interest accrued on payments received under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(10) Payments from:

(a) The Dutch government under the Netherlands' Act on Benefits for Victims of Persecution (WUV).

(b) The Victims of Nazi Persecution Act of 1994 to survivors of the Holocaust.

(c) Susan Walker vs. Bayer Corporation, et al., 96-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds.

(d) Ricky Rey Hemophilia Relief Fund Act of 1998 P.L. 105-369.

(11) The unspent social insurance payments received due to wage credits granted under sections 500 through 506 of the Austrian General Social Insurance Act.

(12) Earned income tax credit refunds and payments are excluded as resources ~~((during the month of receipt and the following month))~~ for nine months after the month of receipt.

(13) Payments from a state administered victim's compensation program for a period of nine calendar months after the month of receipt.

(14) Cash or in-kind items received as a settlement for the purpose of repairing or replacing a specific excluded resource are excluded:

(a) For nine months. This includes relocation assistance provided by state or local government.

(b) Up to a maximum of thirty months, when:

(i) The client intends to repair or replace the excluded resource; and

(ii) Circumstances beyond the control of the settlement recipient prevented the repair or replacement of the excluded resource within the first or second nine months of receipt of the settlement.

(c) For an indefinite period, if the settlement is from federal relocation assistance.

(d) Permanently, if the settlement is assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States, or is comparable assistance received from a State or local government or from a disaster assistance organization. Interest earned on this assistance is also excluded from resources. Any cash or in-kind items received as a settlement and excluded under this subsection are considered as available resources when not used within the allowable time periods.

(15) Insurance proceeds or other assets recovered by a Holocaust survivor as defined in WAC 388-470-0026(4).

(16) Pension funds owned by an ineligible spouse. Pension funds are defined as funds held in a(n):

(a) Individual retirement account (IRA) as described by the IRS code; or

(b) Work-related pension plan (including plans for self-employed individuals, known as Keogh plans).

(17) Cash payments received from a medical or social service agency to pay for medical or social services are excluded for one calendar month following the month of receipt.

(18) SSA- or DVR-approved plans for achieving self-support (PASS) accounts, allowing blind or disabled individuals to set aside resources necessary for the achievement of the plan's goals, are excluded.

(19) Food and nutrition programs with federal involvement. This includes Washington Basic Food, school reduced and free meals and milk programs and WIC.

(20) Gifts to, or for the benefit of, a person under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that Code, as follows:

(a) In-kind gifts that are not converted to cash; or

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

~~((22))~~ (21) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children.

~~((23))~~ (22) The following are among assets that are not considered resources and as such are neither excluded nor counted:

(a) Home energy assistance/support and maintenance assistance;

(b) Retroactive in-home supportive services payments to ineligible spouses and parents; and

(c) Gifts of domestic travel tickets. For a more complete list please see POMS @ <http://policy.ssa.gov/poms.nsf/lnx/0501130050>.

**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 04-09-004, filed 4/7/04, effective 6/1/04)

**WAC 388-475-0700 SSI-related medical—Income eligibility.** (1) In order to be eligible, a client is required do everything necessary to obtain any income to which they are entitled including (but not limited to):

(a) Annuities,

(b) Pensions,

(c) Unemployment compensation,

(d) Retirement, and

(e) Disability benefits; even if their receipt makes the client ineligible for department services, unless the client can provide evidence showing good reason for not obtaining the benefits.

The department does not count this income until the client begins to receive it.

(2) Income is budgeted prospectively for all medical programs.

(3) Anticipated nonrecurring lump sum payments other than retroactive SSI/SSDI payments are considered income in the month received, subject to reporting requirements in WAC 388-418-0007(4). Any unspent portion is considered a resource the first of the following month.

(4) The department follows income and resource methodologies of the Supplemental Security Income (SSI) program defined in federal law when determining eligibility for SSI-related medical or Medicare Savings programs unless the

department adopts rules that are less restrictive than those of the SSI program.

(5) Exceptions to the SSI income methodology:

(a) Lump sum payments from a retroactive SSDI benefit, when reduced by the amount of SSI received during the period covered by the payment, are not counted as income;

(b) Unspent retroactive lump sum money from SSI or SSDI is excluded as a resource for ~~((six))~~ nine months following receipt of the lump sum; and

(c) Both the principal and interest portions of payments from a sales contract, that meet the definition in WAC 388-475-0350(10), are unearned income.

(6) To be eligible for categorically needy (CN) SSI-related medical coverage, a client's countable income cannot exceed the CN program standard described in:

(a) WAC 388-478-0065 through 388-478-0085 for non-institutional medical unless living in an alternate living facility; or

(b) WAC 388-513-1305(2) for noninstitutional CN benefits while living in an alternate living facility; or

(c) WAC 388-513-1315 for institutional and waiver services medical benefits.

(7) To be eligible for SSI-related medical coverage provided under the medically needy (MN) program, a client must:

(a) Have countable income at or below the MN program standard as described in WAC 388-478-0070; or

(b) Satisfy spenddown requirements described in WAC 388-519-0110~~((-01))~~;

(c) Meet the requirements for noninstitutional MN benefits while living in an alternate living facility (ALF). See WAC 388-513-1305(3) ~~((and 388-515-1540))~~; or

(d) Meet eligibility for the MN residential waiver program. See WAC 388-515-1540.

**AMENDATORY SECTION** (Amending WSR 04-09-005, filed 4/7/04, effective 6/1/04)

**WAC 388-475-0800 SSI-related medical—General income exclusions.** The department excludes, or does not consider, the following when determining a client's eligibility for SSI-related medical programs:

(1) The first twenty dollars per month of unearned income. If there is less than twenty dollars of unearned income in a month, the remainder is excluded from earned income in that month.

(a) The twenty-dollar limit is the same, whether applying it for a couple or for a single person.

(b) The disregard does not apply to income paid totally or partially by the federal government or a nongovernmental agency on the basis of an eligible person's needs.

(c) The twenty dollars disregard is applied after all exclusions have been taken from income.

(2) Income that is not reasonably anticipated or is received infrequently or irregularly, whether for a single person or each person in a couple when it is:

(a) Earned and does not exceed a total of ~~((ten))~~ thirty dollars per ~~((month))~~ calendar quarter; or

(b) Unearned and does not exceed a total of ~~((twenty))~~ sixty dollars per ~~((month))~~ calendar quarter;

(c) Increases in a client's burial funds that were established on or after November 1, 1982 if the increases are the result of:

(i) Interest earned on excluded burial funds; or

(ii) Appreciation in the value of an excluded burial arrangement that was left to accumulate and become part of separately identified burial funds.

(3) Essential expenses necessary for a client to receive compensation (e.g., necessary legal fees in order to get a settlement);

(4) Receipts, which are not considered income, when they are for:

(a) Replacement or repair of an exempt resource;

(b) Prepayment or repayment of medical care paid by a health insurance policy or medical service program; or

(c) Payments made under a credit life or credit disability policy.

(5) The fee a guardian or representative payee charges as reimbursement for providing services, when such services are a requirement for the client to receive payment of the income.

(6) Funds representing shared household costs.

(7) Crime victim's compensation.

(8) The value of a common transportation ticket, given as a gift, that is used for transportation and not converted to cash.

(9) Gifts that are not for food, clothing or shelter, and gifts of home produce used for personal consumption.

(10) The department does not consider in-kind income received from someone other than a person legally responsible for the individual unless it is earned. Therefore, the following in-kind payments are not counted when determining eligibility for SSI-related medical programs.

(a) In-kind payments for services paid by a client's employer if:

(i) The service is not provided in the course of an employer's trade or business; or

(ii) It is in the form of food and/or shelter that is:

(A) On the employer's business premises;

(B) For the employer's convenience; and

(C) If shelter, acceptance by the employee is a condition of employment.

(b) In-kind payments made to people in the following categories:

(i) Agricultural employees;

(ii) Domestic employees;

(iii) Members of the Uniformed Services;

(iv) Persons who work from home to produce specific products for the employer from materials supplied by the employer.

**AMENDATORY SECTION** (Amending WSR 04-09-005, filed 4/7/04, effective 6/1/04)

**WAC 388-475-0820 SSI-related medical—Child-related income exclusions.** (1) The department excludes an allowance from a person's earned and/or unearned income for a child living in the home when:

(a) The minor child lives with an SSI-related parent; and

(b) The minor child is not receiving a needs-based cash payment such as TANF or SSI; and

(c) The SSI-related parent is single; or

(d) The SSI-related parent lives with a spouse who has no income; and

(e) The individual applying for or receiving SSI-related medical benefits is the adult parent. The maximum allowance is one-half the Federal Benefit Rate (FBR) for each child. The child's countable income, if any, is subtracted from the maximum child's allowance (~~One-third of the child support received for the child is excluded from the child's income~~) before determining this allowance.

(2) Foster care payments received for a child who is not SSI-eligible and who is living in the household, placed there by a licensed, nonprofit or public child placement or child-care agency are excluded from income regardless of whether the person requesting or receiving SSI-related medical is the adult foster parent or the child who was placed.

(3) Adoption support payments, received by an adult for a child in the household that are designated for the child's needs, are excluded as income. Adoption support payments that are not specifically designated for the child's needs are not excluded and are considered unearned income to the adult.

(4) (~~Up to one thousand three hundred seventy dollars per month of a child's~~) Earned income (~~but not more than five thousand five hundred twenty dollars per year,~~) of a person under age twenty-two is excluded if ((the child)) that person is a student.

(5) Child support payments received from an absent parent for a child living in the home are considered the income of the child.

(6) One-third of child support payments received for a child are excluded from the child's income.

(7) Any portion of a grant, scholarship, ~~((or))~~ fellowship, or gift used ~~((to pay))~~ for tuition, fees and/or other necessary educational expenses at any educational institution is excluded from income for nine months after the month of receipt.

~~((7))~~ (8) Gifts to, or for the benefit of, a person under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that Code, is excluded as follows:

(a) In-kind gifts that are not converted to cash; or

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

~~((8))~~ (9) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children are excluded from income.

~~((9))~~ (10) Unless it is specifically contributed to the client, all earned income of an ineligible or nonapplying person under the age of twenty-one who is a student:

(a) Attending a school, college, or university; or

(b) Pursuing a vocational or technical training program designed to prepare the student for gainful employment.

AMENDATORY SECTION (Amending 04-09-005, filed 4/7/04, effective 6/1/04)

**WAC 388-475-0860 SSI-related medical—Income exclusions under federal statute or other state laws.** The Social Security Act and other federal statutes or state laws list income that the department excludes when determining eligibility for SSI-related medical programs. These exclusions include, but are not limited to:

(1) Income tax refunds;

(2) Federal earned income tax credit (EITC) payments for nine months after the month of receipt;

(3) Compensation provided to volunteers in the Corporation for National and Community Service (CNCS), formerly known as ACTION programs established by the Domestic Volunteer Service Act of 1973. P.L. 93-113;

(4) Assistance to a person (other than wages or salaries) under the Older Americans Act of 1965, as amended by section 102 (h)(1) of Pub. L. 95-478 (92 Stat. 1515, 42 U.S.C. 3020a);

(5) Federal, state and local government payments including assistance provided in cash or in-kind under any government program that provides medical or social services;

(6) Certain cash or in-kind payments a client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

(7) Value of food provided through a federal or nonprofit food program such as WIC, donated food program, school lunch program;

(8) Assistance based on need, including:

(a) Any federal SSI income or state supplement payment (SSP) based on financial need;

(b) Food stamps;

(c) GA-U;

(d) CEAP;

(e) TANF; and

(f) Bureau of Indian Affairs (BIA) general assistance.

(9) Housing assistance from a federal program such as HUD if paid under:

(a) United States Housing Act of 1937 (section 1437 et seq. of 42 U.S.C.);

(b) National Housing Act (section 1701 et seq. of 12 U.S.C.);

(c) Section 101 of the Housing and Urban Development Act of 1965 (section 1701s of 12 U.S.C., section 1451 of 42 U.S.C.);

(d) Title V of the Housing Act of 1949 (section 1471 et seq. of 42 U.S.C.); or

(e) Section 202(h) of the Housing Act of 1959;

(f) Weatherization provided to low-income homeowners by programs that consider income in the eligibility determinations;

(10) Energy assistance payments including:

(a) Those to prevent fuel cutoffs, and

(b) To promote energy efficiency.

(11) Income from employment and training programs as specified in WAC 388-450-0045.

(12) Foster Grandparents program;

(13) Title IV-E and state foster care maintenance payments if the foster child is not included in the assistance unit;

(14) The value of any childcare provided or arranged (or any payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act, as amended by section 8(b) of P.L. 102-586 (106 Stat. 5035).

(15) Educational assistance as specified in WAC 388-450-0035.

(16) Up to two thousand dollars per year derived from an individual's interest in Indian trust or restricted land.

(17) Native American benefits and payments as specified in WAC 388-450-0040 and other Native American payments excluded by federal statute. For a complete list of these payments, see 20 CFR 416, Subpart K, Appendix, IV.

(18) Payments from Susan Walker v. Bayer Corporation, et al., 96-c-5024 (N.D. Ill) (May 8, 1997) settlement funds;

(19) Payments from Ricky Ray Hemophilia Relief Fund Act of 1998, P.L. 105-369;

(20) Disaster assistance paid under Federal Disaster Relief P.L. 100-387 and Emergency Assistance Act, P.L. 93-288 amended by P.L. 100-707 and for farmers P.L. 100-387;

(21) Payments to certain survivors of the Holocaust as victims of Nazi persecution; payments excluded pursuant to section 1(a) of the Victims of Nazi Persecution Act of 1994, P.L. 103-286 (108 Stat. 1450);

(22) Payments made under section 500 through 506 of the Austrian General Social Insurance Act;

(23) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);

(24) Restitution payments and interest earned to Japanese Americans or their survivors, and Aleuts interned during World War II, established by P.L. 100-383;

(25) Payments made from the Agent Orange Settlement Funds or any other funds to settle Agent Orange liability claims established by P.L. 101-201;

(26) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426;

(27) Any interest earned from payments described in subsections (1) through (26) is counted as unearned income, unless otherwise excluded by law.

### WSR 05-13-080

#### EMERGENCY RULES DEPARTMENT OF RETIREMENT SYSTEMS

[Filed June 14, 2005, 12:44 p.m., effective July 1, 2005]

Effective Date of Rule: July 1, 2005.

Purpose: This amendment is to implement HB 1329, enacted during the 2005 session. The bill provides that, if a portion of a LEOFF Plan 1 member's benefit is subject to a property division obligation, the member may select a benefit option with a survivor feature with the remaining portion of the benefit.

Citation of Existing Rules Affected by this Order: Amending WAC 415-104-202.

Statutory Authority for Adoption: RCW 41.50.050(5), 41.26.164.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: HB 1329 (chapter 67, Laws of 2005) requires the department to adopt rules by July 1, 2005, to implement the provisions of the bill.

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

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

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

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

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

Date Adopted: June 13, 2005.

June 13, 2005

S. J. Matheson

Director

AMENDATORY SECTION (Amending WSR 03-12-014, filed 5/27/03)

**WAC 415-104-202 Survivor benefit options—LEOFF Plan 1.** (1) **To whom does this section apply?** This section only applies to members of the law enforcement officers' and fire fighters' retirement system who first became members of the system prior to October 1, 1977 (LEOFF Plan 1).

(2) **What are flexible survivor benefit options?** RCW 41.26.164 allows a retiree to provide a survivor option for a spouse who does not otherwise qualify ~~((as an eligible surviving spouse))~~ for survivor benefits under RCW 41.26.160 or 41.26.161. The survivor option will provide a lifetime benefit for the spouse after the retiree's death.

(3) **How will the retiree's benefit be affected by selecting a flexible survivor option?** The monthly benefit payment will be actuarially reduced beginning the first month following the month in which the department receives the completed form.

(4) **What are the flexible survivor option choices?**

(a) **Joint and whole allowance option.** When the retiree dies, the department pays the surviving spouse a monthly benefit equal to the gross monthly allowance then payable to the retiree.

(b) **Joint and one-half allowance option.** When the retiree dies, the department pays the surviving spouse a monthly benefit equal to one-half of the amount of the retiree's gross monthly retirement allowance then payable to the retiree.

(c) **Joint and two-thirds allowance option.** When the retiree dies, the department pays the surviving spouse a



monthly benefit equal to two-thirds of the retiree's gross monthly retirement allowance then payable to the retiree.

(5) **How does one qualify to add a flexible survivor option?** A retiree may qualify to select a flexible survivor option if:

(a) The retiree's spouse does not ~~((have a spouse who qualifies as an eligible surviving spouse (see subsection (2) of this section)))~~ otherwise qualify for survivor benefits under RCW 41.26.160 or 41.26.161;

(b) ~~((The))~~ Some portion of the retiree's monthly benefit is payable to the retiree, after any reduction pursuant to ((not subject to a property settlement agreement from a court decree of dissolution or legal separation))) a property division obligation under RCW 41.50.670; and

(c) The retiree has not previously selected a flexible survivor option.

(6) **What steps must one take to add a flexible survivor option?** To add a flexible survivor option, the retiree must:

(a) Make the choice during the one year window, on or after the date of the first anniversary and before the second anniversary of the marriage;

(b) Provide the department with proof of the birth date of the spouse and a copy of a marriage certificate as proof of the marriage; and

(c) Properly and in a timely manner complete and file the correct forms with the department.

(7) **What happens if the survivor dies before the retiree?** If the spouse dies before the retiree, the retiree's monthly retirement allowance increases, effective the first day of the following month, to the amount that the retiree would have received had the retiree not chosen a flexible survivor option plus any cost-of-living adjustments (COLA) the retiree received prior to the spouse's death.

(8) **What happens to the eligible surviving children's share if the retiree selects a flexible survivor option?** There is *no* impact to the benefit provided to surviving children if the retiree selects a flexible survivor option.

(9) **Actuarial information.** See chapter 415-02 WAC starting with WAC 415-02-300 for the tables, schedules, and factors the department uses for calculating retirement allowances.

**Terms used in this section:**

(a) Child or children - RCW 41.26.030(7).

(b) Eligible surviving child - RCW 41.26.160 and 41.26.161.

(c) Eligible surviving spouse - RCW 41.25.160, 41.26.161 and 41.26.162.

(d) Surviving spouse - RCW 41.26.030(6).

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

**WSR 05-13-086  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-124—Filed June 15, 2005, 8:23 a.m., effective June 16, 2005, 12:01 a.m.]

Effective Date of Rule: June 16, 2005, 12:01 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 220-48-032.

Statutory Authority for Adoption: RCW 77.12.240.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Permanent rules close Puget Sound to set line fishing on June 16. There is a harvest surplus of dogfish available and this rule change is needed to provide an opportunity to harvest these fish. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 14, 2005.

J. P. Koenings  
Director

NEW SECTION

**WAC 220-48-03200F Set line—Seasons.** Notwithstanding the provisions of WAC 220-48-032, effective 12:01 a.m. June 16, 2005 until further notice it is lawful to fish for dogfish and other bottomfish with setline gear in all Puget Sound Marine Fish - Shellfish Management and Catch Reporting Areas year-round except as provided in this section.

(1) It is unlawful to take, fish for, and possess dogfish and other bottomfish taken with set lines in:

(a) That portion of Area 26C north of a line projected due east from Point Bolin to Bainbridge Island is closed all year.

(b) That portion of Area 26D south of lines projected due west of Point Dalco on Vashon Island, and from Dash Point to Point Piner on Maury Island, is closed all year.

(c) That portion of Area 28A east of a line projected due north from the northwest tip of Fox Island, and north of a line

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projected due east from Fox Point on Fox Island is closed all year.

(d) Those waters provided for in WAC 220-20-010(6) and 220-20-020(4).

(e) Marine Fish-Shellfish Management and Catch Reporting Areas 27A, 27B and 27C.

**WSR 05-13-087  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-119—Filed June 15, 2005, 8:23 a.m., effective June 15, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend hunting rules.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-351.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: These permit hunt changes address public safety concerns. The hunts are conducted on United States Fish and Wildlife refuges, and hunting with modern firearms on these refuges will endanger persons using the refuges for other purposes. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 14, 2005.

J. P. Koenings  
Director

**NEW SECTION**

**WAC 232-28-35100C Deer general seasons and special permits.** Notwithstanding the provisions of WAC 232-28-351, it is unlawful to hunt for deer in the following areas, during the following times, and for the type of deer shown except as provided for in this section:

(1) The Whitcomb A (deer area 3071) modern firearm special permit hunt is closed and a Whitcomb A muzzle loader special permit hunt is established with 5 permits for antlerless only deer during the period September 18 through September 24, 2005.

(2) The Paterson A (deer area 3072) modern firearm special permit hunt is closed and a Paterson A muzzle loader special permit hunt is established with 5 permits for antlerless only deer during the period September 18 through September 24, 2005.

(3) The Whitcomb B (deer area 3071) youth modern firearm special permit hunt is closed and a Whitcomb B youth muzzle loader hunt is established with 5 permits for antlerless only deer during the period September 11 through September 17, 2005.

(4) The Paterson B (deer area 3072) youth modern firearm special permit hunt is closed and a Paterson B youth muzzle loader hunt is established with 5 permits for antlerless only deer during the period September 11 through September 17, 2005.

**WSR 05-13-092  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-126—Filed June 15, 2005, 3:37 p.m., effective June 21, 2005, 6:00 a.m.]

Effective Date of Rule: June 21, 2005, 6:00 a.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-52-04000K and 220-52-04600B; and amending WAC 220-22-400, 220-52-040, and 220-52-046.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The Division of Shellfish Management and Catch Reporting Area 26A is necessary to meet state and tribal commercial harvest allocation plans. The limited commercial fishery in these Marine fish—Shellfish management and catch reporting areas are to take advantage of harvest opportunity and to maintain commercial harvest allocation plans. There is insufficient time to promulgate permanent rules.

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

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

Number of Sections Adopted on the Agency's Own Initiative: New 3, Amended 0, Repealed 2.

EMERGENCY

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

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

Date Adopted: June 15, 2005.

J. P. Koenings  
Director  
by Larry Peck

#### NEW SECTION

**WAC 220-22-40000G Marine fish-shellfish management and catch reporting areas, Puget Sound** Notwithstanding the provisions of WAC 220-22-400, effective 6:00 a.m. June 21, 2005 until further notice Marine Fish-Shellfish Management and Catch Reporting Area 26A shall be defined by the following boundaries:

(1) Area 26A-W is defined as waters of Area 26A except those contiguous waters north and east of a line which extends from Possession Point to the shipwreck located 0.8 nautical miles north of Picnic Point.

(2) Area 26A-E is defined as contiguous waters of 26A north and east of a line from Possession Point to the shipwreck located 0.8 nautical miles north of Picnic Point.

#### NEW SECTION

**WAC 220-52-04000L Commercial crab fishery—Exceptions to permanent rules for pot limits.** Notwithstanding the provisions of WAC 220-52-040, effective 6:00 a.m. June 21, 2005 through 9:00 p.m. June 22, 2005 it is unlawful for any person to fish for crabs for commercial purposes with more than 30 pots per license, per buoy tag number in all waters of Marine Fish-Shellfish Management and Catch Reporting Areas 24A, 24B, 24C and 26A-E. The remaining 70 buoy tags per license must be onboard the designated vessel and available for inspection in the pot limited area.

#### NEW SECTION

**WAC 220-52-04600C Crab fishery—Seasons and areas.** Notwithstanding the provisions of WAC 220-52-046:

(1) Effective 6:00 a.m. June 21 through 9:00 p.m. June 22, 2005, it is lawful to fish for Dungeness Crab for commercial purposes in Marine Fish Shellfish Catch Areas 24A, 24B, 24C and 26A-E.

(2) All other provisions of WAC 220-52-046 remain in effect.

#### REPEALER

The following sections of the Washington Administrative Code are repealed effective 6:00 a.m. June 1, 2005:

WAC 220-52-04000K Commercial crab fishery—Exceptions to permanent rules for pot limits. (05-42)

WAC 220-52-04600B Crab fishery—Seasons and areas. (05-42)

#### WSR 05-13-106

#### EMERGENCY RULES

#### HEALTH CARE AUTHORITY

(Basic Health)

[Order 05-04—Filed June 17, 2005, 9:16 a.m., effective August 1, 2005]

Effective Date of Rule: August 1, 2005.

**Purpose:** The 2005 legislature passed HB 1170, making students under a temporary visa to study in the United States ineligible for subsidized Basic Health coverage. Basic Health rules must be updated to be consistent with that requirement.

**Citation of Existing Rules Affected by this Order:** Amending WAC 182-25-010 and 182-25-040.

**Statutory Authority for Adoption:** RCW 70.47.050.

**Other Authority:** Chapter 188, Laws of 2005.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

**Reasons for this Finding:** Chapter 188, Laws of 2005, becomes effective July 24, 2005, and current rules must be changed to be consistent with the requirements of that law. Because Basic Health coverage is provided on monthly basis, rules must be changed effective August 1, 2005. Draft rules are to be filed June 17, 2005, but the time requirements of notice and opportunity to comment make it impossible to adopt permanent rules to be effective by August 1.

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

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

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

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

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

Date Adopted: June 17, 2005.

Cyndi Presnell  
Rules Coordinator

**AMENDATORY SECTION** (Amending Order 04-03, filed 11/5/04, effective 1/1/05)

**WAC 182-25-010 Definitions.** The following definitions apply throughout these rules.

(1) "Administrator" means the administrator of the Washington state health care authority (HCA) or designee.

(2) "Appeal procedure" means a formal written procedure for resolution of problems or concerns raised by enrollees which cannot be resolved in an informal manner to the enrollee's satisfaction.

(3) "Basic health plan" (or "BHP") means the system of enrollment and payment for basic health care services administered by the administrator through managed health care systems.

(4) "BHP Plus" means the program of expanded benefits available to children through coordination between the department of social and health services (DSHS) and basic health plan. Eligibility for BHP Plus is determined by the department of social and health services, based on Medicaid eligibility criteria. To be eligible for the program children must be under age nineteen, with a family income at or below two hundred percent of federal poverty level, as defined by the United States Department of Health and Human Services. They must be Washington state residents, not eligible for Medicare, and may be required to meet additional DSHS eligibility requirements.

(5) "Co-payment" means a payment indicated in the schedule of benefits which is made by an enrollee to a health care provider or to the MHCS.

(6) "Covered services" means those services and benefits in the BHP schedule of benefits (as outlined in the member handbook issued to the enrollee, or to a subscriber on behalf of the enrollee), which an enrollee shall be entitled to receive from a managed health care system in exchange for payment of premium and applicable co-payments, coinsurance and deductible.

(7) "Disenrollment" means the termination of coverage for a BHP enrollee.

(8) "Effective date of enrollment" means the first date, as established by BHP, on which an enrollee is entitled to receive covered services from the enrollee's respective managed health care system.

(9) "Dependent," as it applies to the subsidized or non-subsidized programs, means:

(a) The subscriber's lawful spouse, not legally separated, who resides with the subscriber; or

(b) The unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, legal guardianship, or placement pending adoption, who is:

(i) Younger than age nineteen, and who has not been relinquished for adoption by the subscriber or the subscriber's dependent spouse; or

(ii) Younger than age twenty-three, and a registered student at an accredited secondary school, college, university, technical college, or school of nursing, attending full time, other than during holidays, summer and scheduled breaks; or

(c) A person of any age who is incapable of self-support due to disability, and who is the unmarried child of the subscriber or the subscriber's dependent spouse, whether by birth, adoption, or legal guardianship; or

(d) An unmarried child younger than age nineteen who is residing with the subscriber under an informal guardianship agreement. For a child to be considered a dependent of the subscriber under this provision:

(i) The guardianship agreement must be signed by the child's parent;

(ii) The guardianship agreement must authorize the subscriber to obtain medical care for the child;

(iii) The subscriber must be providing at least fifty percent of the child's support; and

(iv) The child must be on the account for BHP coverage.

(10) "Eligible full-time employee" means an employee who meets all eligibility requirements in WAC 182-25-030 and who is regularly scheduled to work thirty or more hours per week for an employer. The term includes a self-employed individual (including a sole proprietor or a partner of a partnership, and may include an independent contractor) if the individual:

(a) Is regularly scheduled to work thirty hours or more per week; and

(b) Derives at least seventy-five percent of his or her income from a trade or business that is licensed to do business in Washington.

Persons covered under a health benefit plan pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements.

(11) "Eligible part-time employee" means an employee who meets all the criteria in subsection (10) of this section, but who is regularly scheduled to work fewer than thirty hours per week for an employer.

(12) "Employee" means one who is in the employment of an employer, as defined by RCW 50.04.080.

(13) "Employer" means an enterprise licensed to do business in Washington state, as defined by RCW 50.04.080, with employees in addition to the employer, whose wages or salaries are paid by the employer.

(14) "Enrollee" means a person who meets all applicable eligibility requirements, who is enrolled in BHP, and for whom applicable premium payments have been made.

(15) "Family" means an individual or an individual and eligible spouse and dependents. For purposes of eligibility determination and enrollment in BHP, an individual cannot be a member of more than one family.

(16) "Financial sponsor" means a person, organization or other entity, approved by the administrator, that is responsible for payment of all or a designated portion of the monthly premiums on behalf of a subscriber and any dependents.

(17) "Gross family income" means total cash receipts, as defined in (a) of this subsection, before taxes, from all sources, for subscriber and dependents whether or not they are enrolled in BHP, with the exceptions noted in (b) of this subsection. An average of documented income received over a period of several months will be used for purposes of eligibility determination, unless documentation submitted confirms a change in circumstances so that an average would not be an accurate reflection of current income. A twelve-month average will be used when calculating gambling income, lump-sum payments, and income from capital gains. A twelve-month history of receipts and expenses will be required for calculating self-employment or rental income unless the applicant or enrollee has not owned the business for at least twelve months.

(a) Income includes:

(i) Wages, tips and salaries before any deductions;

(ii) Net receipts from nonfarm self-employment (receipts from a person's own business, professional enterprise, or partnership, after deductions for business expenses). In calculating net self-employment income, deductions will not be allowed for noncash-flow items such as depreciation, amortization, or business use of home, and a net loss from this calculation will not be used to offset other income sources;

(iii) Net receipts from farm self-employment (receipts from a farm which one operates as an owner, renter, or sharecropper, after deductions for farm operating expenses). In calculating net self-employment income, deductions will not be allowed for noncash-flow items such as depreciation, amortization, or business use of home, and a net loss from this calculation will not be used to offset other income sources;

(iv) Periodic payments from Social Security, railroad retirement, military pension or retirement pay, military disability pensions, military disability payments, government employee pensions, private pensions, unemployment compensation, and strike benefits from union funds;

(v) One-time insurance payments other than reimbursement for a loss, periodic insurance or annuity payments, and compensation for injury other than reimbursement for medical costs, including workers' compensation;

(vi) Public assistance, alimony, child support, and military family allotments;

(vii) Work study, assistantships, or training stipends;

(viii) Dividends and interest accessible to the enrollee without a penalty for early withdrawal;

(ix) Net rental income, net royalties, and net gambling or lottery winnings;

(x) Lump sum inheritances and periodic receipts from estates or trusts; and

(xi) Net income from capital gains.

(b) Income does not include the following types of money received:

(i) Any assets drawn down as withdrawals from a bank, the sale of property, a house or a car;

(ii) Tax refunds, gifts, loans;

(iii) Noncash receipts, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits, food or housing received in lieu of wages, the value of food and fuel produced and consumed on farms, the imputed value of rent from owner-occupied nonfarm or farm housing, goods or services received due to payments a trust makes to a third party, and such noncash benefit programs as Medicare, Medicaid, food stamps, school lunches, state supplementary payment income that is specifically dedicated to reimburse for services received, and housing assistance;

(iv) Income earned by dependent children with the exception of distributions from a corporation, partnership, or business;

(v) Income of a family member who resides in another household when such income is not available to the subscriber or dependents seeking enrollment in BHP;

(vi) College or university scholarships, grants, and fellowships;

(vii) Payments from the department of social and health services adoption support program authorized under RCW 26.33.320 and 74.13.100 through 74.13.145;

(viii) Documented child care expenses for the care of a dependent child of a subscriber may be deducted (at a rate set by the administrator and consistent with Internal Revenue Service requirements) when calculating gross family income. To qualify for this deduction:

(A) The subscriber and the spouse listed as a dependent on the account, if any, must be employed or attending school full-time during the time the child care expenses were paid; and

(B) Payment may not be paid to a parent or stepparent of the child or to a dependent child of the subscriber or his/her spouse.

(18) "Home care agency" means a private or public agency or organization that administers or provides home care services directly or through a contract arrangement to ill, disabled, or infirm persons in places of temporary or permanent residence, and is licensed by the department of social and health services (DSHS) as a home care agency. In order to qualify, the agency must be under contract with one of the following DSHS programs: Chore, Medicaid Personal Care, Community Options Program Entry System (COPES) or Respite Care (up to level three).

(19) "Institution" means a federal, state, county, city or other government correctional or detention facility or government-funded facility where health care historically has been provided and funded through the budget of the operating agency, and includes, but is not limited to: Washington state department of corrections institutions; federal, county and municipal government jail and detention institutions; Washington state department of veterans affairs soldiers' and veterans' homes; department of social and health services state hospitals and facilities and juvenile rehabilitation institutions and group homes. An institution does not include: Educational institutions; government-funded acute health care or mental health facilities except as provided above; chemical dependency facilities; and nursing homes.

(20) "Institutionalized" means to be confined, voluntarily or involuntarily, by court order or health status, in an institution, as defined in subsection (19) of this section. This does not include persons on work release or who are residents of higher education institutions, acute health care facilities, alcohol and chemical dependency facilities, or nursing homes.

(21) "Insurance broker" or "agent" means a person who is currently licensed as a disability insurance broker or agent, according to the laws administered by the office of the insurance commissioner under chapter 48.17 RCW.

(22) "Managed health care system" (or "MHCS") means:

(a) Any health care organization (including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof) which has entered into a contract with the HCA to provide basic health care services; or

(b) A self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(23) "Maternity benefits through medical assistance," also known as S-Medical, means the coordinated program between BHP and DSHS for eligible pregnant women. This

program includes all Medicaid benefits, including maternity coverage. Eligible members must be at or below one hundred eighty-five percent of the federal poverty level. Eligibility for this program is determined by DSHS, based on Medicaid eligibility criteria.

(24) "Medicaid" means the Title XIX Medicaid program administered by the department of social and health services, and includes the medical care programs provided to the "categorically needy" and the "medically needy" as defined in chapter 388-503 WAC.

(25) "Medicare" means programs established by Title XVIII of Public Law 89-97, as amended, "Health Insurance for the Aged and Disabled."

(26) "Nonsubsidized enrollee" or "full premium enrollee" means an individual who enrolls in BHP, as the subscriber or dependent, and who pays or on whose behalf is paid the full costs for participation in BHP, without subsidy from the HCA.

(27) "Open enrollment" means a time period designated by the administrator during which enrollees may enroll additional dependents or apply to transfer their enrollment from one managed health care system to another.

(28) "Participating employee" means an employee of a participating employer or home care agency who has met all the eligibility requirements and has been enrolled for coverage under BHP.

(29) "Participating employer" means an employer who has been approved for enrollment in BHP as an employer group.

(30) "Preexisting condition" means any illness, injury or condition for which, in the six months immediately preceding an enrollee's effective date of enrollment in BHP:

(a) Treatment, consultation or a diagnostic test was recommended for or received by the enrollee; or

(b) Medication was prescribed or recommended for the enrollee; or

(c) Symptoms existed which would ordinarily cause a reasonably prudent individual to seek medical diagnosis, care or treatment.

(31) "Premium" means a periodic payment, determined under RCW 70.47.060(2), which an individual, an employer, a financial sponsor, or other entity makes to BHP for enrollment in BHP.

(32) "Program" means subsidized BHP, nonsubsidized BHP, BHP Plus, maternity benefits through medical assistance, or other such category of enrollment specified within this chapter.

(33) "Provider" or "health care provider" means a health care professional or institution duly licensed and accredited to provide covered services in the state of Washington.

(34) "Rate" means the amount, including administrative charges and any applicable premium and prepayment tax imposed under RCW 48.14.0201, negotiated by the administrator with and paid to a managed health care system, to provide BHP health care benefits to enrollees.

(35) "Schedule of benefits" means the basic health care services adopted and from time to time amended by the administrator, which an enrollee shall be entitled to receive from a managed health care system in exchange for payment

of premium and applicable co-payments, as described in the member handbook.

(36) "Service area" means the geographic area served by a managed health care system as defined in its contract with HCA.

(37) "Subscriber" is a person who applies to BHP on his/her own behalf or on behalf of his/her dependents, if any, who is responsible for payment of premiums and to whom BHP sends notices and communications. The subscriber may be a BHP enrollee or the spouse, parent, or guardian of an enrolled dependent and may or may not be enrolled for coverage. Notices to a subscriber and, if applicable, a financial sponsor or employer shall be considered notice to the subscriber and his/her enrolled dependents.

(38) "Subsidized enrollee" or "reduced premium enrollee" means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income does not exceed twice the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA. Full-time students who have received a temporary visa to study in the United States are not eligible to enroll as subsidized enrollees. To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual who enrolls in BHP, either as the subscriber or an eligible dependent, whose current gross family income is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal Department of Health and Human Services, and who receives a premium subsidy from the HCA.

(39) "Subsidy" means the difference between the amount of periodic payment the HCA makes to a managed health care system on behalf of a subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(40) "Washington state resident" or "resident," for purposes of this chapter, means a person who physically resides and maintains a residence in the state of Washington.

(a) To be considered a Washington resident, enrollees who are temporarily out of Washington state for any reason:

(i) May be required to demonstrate their intent to return to Washington state; and

(ii) May not be out of Washington state for more than three consecutive calendar months.

(b) Dependent children who meet the requirements of subsection (9)(b)(ii) of this section and are attending school out-of-state may be considered to be residents if they are out-of-state during the school year, provided their primary residence is in Washington state and they return to Washington state during breaks. Dependent children attending school out-of-state may also be required to provide proof that they pay out-of-state tuition, vote in Washington state and file their federal income taxes using a Washington state address.

(c) "Residence" may include, but is not limited to:

(i) A home the person owns or is purchasing or renting;

(ii) A shelter or other physical location where the person is staying in lieu of a home; or

- (iii) Another person's home.

**AMENDATORY SECTION** (Amending Order 04-03, filed 11/5/04, effective 1/1/05)

**WAC 182-25-040 Enrollment in the plan.** (1) Any individual applying for enrollment in BHP must submit a signed, completed BHP application for enrollment. Applications for enrollment of children under the age of eighteen must be signed by the child's parent or guardian, who shall also be held responsible for payment of premiums due on behalf of the child. If an applicant is accepted for enrollment, the applicant's signature acknowledges the applicant's obligation to pay the monthly premium in accordance with the terms and conditions identified in the member handbook. Applications for BHP Plus enrollment on behalf of children under the age of nineteen will be referred to the department of social and health services for Medicaid eligibility determination.

(2) Each applicant for subsidized enrollment or BHP Plus must list all eligible dependents, whether or not the dependents will be enrolled, and must supply other information and documentation as required by BHP and, where applicable, DSHS medical assistance.

(a) Applicants for subsidized enrollment must provide documentation showing the amount and sources of their gross family income. Income documentation must include a copy of the applicant's most recently filed federal income tax form or verification of nonfiling status, and copies of pay stubs or other documents showing income for the most recent thirty days or complete calendar month as of the date of application. Applicants who were not required to file a federal income tax return may be required to provide other documentation showing year-to-date income. As described in WAC 182-25-010(17), BHP may use an average of documented income when determining eligibility.

(b) Applicants for subsidized or nonsubsidized enrollment must provide documentation of Washington state residence, displaying the applicant's name and current address, for example, a copy of a current utility bill or rent receipt. Other documentation may be accepted if the applicant does not have a physical residence, for example, a signed statement from a person or other entity who is providing temporary shelter.

(c) BHP may request additional information from applicants for purposes of establishing or verifying eligibility, premium responsibility, immigration status, or MHCS selection.

(d) Submission of incomplete or inaccurate information may delay or prevent an applicant's enrollment in BHP. Intentional submission of false information will result in disenrollment of the subscriber and all enrolled dependents.

(3) Each member may be enrolled in only one BHP account. Each family applying for enrollment must designate a MHCS from which the applicant and all enrolled dependents will receive covered services. All applicants from the same family who are covered under the same account must receive covered services from the same MHCS (with the exception of cases in which a subscriber who is paying for BHP coverage for his/her dependent who lives in a different service area). No applicant will be enrolled for whom desig-

nation of a MHCS has not been made as part of the application for enrollment. Procedures for the selection of MHCS are set forth in the BHP member handbook. Generally, enrollees may change from one MHCS to another only during open enrollment or if they are able to show good cause for the transfer, for example, when enrollees move to an area served by a different MHCS or where they would be billed a higher premium for their current MHCS.

(4) When a MHCS assists BHP applicants in the enrollment process, it must provide them with the toll-free number for BHP and information on all MHCS available within the applicant's county of residence and the estimated premiums for each available MHCS.

(5) If specific funding has been appropriated for that purpose, insurance brokers or agents who have met all statutory and regulatory requirements of the office of the insurance commissioner, are currently licensed through the office of the insurance commissioner, and who have completed BHP's training program, will be paid a commission for assisting eligible applicants to enroll in BHP.

(a) Individual policy commission: Subject to availability of funds, and as a pilot program, BHP will pay a one-time fee to any currently licensed insurance broker or agent who sells BHP to an eligible individual applicant if that applicant has not been a BHP member within the previous five years.

(b) Group policy commission: Subject to availability of funds, and as a pilot program, fees paid for the sale of BHP group coverage to an eligible employer will be based on the number of employees in the group for the first and second months of the group's enrollment.

(c) Insurance brokers or agents must provide the prospective applicant with the BHP toll-free information number and inform them of BHP benefits, limitations, exclusions, waiting periods, co-payments, all MHCSs available to the applicant within his/her county of residence and the estimated premium for each of them.

(d) All statutes and regulations of the office of the insurance commissioner will apply to brokers or agents who sell BHP, except they will not be required to be appointed by the MHCS.

(e) BHP will not pay renewal commissions.

(6) Except as provided in WAC 182-25-030(7), applications for enrollment will be reviewed by BHP within thirty days of receipt and those applicants satisfying the eligibility criteria and who have provided all required information, documentation and premium payments will be notified of their effective date of enrollment.

(7)(a) Eligible applicants will be enrolled in BHP in the order in which their completed applications, including all required documentation, have been received by BHP, provided that:

(i) At least one MHCS is accepting new enrollment in the program for which the applicant is applying and from the geographic area where the applicant lives; and

(ii) The applicant also remits full payment of the first premium bill to BHP by the due date specified by BHP.

(b) In the event a waiting list is implemented, eligible applicants will be enrolled in accordance with WAC 182-25-030(6).

(8) An open enrollment period of at least twenty consecutive days will be held annually. During this open enrollment period, enrollees may apply to enroll additional family members or to transfer their enrollment to a different MHCS, provided the MHCS selected is accepting new enrollment for the enrollee's program in the geographic area where the enrollee lives.

(9) Not all family members are required to apply for enrollment in BHP; however, any family member for whom application for enrollment is not made at the same time that other family members apply, may not subsequently enroll as a family member until the next open enrollment period, unless the subscriber has experienced a "qualifying change in family status." "Qualifying changes in family status" include:

(a) The loss of other health care coverage, for a family member who has previously waived coverage, provided BHP receives the family member's application within thirty days of the loss of other coverage, along with proof of the family member's continuous medical coverage from the date the subscriber enrolled in BHP;

(b) Marriage or assuming custody or dependency of a child or adult dependent (other than newborn or newly adopted children), provided BHP receives the new family member's application within thirty days of the change in family status;

(c) Addition of an eligible newborn child or a child newly placed for adoption provided BHP receives the child's application for enrollment within sixty days of the date of birth or placement for adoption. These children may be enrolled effective from the date of birth or placement for adoption; or

(d) Addition of a family member who was not previously eligible for coverage, and who has become eligible.

(10) Subscribers must notify BHP of any changes that could affect their eligibility or subsidy or their dependents' eligibility or subsidy:

(a) Within thirty days of the end of the first month of receiving an increased income; or

(b) Within thirty days of a change other than an income change (for example, a change in family size or address).

(11) BHP will verify the continuing eligibility of subsidized enrollees through the recertification process at least once every twelve months. Upon request of BHP, subsidized enrollees must submit evidence satisfactory to BHP, proving their continued eligibility for enrollment and for the premium subsidy they are receiving.

(a) BHP will verify income of subsidized enrollees through comparison with other state and federal agency records or other third-party sources.

(b) If the enrollee's income on record with other agencies or third-party source differs from the income the enrollee has reported to BHP, or if questions arise concerning the documentation submitted, BHP will require updated documentation from the enrollee to prove continued eligibility for the subsidy they are receiving. At that time, BHP may also require updated documentation of residence to complete the recertification process.

(c) Subsidized enrollees who have been enrolled in BHP six months or more and have not provided updated income documentation for at least six months will be required to sub-

mit new income documentation if their wage or salary income cannot be compared to an independent source for verification.

(12) In addition to verification of income, subsidized and nonsubsidized enrollees must annually submit documentation satisfactory to BHP of the following:

(a) Washington state residence;

(b) Full-time student status for dependent students age nineteen through twenty-two; and

(c) Medicare ineligibility for enrollees age sixty-five or over.

(13) When determining eligibility for subsidized enrollment, noncitizens may be required to provide proof of immigration status, to verify whether they are here on a temporary visa to study in the United States.

(14) For good cause such as, but not limited to, when information received indicates a change in income or a source of income the enrollee has not reported, BHP may require enrollees to provide verification required in subsections (11) and (12) of this section more frequently, regardless of the length of time since their last recertification.

~~((14))~~ (15) Enrollees who fail to comply with a recertification request will be disenrolled, according to the provisions of WAC 182-25-090 (2)(e).

~~((15))~~ (16) If, as a result of recertification, BHP determines that an enrollee has not reported income or income changes accurately, the enrollee will be subject to the provisions of WAC 182-25-085.

## WSR 05-13-142

### EMERGENCY RULES

### BUILDING CODE COUNCIL

[Filed June 21, 2005, 10:16 a.m., effective July 1, 2005]

Effective Date of Rule: July 1, 2005.

Purpose: To amend the Washington State Energy Code to provide an exemption for residential cooling units 54,000 Btu/h and less from having to install an economizer.

Citation of Existing Rules Affected by this Order: Amending WAC 51-11-1423.

Statutory Authority for Adoption: RCW 19.27A.022, 19.27A.025, and 19.27A.045.

Other Authority: Chapters 19.27 and 34.05 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The state Building Code Council (council), based on the following good cause, finds that an emergency affecting the general welfare of the state of Washington exists. The council further finds that immediate amendment of a certain council rule is necessary for the public welfare and that observing the time requirements of notice and opportunity to comment would be contrary to the public interest.



The declaration of emergency affecting the general welfare of the state of Washington is based on the following findings:

The Washington State Energy Code amendment to Section 1423 contained herein as adopted by the council under emergency rule making pursuant to RCW 34.05.350, will provide economic relief to residential homeowners by reinstating the same economizer threshold as the previous code. To conserve energy and provide relief from rising energy costs, the state Building Code Council amended the economizer requirements under their authority in RCW 19.27A.045. The council lowered the threshold for cooling units installed outdoors or in a mechanical room adjacent to outdoors from 54,000 Btu/h to 20,000 Btu/h.

This change may have unanticipated consequences for residential buildings. This could ultimately result in undue expense for homeowners for equipment that may not be necessary in residential applications. The council finds this may be an economic burden and immediate adoption of this amendment is necessary so as to preempt the new regulation coming into place July 1, 2005. The council finds it should not impose the new standards on residential buildings. The amendment herein takes into consideration the general welfare of the public by reverting back to the previous economizer requirement for residential buildings. The council also has taken the necessary steps to adopt a permanent rule. The permanent rule will not be effective until the end of the 2006 legislative session as per RCW 19.27.074.

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

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

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

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

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

Date Adopted: June 10, 2005.

John Neff  
Council Chair

**AMENDATORY SECTION** (Amending WSR 05-01-013, filed 12/2/04, effective 7/1/05)

**WAC 51-11-1423 Economizers.** Economizers meeting the requirements of Section 1413 shall be installed on:

a. Cooling units installed outdoors or in a mechanical room adjacent to outdoors having a total cooling capacity greater than 20,000 Btu/h including those serving computer server rooms, electronic equipment, radio equipment, telephone switchgear; and

b. Other cooling units with a total cooling capacity greater than 54,000 Btu/h, including those serving computer

server rooms, electronic equipment, radio equipment, and telephone switchgear.

**Exception:** For Group R Occupancy, economizers meeting the requirements of Section 1413 shall be installed on single package unitary fan-cooling units having a total cooling capacity greater than 54,000 Btu/h.

The total capacity of all units without economizers (i.e., those units with a total cooling capacity less than a. and b. above) shall not exceed 240,000 Btu/h per building, or 10% of its aggregate cooling (economizer) capacity, whichever is greater. That portion of the equipment serving Group R Occupancy is not included in determining the total capacity of all units without economizers in a building.

**WSR 05-13-144**  
**EMERGENCY RULES**  
**BUILDING CODE COUNCIL**

[Filed June 21, 2005, 10:19 a.m., effective July 1, 2005]

Effective Date of Rule: July 1, 2005.

Purpose: To amend chapter 51-50 WAC, State Building Code adoption and amendment of the 2003 edition of the International Building Code, to eliminate the wired glass safety glazing exception in Section 2406.1.2.

Citation of Existing Rules Affected by this Order: Amending [new section] WAC 51-50-2406.

Statutory Authority for Adoption: RCW 19.27.031 and 19.27.074.

Other Authority: Chapters 19.27 and 34.05 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The state Building Code Council (council), based on the following good cause, finds that an emergency affecting the general welfare of the state of Washington exists. The council further finds that immediate amendment of certain council rules is necessary for the public welfare and that observing the time requirements of notice and opportunity to comment would be contrary to the public interest.

The declaration of emergency affecting the general welfare of the state of Washington is based on the following findings:

The council's adoption of chapter 51-50 WAC, the state amended 2003 edition of the International Building Code (IBC), published by the International Code Council (ICC), took effect July 1, 2004. The membership of the ICC voted in 2004 to delete an exception in the IBC allowing wired glass installed in hazardous locations to meet a safety standard different than that of other types of glass. In reviewing the actions of the ICC, the council found compelling reason to adopt immediately the amended version of Section 2406.1 found in the 2004 supplement to the IBC.

The council finds that wired glass installed in hazardous locations where it may be subject to human impact poses a significant threat to the life safety of the citizens of the state

of Washington. When broken, the exposed wire mesh pose a significant risk and can cause severe injury to entrapped limbs or impacting body parts. Wired glass manufactured to ANSI Z97.1 is more prone to breakage than other safety glazing products produced. Consumer Products Safety Commission surveillance data show over 2,500 glass door injuries per year in the United States. Experts estimate that 90% of these injuries involved wired glass. In light of these findings, the council determined that the exception allowing wired glass conforming to ANSI Z97.1 should be deleted from the Washington State Building Code.

The amendment herein takes into consideration the general welfare and safety of the public by requiring wired glass to meet Consumer Products Safety Commission 16 C.F.R. part 1201. In order to provide immediate relief, the council finds it necessary to adopt the amendment as an emergency rule. The council also has taken the necessary steps to adopt a permanent rule. The permanent rule will not be effective until the end of the 2006 legislative session as per RCW 19.27.074.

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

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

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

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

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

Date Adopted: June 10, 2005.

John Neff  
Council Chair

## NEW SECTION

**WAC 51-50-2406 Section 2406—Safety glazing.**

**2406.1.2 Wired glass.** This section is not adopted.

**WSR 05-13-164**

**EMERGENCY RULES**

**DEPARTMENT OF REVENUE**

[Filed June 21, 2005, 3:42 p.m., effective July 1, 2005]

Effective Date of Rule: July 1, 2005.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: Emergency rule findings are required, see below.

Purpose: RCW 82.72.020 requires the department to collect certain telephone program excise taxes. Those taxes include the tax on switched access lines imposed by RCW 43.20A.725 (Telephone relay service) and 80.36.430 Wash-

ington telephone assistance program. Pursuant to those statutes, the department must annually determine the rate of each tax according to the statutory formulas. This new rule, WAC 458-20-270 Telephone program excise tax rates, provides those rates.

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

Other Authority: RCW 43.20A.725 and 80.36.430.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: RCW 43.20A.725 and 80.36.430 require the department to determine the tax rates applicable under each statute. Those rates apply on a fiscal year basis. Therefore, the rule determining those rates must take effect no later than July 1, 2005, so that the correct tax rates are in effect and revenue can be collected to fund the operation of the programs.

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

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

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

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

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

Date Adopted: June 21, 2005.

Janis P. Bianchi, Manager  
Interpretations and  
Technical Advice Unit

## NEW SECTION

**WAC 458-20-270 Telephone program excise tax rates.** RCW 82.72.020 requires the department of revenue (department) to collect certain telephone program excise taxes. Those taxes include the tax on switched access lines imposed by RCW 43.20A.725 (Telephone relay service - TRS) and 80.36.430 (Washington telephone assistance program - WTAP). Pursuant to those statutes, the department must annually determine the rate of each respective tax according to the statutory formulas.

For the period July 1, 2005 - June 30, 2006, the monthly telephone program excise tax rates are as follows:

TRS	10 cents per switched access line
WTAP	14 cents per switched access line

## WSR 05-13-168

## EMERGENCY RULES

## DEPARTMENT OF AGRICULTURE

[Filed June 21, 2005, 3:54 p.m., effective June 21, 2005]

Effective Date of Rule: Immediately.

Purpose: This rule-making order amends WAC 16-752-505 Wetland and aquatic weed quarantine—Regulated articles, by adding *Glyceria maxima* to the list of aquatic plants prohibited from sale in Washington state.

Citation of Existing Rules Affected by this Order: Amending WAC 16-752-505.

Statutory Authority for Adoption: Chapters 17.10, 17.24, and 34.05 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The intrusion into this state of nonnative, invasive plant species is of grave and immediate concern. *Glyceria maxima*, an aquatic weed, has been identified in two ponds in Snohomish County. It requires early intervention to successfully eradicate, as it is known as a very aggressive colonizer of freshwater environments. The biological window of opportunity to eliminate this infestation before anticipated seed set is very brief and does not allow time to complete the permanent rule-making process. This rule is being adopted to protect the economic well-being of the nursery industry, and the environmental quality and natural resources of the state.

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

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

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

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

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

Date Adopted: June 21, 2005.

Valoria H. Loveland  
Director

**AMENDATORY SECTION** (Amending WSR 04-19-004, filed 9/2/04, effective 10/3/04)

**WAC 16-752-505 Wetland and aquatic weed quarantine—Regulated articles.** All plants and plant parts of the following are regulated articles under this chapter:

## Scientific Name

*Butomus umbellatus**Cabomba caroliniana**Crassula helmsii**Egeria densa**Epilobium hirsutum**Glossostigma diandrum**Glyceria maxima**Hydrilla verticillata**Hydrocharis morsus-ranae**Lagarosiphon major**Ludwigia hexapetala**Lysimachia vulgaris**Murdannia keisak**Myriophyllum aquaticum**Myriophyllum spicatum**Najas minor**Nymphoides peltata**Sagittaria graminea**Sagittaria platyphylla**Spartina alterniflora**Spartina anglica**Spartina densiflora**Spartina patens**Trapa natans**Trapa bicornus**Utricularia inflata*

## Common Name

flowering rush

fanwort

Australian swamp stonecrop

Brazilian elodea

hairy willow herb

mud mat

reed sweetgrass, tall manna grass

hydrilla

European frog-bit

African elodea

water primrose

garden loosestrife

marsh dew flower, Asian spiderwort

parrotfeather

Eurasian watermilfoil

slender-leaved naiad, brittle naiad

yellow floating heart

grass-leaved arrowhead

delta arrowhead

smooth cordgrass

common cordgrass

dense-flowered cordgrass

salt meadow cordgrass

water chestnut, bull nut

water caltrap, devil's pod, bat nut

swollen bladderwort

## WSR 05-13-172

## EMERGENCY RULES

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed June 21, 2005, 4:17 p.m., effective June 22, 2005]

Effective Date of Rule: June 22, 2005.

Purpose: The department's Division of Employment and Assistance Programs must amend WAC 388-273-0035 What we reimburse the local telephone company, to clarify payment limits for reimbursable services.

Citation of Existing Rules Affected by this Order: Amending WAC 388-273-0035.

Statutory Authority for Adoption: RCW 74.08.090, 80.36.440.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This change is necessary to keep the WTAP fund within budget. We are in the process of adopting a permanent rule change and the revisions have been released for public comment. However, an extension of the emergency rule is necessary to ensure that the more than 120,000 WTAP participants can continue to use this critical service.

The department has filed a proposed rule-making notice (WSR 05-12-133) to adopt this rule as permanent, and a public hearing is scheduled for July 5, 2005.

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

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

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

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

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

Date Adopted: June 9, 2005.

Andy Fernando, Manager  
Rules and Policies Assistance Unit

**AMENDATORY SECTION** (Amending WSR 04-13-136, filed 6/22/04, effective 7/23/04)

**WAC 388-273-0035 What we reimburse the local telephone company.** (1) Within available funding limits, we reimburse local telephone companies for fully documented administrative and program expenses associated with WTAP. The reimbursable expenses are limited to:

(a) Program services provided to eligible households June 1, 2003 and beyond, and after eligibility for WTAP is verified;

(i) Monthly flat rate service.

We reimburse the local telephone company an amount equal to the monthly flat rate of the incumbent local exchange carrier providing service in the customer's exchange area, minus the WTAP assistance rate set by the commission, and minus the amount of federal lifeline program reimbursement available to an eligible telecommunications carrier. An "incumbent local exchange carrier" is a telephone company in the U.S. that was providing local service when the Telecommunications Act of 1996 was enacted, and is required to file tariffs with the commission. For all exchange areas, the WTAP reimbursement shall be limited to not more than nineteen dollars for each eligible household.

(ii) Connection fee.

We reimburse the local telephone company an amount equal to one-half the connection fee rate or twenty-two dol-

lars, whichever is less, for your first connection at a given address. If you move, we will reimburse the local telephone company for your first connection at the new address.

(iii) Waiver of local deposit.

We reimburse the local telephone company an amount up to two times the WTAP assistance rate.

(b) Correct, verifiable billing items;

(c) One monthly invoice and supporting documentation submitted and received by WTAP by the fifteenth day following the month the expense occurred;

(d) Items charged in error that have been corrected within thirty days from the date we return the report of invoicing error to the local phone company;

(e) Salaries and benefits for time required to implement and maintain WTAP, with the exception that time required for the correction of billing, case number and client identification errors is not an allowable expense;

(f) Travel expenses for attending hearings, meetings, or training pertaining to WTAP;

(g) Expenses for supplies and materials for implementing and maintaining WTAP;

(h) Postage and handling for delivery of WTAP material;

(i) Administrative charge for change of service orders specified by tariffs; and

(j) Preapproved documented indirect costs associated with implementing and maintaining WTAP.

**WSR 05-13-194  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-125—Filed June 22, 2005, 10:39 a.m., effective June 23, 2005, 7:00 p.m.]

Effective Date of Rule: June 23, 2005, 7:00 p.m.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-01000D; and amending WAC 220-33-010.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Sets the initial commercial fishing periods for the summer season. Harvestable upper Columbia summer chinook and sturgeon are available. Season is consistent with the 2005-2007 interim management agreement and the 2003-2005 sturgeon fishery management plan. Regulation is consistent with compact action of January 28, 2005, and June 15, 2005. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 21, 2005.

J. P. Koenings  
Director

**NEW SECTION**

**WAC 220-33-01000D Columbia River season below Bonneville.** Notwithstanding the provision of WAC 220-33-010, and 220-33-020, it is unlawful for a person to take or possess salmon or sturgeon taken for commercial purposes from Columbia River Salmon Management and Catch Reporting Areas 1A, 1B, 1C, 1D, and 1E, except as provided in the following subsections.

AREA: SMCRA 1A, 1B, 1C, 1D, and 1E

SEASON: 7 p.m. Thursday June 23 to 5 a.m. Friday June 24, 2005

7 p.m. Monday June 27 to 5 a.m. Tuesday June 28, 2005

7 p.m. Tuesday July 5 to 5 a.m. Wednesday July 6, 2005

GEAR: 8-inch minimum mesh and 9-3/4 inch maximum mesh. Shad nets are not allowed on board a vessel participating in the above fishery.

ALLOWABLE SALE: Chinook, coho, shad, and sturgeon. All sockeye and steelhead must be released immediately. A maximum of eight sturgeon may be possessed or sold by each participating vessel during each calendar week (Sunday through Saturday) that the fishery is open. The eight sturgeon possession/sales limit includes both mainstem and Select Area fisheries.

SANCTUARIES: Grays River, Elokomina-A, Cowlitz River, Kalama-A, Lewis-A, Washougal and Sandy Rivers.

OTHER: Quick reporting required for Washington wholesale dealers, WAC 220-69-240.

MISCELLANEOUS: As a condition of fishing, owners or operators of commercial fishing vessels must cooperate with Department observers or observers collecting data for the Department, when notified by the observer of their intent to board the commercial vessel for observation and sampling during an open fishery.

**REPEALER**

The following section of the Washington Administrative Code is repealed effective 5:01 a.m. July 6, 2005:

WAC 220-33-01000D Columbia River season below Bonneville.

**WSR 05-13-195  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-127—Filed June 22, 2005, 10:40 a.m., effective June 22, 2005]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-33-03000W and 220-33-03000X; and amending WAC 220-33-030.

Statutory Authority for Adoption: RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This regulation prohibits salmon nets to be on-board a vessel while shad fishing, when both salmon and shad fisheries are in place. Harvestable numbers of shad are expected in 2005. Incidental impacts to nontarget species are small. This rule is consistent with actions of the Columbia River Compact hearing of January 28, May 10, and June 15, 2005, and is consistent with requirements of the ESA. There is insufficient time to promulgate permanent regulations.

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

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

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

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

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

Date Adopted: June 21, 2005.

J. P. Koenings  
Director

**NEW SECTION**

**WAC 220-33-03000X Commercial shad—Columbia River.** Notwithstanding the provisions of WAC 220-33-030, it is unlawful to take, fish for or possess shad taken for commercial purposes except as provided for in this section:

Area: **Area 2S.** True north/south line through Light #50 near the mouth of the Sandy River upstream to the commercial fishing boundary near Beacon Rock.

Dates: Daily, 3:00 p.m. to 10:00 p.m. from: Immediately to June 24, 2005

Gear: Single-wall, unslackened, floater gill net, with breaking strength of less than 10 pounds. Mesh size: 5 3/8 inches to 6 1/4 inches. The net may not exceed 150 fathoms

EMERGENCY

in length nor 40 meshes in depth. No salmon nets are allowed on the vessel when both fisheries are open.

**Allowable Sale:** During the fishing periods provided in this section, only shad may be kept and sold. All salmonids, walleye and sturgeon must be immediately returned to the water and those alive must be released unharmed.

**Area: Washougal Reef.** Waters of Zone 4-5 inside a line commencing at the white six-second equal-interval light approximately 3/4 miles east of the Washougal Woolen Mill pipeline and projected westerly to the Washougal blinker light, thence to the four-second blinker light on the east end of Lady Island, thence easterly and along the shoreline of Lady Island to the State Highway 14 Bridge, thence easterly across the State Highway 14 Bridge to the mainland.

**Dates:** Daily, 8:00 p.m. to 12:00 a.m. from: Immediately to June 23, 2005

**Gear:** Single-wall, unslackened, floater gill net, with breaking strength of less than 30 pounds. Mesh size: 5 inches to 6 1/4 inches. No salmon nets are allowed on the vessel when both fisheries are open.

**Allowable Sale:** During the fishing periods provided in this section, only shad may be kept and sold. All salmonids, walleye and sturgeon must be immediately returned to the water and those alive must be released unharmed.

on night time fishing contained in this emergency rule. Commercial spot shrimp quotas will have been taken in the catch areas closed in this rule. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

**Date Adopted:** June 21, 2005.

J. P. Koenings  
Director

**REPEALER**

The following section of the Washington Administrative Code is repealed:

WAC 220-33-03000W Commercial shad—Columbia River. (05-100)

The following section of the Washington Administrative Code is repealed effective 10:01 p.m. June 24, 2005:

WAC 220-33-03000X Commercial shad—Columbia River.

**NEW SECTION**

**WAC 220-52-05100P Puget Sound shrimp pot and beam trawl fishery—Season.** Notwithstanding the provisions of WAC 220-52-051, effective immediately until further notice, it is unlawful to fish for shrimp for commercial purposes in Puget Sound except as provided for in this section:

(1) Shrimp pot gear:

(a) All waters of Shrimp Management Areas 1A, 1C, Crustacean Management Regions 2, 3, 4 and 6 outside the shrimp districts are open to the harvest of all shrimp species immediately, until further notice, except as provided for in this section:

i) It is unlawful to harvest shrimp for commercial purposes in Marine Fish/Shellfish Management and Catch Reporting Area 26D and those waters described in this section as 23A-C.

ii) The Port Townsend Shrimp District is open to the harvest of shrimp species other than spot shrimp, except those waters south of the 48.06' North latitude line, north of the 48.04' North latitude line and east of the 122.46' west longitude line are closed.

iii) Effective 1:00 pm June 23rd, until further notice, it is unlawful to harvest shrimp for commercial purposes in Fish/Shellfish Management and Catch Reporting Area 23AE.

(b) The shrimp trip limit accounting week is Monday through Sunday.

(c) Effective immediately, until further notice, it is unlawful for the combined total harvest of spot shrimp by a fisher and/or the fisher's alternate operator to exceed 600 pounds per week, or to exceed 300 pounds per week from Crustacean Management Regions 2, 4, 6, and in Fish/Shellfish Management and Catch Reporting Area 23B, or, through 12:59 p.m. June 23, 2005, to exceed 200 lbs in Fish/Shellfish Management and Catch Reporting Area 23A-E. Any fisher

EMERGENCY

**WSR 05-13-196  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Order 05-128—Filed June 22, 2005, 10:40 a.m., effective June 22, 2005]

**Effective Date of Rule:** Immediately.

**Purpose:** Amend commercial fishing rules.

**Citation of Existing Rules Affected by this Order:** Repealing WAC 220-52-05100N; and amending WAC 220-52-051.

**Statutory Authority for Adoption:** RCW 77.12.047.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

**Reasons for this Finding:** The 2005 state/tribal Puget Sound shrimp harvest management plans require adoption of harvest seasons, harvest reporting areas, and the prohibition

whose weekly shrimp harvest activity is exclusively limited to Marine Fish Shellfish Catch and Reporting Area 29, shall not be subject to the weekly spot shrimp trip limit for that week. It is unlawful to fish for any shrimp while in possession on board the fishing vessel spot shrimp harvested from the previous trip limit accounting week or weeks.

(d) It is unlawful to fish for shrimp for commercial purposes in Puget Sound using shellfish pot gear in more than one Marine Fish-Shellfish Management and Catch Reporting Area per day. Fishers may move all of their shellfish pot gear from one Marine Fish-Shellfish Management and Catch Reporting Area to another Marine Fish-Shellfish Management and Catch Reporting Area if a harvest report is made before the shellfish pot gear is moved. The harvest activity report must be made consistent with the provisions of WAC 220-52-075 and must also include the following additional information.

(i) The number of pots being moved to a new area and the Marine Fish-Shellfish Management and Catch Reporting Area that the pots are being moved to.

(e) It is unlawful to set or pull shellfish pots in one Marine Fish-Shellfish Management and Catch Reporting Area while in possession of shrimp harvested from another Marine Fish-Shellfish Management and Catch Reporting Area except shellfish pots may be set in a new fishing area subsequent to making a report as indicated in Section 1(e) above.

(f) For purposes of shrimp harvest allocation, fishing season, and catch reporting, Marine Fish-Shellfish Catch and Reporting Area 23A is divided into four subareas: 23A-E (east) is those waters of Catch Area 23A north of a line projected 48.22.50° N latitude east of a line projected 122.57°W longitude. 23A-W (west) is those waters of Catch Area 23A north of a line projected 48.22.50° N latitude and west of a line projected 122.57°W longitude. 23A-C (central) is those waters of Catch Area 23A south of a line projected 48.22.50° N latitude and east of a line projected 335 degrees true from the Dungeness lighthouse. 23A-S (south) is those waters of Catch Area 23A west of a line projected 335 degrees true from the Dungeness lighthouse.

(2) Shrimp beam trawl gear:

(a) Crustacean Management Region 3 outside of the shrimp districts is open immediately, until further notice.

(b) That portion of Marine Fish-Shellfish Management and Catch Reporting Area 22A within Shrimp Management Area 1B is open immediately, until further notice.

(c) It is unlawful to set or pull shrimp beam trawl gear from one hour after official sunset to one hour before official sunrise.

(3) All shrimp taken under this section must be sold to licensed Washington wholesale fish dealers.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-52-05100N	Puget Sound shrimp beam trawl fishery—Season (05-121)
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### WSR 05-13-199 EMERGENCY RULES DEPARTMENT OF FISH AND WILDLIFE

[Order 05-129—Filed June 22, 2005, 10:42 a.m., effective June 25, 2005, 12:01 a.m.]

Effective Date of Rule: June 25, 2005, 12:01 a.m.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order:  
Repealing WAC 232-28-61900D; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.240.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The closure date for retention of sturgeon was adopted because Washington and Oregon fish managers estimate that the harvest guideline of four hundred fish will be caught by June 25. There is insufficient time to promulgate permanent rules.

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

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

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

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

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

Date Adopted: June 21, 2005.

J. P. Koenings  
Director

#### NEW SECTION

**WAC 232-28-61900F Exceptions to statewide rules—Sturgeon, Columbia and Deep rivers.** Notwithstanding the provisions of WAC 232-28-619:

(1) Columbia River

(a) Effective July 5, 2005, until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River downstream of the Wauna powerline crossing at RM 40.

(b) Effective immediately until further notice, it is unlawful to retain sturgeon caught in those waters of the Columbia River and tributaries from Bonneville Dam upstream to the Dalles Dam.

(c) Effective June 25, 2005 until further notice, it is unlawful to retain sturgeon caught in those waters of the

Columbia River and tributaries from The Dalles Dam upstream to John Day Dam.

(2) Deep River – Effective July 5, 2005 until further notice, it is unlawful to retain sturgeon caught in those waters of the Deep River

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 a.m. June 25, 2005:

WAC 232-28-61900D      Exceptions to statewide  
rules—Sturgeon, Columbia  
and Deep rivers. (05-118)

EMERGENCY



OFFICE OF THE CODE REVISER  
 Quarterly Rule-Making Report  
 Covering Registers 05-07 through 05-12

Type of Activity	New	Amended	Repealed
<b>ACADEMIC ACHIEVEMENT AND ACCOUNTABILITY COMMISSION</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	2	0	1
Number of Rules Proposed for Permanent Adoption	3	0	1
Number of Rules Withdrawn	3	0	1
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	2	0	1
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>ACCOUNTANCY, BOARD OF</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	0	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	1	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	1	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	1	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>AGRICULTURE, DEPARTMENT OF</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	60	69	100
Number of Rules Adopted as Emergency Rules	17	3	0
Number of Rules Proposed for Permanent Adoption	60	35	66
Number of Rules Withdrawn	5	9	2
Number of Sections Adopted at Request of a Nongovernmental Entity	7	20	3
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	49	19	27
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	14	19	3
Number of Sections Adopted on the Agency's own Initiative	52	49	27
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	70	69	30
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>BELLEVUE COMMUNITY COLLEGE</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	10	5	0

MISC.

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	2	3	2
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	10	5	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	10	5	0
Number of Sections Adopted using Negotiated Rule Making	10	5	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

**BLIND, DEPARTMENT OF SERVICES FOR THE**

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	1	49	14
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	1	1
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	1	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	1
Number of Sections Adopted on the Agency's own Initiative	1	49	14
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

**COMMUNITY AND TECHNICAL COLLEGES, STATE BOARD FOR**

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	0	1	0

**COUNTY ROAD ADMINISTRATION BOARD**

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	0	4	0
Number of Rules Proposed for Permanent Adoption	0	3	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

**CRIMINAL JUSTICE TRAINING COMMISSION**

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	2	2	3
Number of Rules Proposed for Permanent Adoption	2	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	2	2	3
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0

MISC.

Type of Activity	New	Amended	Repealed
Number of Sections Adopted on the Agency's own Initiative	2	2	3
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

**DEAF, WASHINGTON STATE SCHOOL FOR THE**

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	0	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	1	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	1	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

**ECOLOGY, DEPARTMENT OF**

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	1	13	0
Number of Rules Adopted as Emergency Rules	33	0	0
Number of Rules Proposed for Permanent Adoption	14	0	0
Number of Rules Withdrawn	0	2	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	31	12	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	33	0	0
Number of Sections Adopted on the Agency's own Initiative	0	1	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

**EDUCATION, STATE BOARD OF**

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	2	7	8
Number of Rules Adopted as Emergency Rules	0	8	0
Number of Rules Proposed for Permanent Adoption	1	14	0
Number of Rules Withdrawn	0	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	2	9	8
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	1	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	2	15	8
Number of Sections Adopted using Negotiated Rule Making	2	15	8
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

MISC.

<b>Type of Activity</b>	<b>New</b>	<b>Amended</b>	<b>Repealed</b>
<b>EMPLOYMENT SECURITY DEPARTMENT</b>			
<b>Type of Activity</b>	<b>New</b>	<b>Amended</b>	<b>Repealed</b>
Number of Rules Adopted as Emergency Rules	7	5	1
Number of Rules Proposed for Permanent Adoption	4	0	9
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	7	5	1
Number of Sections Adopted on the Agency's own Initiative	0	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	7	5	1
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>ENVIRONMENTAL HEARINGS OFFICE</b>			
<b>Type of Activity</b>	<b>New</b>	<b>Amended</b>	<b>Repealed</b>
Number of Permanent Rules Adopted	49	0	0
Number of Rules Proposed for Permanent Adoption	0	5	0
Number of Rules Withdrawn	9	0	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>FINANCIAL MANAGEMENT, OFFICE OF</b>			
<b>Type of Activity</b>	<b>New</b>	<b>Amended</b>	<b>Repealed</b>
Number of Permanent Rules Adopted	0	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>FISH AND WILDLIFE, DEPARTMENT OF</b>			
<b>Type of Activity</b>	<b>New</b>	<b>Amended</b>	<b>Repealed</b>
Number of Permanent Rules Adopted	6	18	0
Number of Rules Adopted as Emergency Rules	85	0	74
Number of Rules Proposed for Permanent Adoption	5	31	0
Number of Rules Withdrawn	0	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0

MISC.

<b>Type of Activity</b>	<b>New</b>	<b>Amended</b>	<b>Repealed</b>
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	88	18	70
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>FOREST PRACTICES BOARD</b>			
<b>Type of Activity</b>	<b>New</b>	<b>Amended</b>	<b>Repealed</b>
Number of Permanent Rules Adopted	2	41	0
Number of Rules Proposed for Permanent Adoption	1	12	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	2	17	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	2	41	0
Number of Sections Adopted using Negotiated Rule Making	2	41	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>GAMBLING COMMISSION</b>			
<b>Type of Activity</b>	<b>New</b>	<b>Amended</b>	<b>Repealed</b>
Number of Permanent Rules Adopted	0	12	0
Number of Rules Proposed for Permanent Adoption	0	12	0
Number of Rules Withdrawn	0	2	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	1	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	7	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	2	0
Number of Sections Adopted on the Agency's own Initiative	0	9	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	12	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>HEALTH CARE AUTHORITY</b>			
<b>Type of Activity</b>	<b>New</b>	<b>Amended</b>	<b>Repealed</b>
Number of Rules Adopted as Emergency Rules	0	1	0
Number of Rules Proposed for Permanent Adoption	4	9	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	1	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	1	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

MISC.

<b>Type of Activity</b>	<b>New</b>	<b>Amended</b>	<b>Repealed</b>
<b>HEALTH CARE FACILITIES AUTHORITY</b>			
<b>Type of Activity</b>	<b>New</b>	<b>Amended</b>	<b>Repealed</b>
Number of Permanent Rules Adopted	0	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	1	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	1	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>HEALTH, DEPARTMENT OF</b>			
<b>Type of Activity</b>	<b>New</b>	<b>Amended</b>	<b>Repealed</b>
Number of Permanent Rules Adopted	10	77	9
Number of Rules Proposed for Permanent Adoption	78	43	45
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	4	63	7
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	1	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	2	0	2
Number of Sections Adopted on the Agency's own Initiative	6	80	8
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	9	73	9
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>HOME CARE QUALITY AUTHORITY</b>			
<b>Type of Activity</b>	<b>New</b>	<b>Amended</b>	<b>Repealed</b>
Number of Rules Proposed for Permanent Adoption	21	0	0
<b>HORSE RACING COMMISSION</b>			
<b>Type of Activity</b>	<b>New</b>	<b>Amended</b>	<b>Repealed</b>
Number of Permanent Rules Adopted	8	34	17
Number of Rules Adopted as Emergency Rules	2	18	3
Number of Sections Adopted at Request of a Nongovernmental Entity	0	1	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	9	51	11
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	10	50	10
Number of Sections Adopted using Negotiated Rule Making	10	51	11
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>INSURANCE COMMISSIONER, OFFICE OF</b>			
<b>Type of Activity</b>	<b>New</b>	<b>Amended</b>	<b>Repealed</b>
Number of Permanent Rules Adopted	36	23	4
Number of Rules Withdrawn	0	0	1
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0

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Type of Activity	New	Amended	Repealed
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	36	23	4
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	1	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>INTERAGENCY COMMITTEE, OFFICE OF THE</b>			
Type of Activity	New	Amended	Repealed
Number of Rules Withdrawn	2	0	0
<b>LABOR AND INDUSTRIES, DEPARTMENT OF</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	3	103	3
Number of Rules Adopted as Emergency Rules	0	4	0
Number of Rules Proposed for Permanent Adoption	54	80	20
Number of Sections Adopted at Request of a Nongovernmental Entity	0	3	1
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	3	82	2
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	1	0
Number of Sections Adopted on the Agency's own Initiative	3	105	2
Number of Sections Adopted using Negotiated Rule Making	0	21	0
Number of Sections Adopted using Other Alternative Rule Making	3	71	2
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>LICENSING, DEPARTMENT OF</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	11	32	0
Number of Rules Proposed for Permanent Adoption	12	7	0
Number of Rules Withdrawn	12	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	11	24	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	11	29	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	11	25	0
Number of Sections Adopted on the Agency's own Initiative	0	6	0
Number of Sections Adopted using Negotiated Rule Making	1	4	0
Number of Sections Adopted using Other Alternative Rule Making	11	25	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>LIQUOR CONTROL BOARD</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	17	3	6
Number of Rules Proposed for Permanent Adoption	2	10	3
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	17	3	6
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0

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Type of Activity	New	Amended	Repealed
Number of Sections Adopted on the Agency's own Initiative	17	3	6
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	17	3	6
Number of Sections Adopted using Pilot Rule Making	0	0	0

**LOTTERY, WASHINGTON STATE**

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	0	29	5
Number of Rules Adopted as Emergency Rules	0	2	0
Number of Rules Proposed for Permanent Adoption	0	17	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	31	5
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	31	5
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0

**NATURAL RESOURCES, DEPARTMENT OF**

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	0	5	0

**OLYMPIC COLLEGE**

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	2	20	1
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	2	20	1
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	2	20	1
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	2	20	1
Number of Sections Adopted using Pilot Rule Making	0	0	0

**PARKS AND RECREATION COMMISSION**

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	1	1	0
Number of Rules Withdrawn	0	0	1

**PENINSULA COLLEGE**

Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	0	1	3

**PERSONNEL, DEPARTMENT OF**

Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	306	25	790
Number of Rules Proposed for Permanent Adoption	46	29	790
Number of Rules Withdrawn	7	1	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0

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Type of Activity	New	Amended	Repealed
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	307	25	9
Number of Sections Adopted on the Agency's own Initiative	0	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	307	25	9
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>PILOTAGE COMMISSIONERS, BOARD OF</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	0	1	0
Number of Rules Proposed for Permanent Adoption	0	2	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	1	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	1	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	1	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>PUBLIC DISCLOSURE COMMISSION</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	0	6	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	6	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	0	6	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>PUBLIC INSTRUCTION, SUPERINTENDENT OF</b>			
Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	9	9	0
<b>RETIREMENT SYSTEMS, DEPARTMENT OF</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	12	46	20
Number of Rules Proposed for Permanent Adoption	13	47	20
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	10	37	19
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	12	46	20
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	12	44	20

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Type of Activity	New	Amended	Repealed
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>REVENUE, DEPARTMENT OF</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	0	2	0
Number of Rules Adopted as Emergency Rules	2	0	0
Number of Rules Proposed for Permanent Adoption	1	3	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	2	0	0
Number of Sections Adopted on the Agency's own Initiative	2	2	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	2	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>SECRETARY OF STATE</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	9	6	0
Number of Rules Adopted as Emergency Rules	4	12	2
Number of Rules Proposed for Permanent Adoption	3	2	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	1	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	5	9	0
Number of Sections Adopted on the Agency's own Initiative	2	3	2
Number of Sections Adopted using Negotiated Rule Making	3	1	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>SOCIAL AND HEALTH SERVICES, DEPARTMENT OF</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	187	75	116
Number of Rules Adopted as Emergency Rules	164	20	27
Number of Rules Proposed for Permanent Adoption	43	66	7
Number of Rules Withdrawn	12	0	14
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	311	68	104
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	165	10	1
Number of Sections Adopted in Order to Comply with Federal Statute	0	14	2
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	6	4	0
Number of Sections Adopted on the Agency's own Initiative	2	0	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	349	96	107
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>TAX APPEALS, BOARD OF</b>			
Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	15	63	53

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Type of Activity	New	Amended	Repealed
<b>TRANSPORTATION, DEPARTMENT OF</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	1	5	0
Number of Rules Proposed for Permanent Adoption	1	5	0
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	1	2	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	1	1	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	1	1	0
Number of Sections Adopted on the Agency's own Initiative	1	2	0
Number of Sections Adopted using Negotiated Rule Making	0	1	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>UNIVERSITY OF WASHINGTON</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	4	19	1
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	4	19	1
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	4	19	1
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	7	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>UTILITIES AND TRANSPORTATION COMMISSION</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	7	29	13
Number of Rules Proposed for Permanent Adoption	12	11	13
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	0	0	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	0	0	0
Number of Sections Adopted on the Agency's own Initiative	6	29	13
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	0	0	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>WASHINGTON STATE PATROL</b>			
Type of Activity	New	Amended	Repealed
Number of Permanent Rules Adopted	33	42	1
Number of Rules Proposed for Permanent Adoption	50	68	1
Number of Sections Adopted at Request of a Nongovernmental Entity	0	0	0
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	33	40	0
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	0	0	0
Number of Sections Adopted in Order to Comply with Federal Statute	0	0	0
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	33	40	0

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Type of Activity	New	Amended	Repealed
Number of Sections Adopted on the Agency's own Initiative	33	42	0
Number of Sections Adopted using Negotiated Rule Making	0	0	0
Number of Sections Adopted using Other Alternative Rule Making	33	42	0
Number of Sections Adopted using Pilot Rule Making	0	0	0
<b>WASHINGTON STATE UNIVERSITY</b>			
Type of Activity	New	Amended	Repealed
Number of Rules Withdrawn	2	35	8
<b>YAKIMA VALLEY COMMUNITY COLLEGE</b>			
Type of Activity	New	Amended	Repealed
Number of Rules Proposed for Permanent Adoption	0	1	0
<b>TOTALS FOR THE QUARTER:</b>			
Number of Permanent Rules Adopted	781	801	1112
Number of Rules Adopted as Emergency Rules	314	73	107
Number of Rules Proposed for Permanent Adoption	457	596	1033
Number of Rules Withdrawn	52	52	27
Number of Sections Adopted at Request of a Nongovernmental Entity	18	51	4
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures	501	526	195
Number of Sections Adopted in Order to Comply with Federal Rules or Standards	167	11	1
Number of Sections Adopted in Order to Comply with Federal Statute	100	17	2
Number of Sections Adopted in Order to Comply with Recently Enacted State Statutes	421	131	16
Number of Sections Adopted on the Agency's own Initiative	395	661	195
Number of Sections Adopted using Negotiated Rule Making	28	139	19
Number of Sections Adopted using Other Alternative Rule Making	820	497	185
Number of Sections Adopted using Pilot Rule Making	0	0	0

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**WSR 05-13-001**  
**DEPARTMENT OF AGRICULTURE**  
 [Filed June 1, 2005, 2:43 p.m.]

**PUBLIC NOTICE FOR SPARTINA TREATMENT IN WESTERN WASHINGTON**

LEGAL NOTICE: The Washington State Department of Agriculture (WSDA) Laboratory Services Division is hereby notifying the affected public that the herbicides glyphosate (Aquamaster®, Aquaneat®, or Rodeo®) and imazapyr (Habitat®), surfactants (R-11™, Agri-Dex™, Class Act Next Generation™, Competitor™, Dyne-Amic™, Kinetic™, or LI-700™) and marker dyes may be used to control invasive *Spartina* grass species between June 1, 2005, and October 31, 2005. Properly licensed pesticide applicators who have obtained coverage under the WSDA national pollutant discharge elimination system waste discharge general permit may apply glyphosate or imazapyr to control the noxious weed *Spartina* on the saltwater tideflats of Grays Harbor, Hood Canal, Willapa Bay, Puget Sound, and the north and west sides of the Olympic Peninsula.

Use of herbicides is one of the options used to control *Spartina*. These infestations may also be treated by mowing, digging, crushing, or covering.

For more information, including locations of possible application sites or information on *Spartina*, contact the WSDA *Spartina* Control Program at (360) 902-1923, or write WSDA *Spartina* Program, P.O. Box 42560, Olympia, WA 98504-2560. To contact the WSDA NPDES permit coordinator, call Brad White at (360) 902-2071. The Washington State Department of Ecology twenty-four hour emergency/spill response hotline is (425) 649-7000 (northwest region) or (360) 407-6300 (southwest region).

**WSR 05-13-003**  
**NOTICE OF PUBLIC MEETINGS**  
**CONVENTION AND TRADE CENTER**

[Memorandum—June 1, 2005]

The board of directors of the Washington State Convention and Trade Center will meet for a planning retreat June 10-11, 2005. The retreat will take place at Willows Lodge, 14580 N.E. 145th Street, Woodinville, WA.

The Friday program, June 10, will begin with meetings 8:30 a.m. through noon. Following a lunch break, meetings

will continue 1:00 p.m. through 5:00 p.m. The agenda for Friday will include strategic planning sessions for fiscal year 2005-2006.

The Saturday program, June 11, will consist of a regular board meeting beginning at 9:00 a.m. and concluding by 12:00 noon. Actions taken at the board meeting will include approval of the fiscal year 2005-2006 corporate goals.

If you have any questions regarding this meeting, please call (206) 694-5000.

**WSR 05-13-004**

**DEPARTMENT OF CORRECTIONS**

[Filed June 2, 2005, 10:54 a.m., effective July 2, 2005]

**Reviser's note:** The following material has *not* been adopted under the Administrative Procedure Act, chapter 34.05 RCW, but has been filed in the office of the code reviser and is published in the Register exactly as filed.

Following are amendments to chapter 137-48 WAC, Inmate mail and communications. This amendment is submitted for publication in the Washington State Register and the Washington Administrative Code. Pertinent information follows:

1. The amendments to chapter 137-48 WAC, Inmate mail and communications, are adopted as of June 2, 2002 [2005].
2. The effective date of these amendments shall be July 2, 2005.
3. I certify pursuant to RCW 34.05.030 that the rule as stated above is excluded from the Administrative Procedure Act.

Patria Robinson-Martin  
for Harold W. Clarke  
Secretary

AMENDATORY SECTION (Amending WSR 91-23-103, filed 11/20/91, effective 1/1/92)

**WAC 137-48-010 Purpose.** The purpose of these rules is to maintain the safety, security, and discipline of adult prison(~~s and prerelease~~) facilities operated under the jurisdiction of the department of corrections in accordance with Title 72 RCW et al., by establishing guidelines for the development of departmental(~~, division,~~) and institution level policies and rules governing the receipt and sending of mail by inmates to prevent the transmission of illegal items or contraband into or out of an institution. These rules shall not apply to work release facilities under the jurisdiction of the department.

AMENDATORY SECTION (Amending WSR 91-23-103, filed 11/20/91, effective 1/1/92)

**WAC 137-48-020 Definitions.** (1) "Contraband" (~~consists of all~~) includes illegal items, explosives, (~~instruments which if used may cause bodily harm to the person of another, weapons,~~) deadly weapons, alcoholic beverages, (~~and~~) drugs, (~~or~~) tobacco products, controlled substances (~~as defined by chapter 69.50 RCW. Contraband also includes~~) and any item that is controlled, limited, or prohib-

ited on the grounds or within the secure perimeter of a correctional facility as defined by (~~departmental, division, or institutional regulation and approved by the secretary of the department, or the division director/designee~~) department or institution policy.

(2) (~~"Disposable income" funds in an inmate's trust account from any source, which are not frozen or debited by application of (LFO) legal financial obligations or disciplinary/administrative restitution mandates.~~

(3) ~~"Division director" the director of community corrections or prisons or his/her designee(s).~~

(4) "Emergency situations" are critical illnesses, deaths, or similar situations experienced by members of the inmate's family or the inmate.

(~~(5)~~) (3) "Illegal items" are items which are unlawful for any person to possess within the community as defined by the laws of the state of Washington, controlled substances as defined and listed in chapter 69.50 RCW or any weapon, firearm, or any instrument which, if used, could produce serious bodily injury to (~~the person of~~) another.

(~~(6)~~) (4) "Indigent inmate" an inmate who has less than a ten-dollar balance of disposable income in his/her trust fund account on the day (~~of the postage~~) a request is made to utilize funds and during the (~~seven~~) thirty days (~~preceding~~) previous to the (~~postage~~) request(~~, except that:~~

(a) ~~An inmate who has received at least twenty dollars emulative from any source(s) shall not be considered indigent for thirty days following the accumulation of the twenty dollars unless the disposable income account balance is reduced to less than ten dollars by mandatory LFO, disciplinary sanction, or other mandatory administrative process; or~~

(b) ~~An inmate who receives a lump sum of five hundred dollars or more from any source shall not be considered indigent for a period of six months from the date of receipt of the five hundred dollars unless the disposable income account balance is reduced to less than ten dollars by application of LFO obligations, a disciplinary sanction, or any legislative or administratively mandated requirements).~~

(~~(7)~~) (5) "Inspection of mail" the physical act of opening, touching, (~~smelling,~~) and/or reading of mail, the use of mechanical or chemical systems and/or the use of animals to determine the presence of contraband or illegal items.

(~~(8)~~) (6) "Legal mail" is correspondence to or from courts and court staff (judges, clerks of the court, judicial law clerks, etc.), attorneys (~~and persons working for attorneys and to~~), established groups of attorneys involved in the representation of inmates in judicial proceedings (ACLU, legal services groups, etc.) (~~Legal mail may also be mail to or from any local, county, state, or national, or foreign governmental agency, executive or legislative body, and/or any person representing such agency or body in an~~), the President or Vice-President of the United States, members of the United States Congress, embassies and consulates, the United States Department of Justice, state attorney general, governors, members of the state legislature, and law enforcement officers in their official capacity.

(Note:) To be considered and therefore handled as "legal mail" the correspondence must be clearly marked "legal mail" on the outside front of the envelope, and must

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have a return address which clearly indicates that the mail is from one of the above listed sources.

~~((9))~~ (7) "Letters" consist of handwritten/typed communications and/or written/pictorial enclosures to and from inmates. A standard first class, one ounce letter shall be consistent with the dimensions, weight, and thickness as prescribed by the United States Postal Service. A properly addressed and stamped post card or greeting card shall be processed with the same standards as described above for a first class one ounce letter. Nonstandard first class mail requires a surcharge as established by the United States Postal Service.

~~((10))~~ (8) "Mail" consists of letters, publications, or packages delivered by the United States Post Office or by other established and authorized carriers.

~~((11))~~ (9) "Packages" a wrapped or boxed object; a parcel or bundle containing one or more objects, a container in which something is packed for storage or transport or mailing.

~~((12))~~ (10) "Publications" consists of reproduced handwritten or typed/printed or pictorial materials including books, periodicals, newspapers, magazines, and pamphlets.

~~((13))~~ (11) "Return address" for an inmate this includes the full committed name, and may include any other legal name, DOC number, housing assignment, and the full name of the correctional facility from which the correspondence is mailed. For a free citizen this includes a reasonable return address as recognized by the United States Postal Service.

~~((14))~~ (12) "Secretary" is the secretary of the department of corrections or his/her designee(s).

~~((15))~~ (13) "Sexually explicit" means any pictorial representation that is intended for sexual gratification and shows male or female genitalia, full frontal nudity, or depicts one or more of the following sexual behaviors:

(a) One or more of the participants appears to be nonconsenting;

(b) One or more of the participants appears to be acting in a forceful, threatening, or violent manner;

(c) One or more of the participants appears to be dominating one or more of the other participants or one or more of the participants appears to be in a submissive role or one or more of the participants appears to be degraded, humiliated, or appears to willingly engage in behavior that is degrading or humiliating;

(d) One of the participants appears to be a minor, or a minor alone is depicted in a sexually suggestive way;

(e) Bodily excretory behavior which appears to be sexual in nature;

(f) Bestiality, sadomasochistic behavior, and/or bondage; or

(g) Depicts sexual behaviors including, but not limited to, intercourse/penetration, sodomy, fellatio, cunnilingus, anilingus, or masturbation.

The term sexually explicit also refers to those written materials that are intended for sexual gratification and describe one or more of the above sexual behaviors as the predominant theme of the publication or letter.

(14) "Superintendent" means the superintendent of a correctional facility or his/her designee(s).

AMENDATORY SECTION (Amending WSR 91-23-103, filed 11/20/91, effective 1/1/92)

**WAC 137-48-030 Inspection of mail.** (1) All mail intended for or to be sent by an inmate, excluding legal mail discussed in subsection (3) of this section, may be inspected at any time by the staff designated by the superintendent or his/her designee(s). Mail may be disapproved for receipt or transmittal in accordance with WAC 137-48-040.

(2) No person who inspects, or participates in the inspection, of an inmate's mail, shall disclose the contents except in the cause of his/her official duties.

(3) Mail (incoming or outgoing) which is clearly identified on the outside of the envelope as legal mail, as defined in WAC 137-48-020, shall be inspected only in the presence of the inmate. Legal mail shall not be read without a search warrant but may be ~~((visually scanned))~~ inspected in the presence of the inmate to verify legal mail status and that the mail is free of contraband.

(4) Mail containing illegal items or contraband shall be held and disposed of in accordance with the procedures set forth in chapter 137-36 WAC or as otherwise stated in this chapter.

AMENDATORY SECTION (Amending WSR 91-23-103, filed 11/20/91, effective 1/1/92)

**WAC 137-48-040 Restriction of incoming and/or outgoing mail.** (1) Incoming mail to inmates may be disapproved for receipt for any one of the following reasons:

(a) The mail ~~((contains))~~ threatens illegal activity, including but not limited to, threats of physical harm ~~((against any person or threats of criminal activity.~~

~~((b) The mail threatens)),~~ blackmail or extortion.

~~((c) The))~~ (b) The mail threatens the safety and security of the institution, including but not limited to, mail ~~((concerns))~~ concerning sending contraband ~~((in or out of the institution.~~

~~((d) The mail contains plans to))~~ escape

~~((e) The mail contains))~~ plans, security devices, or mail that is in a code, a foreign language that cannot be interpreted, does not contain a return address, contains gang symbols, plans for activities in violation of institutional rules ~~((such as riots.~~

~~((f) The mail concerns plans for criminal activity.~~

~~((g) The mail is in code.~~

~~((h) The mail is in a foreign language, its contents are not understood by the reader, and attempts to have the letter interpreted have been unsuccessful.~~

~~((i) The mail))~~ or contains information which, if communicated, would create a risk of violence and/or physical harm.

~~((j))~~ (c) The mail ~~((contains))~~ is susceptible to the introduction of contraband, including but not limited to, altered publications, mail with unknown substances on or in it, mail purported to be legal mail that is general correspondence, cash or checks, postage stamps, stickers, photos wherein the nonphoto side is or can be separated, publications not mailed directly from vendor, items not ordered and approved through institution channels, greeting cards that are padded, laminated/layered or musical.

~~((k) The mail contains obscene or sexually explicit materials as defined in department policy and/or division directives.~~

~~(H)) (d) Any mail or publication that is deemed to be a threat to legitimate penological objectives, including but not limited to, sexually explicit materials.~~

~~((m) The mail advocates that any ethnic, racial, or religious group is inferior for any reason and makes such group an object of ridicule and scorn, and it may reasonably be thought to precipitate a violent confrontation between the recipient and a member or members of the target group.) (e) The mail contains inmate to inmate correspondence that has not been approved by the superintendent in compliance with department policy.~~

~~(f) The mail contains items identified by the department secretary or designee as not authorized, including but not limited to, multiple copies of documents, mailings soliciting or offering games of chance, clippings from books or magazines.~~

~~(g) The mail is from an individual with whom contact is restricted in compliance with the judgment and sentence, a no contact order, department policy.~~

(2) Outgoing mail from inmates of institutions may be disapproved for mailing for any one of the following reasons:

(a) For any one of the reasons set forth in WAC 137-48-040(1).

(b) The mail is addressed to a minor whose parents or guardian have objected in writing to such correspondence.

(c) An individual or their guardian who previously has been sent obscene or threatening mail by the inmate has complained or has asked that such mail not be received.

(d) The mail solicits money or goods from a person or organization other than the immediate family of the inmate without the permission of the superintendent. The above provisions may not be construed to preclude the purchase of non-contraband goods or payment for such goods which have been approved by the superintendent or his/her designee.

(e) The outside of the mail (envelope or package) does not contain a return address as defined in WAC 137-48-020.

(3) No mail is to be restricted for the reason that it appeals to a particular ethnic, racial, or religious group, or that it contains critical opinions of departmental policy or departmental employees, unless the mail is also judged to be a threat to legitimate penological objectives.

(4) In addition to those reasons cited in this section, packages sent either to or from an inmate are subject to the following restrictions:

(a) An inmate may receive one gift package not to exceed fifteen pounds in weight on a quarterly basis. Quarterly periods shall consist of December through February, March through May, June through August, and September through November. Rules governing the contents of quarterly packages shall be developed specifically by each institutional superintendent and approved by ~~((the division director))~~ staff designated by the secretary. The superintendent may allow exceptions from the one gift package limitation and weight limitation provided that appropriate contraband controls are maintained.

(b) The contents of the quarterly package shall be restricted to those items that are otherwise not available to the

inmate through the institutional store or other purchasing outlet provided by the institution. A replacement package may be sent during the same quarter for damaged packages that are returned to the sender by the inmate. ~~((Packages containing contraband shall be refused delivery to the inmate and will be counted as the package for that quarter.))~~

(c) Prepaid merchandise approved by the superintendent or designee and ordered by the inmate from any wholesaler or retailer shall not be considered one of the quarterly packages.

(d) Inmates may mail packages containing materials which have been sent to him or her in the institution or gifts consisting of his or her own hobby craft or curio work. Packages must be made and mailed at the inmate's expense.

(e) Newly admitted inmates at any department of corrections operated reception center will not receive packages while assigned to the reception center.

**AMENDATORY SECTION** (Amending WSR 91-23-103, filed 11/20/91, effective 1/1/92)

**WAC 137-48-050 Procedures for restrictions of incoming and/or outgoing mail.** (1) If an inmate's incoming or outgoing mail is restricted, written notification will be provided to the inmate by the mailroom staff. This notification shall be provided to the inmate and the sender of the specific publication, letter, or package which has been restricted and the reason for this action. The notice shall contain notification to the inmate that the restriction becomes final within ten days of the initial notice. The superintendent or his/her designee shall review the restriction within the ten-day period of time and shall either uphold the restriction, or allow for the delivery of the mail.

(2) The inmate and sender shall be advised in writing of his/her right to seek review of the decision to restrict his/her mail. The review shall be sought by writing directly to the ~~((director, division of community corrections or prisons))~~ superintendent/designee within ten calendar days of the initial restriction decision.

(3) Upon receipt of an inmate's and/or sender's appeal, the ~~((director of community corrections or prisons))~~ superintendent or his/her designee shall affirm or reverse the action taken at the institution ~~((level))~~ and shall ~~((advise the inmate and sender))~~ send a notice of the decision in writing ~~((of this action))~~ within ten working days from the receipt of the inmate's or sender's written request.

(4) The inmate and the sender may seek a review of the superintendent's/designee's decision by writing directly to the staff designated by the secretary within ten calendar days of the decision.

(5) Upon receipt of the offender's or sender's appeal, the staff designated by the secretary will affirm or reverse the action taken at the facility and will advise the offender or sender in writing of this action within ten calendar days from the receipt of the offender's or sender's written request.

(6) Incarcerated offenders are financially responsible for disposing of their own unauthorized personal property by shipping it to a nonincarcerated person designated by the offender at the offender's expense. The sender should not send stamps or money to the facility or headquarters for this purpose.

(7) When a decision is rendered regarding a particular issue of a publication, that decision shall be binding for all prison facilities ~~((in the respective correctional division))~~. A ~~((division-wide))~~ statewide notification shall be promptly issued from the ~~((office of the director))~~ final reviewer when the decision is rendered.

~~((5))~~ (8) If a package contains contraband and is subject to criminal prosecution, the entire package will be turned over to the appropriate law enforcement agency. Items of contraband not subject to criminal prosecution will be disposed of in accordance with procedures set forth in departmental~~((division))~~ and facility regulations as authorized by chapter 137-36 WAC.

**AMENDATORY SECTION** (Amending WSR 91-23-103, filed 11/20/91, effective 1/1/92)

**WAC 137-48-060 Mail costs.** (1) Except as otherwise stated in this section, mail costs shall be the responsibility of the inmate.

(2) Mail which arrives at the institution with postage due may, at the option of the superintendent, be delivered to the inmate. The institution may pay the postage due in accordance with subsection (3) of this section, or hold the mail for a reasonable period of time so as to allow the inmate to arrange for payment of the postage due. If such arrangements are not made within the time provided, the package/mail may be donated to charity or discarded.

(3) Indigent inmates shall be authorized to receive postage up to the equivalent to the mailing cost of ten standard~~((one ounce))~~ first class letters per week. This indigent postage provision shall cover both legal and/or regular letters ~~((regardless of the number of letters identified as legal mail))~~.

(4) The department shall recoup any expenditures made by the institution for postage due on incoming mail and/or indigent postage for letters, (as identified in subsection (3) of this section) may be recouped by the institution whenever such indigent inmate has ten dollars or more of disposable income in his/her trust fund account.

**AMENDATORY SECTION** (Amending WSR 91-23-103, filed 11/20/91, effective 1/1/92)

**WAC 137-48-080 Telephone usage.** (1) Telephone facilities shall be provided in appropriate numbers and locations to permit reasonable and equitable access to all inmates, except inmates of the reception center and those inmates in disciplinary segregation.

(2) The superintendent shall promulgate written regulations providing for access of inmates to additional telephone facilities in emergency situations.

(3) The superintendent shall promulgate written regulations outlining the hours of telephone availability, maximum length of calls (not less than five minutes), limitations on telephone use, and provisions for monitoring, recording, and operator-announced calls as provided for in RCW ~~((9-73-145))~~ 9.73.095.

### WSR 05-13-005

#### NOTICE OF PUBLIC MEETINGS COMMISSION ON JUDICIAL CONDUCT [Memorandum—June 2, 2005]

By direction of the Commission on Judicial Conduct, the 11:00 a.m., Friday, August 5, 2005, business meeting of the commission, scheduled to be held at the Holiday Inn Express Hotel & Suites, 19621 International Boulevard, SeaTac, WA 98188, is hereby cancelled.

The August business session will be rescheduled for 11:00 a.m., Friday, September 9, 2005, at The Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662.

### WSR 05-13-006

#### NOTICE OF PUBLIC MEETINGS COMMISSION ON JUDICIAL CONDUCT [Memorandum—June 2, 2005]

#### NOTICE OF SPECIAL MEETING

By direction of the Commission on Judicial Conduct, the commission will hold a special meeting commencing at 9:00 a.m. on Thursday, September 8, 2005, and continuing until approximately 9:00 p.m. on that date. The meeting will be conducted at The Heathman Lodge, 7801 N.E. Greenwood Drive, Vancouver, WA 98662, for the purpose of providing an education program for its members.

### WSR 05-13-007

#### NOTICE OF PUBLIC MEETINGS TRAFFIC SAFETY COMMISSION [Memorandum—June 2, 2005]

This is to inform you that the time for the July 21 commission meeting has changed from 10:30 a.m. to 9:00 a.m. The location remains the same.

If you have any questions, please call Michelle Nicholls at (360) 586-3864.

### WSR 05-13-011

#### NOTICE OF PUBLIC MEETINGS OFFICE OF THE INTERAGENCY COMMITTEE (Interagency Committee for Outdoor Recreation) [Memorandum—June 2, 2005]

The Interagency Committee for Outdoor Recreation (IAC) will meet Tuesday, June 21, beginning at 1:00 p.m. at Sawyer Hall, 510 Desmond Drive, Lacey, WA.

This meeting focuses on the 6242 lands strategy report, including possible final adoption.

If you have comments on the lands strategy report for committee review, please submit information to IAC no later



than noon on June 15, 2005. This will allow for distribution to committee members in a timely fashion.

IAC public meetings are held in locations accessible to people with disabilities. Arrangements for individuals with hearing or visual impairments can be provided by contacting IAC by June 15, at (360) 902-2637 or TDD (360) 902-1996.

Next Meeting: July 7 and 8, 2005, Cedar River Watershed Education Center, North Bend.

**WSR 05-13-012**  
**NOTICE OF PUBLIC MEETINGS**  
**STATE BOARD OF EDUCATION**  
[Memorandum—June 2, 2005]

**Change in Meeting Locations for 2005**

August 25-26, 2005  
Educational Service District 123  
3918 West Court Street  
Pasco, WA 99301  
(509) 547-8441  
October 27-28, 2005  
Educational Service District 113  
601 McPhee Road S.W.  
Olympia, WA 98502  
(360) 586-2933

**WSR 05-13-013**  
**RULES OF COURT**  
**STATE SUPREME COURT**  
[June 2, 2005]

IN THE MATTER OF THE ADOPTION ) ORDER  
OF THE AMENDMENTS TO ELC 3.4 ) NO. 25700-A-813  
AND LAW BOARD REGULATIONS 3R )

The Washington State Bar Association having recommended the adoption of the proposed amendments to ELC 3.4 and the Law Board Regulation 3R and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the amendments as attached hereto are adopted.

(b) That the amendments will be published in the Washington Reports and become effective September 1, 2005.

DATED at Olympia, Washington this 2nd day of June 2005.

Alexander, C.J.

C. Johnson, J.

Chambers, J.

Madsen, J.

Owens, J.

Sanders, J.

Fairhurst, J.

Bridge, J.

J. M. Johnson, J.

**SUGGESTED AMENDMENT**  
**RULES FOR ENFORCEMENT OF LAWYER CONDUCT (ELC)**  
**ELC 3.4 RELEASE OR DISCLOSURE OF OTHERWISE CONFIDENTIAL INFORMATION**

- (a) Disclosure of Information. [No change].
- (b) Investigative Disclosure. [No change].
- (c) Release Based upon Lawyer's Waiver. [No change].
- (d) Response to Inquiry or False or Misleading Statement. [No change].
- (e) Discretionary Release. [No change].
- (f) Statement of Concern. [No change].
- (g) Release to Judicial Officers. [No change].
- (h) Cooperation with Criminal and Disciplinary Authorities. [No change].
- (i) Release to Lawyers' Fund for Client Protection. [No change].
- (j) Conflicts Review Officer. [No change].
- (k) Board of Governors Access. [No change].

(l) Release to Practice of Law Board. Information obtained in an investigation relating to possible unauthorized practice of law may be released to the Practice of Law Board. Such information shall remain under the control of the Office of Disciplinary Counsel and the Practice of Law Board must treat it as confidential unless this title or the Executive Director authorizes release.

**PRACTICE OF LAW BOARD REGULATIONS**

**REGULATION 3. ESTABLISHMENT OF THE BOARD**

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**R. Open Meeting and Records.** All records, files, meetings and proceedings of the POL Board and its designated committees shall be open and public, except that the POL Board may meet in executive session and records and files may be made confidential where the preservation of confidentiality is desirable or where public disclosure might result in the violation of individual rights or in unwarranted private or personal harm. All discussions of particular complaints and investigations will be held in Executive Session. Nothing in these regulations shall be construed to deny access to relevant information by professional licensing or discipline agencies, or other law enforcement authorities, as the Board shall authorize.

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

MISC.

WSR 05-13-014
RULES OF COURT
STATE SUPREME COURT

[June 2, 2005]

IN THE MATTER OF THE ADOPTION ) ORDER
OF THE AMENDMENTS TO APR 1, APR ) NO. 25700-A-814
2 AND APR 3 )

The Washington State Bar Association having recommended the adoption of the proposed amendments to APR 1, APR 2 and APR 3, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the amendments as attached hereto are adopted.

(b) That the amendments will be published in the Washington Reports and become effective September 1, 2005.

DATED at Olympia, Washington this 2nd day of June 2005.

Alexander, C. J.

C. Johnson, J.

Chambers, J.

Madsen, J.

Owens, J.

Sanders, J.

Fairhurst, J.

Bridge, J.

J. M. Johnson, J.

SUGGESTED AMENDMENT
ADMISSION TO PRACTICE RULES (APR)

RULE 1. IN GENERAL; SUPREME COURT; PREREQUISITES TO THE PRACTICE OF LAW; IMMUNITY

(a) Supreme Court. [No change].

(b) Prerequisites to the Practice of Law. [No change].

(c) Immunity. The Washington State Bar Association, its officers and agents (including but not limited to its staff, members of the Board of Governors, the Committee of Law Bar Examiners, the Character and Fitness Committee, the Law Clerk Committee, or any other individual acting under authority of these rules) are immune from all liability for conduct and communications occurring in the performance of their official duties relating to the examination, character and fitness qualifications, admission, and licensing of persons seeking to be admitted to the practice of law or for a limited license to practice law, provided only that the Bar Association, officer, or agent shall have acted in good faith. The burden of proving bad faith in this context shall be upon the person asserting it. The Bar Association shall provide defense to any action brought against an officer or agent of the Bar Association for actions taken in good faith under these rules and shall bear the costs of that defense and shall indemnify the officer or agent against any judgment taken therein. Communications to the Association, the Board of Governors, the Committee of Law Bar Examiners, the Character and Fit-

ness Committee, the Law Clerk Committee, or any other individual acting under authority of these rules, are absolutely privileged, and no lawsuit may be predicated thereon.

SUGGESTED AMENDMENT
ADMISSION TO PRACTICE RULES (APR)
RULE 2. BOARD OF GOVERNORS

(a) Powers. In addition to any other power or authority in other rules, the Board of Governors of the Bar Association (referred to in these rules as the Board of Governors) shall have the power and authority to:

(1) Appoint a Committee of Law Bar Examiners (referred to in these rules as the Committee) from among the active members of the Bar Association for the purposes of assisting the Board of Governors in conducting the bar examination;

(2) Appoint a Law Clerk Committee from among the active members of the Bar Association for the purposes of assisting the Board of Governors in supervising the Law Clerk Program;

(3) Approve or deny applications for permission to take the bar examination, to enroll in the law clerk program, or to engage in the limited practice of law under pertinent provisions of rules 8 and 9;

(4) Investigate all aspects of an applicants qualifications to take the bar examination, to be admitted to the practice of law, to engage in the limited practice of law under pertinent provisions of rules 8 and 9, or to enroll in the law clerk program;

(5) Recommend to the Supreme Court the admission or rejection of each applicant who has passed the bar examination or who is applying to engage in the limited practice of law under pertinent provisions of rules 8 and 9;

(6) Approve law schools for the purposes of these rules and maintain a list of such approved law schools on file with the Clerk of the Supreme Court;

(7) Prescribe, with the approval of the Supreme Court, the amount of any fees required by these rules;

(8) Prescribe the form and content of any application, certificate, or other document referred to in these rules; and

(9) Perform any other functions and take any other actions provided for in these rules, or as may be delegated by the Supreme Court, or as may be necessary and proper to carry out its duties.

(b) Written Request. [No change].

SUGGESTED AMENDMENT
ADMISSION TO PRACTICE RULES (APR)
RULE 3. APPLICANTS TO TAKE THE BAR EXAMINATION

(a) Prerequisite for Admission. [No change].

(b) Qualification for Bar Examination. [No change].

(c) Exceptions. [No change].

(d) Forms; Fees; Filing. [No change].

(e) Disclosure of Records Unless expressly authorized by the Supreme Court or by the bar applicant, bar application forms and related records, documents, and proceedings shall not be disclosed, except as necessary to conduct an investigation and hearing pursuant to rule 7.

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

MISC.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 05-13-015
RULES OF COURT
STATE SUPREME COURT
[June 2, 2005]

IN THE MATTER OF THE ADOPTION ) ORDER
OF THE AMENDMENT TO APR 13 ) NO. 25700-A-815

The Washington State Bar Association having recommended the adoption of the proposed amendment to APR 13, and the Court having considered the amendment and comments submitted thereto, and having determined that the proposed amendment will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

- (a) That the amendment as attached hereto are adopted.
(b) That the amendment will be published in the Washington Reports and become effective September 1, 2005.

DATED at Olympia, Washington this 2nd day of June 2005.

Alexander, C.J.
C. Johnson, J. Chambers, J.
Madsen, J. Owens, J.
Fairhurst, J.
Bridge, J. J. M. Johnson, J.

SUGGESTED AMENDMENT
ADMISSION TO PRACTICE RULES (APR)
APR 13. SIGNING OF PLEADINGS AND OTHER PAPERS;
ADDRESS OF RECORD; ELECTRONIC MAIL ADDRESS; NOTICE
OF CHANGE OF ADDRESS, TELEPHONE NUMBER, OR NAME
(revised, December 5, 2003)

(a) Signing of Pleadings and Other Papers. All pleadings and other papers signed by an attorney and filed with a court shall include the attorney's Washington State Bar Association membership number in the signature block. The law department of a municipality, county, or state, public defender organization or law firm is authorized to make an application to the Administrative Office of the Administrator for the Courts for an office identification number. An office identification number may be assigned by the Administrative Office of the Administrator for the Courts upon a showing that it will facilitate the process of electronic notification. If an office identification number is granted, it shall appear with the attorney's Washington State Bar Association membership number in the signature block.

(b) Address of Record; Change of Address. An attorney must advise the Washington State Bar Association of a

current mailing address and telephone number. The mailing address shall be the attorney's address of record. An attorney whose office mailing address or office telephone number changes shall, within 10 days after the change, notify the Executive Director of the Washington State Bar Association, who shall forward changes weekly to the Office of the Clerk of the Supreme Court for entry into the state computer system. The notice shall be in a form acceptable to the Bar Association and, in addition to shall include (1) the attorney's full name, the notice shall contain (1) (2) the attorney's Washington State Bar Association membership number, (2) (3) the previous address and telephone number, clearly identified as such, (3) (4) the new address and telephone number, clearly identified as such, and (4) (5) the effective date of the change. The courts of this state may rely on the address information contained in the state computer system in issuing notices in pending actions.

(c) Electronic mail address: An attorney should advise the Washington State Bar Association of a current business electronic mail address if one exists. An attorney whose business electronic mail address changes should, within 10 days after the change, notify the Executive Director of the Washington State Bar Association, who shall forward changes weekly to the Office of the Clerk of the Supreme Court for entry into the state computer system. Use of electronic mail addresses for court notice, service and filing must comply with GR 30.

(d) Change of Name. [No change].

(e) Requirements of Local and Other Court Rules Not Affected. [No change].

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

Reviser's note: The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 05-13-016
RULES OF COURT
STATE SUPREME COURT
[June 2, 2005]

IN THE MATTER OF THE ADOPTION ) ORDER
OF THE AMENDMENTS TO GR 11 AND ) NO. 25700-A-816
GR 11.2 )

The Superior Court Judges' Association and the Washington State Bar Association having recommended the adoption of the proposed amendments to GR 11 and GR 11.2, and the Court having approved the proposed amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Office of the Administrator for the Court's websites in January 2006.

(b) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no

MISC.

later than April 28, 2006. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or Lisa.Bausch@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 2nd day of June 2005.

For the Court  
Gerry L. Alexander  
Chief Justice

RULE 11  
COURT INTERPRETERS

(a) To Assist Witnesses and Parties. The use of qualified interpreters is authorized in judicial proceedings involving hearing sensory-impaired or non-English speaking individuals.

(b) To Assist Jurors. The use of qualified interpreters is authorized in judicial proceedings involving competent and qualified jurors whose sensory-impairment would otherwise interfere with their ability to understand testimony and evidence, participate in deliberations and render a verdict.

(1) A qualified interpreter who serves in this capacity must abide by GR 11.2, refrain from expressing a personal opinion about any matter in connected to the case by any juror, and keep confidential all juror deliberations, unless directed otherwise by the court.

(2) Upon impaneling the jury, the court shall give the interpreter the following oath:

Do you solemnly swear or affirm that you will make a true interpretation to the person serving as a juror of all the proceedings in a form or manner which the juror understands, to the best of your skill and judgment, and that you will assist the juror in communications with the court and other jurors as directed by the court, and that you will not express your personal opinion about any matter connected to this case to any juror, and that you will keep confidential all jury deliberations unless directed otherwise by the court.

RULE 11.2  
CODE OF CONDUCT FOR COURT INTERPRETERS

PREAMBLE. All language interpreters serving in a legal proceeding, whether certified or uncertified, shall abide by the following Code of Conduct:

An language interpreter who violates any of the provisions of this code is subject to a citation for contempt, disciplinary action or any other sanction that may be imposed by law. The purpose of this Code of Conduct is to establish and maintain high standards of conduct to preserve the integrity and independence of the adjudicative system.

(a) An language interpreter, like an officer of the court, shall maintain high standards of personal and professional conduct that promote public confidence in the administration of justice.

(b) A language interpreter shall interpret or translate the material thoroughly and precisely, adding or omitting nothing, and stating as nearly as possible what has been stated in the language of the speaker, giving consideration to variations in grammar and syntax for both languages involved. A language interpreter shall use the level of communication that

best conveys the meaning of the source, and shall not interject the interpreters personal moods or attitudes.

(c) A sensory interpreter shall describe sensory information thoroughly and precisely, adding or omitting nothing, and describing as nearly as possible sensory information, whose absence would otherwise interfere with a sensory-impaired person's ability to participate in court proceedings. A sensory interpreter shall use the level of communication that best conveys the sensory information being presented, and shall not interject the interpreter's personal moods or attitudes.

(ed) When an language interpreter has any reservation about their ability to satisfy fulfill an assignment competently, the interpreter shall immediately convey that reservation to the parties and to the court. The interpreter shall notify the appointing authority or the court, if sensory information or If the communication mode or language of the non-English speaking person cannot be readily interpreted, the interpreter shall notify the appointing authority or the court.

(de) No language interpreter shall render services in any matter in which the interpreter is a potential witness, associate, friend, or relative of a contending party, unless a specific exception is allowed by the appointing authority for good cause noted on the record. Neither shall the interpreter serve in any matter in which the interpreter has an interest, financial or otherwise, in the outcome. Nor shall any language interpreter serve in a matter where the interpreter has participated in the choice of counsel.

(ef) Except in the interpreters official capacity, no language interpreter shall discuss, report, or comment upon a matter in which the person serves as interpreter. Interpreters shall not disclose any communication that is privileged by law without the written consent of the parties to the communication, or pursuant to court order.

(fg) An language interpreter shall report immediately to the appointing authority in the proceeding any solicitation or effort by another to induce or encourage the interpreter to violate any law, any provision of the rules which may be approved by the courts for the practice of language interpreting, or any provisions of this Code of Conduct.

(gh) Language-Interpreters shall not give legal advice and shall refrain from the unauthorized practice of law.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 05-13-017  
RULES OF COURT  
STATE SUPREME COURT  
[June 2, 2005]

IN THE MATTER OF THE ADOPTION ) ORDER  
OF THE AMENDMENT TO RAP 3.4 ) NO. 25700-A-817

The Supreme Court Clerk having recommended the adoption of the proposed amendment to RAP 3.4, and the Court having considered the amendment submitted thereto, and having determined that the proposed amendment will aid in the prompt and orderly administration of justice;

MISC.

Now, therefore, it is hereby

ORDERED:

(a) That the amendment as attached hereto is adopted.

(b) That the amendment will be published in the Washington Reports and become effective September 1, 2005.

DATED at Olympia, Washington this 2nd day of June 2005.

Alexander, C.J.

Alexander, C.J.

C. Johnson, J.

Chambers, J.

C. Johnson, J.

Chambers, J.

Madsen, J.

Owens, J.

Madsen, J.

Owens, J.

Sanders, J.

Fairhurst, J.

Sanders, J.

Fairhurst, J.

Bridge, J.

J. M. Johnson, J.

Bridge, J.

J. M. Johnson, J.

RULE 3.4 TITLE OF CASE AND DESIGNATION OF PARTIES

The title of a case in the appellate court is the same as in the trial court except that the party seeking review by appeal is called an "appellant," the party seeking review by discretionary review is called a "petitioner," and an adverse party of review is called a "respondent."

Upon motion of a party or on the court's own motion, and after notice to ((all interested)) the parties, the Supreme Court or the Court of Appeals may change the title of a case by order in said case.

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

WSR 05-13-018
RULES OF COURT
STATE SUPREME COURT

[June 2, 2005]

IN THE MATTER OF THE ADOPTION ) ORDER
OF THE NEW RALJ 7.3 AND NEW RALJ ) NO. 25700-A-818
8.4 )

The Superior Judges' Association having recommended the adoption of proposed New RALJ 7.3 and New RALJ 8.4, and the Court having considered the new rules and comment submitted thereto, and having determined that the proposed new rule will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the new rules as attached hereto are adopted.

(b) That the new rules will be published in the Washington Reports and become effective September 1, 2005.

DATED at Olympia, Washington this 2nd day of June 2005.

RULES FOR APPEAL OF DECISIONS OF COURTS OF LIMITED JURISDICTION (RALJ)

Suggested New Rule

[NEW] RULE 7.3. FORMAT OF BRIEFS

(a) Typing or Printing Brief. All briefs shall conform to the requirements of GR 14. In addition, the text of any brief typed or printed in a proportionally spaced typeface must appear in print as 12 point or larger type with no more than 10 characters per inch and double-spaced. The same typeface and print size should be standard throughout the brief, except that footnotes may appear in print as 10 point or larger type and be the equivalent of single-spaced. Quotations may be the equivalent of single-spaced. Except for materials in an appendix, the typewritten or printed material in the brief may not be reduced or condensed by photographic or other means.

(b) Length of Brief. The briefs of appellant and respondent filed pursuant to RALJ 7.2 (a) and (b) shall not exceed 18 pages. Reply briefs filed pursuant to RALJ 7.2(c) shall not exceed 6 pages. For the purpose of determining compliance with this rule, appendices are not included. For good cause, the court may grant a motion to file an over-length brief.

(c) Unpublished Opinions. A party may not cite as authority an unpublished opinion of a Washington appellate court, nor of any other state or federal court that is not published. A party may not cite as authority a decision of a superior court, a court of limited jurisdiction, or a decision of a commissioner of the Supreme Court or Court of Appeals.

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

RULES FOR APPEAL OF DECISIONS OF COURTS OF LIMITED JURISDICTION (RALJ)

Suggested New Rule

[NEW] RULE 8.4. WAIVER OF ORAL ARGUMENT

The parties may, at any time, agree to waive oral argument and submit the matter for consideration by the court on the briefs that have been submitted. The court may, on its own initiative, direct that there be no argument, once it has received the brief of appellant and the brief of respondent.

MISC.

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

**WSR 05-13-019**  
**RULES OF COURT**  
**STATE SUPREME COURT**  
 [June 2, 2005]

IN THE MATTER OF THE ADOPTION ) ORDER  
 OF THE AMENDMENTS TO GR 15 AND ) NO. 25700-A-819  
 GR 22 )

The Judicial Information System Committee having recommended the adoption of the proposed amendments to GR 15 and GR 22, and the Court having approved the proposed amendments for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed amendments as attached hereto are to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Office of the Administrator for the Court's websites expeditiously.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than 90 days from the published date. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or Lisa.Bausch@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 2nd day of June 2005.

For the Court  
 Gerry L. Alexander  
 Chief Justice

**GR 9 COVER SHEET**

**Suggested Amendments to GR 15**  
**Submitted by the Judicial Information System Committee**

**Purpose:** The Judicial Information Systems Committee (JISC) is proposing amendments to GR 15, Destruction and Sealing of Court Records. In recent years several interested parties and organizations have raised concerns and suggested changes to GR 15. The rule has been criticized as giving insufficient guidance to the trial courts and trial attorneys. In response to these concerns and issues, a work group was formed in October 2003 to draft amendments to GR 15.

The work group consisted of several judges, lawyers, court clerks, a court commissioner, and a representative from the media. This work group met on several occasions and discussed and debated several drafts of the rule. After approval of a final draft, the work group forwarded the amendments to the JISC. The JISC added references to

redaction of a court record and unanimously voted to forward the amendments to the Supreme Court Rules Committee for adoption.

The following changes to GR 15 are being proposed in this suggested draft. These changes are:

- "Court record" is defined and used throughout for consistency with GR 31. The definition is the same definition used in GR 31. See suggested GR 15 (b)(1).
- "Court file" is defined as "the clerk's papers including the pleadings, orders, and other papers filed with the clerk of the court under a single or consolidated cause number(s)." See suggested GR 15 (b)(2).
- The definition of "seal" was simplified. See suggested GR 15 (b)(4). Changes in the sealing procedures have been specified. The sealed file will not be available to the public, but the sealing order will be available. The court must enter written findings that justify the sealing of a court record. Agreement of the parties alone is neither a compelling circumstance nor a sufficient basis to seal a court record. See suggested GR 15(c).
- "Redaction" was added to the rule and treated similarly to "seal." This is in response to the Supreme Court's recent decision in *Dreiling v. Jain*, 151 Wn.2d 900, 93 P.3d 861 (2004), holding that "the least restrictive means" should be used for restricting access to a court record. See suggested GR 15 (b)(5) and (c).
- Vacated criminal convictions were addressed separately in response to RCW 9.94A.230(3) and the Supreme Court's interpretation of this statute in *State v. Breazeale*, 144 Wn. 2d 829, 837-838, 31 P.3rd 1155, 1159 (2001). See suggested GR 15(d).
- If a person is charged with a new crime or a sexually violent predator petition is filed, sealing of a vacated criminal conviction may be nullified. See suggested GR 15 (e)(2)(A)(B).
- In civil cases, notice for unsealing is waived if good faith effort to locate party is unsuccessful. See suggested GR 15 (e)(3).
- Because of changing technology, the term microfilming was deleted and the section on non-paper sealed records broadened. See suggested GR 15(f).
- The sections on sealing and destruction have been separated to simplify and to give better guidance. See suggested GR 15(h).
- Accounting records shall not be destroyed; rather the records shall be sealed. This provision was added to address the need for availability of accounting records for audits. See suggested GR 15 (h)(3)(B).

<sup>1</sup> See e.g. *Dreiling v. Jain*, 151 Wn.2d 900, 912 (2004).

**RULE GR 15**  
**DESTRUCTION, AND SEALING, AND REDACTION OF COURT RECORDS**

(a) **Purpose and Scope of the Rule.** This rule sets forth a uniform procedure for the destruction, and sealing, and redaction of court files, cases, records, or specified documents or material in a court file or record at all court levels records. This rule shall apply to court files, cases, records, documents, or materials in any form or format, including but not limited to hard copy, microfilm, microfiche, and auto-

MISC.

~~mated information system format. The clerk shall maintain all documents and materials filed with the court, and shall make available for public examination all files, cases, records, documents, or materials which have not been ordered destroyed or sealed. applies to all court records, regardless of the physical form of the court record, the method of recording the court record, or the method of storage of the court record.~~

**(b) Definitions and Construction of Terms.**

~~(1) "Court file" means the pleadings, orders, and other papers filed with the clerk of the court under a single or consolidated cause number(s).~~

~~(2) "Court record" is defined in GR 31 (c)(4).~~

~~(23) Destroy. To destroy means to obliterate a court file, case, document, or material record or file in such a way as to make it permanently irretrievable. A motion or order to expunge shall be treated as a motion or order to destroy.~~

~~(14) Seal. To seal means to protect from examination by the public or non- and unauthorized court personnel. Sealing of a hard copy, microfilm, or microfiche is accomplished by enclosing with a fastening which must be broken before access can be obtained. Sealing of an automated information system file or record is accomplished by restricting access to authorized court personnel only. The existence of a sealed file, unless protected by statute, is available for viewing by the public on court indices, but is limited to the case number, names of the parties, the notation "case sealed", the case type in civil cases and the cause of action or charge in criminal cases. The contents of sealed documents or records within a case are not available for viewing by the public. Sealed files, documents or records may be examined by the public only after the files, documents, or records have been ordered unsealed pursuant to section (d) of this rule. A motion or order to delete, purge, remove, excise, erase, or redact shall be treated as a motion or order to seal.~~

~~(5) Redact. To redact means to protect from examination by the public and unauthorized court personnel a portion or portions or a specified court record.~~

~~(6) Restricted Personal Identifiers are defined in GR 22 (b)(6).~~

~~(7)(35) Strike. A motion or order to strike is not a motion or order to seal or destroy.~~

~~(8)(6) Vacate. To vacate means to nullify or cancel.~~

**~~(e) Grounds and Procedure for Requesting the Sealing or Destruction of Court Records.~~**

~~(1) Criminal Cases or Juvenile Proceedings.~~

~~(A) Destruction of Files or Records. On motion of any interested person in a criminal case or juvenile proceeding, or on the court's own motion, and after a hearing, the court may order the files and records in the proceeding, or any part thereof, to be destroyed if the court finds that such action is expressly permitted by statute. Reasonable notice of the hearing shall be given to: (1) the prosecuting authority of the city or county; (2) the affected adult or juvenile defendant; (3) the victim, if ascertainable; and (4) the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile defendant. This subsection (e)(1)(A) shall not preclude the routine destruction of documents pursuant to applicable retention schedules.~~

~~(B) Sealing of Files and Records. Subject to the provisions of RCW 4.24 and CR 26(j), on motion of any interested person in a criminal case or juvenile proceeding, or on the court's own motion, and after a hearing, the court may order the files and records in the proceeding, or any part thereof, to be sealed if the court finds that such action is expressly permitted by statute or that there are compelling circumstances requiring such action. Reasonable notice of the hearing shall be given by the moving party to: (1) the prosecuting authority of the city or county; (2) the affected adult or juvenile defendant; (3) the victim, if ascertainable; and (4) the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile defendant.~~

~~(2) Civil Cases.~~

~~(A) Destruction of Files or Records. After entry of final judgment, no civil case file or any part thereof may be destroyed, except after files have been microfilmed as provided in RCW 36.23.065. Before entry of final judgment, civil case files or parts thereof may be destroyed only if the destruction is expressly permitted by statute. This subsection (e)(2)(A) shall not preclude the routine destruction of documents pursuant to applicable retention schedules.~~

~~(B) Sealing of Files or Records. On motion of any party to a civil proceeding, or on the court's own motion, and after reasonable notice to the nonmoving party and a hearing, the court may order the sealing of any files and records in the proceeding (i) to further an order entered under CR 12(f) or a protective order entered under CR 26(e); or (ii) under compelling circumstances where justice so requires.~~

**~~(c) Sealing or Redacting Court Records~~**

~~(1) In a civil case, the court or any party may request a hearing to seal or redact the court records. In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to seal or redact the court records. Reasonable notice of a hearing to seal must be given to all parties in the case. In a criminal case, reasonable notice of a hearing to seal or redact must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile defendant.~~

~~(2) After the hearing, the court may order the court files and records in the proceeding, or any part thereof, to be sealed or redacted if the court makes and enters written findings that the specific sealing or redaction is justified by privacy or safety concerns that outweigh the public interest in access to the court record. Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records. Sufficient privacy or safety concerns that may be weighed against the public interest include findings that:~~

~~(A) The sealing or redaction is permitted by statute; or~~

~~(B) The sealing or redaction furthers an order entered under CR 12(f) or a protective order entered under CR 26(c); or~~

~~(C) A conviction has been vacated; or~~

~~(D) The sealing or redaction furthers an order entered pursuant to RCW 4.24.611; or~~

~~(E) The redaction includes only restricted personal identifiers contained in the court record; or~~

(F) Another identified compelling circumstances exists that requires the sealing or redaction.

(3) A court record shall not be sealed under this section when redaction will adequately resolve the issues before the court pursuant to subsection (2) above.

(4) Sealing of Entire Court File. When the clerk receives a court order to seal the entire court file, the clerk shall seal the court file and secure it from public access. All court records filed thereafter shall also be sealed unless otherwise ordered. The existence of a court file sealed in its entirety, unless protected by statute, is available for viewing by the public on court indices. The information on the court indices is limited to the case number, names of the parties, the notation "case sealed," the case type and cause of action in civil cases and the cause of action or charge in criminal cases, except where the conviction in a criminal case has been vacated, section (d) shall apply. The order to seal and written findings supporting the order to seal shall also remain accessible to the public, unless protected by statute.

(5) Sealing of Specified Court Records. When the clerk receives a court order to seal specified court records the clerk shall:

(A) On the docket, preserve the docket code, document title, document or subdocument number and date of the original court records;

(B) Remove the specified court records, seal them, and return them to the file under seal or store separately. The clerk shall substitute a filler sheet for the removed sealed court record. In the event the If the court record ordered sealed exists in a microfilm, microfiche or other storage medium form other than paper, the clerk shall limit restrict access to the alternate storage medium so as to prevent unauthorized viewing of the sealed court record; and

(C) File the order to seal and the written findings supporting the order to seal. Both shall be accessible to the public.

(D) Before a court file is made available for examination, the clerk shall prevent access to the sealed court records.

(6) Procedures for Redacted Court Records. When a court record is redacted pursuant to a court order, the original court record shall be replaced in the public court file by the redacted copy. The redacted copy shall be provided by the moving party. The original unredacted court record shall be sealed following the procedures set forth in (c)(5).

(d) Procedures for Vacated Criminal Convictions. In cases where a criminal conviction has been vacated and an order to seal entered, the information in the public court indices shall be limited to the case number, case type with the notation "DV" if the case involved domestic violence, the defendant's name, and the notation "vacated."

(de) Grounds and Procedure for Requesting the Unsealing of Sealed Records.

(1) Sealed court records may be examined by the public only after the court records have been ordered unsealed pursuant to this section or after entry of a court order allowing access to a sealed court record.

(12) Criminal Cases. After the entry of an order to seal all or part of a court file in a criminal proceeding, the A sealed court records in a criminal case sealed shall be ordered unsealed only upon proof of compelling circumstances,

unless otherwise provided by statute, and only upon motion and written notice to the persons entitled to notice under subsection (c)(1) of this rule except:

(A) If a new criminal charge is filed and the existence of the conviction contained in a sealed record is an element of the new offense, or would constitute a statutory sentencing enhancement, or provide the basis for an exceptional sentence, upon application of the prosecuting attorney the court shall nullify the sealing order in the prior sealed case(s).

(B) If a petition is filed alleging that a person is a sexually violent predator, upon application of the prosecuting attorney the court shall nullify the sealing order as to all prior criminal records of that individual.

(23) Civil Cases. After the entry of an order to seal all or part of a court file in a civil proceeding, the records A sealed court record in a civil case shall be ordered unsealed only upon stipulation of all parties or upon motion and written notice to all parties and proof of compelling circumstances, or pursuant to RCW 4.24 or CR 26(j). If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

(34) Juvenile Proceedings. After entry of an order to seal all or part of a court file in a juvenile proceeding, inspection of the a sealed juvenile court record files and records included in the order to seal may thereafter be is permitted only by order of the court upon motion made by the person who is the subject of the record, except as otherwise provided in RCW 13.50.010(8) and 13.50.050(24). Any adjudication of a juvenile offense or a crime subsequent to sealing has the effect of nullifying the sealing order, pursuant to RCW 13.50.050(15).

(e) Clerks Duties.

(1) Destruction of Entire File. Upon receipt of a court order to destroy the entire file under the primary control of the clerk, the clerk shall:

(A) Destroy all references to the file from any applicable automated information systems; and

(B) Destroy all documents in the file, in whatever media they may be stored, except for the order to destroy.

(2) Sealing of Entire File. Upon receipt of a court order to seal the entire file under the primary control of the clerk, the clerk shall:

(A) Seal the automated file.

(B) Seal the file and secure it and all subsequently filed documents from public access, except for the order to seal.

(3) Destruction of Specified Documents. Upon receipt of a court order to destroy specified documents or materials within a file under the primary control of the clerk, the clerk shall:

(A) On the automated docket destroy any docket code information except any document or sub document number previously assigned to the document destroyed and enter "Ordered Destroyed" for the docket entry;



~~(B) Destroy the appropriate documents or material in whatever media they may be stored, substituting, when applicable, a printed or other reference to the order to destroy, including the date, location, and document number of the order to destroy; and~~

~~(C) File the order to destroy.~~

~~(4) Sealing of Specified Documents.—Upon receipt of a court order to seal specified documents or material within a file under the primary control of the clerk, the clerk shall:~~

~~(A) On the automated docket, preserve the docket code, document title, document or subdocument number and date of the original documents or material;~~

~~(B) Remove the documents or material from the file, seal them, and return them to the file under seal or store separately, substituting a filler sheet for the removed sealed document. In the event the document ordered sealed exists in a microfilm, microfiche or other storage medium, the clerk shall limit access to the alternate storage medium so as to prevent unauthorized viewing of the sealed document; and~~

~~(C) File the order to seal.~~

~~(D) If the file is made available for examination, the clerk shall prevent access to the sealed records before the rest of the file is made available.~~

**(f) Microfilming Maintenance of Sealed Court Records.** Sealed court records may be microfilmed as provided in RCW 36.23.065 and such microfilm shall be maintained in accordance with this rule. are subject to the provisions of RCW 36.23.065 and can be maintained in other mediums than paper.

~~(g) Trial Exhibits. Notwithstanding any other provision of this rule, trial exhibits may be destroyed or returned to the parties if all parties so stipulate in writing and the court so orders.~~

**(hg) Use of Sealed Records on Appeal.** A file court record or any portion of it, sealed in the trial court shall be made available to the appellate court in the event of an appeal. Cases Court records sealed in the trial court shall be sealed from public access in the appellate court subject to further order of the appellate court.

**(h) Destruction of Court Records.**

(1) The court shall not order the destruction of any court record unless expressly permitted by statute. The court shall enter written findings that cite the statutory authority for the destruction of the court record.

(2) In a civil case, the court or any party may request a hearing to destroy court records only if there is express statutory authority permitting the destruction of the court records. In a criminal case or juvenile proceeding, the court, any party, or any interested person may request a hearing to destroy the court records only if there is express statutory authority permitting the destruction of the court records. Reasonable notice of the hearing to destroy must be given to all parties in the case. In a criminal case, reasonable notice of the hearing must also be given to the victim, if ascertainable, and the person or agency having probationary, custodial, community placement, or community supervision over the affected adult or juvenile defendant.

(3) When the clerk receives a court order to destroy the entire court file the clerk shall:

(A) Remove all references to the court records from any applicable information systems maintained for or by the clerk except for accounting records, the order to destroy, and the written findings. The order to destroy and the supporting written findings shall be filed and available for viewing by the public.

(B) The accounting records shall be sealed.

(4) When the clerk receives a court order to destroy specified court records the clerk shall:

(A) On the automated docket, destroy any docket code information except any document or sub-document number previously assigned to the court record destroyed, and enter "Ordered Destroyed" for the docket entry;

(B) Destroy the appropriate court records, substituting, when applicable, a printed or other reference to the order to destroy, including the date, location, and document number of the order to destroy; and

(C) File the order to destroy and the written findings supporting the order to destroy. Both the order and the findings shall be publicly accessible.

(5) This subsection shall not prevent the routine destruction of court records pursuant to applicable preservation and retention schedules.

(i) Trial Exhibits. Notwithstanding any other provision of this rule, trial exhibits may be destroyed or returned to the parties if all parties so stipulate in writing and the court so orders.

(ij) Effect on Other Statutes. Nothing in this rule is intended to restrict or to expand the authority of clerks under existing statutes, nor is anything in this rule intended to restrict or expand the authority of any public auditor in the exercise of duties conferred by statute.

(j) Access to Juror Information. Individual juror information, other than name, is presumed to be private. After the conclusion of a jury trial, the attorney for a party, or party pro se, or member of the public, may petition the trial court for access to individual juror information under the control of court. Upon a showing of good cause, the court may permit the petitioner to have access to relevant information. The court may require that juror information not be disclosed to other persons.

(k) Access to Master Jury Source List. Master jury source list information, other than name and address, is presumed to be private. Upon a showing of good cause, the court may permit a petitioner to have access to relevant information from the list. The court may require that the information not be disclosed to other persons.

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GR 9 COVER SHEET

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Suggested Amendments to GR 22

Submitted by the Judicial Information System Committee

**Purpose:** The Judicial Information Systems Committee (JISC) is proposing amendments to GR 22, Access to Family Law Court Records. GR 22 was adopted in October 2001. Since its adoption, several interested parties and organizations have raised concerns to the JISC and have suggested possible amendments to the rule. In response to these con-

cerns and suggestions, a work group was formed in October 2003 to draft amendments to GR 22.

The work group consisted of judges, lawyers, court clerks, a court commissioner, and a representative from the media. This work group met on several occasions and discussed and debated different amendments to the rule. A final draft was written and approved by workgroup and the JISC unanimously agreed to forward the suggested amendments to the Supreme Court Rules Committee with a recommendation that the amendments be adopted. The suggested amendments are the following:

- "Court record" is defined and used throughout for consistency with GR 31. The definition is the same definition used in GR 31. See suggested GR 22 (b)(1).
- In addition to family law cases, guardianship cases under Title 11 (Probate and Trust), Chapter 73.36 RCW (Veterans) and Chapter 74.34 (Vulnerable Adults) are added to the cases types covered by GR 22. See suggested GR 22 (a) and (b)(2).
- "Personal health care records" are placed under a confidential cover sheet thereby preventing public access to this sensitive information. A definition for "personal health care records" is added. See suggested GR 22 (b)(3) and GR 22(f).
- "Retirement plan order" is added to the definition section and is treated as a "sealed financial source document." Retirement plans such as pensions contain sensitive and confidential information, they should not be accessible to the public without a court order. See suggested GR 22 (b)(7) and (8).
- A new section addressing "confidential reports" was added. These reports almost always contain sensitive and sometimes embarrassing information that not only affect the parties involved, but children and other unwilling or unwitting participants. The JISC understands that some of this information must be available in the public record because of accountability and public trust issues. Therefore, the listings of materials and documents reviewed, individuals contacted, tests conducted and reviewed, and the experts' conclusions and recommendations would be publicly accessible. On the other hand, the detailed information that was reviewed by the expert would not be available in the public record. See suggested GR 22(e).
- A provision is added which states that a cover sheet can only be used to seal documents covered in the rule and that sanctions will be imposed on those who violate this provision. See suggested GR 22 (f)(4).
- Provisions are added to allow access to restricted records for purpose of conducting official court business by the Commission on Judicial Conduct and Certified Professional Guardian Board. See suggested GR 22 (g)(1)(A).
- When deciding to unseal a document the court must consider safety issues in addition to privacy issues as provided in the current rule. See suggested GR 22 (h)(3).

## GR 22 (Suggested Amendments)

### ACCESS TO FAMILY LAW AND GUARDIANSHIP COURT RECORDS

(a) **Purpose and Scope of this Rule.** This rule governs access to family law and guardianship case court records, whether the records are maintained in paper or electronic form. The policy of the courts is to facilitate public access to court records, provided that such access will not present an unreasonable invasion of personal privacy, will not permit access to records or information defined by law or court rule as confidential, sealed, exempted from disclosure, or otherwise restricted from public access, and will not be unduly burdensome to the ongoing business of the courts.

#### (b) Definition and Construction of Terms.

~~(1) "Case record" means any record pertaining to a particular case or controversy maintained by the court in paper or electronic format.~~

(1) "Court record" is defined in GR 31 (c)(4).

(2) "Family law case or guardianship case" means any case filed under Chapters 11.88, 11.92, 26.09, 26.10, 26.12, 26.18, 26.21, 26.23, 26.26, 26.27, 26.50, 26.52, 73.36 and 74.34 RCW.

(3) "Personal Health Care Record" means any record or correspondence that contains health information that relates to the past, present, or future physical or mental health condition of an individual including past, present, or future payments for health care.

~~(3)~~(4) "Personal Privacy" is unreasonably invaded only if disclosure of information about the person or the family would (a) be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.

~~(4)~~(5) "Public access" means unrestricted access to view or copy a requested document filed in a court case court record.

~~(5)~~(6) "Restricted personal identifiers" means a party's social security number, a party's driver's license number, a party's telephone number, financial account numbers, social security number of a minor child and date of birth of a minor child.

#### COMMENT

*A party shall is not be required to provide a residence address, in the publicly available case record. Pattern forms shall be modified, as necessary, to reflect the intent of this rule. Parties Petitioners or counsel to a family law case must will provide a service or contact address in accordance with CR 4.1 that will be publicly available and all parties and counsel should provide a contact address if otherwise required. Pattern forms shall be modified, as necessary, to reflect the intent of this rule.*

(7) "Retirement plan order" means a supplemental order entered for the sole purpose of implementing a property division that is already set forth in a separate order or decree in a family law case. A retirement plan order may not grant substantive relief other than what is set forth in a separate order. Examples of retirement plan orders are orders that implement a division of retirement, pension, insurance, military, or sim-

ilar benefits as already defined in a decree of dissolution of marriage.

~~(6)(8)~~ "Sealed financial source documents" means income tax returns, W-2s and schedules, wage stubs, credit card statements, financial institution statements, checks or the equivalent, check registers, loan application documents, retirement plan orders, as well as other financial information sealed by court order.

**(c) Access to Family Law or Guardianship Case Court Records.**

(1) General Policy. Except as provided in RCW 26.26.200 and subsections (c)(2) and (c)(3) below, all case court records shall be open to the public for inspection and copying upon request. The Clerk of the court may assess fees, as may be authorized by law, for the production of such records. ~~Individual documents may be requested electronically.~~

**COMMENT**

~~This rule does not prohibit making an index of family law case records generally available to the public in electronic form. Electronic access to family law case records is limited to responses to specific requests. However, GR 31 prohibits the release of information, which will have the effect of providing access to lists of individuals, which will be used for the purpose of facilitating a profit making activity.~~

(2) Restricted Access. The Confidential Information Form, Sealed Financial Source Documents, Domestic Violence Information Form, Notice of Intent to Relocate required by R.C.W. 2926.09.440, Sealed Personal Health Care Record, Retirement Plan Order, Confidential Reports as defined in (e)(2)(B), and any Personal Information Sheet necessary for Judicial Information System purposes shall only be accessible as provided in sections (fg) and (gh) herein.

(3) Excluded Records. This section (c) does not apply to court records, documents, or papers that are sealed as provided in GR 15(e)(2)(B), or to which access is otherwise restricted by law.

**(d) Restricted Personal Identifiers Not Required-Except.** Parties to a family law case or the protected person in a guardianship case shall not be required to provide restricted personal identifiers in any document filed with the court or required to be provided upon filing a family law or guardianship case, except:

(1) "Sealed financial source documents" filed in accordance with GR ~~---~~(ef)(1).

(2) The following forms: Confidential Information Form, Domestic Violence Information Form, Notice of Intent to Relocate required by R.C.W. 2926.09.440, Vital Statistics Form, Law Enforcement Information Form, Foreign Protection Order Information Form, and any Personal Information Sheet necessary for Judicial Information System purposes.

(3) Court requested documents that contain restricted personal identifiers, which may be submitted by a party as financial source documents under the provisions of section (ef) of this rule.

**COMMENT**

~~Documents Court records not meeting the definition of "Sealed Financial Source Documents", "Personal Health~~

Care Records", Retirement Plan Orders, Confidential Reports or court records that otherwise meet the definition but have not been submitted in accordance with (ef)(1) are not automatically sealed. Section (ef)(3) provides authority for the court to seal ~~documents~~ court records containing restricted personal identifiers upon motion of a party, or on the court's own motion during a hearing or trial.

**(e) Filing of Reports in Family Law and Guardianship cases - Cover Sheet.**

(1) This section applies to documents that are intended as reports to the court in Family law and Guardianship cases including, but not limited to, the following:

(A) Parenting evaluations;

(B) Domestic Violence Assessment Reports created by Family Court Services or a qualified expert appointed by the court;

(C) Risk Assessment Reports created by Family Court Services or a qualified expert;

(D) CPS Summary Reports created by Family Court Services or supplied directly by Children's Protective Services;

(E) Sexual abuse evaluations; and

(F) Reports of a guardian ad litem or Court Appointed Special Advocate.

(2) Reports shall be filed as two separate documents, one public and one sealed.

(A) Public Document. The public portion of any report shall include a simple listing of:

(i) Materials or information reviewed;

(ii) Individuals contacted;

(iii) Tests conducted or reviewed; and

(iv) Conclusions and recommendations.

(B) Sealed Document. The sealed portion of the report shall be filed with a coversheet designated: "Sealed Confidential Report." The material filed with this coversheet shall include:

(i) Detailed descriptions of material or information gathered or reviewed;

(ii) Detailed descriptions of all statements reviewed or taken;

(iii) Detailed descriptions of tests conducted or reviewed; and

(iv) Any analysis to support the conclusions and recommendations.

(3) The sealed portion may not be placed in the court file or used as an attachment or exhibit to any other document except under seal.

**(ef) Sealing Financial Source Documents, Personal Health Care Records, and Sealed Confidential Reports in Family Law and Guardianship cases - Cover Sheet.**

(1) Financial source documents, personal health care records, and confidential reports as defined in (e)(2)(B) of this rule shall be submitted to the clerk under a cover sheet designated "SEALED FINANCIAL SOURCE DOCUMENTS", "SEALED PERSONAL HEALTH CARE RECORDS", or "SEALED CONFIDENTIAL REPORT" for filing in the case court record of family law or guardianship cases.

(2) All financial source documents, personal health care records, or confidential reports so submitted shall be automatically sealed by the clerk. The cover sheet or a copy thereof shall remain part of the public court file.

(3) The court may order that any financial source documents containing restricted personal identifiers, personal health care records, or any report containing information described in (e)(2)(B) be sealed if they have not previously automatically been sealed pursuant to this rule.

(4) These coversheets may not be used for any documents except as provided in this rule. Sanctions may be imposed upon any party or attorney who violates this rule.

COMMENT

See comment to (d)(3) above.

**(fg) Access by Courts, Agencies, and Parties to Restricted Documents.**

(1) Unless otherwise provided by statute or court order, the following persons shall have access to all court records and files in family law or guardianship cases:

(A) Judges, commissioners, and other court personnel, the Commission on Judicial Conduct, and the Certified Professional Guardian Board may access and use restricted court records only for the purpose of conducting official business of the court, Commission, or Board, carrying out the business of the court.

(B) Any state administrative agency of any state that administers programs under Title IV-A, IV-D, IV-E, or XIX of the federal Social Security Act.

(2) Except as otherwise provided by statute or court order, the following persons shall have access to all documents filed in a family law case, except the Personal Information Sheet, Vital Statistics Form, Confidential Information Form, Domestic Violence Information Form, Law Enforcement Information Form, and Foreign Protection Order Form.

(A) Parties of record as to their case.

(B) Attorneys as to cases where they are attorneys of record.

**(gh) ~~Public Access to Restricted Case Court Records Restricted Under This Rule.~~**

~~(1) Information filed by a party in any file or court record, that is not a sealed financial source document as defined by (b)(6) or a personal health care record, shall be available to the public, unless sealed by the court under section (e)(3), or access is restricted under section (e)(2).~~

COMMENT

~~If a party files documents containing "restricted personal identifiers" without following the procedure for sealing those documents provided in section (e), such documents shall be publicly available in the case record. Access to documents specifically listed in section (e)(2) is restricted. Those documents are only available to the public under the provisions of subsections (2) and (3) below.~~

(21) The parties may stipulate in writing to allow access to the public to any ~~files or~~ court records otherwise restricted under section (c)(2) above.

(32) Any person may file a motion, supported by an affidavit showing good cause, for access to any ~~document~~ court record otherwise restricted under section (c)(2) above, or to be granted access to such ~~documents~~ court records with specified information deleted. Written notice of the motion shall be provided to all parties in the manner required by the Superior Court Civil Rules.

If the person seeking access cannot locate a party to provide the notice required by this rule, after making a good faith reasonable effort to provide such notice as required by the Superior Court Rules, an affidavit may be filed with the court setting forth the efforts to locate the party and requesting waiver of the notice provision of this rule. The court may waive the notice requirement of this rule if the court finds that further good faith efforts to locate the party are not likely to be successful.

(43) The court shall allow access to ~~restricted documents~~ court records restricted under this rule, or relevant portions of ~~restricted documents~~ court records restricted under this rule, if the court finds that the public interests in granting access or the personal interest of the person seeking access outweigh the privacy and safety interests of the parties or dependent children. If the court grants access to ~~restricted documents~~ court records, the court may enter such orders necessary to balance the personal privacy and safety interests of the parties or dependent children with the public interest or the personal interest of the party seeking access, consistent with this rule.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 05-13-020  
RULES OF COURT  
STATE SUPREME COURT  
[June 2, 2005]

IN THE MATTER OF THE ADOPTION ) ORDER  
OF THE AMENDMENT TO CR 23 ) NO. 25700-A-820

The Washington State Bar Association, the Legal Foundation of Washington and the Access to Justice Board having recommended the adoption of the proposed amendment to CR 23, and the Court having approved the proposed amendment for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed amendment as attached hereto is to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Office of the Administrator for the Court's websites expeditiously.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than 90 days from the published date. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or Lisa.Bausch@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 2nd day of June 2005.

For the Court  
Gerry L. Alexander  
Chief Justice

MISC.

GR 9 COVER SHEET

Suggested Amendment
CIVIL RULES FOR SUPERIOR COURT (CR)

Rule 23 - Class Actions

Submitted by the Washington State Access to Justice Board, the Legal Foundation of Washington, and the Washington State Bar Association

Purpose

The suggested amendment to CR 23 creates a new section (f), which will provide direction to parties and trial court judges relating to the disposition of residual funds in class action proceedings. As defined in the suggested rule, these residual funds are "funds that remain after the payment of all approved class member claims, expenses, litigation costs, attorneys' fees and other court approved disbursements to implement the relief granted." Although class action matters frequently result in the creation of residual funds, CR 23 does not currently provide direction with respect to how such funds should be managed and disbursed. The suggested amendment fills this regulatory gap.

Historically, in the absence of direction from the rule itself, trial courts have exercised their powers in equity to award residual funds on a discretionary basis. This form of equitable distribution has become known as the cy pres doctrine. Courts have applied this doctrine to direct payment of residual funds to charitable organizations whose objectives have some connection with the interests of the class as a whole.

The suggested amendment will direct payment of twenty-five percent of residual funds in any class action to the Legal Foundation of Washington, which administers Interest on Lawyer's Trust Accounts (IOLTA) and other funds in support of legal and educational programs for low-income persons in Washington State. In so doing, the suggested rule will codify and refine the judicially developed cy pres doctrine in a way that is consistent with its equitable purpose and which will serve the compelling interest in ensuring equal access to justice.

The suggested amendment is designed to apply only in those cases in which the parties and the court have authorized the creation of residual funds. It does not alter the ability of parties, subject to court approval, to formulate settlements that leave no residual funds remaining for distribution. Thus, the suggested amendment will only affect cases where, after the expiration of a claims period, residual funds in fact remain after payment of all class-member claims, authorized costs, expenses, attorneys' fees, and other obligations.

CIVIL RULES (CR)

RULE 23. CLASS ACTIONS
CR 23

(a) - (e) [Unchanged.]

(f) Disposition of Residual Funds.

(1) "Residual Funds" are funds that remain after the payment of all approved class member claims, expenses, litiga-

tion costs, attorneys' fees, and other court-approved disbursements to implement the relief granted. Nothing in this rule is intended to limit the parties to a class action from suggesting, or the trial court from approving, a settlement that does not create residual funds.

(2) Any order entering a judgment or approving a proposed compromise of a class action certified under this rule that establishes a process for identifying and compensating members of the class shall provide for the disbursement of residual funds. In matters where the claims process has been exhausted and residual funds remain, not less than twenty-five percent (25%) of the residual funds shall be disbursed to the Legal Foundation of Washington to support activities and programs that promote access to the civil justice system for low income residents of Washington State. The court may disburse the balance of any residual funds beyond the minimum percentage to the Legal Foundation of Washington or to any other entity for purposes that have a direct or indirect relationship to the objectives of the underlying litigation or otherwise promote the substantive or procedural interests of members of the certified class.

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

WSR 05-13-021
RULES OF COURT
STATE SUPREME COURT
[June 2, 2005]

IN THE MATTER OF THE ADOPTION ) ORDER
OF THE AMENDMENTS TO CRLJ 26 ) NO. 25700-A-821
AND CrRLJ 3.2 )

The District and Municipal Court Judges' Association having recommended the adoption of the proposed amendments to CRLJ 26 and CrRLJ 3.2, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the amendments as attached hereto are adopted.

(b) That the amendments will be published in the Washington Reports and become effective September 1, 2005.

DATED at Olympia, Washington this 2nd day of June 2005.

Alexander, C.J.

C. Johnson, J.

Chambers, J.

Madsen, J.

Owens, J.

Sanders, J.

Fairhurst, J.

Bridge, J.

J. M. Johnson, J.

MISC.

CIVIL RULES FOR COURTS OF LIMITED JURISDICTION (CRLJ)
RULE 26. DISCOVERY

Discovery in courts of limited jurisdiction shall be permitted as follows:

(a) Specification of Damages. A party may demand a specification of damages under RCW 4.28.360.

(b) Interrogatories and Requests for Production.

(1) The following interrogatories may be submitted by any party:

(A) State the amount of general damages being claimed.

(B) State each item of special damages being claimed and the amount thereof.

(C) List the name, address, and telephone number of each person having any knowledge of facts regarding liability.

(D) List the name, address and telephone number of each person having any knowledge of facts regarding the damages claimed.

(E) List the name, address, and telephone number of each expert you intend to call as a witness at trial. For each expert, state the subject matter on which the expert is expected to testify. State the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

(2) In addition to section (b)(1), any party may serve upon any other party not more than two sets of written interrogatories containing not more than 20 questions per set without prior permission of the court. Separate sections, paragraphs or categories contained within one interrogatory shall be considered separate questions for the purpose of this rule. The interrogatories shall conform to the provisions of CR 33.

(3) The following requests for production may be submitted by any party:

(A) Produce a copy of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of any judgment which may be entered in this action, or to indemnify or reimburse the payments made to satisfy the judgment.

(B) Produce a copy of any agreement, contract or other document upon which this claim is being made.

(C) Produce a copy of any bill or estimate for items for which special damage is being claimed.

(4) In addition to section (b)(3), any party may submit to any other party a request for production of up to five separate sets of groups of documents or things without prior permission of the court. The requests for production shall conform to the provisions of CR 34.

(c) Depositions.

(1) A party may take the deposition of any other party, unless the court orders otherwise.

(2) Each party may take the deposition of one two additional persons without prior permission of the court. The deposition shall conform to the provisions of CR 30.

(d) Requests for Admission

(1) A party may serve upon any other party up to 15 written requests for admission without prior permission of the court. Separate sections, paragraphs or categories contained within one request for admission shall be considered separate requests for purposes of this rule.

(2) The requests for admission shall conform to the provisions of CR 36.

(e) Other Discovery at Discretion of Court. No additional discovery shall be allowed, except as the court may order. The court shall have discretion to decide whether to permit any additional discovery. In exercising such discretion the court shall consider (1) whether all parties are represented by counsel, (2) whether undue expense or delay in bringing the case to trial will result and (3) whether the interests of justice will be promoted.

(f) How Discovery to Be Conducted. Any discovery authorized pursuant to this rule shall be conducted in accordance with Superior Court Civil Rules 26 through 37, as governed by CRLJ 26.

(g) Time for Discovery. Twenty-one days after the service of the summons and complaint, or counterclaim, or cross-complaint, the served party may demand the discovery set forth in sections (a)-(e) (d) of this rule, or request additional discovery pursuant to section (d) (e) of this rule. Unless agreed by the parties and with the permission of the court, all discovery shall be completed within 60 days of the demand, or 90 days of service of the summons and complaint, or counterclaim, or cross complaint, whichever is longer.

CRIMINAL RULES FOR COURTS OF LIMITED JURISDICTION (CrRLJ)

RULE 3.2 RELEASE OF ACCUSED

If the court does not find, or a court has not previously found, probable cause, the accused shall be released without conditions.

(a) through (n) [No change.]

(o) Bail in Criminal Offense Cases—Mandatory Appearance.

(1) When required to reasonably assure appearance in court, bail for a person arrested for the following criminal offenses listed in this rule or comparable ordinances shall be the amount listed in this rule. In an individual case and after hearing the court for good cause recited in a written order may set a different bail amount.

(2) A court may adopt a local rule requiring that persons subjected to custodial arrest for a certain class of offenses be held until they have appeared before a judge.

(3) Forfeiture of bail shall not constitute a final disposition for a mandatory offense or comparable ordinance without a written order of the court showing the reasons. The order may be a simple docket entry. If the court allows forfeiture of bail for a mandatory offense, it may accept bail in an amount no less than that set forth in these rules as full payment including all statutory assessments.

Table with 3 columns: Item number, Description of offense, and Bail amount. Includes offenses like Driving while under the influence, Driving while under the influence-nonhighway vehicle or snowmobile, Operating nonhighway vehicle or snowmobile so as to endanger human life, etc., and No valid driver's license (without identification).

MISC.

		Bail
5.	Unlawful possession or use of a driver's license (RCW 46.20.0921)	\$100
6.	Driving while license suspended or revoked in the first and second degrees (RCW 46.20.342)	\$500
7.	Driving while license suspended or revoked in the third degree (RCW 46.20.342)	\$250
8.	Violating occupational license restrictions (RCW 46.20.410)	\$200
9.	Financial responsibility suspension (RCW 46.29.610, .620)	\$100
10.	Transporting dangerous articles (RCW 46.48.175)	\$500
11.	Unattended hit and run (RCW 46.52.010)	\$250
12.	Attended hit and run (RCW 46.52.020)	\$500
13.	Reports of repairs, concealing evidence (RCW 46.52.090)	\$500
14.	Confidentiality of driving records (RCW 46.52.130)	\$500
15.	Failure to obey police officer, flagger, or fire fighter (RCW 46.61.015)	\$250
16.	Failure to cooperate with or give information to police officer (RCW 46.61.020)	\$100

		Bail
17.	Failure to stop and give information (RCW 46.61.022)	\$100
18.	Reckless driving (RCW 46.61.500)	\$500
19.	Racing (RCW 46.61.530)	\$500
20.	Leaving children unattended (RCW 46.61.685)	\$250
21.	Unfair motor vehicle business practices (RCW 46.70.170)	\$250
22.	Unlawful operation of for hire vehicles (RCW 46.72.100)	\$250
23.	Motor vehicle wreckers (RCW 46.80.170)	\$500
24.	Driving training schools (RCW 46.82.390)	\$250
25.	First Degree Negligent Driving (RCW 46.61.525)	\$250

Bail

(p) through (q) [No change.]

(r) **Forfeitable Wildlife and Fisheries Offenses.** The following offenses shall be forfeitable as a final disposition, in the amounts listed, to include statutory assessments:

WHERE A BAIL AMOUNT IS SHOWN, THE BREAKDOWN IS:

RCW	WAC	TITLE	BAIL	70% PSEA	35% PSEA	TOTAL
77.15.120.1		Take endangered fish or wildlife, 2nd degree (Mandatory appearance, GM)	\$263	\$184.10	\$92.05	\$540
	232-12-275	Wildlife rehabilitation	\$79	\$55.30	\$27.65	\$162
77.15.120.2		Take endangered fish or wildlife, 1st degree (Mandatory appearance, F)	\$1,316	\$921.20	\$460.60	\$2,698
77.15.130		Take protected fish or wildlife (M)	\$132	\$92.40	\$46.20	\$271
	232-12-064	Live wildlife	\$263	\$184.10	\$92.05	\$540
	232-12-117	Raptor marking	\$79	\$55.30	\$27.65	\$162
	232-12-121	Raptor reporting	\$79	\$55.30	\$27.65	\$162
	232-12-129	Captive raptor propagation	\$79	\$55.30	\$27.65	\$162
	232-12-275	Wildlife rehabilitation	\$79	\$55.30	\$27.65	\$162
77.15.140		Take unclassified fish or wildlife (M)	\$53	\$37.10	\$18.55	\$109
	232-12-055	Hunter orange	\$53	\$37.10	\$18.55	\$109
	232-12-064	Live wildlife	\$263	\$184.10	\$92.05	\$540
	232-12-077	Possession without statement	\$79	\$55.30	\$27.65	\$162
	232-12-242	Hunt wildlife during deer or elk season	\$132	\$92.40	\$46.20	\$271
	232-12-275	Wildlife rehabilitation	\$79	\$55.30	\$27.65	\$162
77.15.150		Use poisons or explosives (Mandatory appearance, GM)	\$789	\$552.30	\$276.15	\$1,618
77.15.160.1		Catch record card (I)	\$39	\$27.30	\$13.65	\$80
77.15.160.2		Use barbed hooks (I)	\$39	\$27.30	\$13.65	\$80
77.15.160.3		Rule of commission or director designated as infraction (I)	\$39	\$27.30	\$13.65	\$80
77.15.170.1		Wastage 2nd degree (M)	\$132	\$92.40	\$46.20	\$271
77.15.170.2		Wastage 1st degree (Mandatory appearance, GM)	\$263	\$184.10	\$92.05	\$540
77.15.180.1		Interfere with fishing/hunting gear 2nd degree (M)	\$184	\$128.80	\$64.40	\$378
77.15.180.3		Interfere with fishing/hunting gear 1st degree (Mandatory appearance, GM)	\$526	\$368.20	\$184.10	\$1,079
77.15.190		Trapping violations (M) (Includes pamphlet violations)	\$53	\$37.10	\$18.55	\$109
	232-12-024	Sealing pelts	\$79	\$55.30	\$27.65	\$162
	232-12-24402	Colville Reservation - hunting or trapping	\$184	\$128.80	\$64.40	\$378
77.15.210		Obstruct taking of fish or wildlife (Mandatory appearance, GM)	\$526	\$368.20	\$184.10	\$1,079
77.15.220		Posting signs (M)	\$132	\$92.40	\$46.20	\$271
77.15.230		Use of department lands (M)	\$132	\$92.40	\$46.20	\$271
	232-12-177	Vehicle operation on department lands	\$53	\$37.10	\$18.55	\$109

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RCW	WAC	TITLE	BAIL	70% PSEA	35% PSEA	TOTAL
	232-12-187	Access area use	\$53	\$37.10	\$18.55	\$109
	232-12-254	Litter on department lands	\$53	\$37.10	\$18.55	\$109
77.15.240		Use of dog (M)	\$132	\$92.40	\$46.20	\$271
77.15.250.1		Release of fish or wildlife (Mandatory appearance, GM)	\$263	\$184.10	\$92.05	\$540
77.15.250.2		Release of deleterious exotic fish or wildlife (Mandatory appearance, F)	\$2,631	\$1,841.70	\$920.85	\$5,394
77.15.260.1		Trafficking 2nd degree (GM)	\$184	\$128.80	\$64.40	\$378
77.15.260.2		Trafficking 1st degree (Mandatory appearance, F)	\$2,631	\$1,841.70	\$920.85	\$5,394
77.15.270		False reporting (GM)	\$184	\$128.80	\$64.40	\$378
77.15.280		Report fish or wildlife harvest (M)	\$53	\$37.10	\$18.55	\$109
77.15.290.1		Transport of fish or wildlife 2nd degree (M)	\$184	\$128.80	\$64.40	\$378
	232-12-021	Importation of wildlife	\$184	\$128.80	\$64.40	\$378
	232-12-061	Fail to tag	\$184	\$128.80	\$64.40	\$378
	232-12-224	Off-reservation possession of wildlife	\$184	\$128.80	\$64.40	\$378
77.15.290.2		Transport of fish or wildlife 1st degree (Mandatory appearance, GM)	\$789	\$552.30	\$276.15	\$1,618
	232-12-021	Importation of wildlife	\$184	\$128.80	\$64.40	\$378
	232-12-061	Fail to tag	\$184	\$128.80	\$64.40	\$378
	232-12-224	Off – reservation possession of wildlife	\$184	\$128.80	\$64.40	\$378
77.15.300		Hydraulic project activity (Mandatory appearance, GM)	\$789	\$552.30	\$276.15	\$1,618
77.15.310		Fish guard on water diversion (Mandatory appearance, GM)	\$789	\$552.30	\$276.15	\$1,618
77.15.320		Fishway (Mandatory appearance, GM)	\$526	\$368.20	\$184.10	\$1,079
77.15.330		Hunting or fishing contest (M)	\$132	\$92.40	\$46.20	\$271
	232-12-041	Field trial permit	\$79	\$55.30	\$27.65	\$162
	232-12-168	Fishing contests conditions	\$79	\$55.30	\$27.65	\$162
	232-12-169	Hunting contests conditions	\$79	\$55.30	\$27.65	\$162
77.15.340		Game farm operation (GM)	\$263	\$184.10	\$92.05	\$540
	232-12-031	Game farm invoice	\$79	\$55.30	\$27.65	\$162
77.15.350		Aquatic farms – inspection and disease control (M)	\$263	\$184.10	\$92.05	\$540
77.15.360		Interfere with department operations (GM)	\$263	\$184.10	\$92.05	\$540
77.15.370.1.a		Recreational fishing 1st degree (GM)	\$184	\$128.80	\$64.40	\$378
77.15.370.1.b		Fish in fishway (GM)	\$263	\$184.10	\$92.05	\$540
77.15.370.1.c		Shoot, gaff, snag fish (GM)	\$263	\$184.10	\$92.05	\$540
77.15.380		Recreational fishing 2nd degree (M)	\$53	\$37.10	\$18.55	\$109
	220-20-025.1	Razor clam beds, driving on	\$39	\$27.30	\$13.65	\$80
	220-20-025.2	Crab, soft shell +\$10 each crab over 1	\$39 \$0	\$27.30 \$0	\$13.65 \$0	\$80
	220-56-145.1	Dolly Vardon/bull trout or sturgeon mutilation +\$50 each fish over 1	\$79 \$0	\$55.30 \$0	\$27.65 \$0	\$162
	220-56-145.2	Recreational salmon, mutilation +\$50 each fish over 1	\$79 \$0	\$55.30 \$0	\$27.65 \$0	\$162
	220-56-145.3	Recreational bottomfish, mutilation +\$50 each fish over 1	\$53 \$0	\$37.10 \$0	\$18.55 \$0	\$109
	220-56-180.8	Recreational salmon, possession, each fish	\$79	\$55.30	\$27.65	\$162
	220-56-190.1-6	Recreational salmon, over limit, each fish	\$79	\$55.30	\$27.65	\$162
	220-56-190.7	Recreational salmon, illegal size +\$50 each fish over 1	\$79 \$0	\$55.30 \$0	\$27.65 \$0	\$162
	220-56-191	Recreational salmon, Puget Sound, undersize +\$50 each fish over 1	\$79 \$0	\$55.30 \$0	\$27.65 \$0	\$162
	220-56-191.1-9	Recreational salmon, Puget Sound, over limit, each fish	\$79	\$55.30	\$27.65	\$162
	220-56-215	Recreational salmon, snagged, each fish	\$79	\$55.30	\$27.65	\$162
	220-56-220	Recreational salmon, eggs	\$132	\$92.40	\$46.20	\$271
	220-56-235	Recreational bottomfish, over limit +\$25 each fish over 1	\$53 \$0	\$37.10 \$0	\$18.55 \$0	\$109
	220-56-240.1	Recreational sturgeon, size or limit (Mandatory appearance)	\$263	\$184.10	\$92.05	\$540
	220-56-240.2	Recreational forage fish, over limit +\$2 each pound of fish over 10lbs.	\$39 \$0	\$27.30 \$0	\$13.65 \$0	\$80



RCW	WAC	TITLE	BAIL	70% PSEA	35% PSEA	TOTAL
	220-56-245	Recreational bottomfish, halibut, over limit, each fish	\$79	\$55.30	\$27.65	\$162
	220-56-255	Recreational bottomfish, halibut, undersize, each fish	\$79	\$55.30	\$27.65	\$162
	220-56-295.1	Recreational sturgeon, remove roe (Mandatory appearance)	\$526	\$368.20	\$184.10	\$1,079
	220-56-310.1	Recreational clams, over limit	\$39	\$27.30	\$13.65	\$80
		+\$2 each clam over limit	\$0	\$0	\$0	
	220-56-310.2	Recreational razor clam, over limit, 1-15	\$26	\$18.20	\$9.10	\$54
		+\$10 each clam over 30	\$0	\$0	\$0	
	220-56-310.3	Recreational geoduck, over limit	\$53	\$37.10	\$18.55	\$109
		+\$50 each geoduck over 4	\$0	\$0	\$0	
	220-56-310.4	Recreational clams, horse clams over limit	\$39	\$27.30	\$13.65	\$80
		+\$25 each clam over 8	\$0	\$0	\$0	
	220-56-310.5	Recreational oysters, over limit	\$26	\$18.20	\$9.10	\$54
		+\$10 each oyster over 19	\$0	\$0	\$0	
	220-56-310.6	Recreational scallops, over limit Rock scallops	\$39	\$27.30	\$13.65	\$80
		+\$10 each over 13	\$0	\$0	\$0	
	220-56-310.7	Recreational scallops, over limit sea scallops	\$39	\$27.30	\$13.65	\$80
		+\$10 each over 13	\$0	\$0	\$0	
	220-56-310.8	Recreational scallops, over limit pink scallops	\$39	\$27.30	\$13.65	\$80
		+\$10 each full pound or quart over first limit	\$0	\$0	\$0	
	220-56-310.9	Recreational shrimp, over limit	\$39	\$27.30	\$13.65	\$80
		+\$50 each full limit over 2 limits	\$0	\$0	\$0	
	220-56-310.10	Recreational octopus, over limit	\$53	\$37.10	\$18.55	\$109
		+\$50 each octopus over 3	\$0	\$0	\$0	
	220-56-310.11	Recreational abalone, possess	\$79	\$55.30	\$27.65	\$162
		+\$150 each abalone over 1	\$0	\$0	\$0	
	220-56-310.12	Recreational crawfish, over limit	\$39	\$27.30	\$13.65	\$80
		+\$25 each full limit over 2 limits	\$0	\$0	\$0	
	220-56-310.13	Recreational squid, over limit	\$39	\$27.30	\$13.65	\$80
		+\$50 for any amount over 10 pounds above limit	\$0	\$0	\$0	
	220-56-310.14	Recreational sea cucumber, over limit	\$39	\$27.30	\$13.65	\$80
		+\$10 each over 26	\$0	\$0	\$0	
	220-56-310.15	Recreational red sea urchin, over limit	\$39	\$27.30	\$13.65	\$80
		+\$10 each urchin over 19	\$0	\$0	\$0	
	220-56-310.16	Recreational purple sea urchin, over limit	\$39	\$27.30	\$13.65	\$80
		+\$10 each urchin over 19	\$0	\$0	\$0	
	220-56-310.17	Recreational green urchin, over limit	\$39	\$27.30	\$13.65	\$80
		+\$10 each urchin over 37	\$0	\$0	\$0	
	220-56-310.18	Recreational Dungeness crab, over limit, 1-6 crabs	\$39	\$27.30	\$13.65	\$80
		+\$25 each crab over 6	\$0	\$0	\$0	
	220-56-310.19	Recreational red rock crab, over limit, 1-6 crabs	\$39	\$27.30	\$13.65	\$80
		+\$25 each crab over 6	\$0	\$0	\$0	
	220-56-310.20	Recreational mussels, over limit	\$39	\$27.30	\$13.65	\$80
		+\$50 each full 10lbs. over 20lbs.	\$0	\$0	\$0	
	220-56-310.21	Recreational barnacles, over limit	\$39	\$27.30	\$13.65	\$80
		+\$50 each full 10lbs. over 2 limits	\$0	\$0	\$0	
	220-56-310.23	Recreational King or box crab, possess	\$79	\$55.30	\$27.65	\$162
		+\$150 each over 1	\$0	\$0	\$0	
	220-56-335	Recreational crab, 1-6 crabs	\$39	\$27.30	\$13.65	\$80
		+\$25 each crab over 6	\$0	\$0	\$0	
	220-56-355.2	Recreational geoduck, neck only	\$53	\$37.10	\$18.55	\$109
		+\$50 each neck over 1	\$0	\$0	\$0	
	220-56-355.3	Recreational clams, undersize	\$39	\$27.30	\$13.65	\$80
		+\$2 each clam over 1	\$0	\$0	\$0	
	220-56-365	Recreational razor clam, fail to retain	\$39	\$27.30	\$13.65	\$80
	220-56-385	Recreational oysters, retain shell	\$26	\$18.20	\$9.10	\$54
		+\$10 each shell over 1	\$0	\$0	\$0	
	220-56-400	Recreational abalone, possess	\$79	\$55.30	\$27.65	\$162
		+\$150 each over 1 abalone	\$0	\$0	\$0	
	232-12-064	Live wildlife	\$263	\$184.10	\$92.05	\$540

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RCW	WAC	TITLE	BAIL	70% PSEA	35% PSEA	TOTAL
	232-12-077	Possession without statement	\$79	\$55.30	\$27.65	\$162
	232-12-151	Fly fishing rules	\$79	\$55.30	\$27.65	\$162
	232-12-164	Fishing near dams	\$132	\$92.40	\$46.20	\$271
77.15.390		Seaweed (M)	\$53	\$37.10	\$18.55	\$109
77.15.400.1		Wild birds 2nd degree (M)	\$79	\$55.30	\$27.65	\$162
	232-12-044	Game bird marking requirements	\$79	\$55.30	\$27.65	\$162
	232-12-047	Unlawful firearm	\$79	\$55.30	\$27.65	\$162
	232-12-055	Hunter orange	\$53	\$37.10	\$18.55	\$109
	232-12-061	Fail to tag	\$184	\$128.80	\$64.40	\$378
	232-12-064	Live wildlife	\$263	\$184.10	\$92.05	\$540
	232-12-068	Nontoxic shot	\$53	\$37.10	\$18.55	\$109
	232-12-077	Possession without statement	\$79	\$55.30	\$27.65	\$162
	232-12-24402	Colville Reservation – hunting or trapping	\$184	\$128.80	\$64.40	\$378
	232-12-264	Bait game birds	\$263	\$184.10	\$92.05	\$540
	232-12-267.1	Field identification of game birds	\$53	\$37.10	\$18.55	\$109
	232-12-275	Wildlife rehabilitation	\$79	\$55.30	\$27.65	\$162
	232-12-291	Hunt before or after hours	\$79	\$55.30	\$27.65	\$162
	232-12-828	Disabled hunter/companion violation	\$79	\$55.30	\$27.65	\$162
77.15.400.2		Wild birds 1st degree (GM)	\$132	\$92.40	\$46.20	\$271
77.15.410.1		Big game animal 2nd degree (GM)	\$263	\$184.10	\$92.05	\$540
	232-12-047	Unlawful firearm	\$79	\$55.30	\$27.65	\$162
	232-12-051	Muzzleloading firearms	\$79	\$55.30	\$27.65	\$162
	232-12-054	Unlawful archery	\$79	\$55.30	\$27.65	\$162
	232-12-055	Hunter orange	\$53	\$37.10	\$18.55	\$109
	232-12-064	Live wildlife	\$263	\$184.10	\$92.05	\$540
	232-12-077	Possession without statement	\$79	\$55.30	\$27.65	\$162
	232-12-24402	Colville Reservation – hunting or trapping	\$184	\$128.80	\$64.40	\$378
	232-12-267.2	Field identification of big game	\$184	\$128.80	\$64.40	\$378
	232-12-267.3	Field identification of big game with horn or antler	\$263	\$184.10	\$92.05	\$540
	232-12-275	Wildlife rehabilitation	\$79	\$55.30	\$27.65	\$162
	232-12-291	Hunt before or after hours	\$79	\$55.30	\$27.65	\$162
	232-12-828	Disabled hunter/companion violation	\$79	\$55.30	\$27.65	\$162
77.15.410.2		Big game animal 1st degree (Mandatory appearance, F)	\$2,631	\$1,841.70	\$920.85	\$5,394
77.15.430.1		Wild animals 2nd degree (M)	\$79	\$55.30	\$27.65	\$162
	232-12-055	Hunter orange	\$53	\$37.10	\$18.55	\$109
	232-12-064	Live wildlife	\$263	\$184.10	\$92.05	\$540
	232-12-077	Possession without statement	\$79	\$55.30	\$27.65	\$162
	232-12-242	Hunt during modern firearm deer/elk season	\$132	\$92.40	\$46.20	\$271
	232-12-24402	Colville Reservation – hunting or trapping	\$184	\$128.80	\$64.40	\$378
	232-12-275	Wildlife rehabilitation	\$79	\$55.30	\$27.65	\$162
	232-12-291	Hunt before or after hours	\$79	\$55.30	\$27.65	\$162
	232-12-828	Disabled hunter/companion violation	\$79	\$55.30	\$27.65	\$162
77.15.430.2		Wild animals 1st degree (M)	\$132	\$92.40	\$46.20	\$271
77.15.440		Use of weapon/dog/trap on game reserve (M)	\$132	\$92.40	\$46.20	\$271
77.15.450.1		Spotlighting big game 2nd degree (GM)	\$526	\$368.20	\$184.10	\$1,079
77.15.450.2		Spotlighting big game 1st degree (Mandatory appearance, F)	\$2,631	\$1,841.70	\$920.85	\$5,394
77.15.460		Loaded firearm in vehicle (M)	\$132	\$92.40	\$46.20	\$271
77.15.470		Avoid check station (GM)	\$263	\$184.10	\$92.05	\$540
77.15.500.1		Commercial fish without license 2nd degree (GM)	\$0	\$0	\$0	
		Limited entry	\$1,053	\$737.10	\$368.55	\$2,159
		Non-limited entry	\$526	\$368.20	\$184.10	\$1,079
77.15.500.1.b		Commercial fish without license 2nd degree (GM)	\$0	\$0	\$0	
		Alternate operator	\$263	\$184.10	\$92.05	\$540
77.15.500.2		Commercial fish without license 1st degree (Mandatory appearance, F)	\$2,631	\$1,841.70	\$920.85	\$5,394

RCW	WAC	TITLE	BAIL	70% PSEA	35% PSEA	TOTAL
77.15.510		Commercial fish guide/charter (GM)	\$1,053	\$737.10	\$368.55	\$2,159
77.15.530.1		Non-designated vessel (Mandatory appearance, GM)	\$526	\$368.20	\$184.10	\$1,079
77.15.530.4		Non-designated vessel same day (Mandatory appearance, F)	\$1,053	\$737.10	\$368.55	\$2,159
77.15.540		Use of commercial fish license (M)	\$79	\$55.30	\$27.65	\$162
	220-20-050.1,2	Vessel registration decal display	\$53	\$37.10	\$18.55	\$109
	220-20-050.3	Salmon angler decal display	\$53	\$37.10	\$18.55	\$109
	220-20-051.4	Affix registration/documentation numbers	\$53	\$37.10	\$18.55	\$109
77.15.550.1		Commercial fish area or time 2nd degree (GM)	\$789	\$552.30	\$276.15	\$1,618
	220-20-010.12	Salmon through power block, each fish	\$79	\$55.30	\$27.65	\$162
	220-20-010.13	Mutilate food fish, each fish	\$79	\$55.30	\$27.65	\$162
	220-20-015.3	Commercial salmon, undersize	\$79	\$55.30	\$27.65	\$162
		+\$50 each fish over 1	\$0	\$0	\$0	
	220-20-015.3.b	Commercial salmon, dressed fish	\$79	\$55.30	\$27.65	\$162
		+\$50 each fish over 1	\$0	\$0	\$0	
	220-20-016.1	Commercial salmon, take home limit, each fish	\$79	\$55.30	\$27.65	\$162
	220-20-016.2	Sell salmon to unauthorized buyer	\$263	\$184.10	\$92.05	\$540
		+\$150 each fish over 1	\$0	\$0	\$0	
	220-20-020.1	Commercial sturgeon, illegal size, undersized each fish	\$79	\$55.30	\$27.65	\$162
		Oversized, each fish (Mandatory appearance)	\$263	\$184.10	\$92.05	\$540
	220-20-020.5	Commercial bottomfish, undersized flounder	\$53	\$37.10	\$18.55	\$109
		+\$50 each fish over 1	\$0	\$0	\$0	
	220-20-021.1.a	Commercial sturgeon, exceed limit	\$79	\$55.30	\$27.65	\$162
		+\$50 each fish over 1	\$0	\$0	\$0	
	220-20-021.1.c	Sale of sturgeon eggs (Mandatory appearance)	\$1,053	\$737.10	\$368.55	\$2,159
	220-20-021.2	Purchase sturgeon eggs (Mandatory appearance)	\$1,053	\$737.10	\$368.55	\$2,159
	220-20-025.2	Commercial crab, soft shell	\$132	\$92.40	\$46.20	\$271
	220-20-025.3	Commercial crab, back shell	\$132	\$92.40	\$46.20	\$271
	220-33-020.3	Commercial sturgeon, illegal size (Mandatory appearance)	\$263	\$184.10	\$92.05	\$540
	220-33-020.4	Commercial sturgeon, over limit, each fish	\$79	\$55.30	\$27.65	\$162
	220-33-020.5	Commercial sturgeon, remove eggs	\$132	\$92.40	\$46.20	\$271
	220-33-020.6	Commercial sturgeon, remove head or tail, each fish	\$79	\$55.30	\$27.65	\$162
	220-36-031.2	Commercial sturgeon, illegal size (Mandatory appearance)	\$263	\$184.10	\$92.05	\$540
	220-36-031.3	Commercial sturgeon, closed season	\$263	\$184.10	\$92.05	\$540
		+\$150 each fish over 1	\$0	\$0	\$0	
	220-40-031.2	Commercial sturgeon, illegal size (Mandatory appearance)	\$263	\$184.10	\$92.05	\$540
	220-40-031.3	Commercial sturgeon, closed season	\$263	\$184.10	\$92.05	\$540
		+\$150 each fish over 1	\$0	\$0	\$0	
	220-44-050	Commercial bottomfish, catch limit	\$263	\$184.10	\$92.05	\$540
		+\$500 each additional 10% over limit	\$0	\$0	\$0	
	220-44-050.3	Commercial bottomfish, undersized lingcod	\$79	\$55.30	\$27.65	\$162
		+\$50 each fish over 1	\$0	\$0	\$0	
	220-47-401	Chinook salmon using reef net gear	\$79	\$55.30	\$27.65	\$162
		+\$50 each fish over 1	\$0	\$0	\$0	
	220-48-005.1	Commercial bottomfish, undersized sole	\$79	\$55.30	\$27.65	\$162
		+\$50 each fish over	\$0	\$0	\$0	
	220-48-005.3	Commercial bottomfish, lingcod, closed area	\$79	\$55.30	\$27.65	\$162
		+\$50 each fish over 1	\$0	\$0	\$0	
	220-48-005.4	Commercial bottomfish, lingcod, illegal size	\$79	\$55.30	\$27.65	\$162
		+\$50 each fish over 1	\$0	\$0	\$0	
	220-48-005.5	Commercial bottomfish, lingcod, closed time	\$79	\$55.30	\$27.65	\$162
		+\$50 each fish over 1	\$0	\$0	\$0	
	220-48-005.6	Commercial bottomfish, retain shellfish	\$132	\$92.40	\$46.20	\$271
	220-48-005.7.b	Commercial bottomfish, retain salmon or sturgeon	\$79	\$55.30	\$27.65	\$162
		+\$50 each fish over 1	\$0	\$0	\$0	
	220-48-005.7.c	Commercial bottomfish, retain shellfish	\$132	\$92.40	\$46.20	\$271
	220-48-005.7.d	Commercial bottomfish, whiting	\$53	\$37.10	\$18.55	\$109
		+\$50 each fish over 1	\$0	\$0	\$0	
	220-48-052.2	Commercial bottomfish, fish for possess salmon, each fish	\$79	\$55.30	\$27.65	\$162

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RCW	WAC	TITLE	BAIL	70% PSEA	35% PSEA	TOTAL
	220-52-019.5	Commercial geoduck, neck or siphon +\$50 for each geoduck over 1	\$79 \$0	\$55.30 \$0	\$27.65 \$0	\$162
	220-52-019.9	Commercial geoduck, processing (Mandatory appearance)	\$789	\$552.30	\$276.15	\$1,618
	220-52-040.3	Commercial crab, undersized or female +\$50 each crab over 1	\$132 \$0	\$92.40 \$0	\$46.20 \$0	\$271
	220-52-043.6	Commercial crab, incidental catch	\$132	\$92.40	\$46.20	\$271
	220-52-050.1.c	Commercial shrimp, exceed count	\$526	\$368.20	\$184.10	\$1,079
	220-52-050.1.d	Commercial shrimp, incidental catch, each fish	\$79	\$55.30	\$27.65	\$162
	220-52-050.1.e	Commercial shrimp, incidental catch of shellfish	\$132	\$92.40	\$46.20	\$271
	220-52-060.1.c	Commercial crawfish, undersized or female	\$79	\$55.30	\$27.65	\$162
	220-52-068.4	Commercial scallops, incidental catch	\$132	\$92.40	\$46.20	\$271
	220-52-069.2.a.ii	Commercial scallops, undersized +\$25 each scallop over 1	\$53 \$0	\$37.10 \$0	\$18.55 \$0	\$109
	220-52-069.2.a.iv	Commercial scallops, retain other foodfish or shellfish	\$132	\$92.40	\$46.20	\$271
	220-52-071.3.c	Commercial sea cucumbers, possess geoduck, each geoduck	\$79	\$55.30	\$27.65	\$162
	220-52-073.2	Commercial sea urchins, illegal size +\$25 each sea urchin over 1	\$53 \$0	\$37.10 \$0	\$18.55 \$0	\$109
	220-52-073.3.d	Commercial sea urchins, purple sea urchin, each urchin	\$53	\$37.10	\$18.55	\$109
	220-52-073.3.g	Commercial sea urchins, processing	\$526	\$368.20	\$184.10	\$1,079
	220-88A-070.3	Commercial shrimp, undersized spot shrimp	\$263	\$184.10	\$92.05	\$540
77.15.550.2		Commercial fish area or time 1st degree (Mandatory appearance, F)	\$1,579	\$1,105.30	\$552.65	\$3,237
77.15.560		Report commercial fish harvest or delivery (GM)	\$526	\$368.20	\$184.10	\$1,079
77.15.570.1		Participate in treaty Indian fishery (GM)	\$526	\$368.20	\$184.10	\$1,079
77.15.570.2		Participate in treaty Indian commercial fishery (Mandatory appearance, F)	\$1,579	\$1,105.30	\$552.65	\$3,237
77.15.580.1.a		Use of net to take fish 2nd degree (Mandatory appearance, GM)	\$789	\$552.30	\$276.15	\$1,618
77.15.580.1.b		Use of net, retain fish 2nd degree (Mandatory appearance, GM)	\$263	\$184.10	\$92.05	\$540
77.15.580.2		Use of net to take fish 1st degree (Mandatory appearance, F)	\$1,579	\$1,105.30	\$552.65	\$3,237
77.15.590		Commercial vessel for charter or recreational use (GM)	\$263	\$184.10	\$92.05	\$540
77.15.600		Commercial wildlife activity (GM)	\$526	\$368.20	\$184.10	\$1,079
77.15.610		Commercial wildlife license (M)	\$79	\$55.30	\$27.65	\$162
77.15.620.1		Fish dealing 2nd degree (GM)	\$789	\$552.30	\$276.15	\$1,618
77.15.620.3		Fish dealing 1st degree (Mandatory appearance, F)	\$2,631	\$1,841.70	\$920.85	\$5,394
77.15.630.1		Use of fish buyer/dealer license 2nd degree (GM)	\$789	\$552.30	\$276.15	\$1,618
77.15.630.2		Use of fish buyer/dealer license 1st degree (Mandatory appearance, F)	\$2,631	\$1,841.70	\$920.85	\$5,394
77.15.640		Violate fish buyer/dealer rules (GM)	\$263	\$184.10	\$92.05	\$540
77.15.650.1		Purchase or use of license 2nd degree (GM)	\$263	\$184.10	\$92.05	\$540
77.15.650.2		Purchase or use of license 1st degree (Mandatory appearance, F)	\$1,316	\$921.20	\$460.60	\$2,698
77.15.660		Scientific permit (GM)	\$263	\$184.10	\$92.05	\$540
77.15.670.1		Suspension of department privileges 2nd degree (GM)	\$526	\$368.20	\$184.10	\$1,079
77.15.670.2		Suspension of department privileges 1st degree (Mandatory appearance, F)	\$2,631	\$1,841.70	\$920.85	\$5,394
77.16.070		Hunting intoxicated (Mandatory appearance, GM)	\$263	\$184.10	\$92.05	\$540
77.16.360.1		Hunt bear using bait (GM)	\$263	\$184.10	\$92.05	\$540
77.16.360.2		Hunt with dog or dogs (GM)	\$263	\$184.10	\$92.05	\$540

(s) **Forfeitable Natural Resources Offenses.** The following offenses shall be forfeitable as a final disposition, in the amounts listed, to include statutory assessments:

FOREST PROTECTION					
WHERE A BAIL AMOUNT IS SHOWN, THE BREAKDOWN IS:		BAIL	70% PSEA	35% PSEA	TOTAL
RCW 76.04.205	Violation of Burning Permit	90	63	31.50	185

FOREST PROTECTION					
WAC 332-24-211	Violations of Outdoor Burning Rules	90	63	31.50	185
RCW 76.04.215	Burning Mill Wood Waste—Arresters	90	63	31.50	185
RCW 76.04.246	Use of Blasting Fuse	90	63	31.50	185
RCW 76.04.305	Closed to Entry—Extra Fire Hazard	90	63	31.50	185
RCW 76.04.315	Suspension of Burning Permits/Privileges	90	63	31.50	185
RCW 76.04.325 WAC 332-24-301	Closure of Forest Operations or Industrial Restrictions Forest Lands	90	63	31.50	185
RCW 76.04.405 WAC 332-24-405	Spark-Emitting Equipment Regulated	90	63	31.50	185
RCW 76.04.415	Work Stoppage Notice—Violation	90	63	31.50	185
RCW 76.04.425	Unauthorized Entry Into Sealed Fire Tool Box	90	63	31.50	185
RCW 76.04.435	Deposit of Fire or Live Coals—Railroad	150	105	52.50	308
RCW 76.04.455	Discarding Lighted Material	90	63	31.50	185
RCW 76.04.465 WAC 332-24-401	Certain Snags To Be Felled Felling of Snags	90	63	31.50	185
WAC 332-24-409	Electric Fence Controllers—Uncertified	90	63	31.50	185
RCW 76.04.650	Disposal of Forest Debris—Felling	90	63	31.50	185
RCW 76.04.700	Failure To Extinguish Campfire	90	63	31.50	185
RCW 76.04.710	Willful Setting of Fire	160	112	56	328
RCW 76.04.720	Removal of Notices—Signs	90	63	31.50	185
RCW 76.04.730	Negligent Fire—Spread	90	63	31.50	185

FOREST PRACTICES

WHERE A BAIL AMOUNT IS SHOWN, THE BREAKDOWN IS:		BAIL	70% PSEA	35% PSEA	TOTAL
RCW 76.09.060(5) WAC 222-20-060	Deviation From Approved Appl./Notif.	250	175	87.50	513
RCW 76.09.060(3) WAC 222-20-050	Conversion-Deviation From Approved Appl./Notif.	250	175	87.50	513
RCW 76.09.060 WAC 222-34-010 WAC 222-34-020	Conversion-Deviation From Approved Appl./Notif. (also see Reforestation)	250	175	87.50	513
RCW 76.09.050(4) WAC 222-24-020(6)	Road Location—Unstable Slopes	250	175	87.50	513
RCW 76.09.050(4) WAC 222-24-025	Location and Design	250	175	87.50	513
RCW 76.09.050(4) WAC 222-24-030	Road Construction—General	250	175	87.50	513
RCW 76.09.050(4) WAC 222-24-030(8,9)	End Haul/Side Cast and Waste Disposal	250	175	87.50	513
RCW 76.09.050(4) WAC 222-24-050	Road Maintenance	250	175	87.50	513
RCW 76.09.050(4) WAC 222-24-060	Rock Quarries	250	175	87.50	513
RCW 76.09.050(4) WAC 222-30-020	Harvest Unit, Plan Design	250	175	87.50	513
RCW 76.09.050(4) WAC 222-30-020(2,3)	Landing Location and Construction—Water	250	175	87.50	513
RCW 76.09.050(4) WAC 222-30-040	Temperature Control Shade Requirements—Temp. Sensitive	250	175	87.50	513
RCW 76.09.050(4) WAC 222-30-040	Temperature Control Shade Requirements—General	250	175	87.50	513
RCW 76.09.050(4) WAC 222-30-050	Falling and Bucking	250	175	87.50	513
RCW 76.09.050(4) WAC 222-30-060	Cable Yarding	250	175	87.50	513
RCW 76.09.050(4) WAC 222-30-070	Tractor and Wheeled Skidding Systems	250	175	87.50	513

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**FOREST PRACTICES**

WHERE A BAIL AMOUNT IS SHOWN, THE BREAKDOWN IS:		BAIL	70% PSEA	35% PSEA	TOTAL
RCW 76.09.050(4) WAC 222-30-090	Postharvest Site Preparation	250	175	87.50	513
RCW 76.09.050(4) WAC 222-30-100	Slash Disposal (See also RCW 76.04 & WAC 332-24)	250	175	87.50	513
RCW 76.09.050(4) WAC 222-38-020	Chemicals	250	175	87.50	513

Consult Department of Agriculture prior to citation.

**SPECIALIZED FOREST PRODUCTS**

General Rules

WHERE A BAIL AMOUNT IS SHOWN, THE BREAKDOWN IS:		BAIL	70% PSEA	35% PSEA	TOTAL
RCW 43.30.310 WAC 332-52-030	Nontraffic				
	(1) Sanitation	90	63	31.50	185
	(2) Public Behavior (c) Selling without permission (d) Advertising without permission (f) Fireworks	40	28	14	82
	(3) Audible Devices (a) Audible devices regulated (b) Unauthorized use of public address system	90	63	31.50	185
		70	49	24.50	144

Public Behavior—Recreation Site

WHERE A BAIL AMOUNT IS SHOWN, THE BREAKDOWN IS:		BAIL	70% PSEA	35% PSEA	TOTAL
RCW 43.30.310 WAC 332-52-040					
	(4) Occupying a closed site	25	17.50	8.75	52
	(5) Fire outside designated location	25	17.50	8.75	52
	(6) Camping in a day-use area	25	17.50	8.75	52
	(7) Failure to clean up rubbish	25	17.50	8.75	52
	(8) Utilizing site which is designated for other use	25	17.50	8.75	52
	(9) Overstaying site	25	17.50	8.75	52
	(10) Failure to maintain quiet	25	17.50	8.75	52
	(11) Saddle or pack animals in camp	25	17.50	8.75	52
	(12) Pets at large	25	17.50	8.75	52

**MANDATORY**

WHERE A BAIL AMOUNT IS SHOWN, THE BREAKDOWN IS:		BAIL
RCW 76.04.445	Reporting Fire	Mandatory
RCW 76.04.740	Reckless Burning	Mandatory
RCW 76.09.170 WAC 222-46-080	Knowingly in Violation of RCW 76.09.010-.280	Mandatory
RCW 76.09.050 (2),(4) WAC 222-20-010	Operation Without Application/Notification	Mandatory
RCW 76.09.050(4) WAC 222-24-040	Water Crossing Structures (See also RCW 75.20.100 & WAC 220-110)	Mandatory
RCW 76.09.050(4) WAC 222-30-020(4)	Riparian Management Zone	Mandatory
RCW 76.09.050(4) WAC 222-30-030	Stream Bank Integrity	Mandatory
RCW 76.09.050(4) WAC 222-30-080	Landing Cleanup	Mandatory
RCW 76.09.070 WAC 222-34-010	Reforestation	Mandatory
RCW 76.36	Marks and Brands. File All Charges With Prosecutor. (No Citation.)	Mandatory
RCW 76.40	Log Patrol. File All Charges With Prosecutor. (No Citation.)	Mandatory

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**MANDATORY**

WHERE A BAIL AMOUNT IS SHOWN, THE BREAKDOWN IS:		BAIL
RCW 76.48.030	No Valid Permit	Mandatory
RCW 76.48.070	Possessing Forest Products Without a Valid Permit	Mandatory
RCW 76.48.070	Transporting Forest Products Without a Valid Permit	Mandatory
RCW 76.48.075	Transporting Forest Products From Out of State	Mandatory
RCW 76.48.094	Cedar Processor—Failure To Maintain Records	Mandatory
RCW 76.48.096	Cedar Processor—Purchase From a Person Without a Permit	Mandatory
RCW 76.48.120	Offering a False or Fraudulent Permit (Class C Felony—No Citation.)	Mandatory

**General Rules**

RCW 43.30.310 WAC 332-52-030	Nontraffic	
	(2) Public behavior	Mandatory
	(a) Inciting or participating in riots	
	(b) Malicious mischief Damages less than \$50	Mandatory
	Damages more than \$50, less than \$250	Mandatory
	Damages more than \$250, less than \$1,500 (Class C Felony—No Citation.) Damages more than \$1,500 (Class B Felony—No Citation.)	Mandatory
	(e) Erecting unauthorized buildings	Mandatory

**Public Behavior—Recreation Site**

RCW 43.30.310 WAC 332-52-040	Nontraffic	
	(1) Destroying—Defacing (Malicious mischief) Damages less than \$50	Mandatory
	Damages more than \$50, less than \$250	Mandatory
	Damages more than \$250, less than \$1,500 (Class C Felony—No Citation.)	Mandatory
	Damages more than \$1,500 (Class B Felony—No Citation.)	Mandatory
	(2) Discharging firearms	Mandatory

(t) **Forfeitable Parks Offenses.** The following offenses shall be forfeitable as a final disposition, in the amounts listed, to include statutory assessments:

WHERE A BAIL AMOUNT IS SHOWN, THE BREAKDOWN IS:		BAIL	70% PSEA	35% PSEA	TOTAL
<b>CRIMINAL</b>					
<b>WAC</b>					
308-93-020	Vessel Registration Required				Mandatory
352-32-120	Firearms and/or Weapons				Mandatory
352-32-130	Aircraft				Mandatory
352-32-140	Fireworks	70.00	49.00	24.50	144.00
352-32-150	Fishing	50.00	35.00	17.50	103.00
352-32-15001	Little Spokane River Natural Area Prohibited Uses	50.00	35.00	17.50	103.00
352-32-170	Rubbish				Mandatory
352-32-180	Sanitation				Mandatory
352-32-210	Consumption of Alcohol in State Park Areas	50.00	35.00	17.50	103.00
352-32-290	Wood Debris Collection	70.00	49.00	24.50	144.00
352-37-070	Restricted Areas				Mandatory
352-37-120	Operator's License Required				Mandatory
352-37-140	Certain Practices Prohibited				Mandatory

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WHERE A BAIL AMOUNT IS SHOWN, THE BREAKDOWN IS:		BAIL	70% PSEA	35% PSEA	TOTAL
352-37-170	Aircraft				Mandatory
352-37-190	Excluded/Limited Recreational Activities	50.00	35.00	17.50	103.00
352-60-030	Personal Flotation Devices	24.74	17.32	8.66	51.00
352-60-040	Visual Distress Signals	24.74	17.32	8.66	51.00
352-60-050	Ventilation	70.00	49.00	24.50	144.00
352-60-060	Navigation Lights and Shapes and Sound and Light Signals	70.00	49.00	24.50	144.00
352-60-070	Steering and Sailing				Mandatory
352-60-080	Fire Extinguishing Equipment	24.74	17.32	8.66	51.00
352-60-090	Backfire Flame Control	70.00	49.00	24.50	144.00
352-60-100	Liquefied Petroleum Gas				Mandatory
352-60-110	Canadian Vessels				Mandatory
352-70-040	Boating Accident & Casualty Report				Mandatory

(u) **Forfeitable Utilities and Transportation Offense.** The following offenses shall be forfeitable as a final disposition, in the amounts listed, to include statutory assessments:

WHERE A BAIL AMOUNT IS SHOWN, THE BREAKDOWN IS:		BAIL	70% PSEA	35% PSEA	TOTAL
RCW & WAC	VIOLATION				
81.04.380	Violation of Chapter by Officer, Agent, Employee of Public Service Co. (Mandatory Appearance)				500
81.04.385	Failure To Comply With Commission Orders/Provision of Title 81 (Mandatory Appearance)				500
81.04.390	Person Violating Provision of Title 81 (Mandatory Appearance)				500
81.04.390	Failure To Observe Order, Aiding, Abetting, Etc. (Mandatory Appearance)				250
81.68.045 480-30-030	Certificate Required—Auto Transp. (Mandatory Appearance)				500
81.68.045 480-40-030	Certificate Required—Excursion Bus (Mandatory Appearance)				500
81.70.220 480-40-030	Certificate Required—Charter Bus (Mandatory Appearance)				500
81.70.330 480-30-090	No Name or Permit Number Displayed—Charter/Excursion Bus	50	35	17.50	103
81.70.340 480-40-120	Fail to ID Vehicle—Auto Transp.	50	35	17.50	103
480-30-100	Fail To Register ICC Authority—Charter/Excursion Bus	80	56	28	164
480-30-100	Disqualified Driver—License Suspended or Revoked, and Other Disqualifying Offenses as Listed in 49 C.F.R. Section 391.15 (Mandatory Appearance)				500
480-40-070	Disqualified Driver—License Suspended or Revoked, and Other Disqualifying Offenses as Listed in 49 C.F.R. Section 391.15 Charter/Excursion Bus (Mandatory Appearance)				500
480-30-100	Medical Certificate Violation—Auto Transp.	50	35	17.50	103
480-40-070	Medical Certificate Violation—Charter/Excursion Bus	50	35	17.50	103
480-30-097	Moving Equipment Ordered Out of Service Without Repairs Made—Auto Transp. (Mandatory Appearance)				500
480-40-065	Moving Equipment Ordered Out of Service Without Repairs Made—Charter/Excursion Bus (Mandatory Appearance)				500
480-30-100	Hours of Service—Auto Transp.—Driver in Service	50	35	17.50	103
480-30-100(1)	Driver Out of Service	80	56	28	164
81.77.040 480-70-070	Certificate of Convenience and Necessity Required—Solid Waste Transp. (Mandatory Appearance)				500
480-70-300	Fail To ID Vehicle—Solid Waste Transp.	50	35	17.50	103
480-70-400	Disqualified Driver—License Suspended or Revoked, and Other Disqualifying Offenses as Listed in 49 C.F.R. Section 391.15—Solid Waste Transp. (Mandatory Appearance)				500
480-70-400	Medical Certificate Violation—Solid Waste Transp.	50	35	17.50	103

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WHERE A BAIL AMOUNT IS SHOWN, THE BREAKDOWN IS:		BAIL	70% PSEA	35% PSEA	TOTAL
480-70-325	Moving Equipment Ordered Out of Service Without Repairs Made-Solid Waste Transp. (Mandatory Appearance)				500
480-70-330	Hours of Service—Solid Waste Transp.-Driver in Service	50	35	17.50	103
	Driver Out of Service	80	56	28	164
81.80.060	No Valid Combination of Services Permit	130	91	45.50	267
81.80.070	No Valid Permit—Common/Contract (Mandatory Appearance)				500
81.80.100	Exceeding Permit Authority	130	91	45.50	267
81.80.355	Unlawful Advertising	80	56	28	164
480-14-100					
81.80.371	Fail to Register Appropriate ICC Authority	80	56	28	164
480-14-320					
480-12-121	Fail to Display Copy of Permit	25	17.50	8.75	52
480-14-090					
480-14-110	Improper Use of Permit or Registration	130	91	45.50	267
81.80.305	No Name or Permit Number Displayed	50	35	17.50	103
480-12-150					
480-14-340					
480-12-165	Moving Equipment Ordered Out of Service Without Repairs Made				500
480-14-360(3)	(Mandatory Appearance)				
480-12-180(6)	Disqualified Driver—License Suspended or Revoked, and Other Dis-				500
480-14-370(7)	qualifying Offenses as Listed in 49 C.F.R. § 391.15 (Mandatory Appearance)				
480-12-180(1)	Attendance/Surveillance of Hazardous Material Laden Motor Vehicle				500
480-14-370(1)	(Mandatory Appearance)				
480-12-180(1)	Parking of Hazardous Material Laden Motor Vehicle (Mandatory				500
480-14-370(1)	Appearance)				
480-12-180(1)	Explosive Laden Vehicle Off Route (Mandatory Appearance)				500
480-14-370(1)					
480-12-180(6)	Medical Certificate Violation	50	35	17.50	103
480-14-370(7)					
480-12-190	Hours of Service Violation Driver in Service	50	35	17.50	103
480-14-380					
480-12-190(1)	Driver Out of Service	80	56	28	164
480-14-380	Hazardous Material Transportation (Mandatory Appearance)				500
480-14-390					
480-12-210	Failure to Display Commission Approved Lease	50	35	17.50	103
81.90.030	Certificate Required (Mandatory Appearance)				500
81.90.140	Failure to Register Interstate Authority	80	56	28	164
480-35-110					
480-35-120	Failure to Display Valid Identification Decal	50	35	17.50	103
81.80.301	Failure to Display Single State Registration (SSR) Receipt	50	35	17.50	103
480-14-300					
480-14-400	Radioactive Material Transp. (Mandatory Appearance)				500

[Amended effective September 1, 2002; April 1, 2003.]

Reviser's note: The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

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

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WSR 05-13-022  
RULES OF COURT  
STATE SUPREME COURT

[June 2, 2005]

IN THE MATTER OF THE ADOPTION ) ORDER  
OF THE AMENDMENT TO AR 6 ) NO. 25700-A-822

The Superior Court Judges' Association having recommended the adoption of the proposed amendment to AR 6, and the Court having approved the proposed amendment for publication;

Now, therefore, it is hereby

ORDERED:

(a) That pursuant to the provisions of GR 9(g), the proposed amendment as attached hereto is to be published for comment in the Washington Reports, Washington Register, Washington State Bar Association and Office of the Administrator for the Court's websites expeditiously.

(b) The purpose statement as required by GR 9(e), is published solely for the information of the Bench, Bar and other interested parties.

(c) Comments are to be submitted to the Clerk of the Supreme Court by either U.S. Mail or Internet E-Mail by no later than 90 days from the published date. Comments may be sent to the following addresses: P.O. Box 40929, Olympia, Washington 98504-0929, or Lisa.Bausch@courts.wa.gov. Comments submitted by e-mail message must be limited to 1500 words.

DATED at Olympia, Washington this 2nd day of June 2005.

For the Court  
Gerry L. Alexander  
Chief Justice

GR 9 COVER SHEET

SUGGESTED AMENDMENT  
SUPERIOR COURT ADMINISTRATIVE RULE (APR)  
AR 6. JUDGES PRO TEMPORE

**Purpose:** AR 6—Elected Judges Pro Tempore was adopted in late 2001. This rule permits the presiding judge of a superior court to appoint an elected sitting judge as an elected judge pro tempore. Courts are using elected judges pro tempore to handle cases and to cover calendars in the superior courts.

A problem has arisen with the rule when named elected judges pro tempore are no longer available to serve in that capacity during the annual assignment period. The proposed change addresses this problem by permitting limited substitution on the list of elected judges pro tempore.

New section (e) sets out the procedure for substituting elected judges pro tempore. It provides when an elected judge pro tempore is no longer able to serve, a new elected judge pro tempore may be substituted. The substitute appointment is not required to meet the time limitations set out in section (c) but is required to meet to other requirements set out in that section and in sections (b) and (d). If a court has three elected judges pro tempore, one elected judge pro tempore may be substituted annually and in all other courts no more than two judges may be substituted annually.

AR 6

Elected Judges Pro Tempore

**(a) Generally.** Wa. const. art. IV, § 7 and RCW 2.08.180 authorize the appointment of judges pro tempore. RCW 2.08.180(2) provides for the appointment of any elected sitting judge as an elected judge pro tempore.

**(b) Assignment and Qualifications.** The presiding judge of any superior court may, in the interest of justice, assign an elected sitting judge from the Supreme Court, Court of Appeals, District or Municipal Court to serve as an elected judge pro tempore. The presiding judge will obtain the consent of an elected judge pro tempore before making the assignment. Consent of the parties or attorneys is not required. The presiding judge will make these assignments based on the experience and demonstrated ability of the elected judge pro tempore with the subject matter and the level of complexity of the case.

**(c) Number and Publication of Judges Pro Tempore.** Each superior court shall file with the Administrative Office of the Courts (AOC) by February 1st the list of elected judges pro tempore to which it will be assigning cases during the year commencing on April 1st. Each court may appoint a minimum of three (3) elected judges pro tempore or one (1) elected judge pro tempore for every five (5) judges but in no event may the list contain more than fifteen (15) elected judges pro tempore. The list shall identify the court upon which the elected judge pro tempore serves and the number of years of judicial service. The list shall be disseminated in the same manner as required for local court rules by GR 7 and shall be published on the AOC website.

**(d) Date of Filing of Action Controls Assignment of Elected Judges Pro Tempore.** The list of elected judges pro tempore which is on file on the date of the filing of the action is the list from which an elected judge pro tempore shall be appointed by the presiding judge to hear matters for the duration of that case.

**(e) Substitute Judge Pro Tempore.** In the event an elected judge pro tempore appointed in accordance with section (c) becomes unable to serve as an elected judge pro tempore, a new elected judge pro tempore may be substituted on the list for the elected judge pro tempore who is unavailable. The appointment of a substitute elected judge pro tempore is not required to comply with the time periods set forth in section (c) but shall comply with identification and dissemination requirements set forth in that section. The provisions of section (b) and (d) shall apply to the appointment of a substitute elected judge pro tempore. For courts having three (3) elected judges pro tempore, one elected pro tempore judge may be substituted annually and in all other courts no more than two (2) elected judges pro tempore may be substituted annually.

**(f) Notice of Change of Elected Judge Pro Tempore.** In addition to RCW 4.12.050, any party to or any attorney appearing in any case which is assigned to an elected judge pro tempore shall be entitled to one (1) notice of change of judge when that judge has been assigned a matter over which to preside. Counsel shall file any "Notice of Change of Judge" before the noticed judge has made any discretionary ruling in the case, either on the motion of the party filing the

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notice of change of judge or on the motion of any other party to the action. The notice of change of judge shall be filed with the clerk of the court and copies served on all parties, the presiding judge, the court administrator and the noticed judge. Upon the filing of a notice or change of judge, the case shall be transferred to the presiding judge for reassignment and the noticed judge shall thereafter be ineligible to preside over any matters in that case.

Comment

For attorney judges pro tempore, see RCW 2.08.180(1). For visiting judges, see RCW 2.08.140 and 150.

WSR 05-13-023
RULES OF COURT
STATE SUPREME COURT
[June 2, 2005]

IN THE MATTER OF THE ADOPTION ) ORDER
OF THE AMENDMENTS TO CR 1, CRLJ ) NO. 25700-A-823
1, CR 5, CRLJ 5, CR 11, CRLJ 11, CR 15, )
CRLJ 15, CR 27, CR 28, CR 30, CR 50, )
CRLJ 50, CR 52, CR 59, CRLJ 59, CR 62, )
CR 4.7 AND CrRLJ 4.7 )

The Washington State Bar Association having recommended the adoption of the proposed amendments to CR 1, CRLJ 1, CR 5, CRLJ 5, CR 11, CRLJ 11, CR 15, CRLJ 15, CR 27, CR 28, CR 30, CR 50, CRLJ 50, CR 52, CR 59, CRLJ 59, CR 62, CrR 4.7 and CrRLJ 4.7, and the Court having considered the amendments and comments submitted thereto, and having determined that the proposed amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the amendments as attached hereto are adopted.

(b) That the amendments will be published in the Washington Reports and become effective September 1, 2005.

DATED at Olympia, Washington this 2nd day of June 2005.

Alexander, C.J.

C. Johnson, J.

Chambers, J.

Madsen, J.

Owens, J.

Sanders, J.

Fairhurst, J.

Bridge, J.

J. M. Johnson, J.

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 05-14 issue of the Register.

WSR 05-13-024
RULES OF COURT
STATE SUPREME COURT
[June 2, 2005]

IN THE MATTER OF THE ADOPTION ) ORDER
OF THE AMENDMENTS TO NEW GR ) NO. 25700-A-824
11.1 AND RENUMBERED GR 11.2 AND )
GR 11.3 )

The Interpreter Advisory Commission having recommended the adoption of proposed amendments to New GR 11.1 and Renumbered GR 11.2 and GR 11.3, and the Court having considered the new rule and amendments submitted thereto, and having determined that the proposed new rule and amendments will aid in the prompt and orderly administration of justice;

Now, therefore, it is hereby

ORDERED:

(a) That the new rule and amendments as attached hereto are adopted.

(b) That the new rule and amendments will be published in the Washington Reports and become effective September 1, 2005.

DATED at Olympia, Washington this 2nd day of June 2005:

Alexander, C.J.

C. Johnson, J.

Chambers, J.

Madsen, J.

Owens, J.

Sanders, J.

Fairhurst, J.

Bridge, J.

J. M. Johnson, J.

RULE 11

COURT INTERPRETERS

The use of qualified interpreters is authorized in judicial proceedings involving hearing impaired or non-English speaking individuals.

RULE 11.1

PURPOSE AND SCOPE OF INTERPRETER COMMISSION

(a) Purpose and Scope. This rule establishes the Interpreter Commission ("Commission") and prescribes the conditions of its activities. This rule does not modify or duplicate the statutory process directing the Court Certified Interpreter Program as it is administered by the Administrative Office of the Courts (AOC) (RCW 2.43). The Interpreter Commission will develop policies for the Interpreter Program and the Program Policy Manual, published on the Washington Court's website at www.courts.wa.gov, which shall constitute the official version of policies governing the Court Certified Interpreter Program.

(b) Jurisdiction and Powers. All certified court interpreters who are certified in the state of Washington by AOC are

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subject to rules and regulations specified in the Interpreter Program Manual. The Commission shall establish three committees to fulfill ongoing functions related to issues, discipline, and judicial/court administration education. Each committee shall consist of three Commission members and one member shall be identified as the chair.

(1) The Issues Committee is assigned issues, complaints, and/or requests from interpreters for review and response. If the situation cannot be resolved at the Issues Committee level, the matter will be submitted by written referral to the Disciplinary Committee.

(2) The Disciplinary Committee has the authority to decertify and deny certification of interpreters based on the disciplinary procedures for: (a) violations of continuing education/court hour requirements, (b) failure to comply with Interpreter Code of Conduct (GR 11.2) or professional standards, or (3) violations of law that may interfere with their duties as a certified court interpreter. The Disciplinary Committee will decide on appeal any issues submitted by the Issues Committee.

(3) The Judicial and Court Administration Education Committee shall provide ongoing opportunities for training and resources to judicial officers and court administrators related to court interpretation improvement.

(c) Establishment. The Supreme Court shall appoint members to the Interpreter Commission. The Supreme Court shall designate the chair of the Commission. The Commission shall include representatives from the following areas of expertise: judicial officers from the appellate and each trial court level (3), interpreter (2), court administrator (1), attorney (1), public member (2), representative from ethnic organization (1), and AOC representative (1). The term for a member of the Commission shall be three years. Members are eligible to serve a subsequent 3 year term. The Commission shall consist of eleven members. Members shall only serve on one committee and committees may be supplemented by ad hoc professionals as designated by the chair. Ad hoc members may not serve as the chair of a committee.

(d) Regulations. Policies outlining rules and regulations directing the interpreter program are specified in the Interpreter Program Manual. The Commission, through the Issues Committee and Disciplinary Committee, shall enforce the policies of the interpreter program. Interpreter program policies may be modified at any time by the Commission and AOC.

(e) Existing Law Unchanged. This rule shall not expand, narrow, or otherwise affect existing law, including but not limited to RCW chapter 2.43.

(f) Meetings. The Commission shall hold meetings as determined necessary by the chair. Meetings of the Commission are open to the public except for executive sessions and disciplinary meetings related to action against a certified interpreter.

(g) Immunity from Liability. No cause of action against the Commission, its standing members or ad hoc members appointed by the Commission, shall accrue in favor of a certified court interpreter or any other person arising from any act taken pursuant to this rule, provided that the Commission members or ad hoc members acted in good faith. The burden

of proving that the acts were not taken in good faith shall be on the party asserting it.

#### RULE 11.2

#### CODE OF CONDUCT FOR COURT INTERPRETERS

PREAMBLE. All language interpreters serving in a legal proceeding, whether certified or uncertified, shall abide by the following Code of Conduct:

A language interpreter who violates any of the provisions of this code is subject to a citation for contempt, disciplinary action or any other sanction that may be imposed by law. The purpose of this Code of Conduct is to establish and maintain high standards of conduct to preserve the integrity and independence of the adjudicative system.

(a) A language interpreter, like an officer of the court, shall maintain high standards of personal and professional conduct that promote public confidence in the administration of justice.

(b) A language interpreter shall interpret or translate the material thoroughly and precisely, adding or omitting nothing, and stating as nearly as possible what has been stated in the language of the speaker, giving consideration to variations in grammar and syntax for both languages involved. A language interpreter shall use the level of communication that best conveys the meaning of the source, and shall not interject the interpreters personal moods or attitudes.

(c) When a language interpreter has any reservation about ability to satisfy an assignment competently, the interpreter shall immediately convey that reservation to the parties and to the court. If the communication mode or language of the non-English speaking person cannot be readily interpreted, the interpreter shall notify the appointing authority or the court.

(d) No language interpreter shall render services in any matter in which the interpreter is a potential witness, associate, friend, or relative of a contending party, unless a specific exception is allowed by the appointing authority for good cause noted on the record. Neither shall the interpreter serve in any matter in which the interpreter has an interest, financial or otherwise, in the outcome. Nor shall any language interpreter serve in a matter where the interpreter has participated in the choice of counsel.

(e) Except in the interpreters official capacity, no language interpreter shall discuss, report, or comment upon a matter in which the person serves as interpreter. Interpreters shall not disclose any communication that is privileged by law without the written consent of the parties to the communication, or pursuant to court order.

(f) A language interpreter shall report immediately to the appointing authority in the proceeding any solicitation or effort by another to induce or encourage the interpreter to violate any law, any provision of the rules which may be approved by the courts for the practice of language interpreting, or any provisions of this Code of Conduct.

(g) Language interpreters shall not give legal advice and shall refrain from the unauthorized practice of law.

GR 44-2 11.3

TELEPHONIC INTERPRETATION

(a) Interpreters may be appointed to serve by telephone for brief, nonevidentiary proceedings, including initial appearances and arraignments, when interpreters are not readily available to the court. Telephone interpretation is not authorized for evidentiary hearings.

(b) RCW 2.43 and GR 11.4 2 must be followed regarding the interpreter's qualifications and other matters.

(c) Electronic equipment used during the hearing must ensure that the non-English speaking party hears all statements made by the participants. If electronic equipment is not available for simultaneous interpreting, the hearing shall be conducted to allow consecutive interpretation of each sentence.

(d) Attorney-client consultations must be interpreted confidentially.

(e) Written documents which would normally be orally translated by the interpreter must be read aloud to allow full oral translation of the material by the interpreter.

(f) An audio recording shall be made of all statements made on the record during their interpretation, and the same shall be preserved.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

WSR 05-13-025
RULES OF COURT
STATE SUPREME COURT
[June 2, 2005]

IN THE MATTER OF THE ADOPTION ) ORDER
OF THE AMENDMENT TO NEW RAP ) NO. 25700-A-825
15.2 - FORM 12 )

The Office of Public Defense having recommended the adoption of the proposed amendment to RAP 15.2 - Form 12, and the Court having determined that the proposed amendment will aid in the prompt and orderly administration of justice and further determined that an emergency exists which necessitates an early adoption;

Now, therefore, it is hereby

ORDERED:

(a) That the amendment as attached hereto is adopted.

(b) That pursuant to the emergency provisions of GR 9 (j)(1), the amendment will be published expeditiously and become effective upon publication.

DATED at Olympia, Washington this 2nd day of June 2005.

Alexander, C.J.

C. Johnson, J.

Chambers, J.

Madsen, J.

Owens, J.

Sanders, J.

Fairhurst, J.

Bridge, J.

J. M. Johnson, J.

SUGGESTED RULE/FORM CHANGE

FORM 12. Order of Indigency

(Rule 15.2)

SUPERIOR COURT OF WASHINGTON
FOR ( ) COUNTY

(Name of plaintiff), )
Plaintiff, ) No. (trial court)
v. )
(Name of defendant), ) ORDER OF INDIGENCY
Defendant. )

(Set forth finding of indigency and state that applicable law grants review wholly or partially at public expense. For example: "The court finds that the defendant lacks sufficient funds to prosecute an appeal and applicable law grants defendant a right to review at public expense to the extent defined in this order.") The court orders as follows:

1. (Name of indigent) is entitled to counsel for review wholly at public expense.

2. (Name of appointed attorney) is appointed as counsel for review. Appointed counsel may be assisted by counsel in the same firm as appointed counsel. The appellate court shall appoint counsel for review pursuant to RAP 15.2. (If applicable: "Trial counsel must assist appointed counsel for review in preparing the record.")

3. (Name of indigent) is entitled to the following at public expense:

(a) Those portions of the verbatim report of proceedings reasonably necessary for review as follows: (Designate parts of report.)

(b) A copy of the following clerk's papers: (Designate papers by name and trial court clerk's subnumber.)

(c) Preparation of original documents to be reproduced by the clerk as provided in rule 14.3(b).

(d) Reproduction of briefs and other papers on review which are reproduced by the clerk of the appellate court.

(e) The cost of transmitting the following cumbersome exhibits: (Designate cumbersome exhibits needed for review. See rule 9.8(b).)

(f) Other items: (Designate items.)

(Date)

Signature

(Name of Judge)

Judge of the Superior Court

Presented by:

(Name of party and attorney for party presenting order; Washington State Bar Association membership number)

MISC.

**Reviser's note:** The typographical errors in the above material occurred in the copy filed by the State Supreme Court and appear in the Register pursuant to the requirements of RCW 34.08.040.

(360) 664-5278, TDD (360) 753-9122, fax (360) 586-3274, e-mail [sreams@dshs.wa.gov](mailto:sreams@dshs.wa.gov).

April 15, 2005  
Susan Reams

**WSR 05-13-027**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed June 3, 2005, 4:11 p.m.]

**DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT**

**Document Title:** Numbered Memorandum 05-29 MAA.  
**Subject:** Prescription drug program: Additions and changes to the Washington preferred drug list and changes to expedited prior authorization criteria.  
**Effective Date:** July 1, 2005.

**Document Description:** **Effective for claims with dates of service on and after July 1, 2005, unless otherwise specified,** the Medical Assistance Administration (MAA) will implement the additions and changes to the Washington preferred drug list and expedited prior authorization (EPA) outlined in this numbered memorandum.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Office of Rules and Publications, DSHS, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to web site <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2005"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail [salmobl@dshs.wa.gov](mailto:salmobl@dshs.wa.gov).

June 2, 2005  
Barbara Salmon  
for Ann Myers, manager  
Rules and Publications Section

**WSR 05-13-028**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed June 3, 2005, 4:12 p.m.]

**DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT**

**Document Title:** DCS SEO Handbook Chapter 2 Revision.  
**Subject:** Case set up.  
**Effective Date:** April 12, 2005.

**Document Description:** Existing DCS SEO Handbook Chapter 2, case set up, is updated to assist staff in current tools used for setting up child support cases for child support collection.

To receive a copy of the interpretive or policy statement, contact Susan Reams, Division of Child Support, Mailstop 45860, P.O. Box 9162, Olympia, WA 98507-9162, phone

**WSR 05-13-032**  
**NOTICE OF PUBLIC MEETINGS**  
**WASHINGTON STATE UNIVERSITY**  
[Memorandum—May 20, 2005]

The Washington State University board of regents has moved the date of one of its regularly scheduled meetings in 2005. The meeting of June 8, 2005, has been rescheduled to September 16, 2005.

Additionally, the board of regents has adopted the following schedule for 2006:

January 27	Pullman
March 3	Tri-Cities
May 5	Pullman
September 15	Seattle
October 20	Pullman
November 17	Pullman

Inquiries about the meeting can be directed to the WSU president's office, (509) 335-6666.

**WSR 05-13-033**  
**NOTICE OF PUBLIC MEETINGS**  
**FIRE PROTECTION**  
**POLICY BOARD**  
[Memorandum—June 1, 2005]

The July work session of the Washington State Fire Protection Policy Board has been changed from July 27, 2005, to July 26, 2005, and will now be held at the WSP Fire Training Academy, 50810 S.E. Grouse Ridge Road, North Bend, WA 98045.

For further information, please contact Ellen Tomblison at (360) 753-0411.

**WSR 05-13-034**  
**NOTICE OF PUBLIC MEETINGS**  
**FIRE PROTECTION**  
**POLICY BOARD**  
[Memorandum—June 1, 2005]

The Fire Protection Policy Board has scheduled a special meeting to discuss the responsibility for fire prevention related activities, including fire investigations and inspections, which will be held on July 20, 2005, in the WSP Conference Room, located in the General Administration Building, 210 11th Street, Olympia, WA, beginning at 11:00.

MISC.

For further information, please contact Ellen Tombleson at (360) 753-0411.

**WSR 05-13-036**  
**NOTICE OF PUBLIC MEETINGS**  
**BOARD OF**  
**TAX APPEALS**

[Memorandum—June 3, 2005]

The Board of Tax Appeals will cancel quarterly business meetings scheduled for September 8, and December 8, 2005. The board will begin holding monthly public meetings beginning August 12, 2005, at 9:30 a.m., all meetings will be held at the Board of Tax Appeals, 910 5th Avenue S.E., Olympia. The scheduled for the monthly meetings will be the second Friday of each month from 9:30 to 11:00 a.m., however, should it fall on a holiday the meeting will be held the following week. The schedule for the balance of the year is as follows:

August 12, 2005	9:30 - 11:00 a.m.
September 9, 2005	9:30 - 11:00 a.m.
October 14, 2005	9:30 - 11:00 a.m.
November 18, 2005	9:30 - 11:00 a.m.
December 9, 2005	9:30 - 11:00 a.m.

**WSR 05-13-037**  
**INTERPRETIVE OR POLICY STATEMENT**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed June 6, 2005, 4:25 p.m.]

**DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT**

Document Title: Public Notice.  
 Subject: Medicaid state plan amendment 05-006.  
 Effective Date: August 1, 2005.

Document Description: The Department of Social and Health Services (department), Medical Assistance Administration (MAA), is updating the Medicaid state plan through state plan amendment (SPA) 05-006 to further describe policy and methods for hospital payment explained in Attachment 4.19-A, Part I of the state plan. These changes to payment method are justified to clarify the payment methods described and to comply with the state's current policy.

This update lists programs where changes to the plan are being made. Significant changes include:

Attachment 4.19-A, Part I:

- Establish a per diem floor for payments for certain psychiatric services provided in some hospitals.

Written comments may be sent to Doug Porter, Assistant Secretary, Medical Assistance Administration, Department of Social and Health Services, P.O. Box 45080, Olympia, WA 98504-5080.

For more information regarding this clarification of language, please write to Larry Linn, Office of Hospital and

Managed Care Rates, Medical Assistance Administration, Department of Social and Health Services, P.O. Box 45510, Olympia, WA 98504-5510.

To receive a copy of the interpretive or policy statement, contact Ann Myers, DSHS, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504, phone (360) 725-1345, weblink <http://maa.dshs.wa.gov>, TDD (800) 848-5429, fax (360) 586-9727, e-mail [Myersea@dshs.wa.gov](mailto:Myersea@dshs.wa.gov).

Ann Myers

**WSR 05-13-043**  
**NOTICE OF PUBLIC MEETINGS**  
**DEPARTMENT OF**  
**GENERAL ADMINISTRATION**

[Memorandum—June 1, 2005]

Following is a notice of cancellation for the Thursday, June 16, 2005, State Capitol Committee meeting.

If you have any questions, Lenore Miller can be reached at (360) 902-0970.

**WSR 05-13-054**  
**NOTICE OF PUBLIC MEETINGS**  
**BATES TECHNICAL COLLEGE**

[Memorandum—June 6, 2005]

The board of trustees of Bates Technical College will have a special meeting on June 8, 2005, from 2:00 p.m. to approximately 4:00 p.m. in the President's Conference Room, 1101 South Yakima Avenue, Tacoma. The board will go into executive session for the purpose of discussing personnel matters. No action will be taken during executive session.

**WSR 05-13-055**  
**NOTICE OF PUBLIC MEETINGS**  
**SHORELINE COMMUNITY COLLEGE**

[Memorandum—June 3, 2005]

The board of trustees of Shoreline Community College will hold a special meeting on Wednesday, June 8, 2005, beginning at 5:00 p.m., in the Building 1000 Central Conference Room. The board will convene immediately into executive session and will reconvene into special session to adjourn the meeting no later than 8:00 p.m.

Please call (206) 546-4552 or e-mail Michele Foley at [mfoley@shoreline.edu](mailto:mfoley@shoreline.edu) if you have further information.

## WSR 05-13-056

NOTICE OF PUBLIC MEETINGS  
HIGHER EDUCATION CONSORTIUM

[Memorandum—June 3, 2005]

NSIS Higher Education Consortium  
Board of Directors - Revised

The NSIS Higher Education Consortium board of directors has adopted a schedule of regular meetings for 2005:

Wednesday, January 26	Cancelled
Friday, October 21	Cancelled

Meetings will begin at 9:00 a.m. and will be held in Conference Room 213, University Center at Everett Station, 3201 Smith Avenue, Everett, WA. This meeting space is accessible to persons of disability. For information, call the University Center Office at (425) 252-9505.

## WSR 05-13-057

## HIGHER EDUCATION CONSORTIUM

[Memorandum—June 3, 2005]

Notice of Dissolution  
NSIS Higher Education Consortium  
Board of Directors

This is notice that new legislation, HB 1794, will transfer leadership and management responsibility for the NSIS Higher Education Consortium operations from the NSIS board of directors to Everett Community College when the law goes into effect on July 24, 2005.

Larry Marrs  
Executive Director

## WSR 05-13-060

NOTICE OF PUBLIC MEETINGS  
DEPARTMENT OF  
GENERAL ADMINISTRATION

(State Capitol Committee)

[Memorandum—June 9, 2005]

Following is the State Capitol Committee meeting date:

Date:	Tuesday, July 19, 2005
Time:	12:30 p.m. - 2:30 p.m.
Location:	General Administration Building, Room 207

If you have any questions, please contact Sarah J. S. Purce at (360) 902-0975.

## WSR 05-13-061

## STATE BOARD OF EDUCATION

[Filed June 10, 2005, 10:51 a.m.]

The Washington State Board of Education would like to recodify the following sections of chapter 180-24 WAC and make the new sections a new part. Chapter 180-24 WAC is titled School district organization and chapter 180-16 WAC is titled State support of public schools.

**No language is being changed** - only moving three sections from one chapter to another. This recodification is only to place these three sections of chapter 180-24 WAC in a more appropriate and applicable chapter, chapter 180-16 WAC.

Previous WAC	New WAC Location
WAC 180-24-400	WAC 180-16-241
WAC 180-24-410	WAC 180-16-242
WAC 180-24-415	WAC 180-16-243

Larry Davis  
Executive Director

## WSR 05-13-075

INTERPRETIVE OR POLICY STATEMENT  
DEPARTMENT OF  
SOCIAL AND HEALTH SERVICES

[Filed June 13, 2005, 4:26 p.m.]

## DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 05-30 MAA.  
Subject: Prescription drug program: Maximum allowable cost update.

Effective Date: July 1, 2005.

Document Description: Effective for dates of service on and after July 1, 2005, **the Medical Assistance Administration (MAA) will implement the following changes to the prescription drug program:**

1. New additions to the maximum allowable cost (MAC) list;
2. Adjustments to existing MACs; and
3. Deletions from the MAC list.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Office of Rules and Publications, DSHS, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to website <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2005"), TDD 1-800-848-5429, fax (360) 586-9727, e-mail [salmobl@dshs.wa.gov](mailto:salmobl@dshs.wa.gov).

June 9, 2005  
Barbara Salmon  
for Ann Myers, Manager  
Rules and Publications Section



**WSR 05-13-081**  
**AGENDA**  
**DEPARTMENT OF**  
**RETIREMENT SYSTEMS**  
 [Filed June 14, 2005, 12:45 p.m.]  
 SEMI-ANNUAL  
 RULE DEVELOPMENT AGENDA  
 (RCW 34.05.314)  
 JULY 1, 2005 - DECEMBER 31, 2005

2005, through December 31, 2005. Rules may be added or deleted from the work schedule as a result of legislative action, court decisions, and employer, member, and agency requests.

If you have questions about this rule-making agenda or the DRS rule-making process, please contact Leslie L. Saeger, Rules Coordinator, Department of Retirement Systems, P.O. Box 48380, Tumwater, WA 98504-8380, phone (360) 664-7291, TTY (360) 586-5450, LeslieS@drs.wa.gov.

This agenda shows anticipated rule-making activity by the Department of Retirement Systems (DRS) for July 1,

Subject	Description	Anticipated Rule-Making Actions by December 31, 2005
Benefit options	Amend PERS <sup>1</sup> , SERS <sup>2</sup> , TRS, LEOFF <sup>3</sup> Plan 2, and WSPRS <sup>4</sup> Plan 2 rules to clarify a member's options at retirement.	CR-102, Public Hearing, Adoption
Chapter 415-112 WAC, Teachers' retirement system	TRS <sup>5</sup> Chapter. Most of the TRS rules were amended during the January - June 2005 agenda period. The next phase will address rules that require extensive revisions and new rules as needed to implement statute.	CR-102, Public Hearing, Adoption
Chapter 415-113 WAC, Portability of public employment benefits	Amend and expand upon rules for people who are members of more than one retirement system.	CR-102, Public Hearing, Adoption
Disability benefits	New rules pertaining to disability benefits for members of SERS, LEOFF Plan 2, and PERS Plan 1 members.	CR-102, Public Hearing, Adoption
Interruptive military service	New rule(s) to address service credit and other issues pertaining to interruptive military service.	Draft
Post thirty-year program	New rules to implement the program established by RCW 41.32.4986 for TRS Plan 1 members and RCW 41.40.191 for PERS Plan 1 members.	CR-102
Public safety employees' retirement system	New chapter to implement PSERS <sup>6</sup> , a new retirement system created by 2004 legislation. The implementation date is July 1, 2006.	CR-102
Purchased service credit	New rules to implement 2004 and 2005 legislation that allows PERS, SERS, TRS, and LEOFF members to purchase up to five additional years of service credit at retirement.	CR-102, Public Hearing
Regulatory review amendments	Amend SERS and LEOFF rules according to comments received during DRS' 4-year regulatory review.	CR-101, Possible CR-102
Other	Implement legislation enacted during the 2005 legislative session.	CR-101s, Possible CR-102s

<sup>1</sup> Public Employees' Retirement System

<sup>2</sup> School Employees' Retirement System

<sup>3</sup> Law Enforcement Officers and Fire Fighters' Retirement System

<sup>4</sup> Washington State Patrol Retirement System

<sup>5</sup> Teachers' Retirement System

<sup>6</sup> Public Safety Employee's Retirement System

**WSR 05-13-082****NOTICE OF PUBLIC MEETINGS  
BELLINGHAM TECHNICAL COLLEGE**

[Memorandum—June 14, 2005]

The board of trustees of Bellingham Technical College will hold a special session to discuss the operating budget for fiscal year 2005-2006, on Thursday, June 16, 2005, from 8:00 a.m. to 9:00 a.m., in the College Services Building Board Room on the Bellingham Technical College campus.

The regularly scheduled meeting of the board of trustees of Bellingham Technical College will be held on Thursday, June 16, 2005, 9:00 - 11:00 a.m., in the College Services Board Room on the Bellingham Technical college campus.

Call 752-8334 for information.

**WSR 05-13-083****NOTICE OF PUBLIC MEETINGS  
OFFICE OF THE  
INTERAGENCY COMMITTEE  
(Governor's Forum on Monitoring)**

[Memorandum—June 10, 2005]

The next public meeting of the Governor's Forum on Monitoring (Executive Order 04-03) will be Tuesday, July 19, 2005, from 1:30 to 4:00 p.m., in Room #172 of the Natural Resources Building, 1111 Washington Street S.E., Olympia.

For further information, please contact Patty Dickason, Interagency Committee for Outdoor Recreation (IAC), (360) 902-3012 or check the web page at <http://www.iac.wa.gov/monitoring/schedule.htm>.

The IAC schedules all public meetings at barrier free sites. Persons who need special assistance, such as large type materials, may contact Patty Dickason at the number listed above or by e-mail at [pattyd@iac.wa.gov](mailto:pattyd@iac.wa.gov).

**WSR 05-13-088****NOTICE OF PUBLIC MEETINGS  
LAW ENFORCEMENT OFFICERS' AND  
FIRE FIGHTERS' PLAN 2 RETIREMENT BOARD**

[Memorandum—June 13, 2005]

The Law Enforcement Officers' and Fire Fighters' Plan 2 Retirement Board has cancelled the June 23 board meeting.

The next regularly scheduled meeting is **Wednesday, July 27, 2005**, at 9:30 a.m. located in the Washington State Investment Boardroom.

Please feel free to contact Jessica Burkhart at (360) 586-2322 or by e-mail at [jessica.burkhart@leoff.wa.gov](mailto:jessica.burkhart@leoff.wa.gov) should you have any questions.

**WSR 05-13-089****NOTICE OF PUBLIC MEETINGS  
SHORELINE COMMUNITY COLLEGE**

[Memorandum—June 13, 2005]

The board of trustees of Shoreline Community College will hold a special meeting on Wednesday, June 14, 2005, beginning at 5:00 p.m., in the Building 1000 Central Conference Room. The board will convene immediately into executive session and will reconvene into special session to adjourn the meeting no later than 8:00 p.m.

Please call (206) 546-4552 or e-mail Michele Foley at [mfoley@shoreline.edu](mailto:mfoley@shoreline.edu) if you have further information.

**WSR 05-13-090****NOTICE OF PUBLIC MEETINGS  
DEPARTMENT OF  
NATURAL RESOURCES  
(Board of Natural Resources)**

[Memorandum—June 15, 2005]

The July 5, 2005, Board of Natural Resources meeting has been cancelled and rescheduled as a regular meeting on July 29, 2005, in Room 172, at 9:00 a.m. If you have any questions, please feel free to call Sasha Lange at (360) 902-1103.

**WSR 05-13-091****ATTORNEY GENERAL'S OFFICE**

[Filed June 15, 2005, 3:15 p.m.]

**NOTICE OF REQUEST FOR ATTORNEY GENERAL'S OPINION  
WASHINGTON ATTORNEY GENERAL**

The Washington Attorney General issues formal published opinions in response to requests by the heads of state agencies, state legislators, and county prosecuting attorneys. When it appears that individuals outside the Attorney General's Office have information or expertise that will assist in the preparation of a particular opinion, a summary of that opinion request will be published in the state register. If you are interested in commenting on a request listed in this volume of the register, you should notify the Attorney General's Office of your interest by July 26, 2005. This is not the due date by which comments must be received. However, if you do not notify the Attorney General's Office of your interest in commenting on an opinion request by this date, the opinion may be issued before your comments have been received. You may notify the Attorney General's Office of your intention to comment by calling (360) 664-3027, or by writing to the Solicitor General, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100. When you notify the office of your intention to comment, you will be provided with a copy of the opinion request in which you are interested, information about the Attorney General's Opinion process, information on how to submit your comments, and a due date by which your comments must be received to ensure that they are fully considered.

MISC.

The Attorney General's Office seeks public input on the following opinion request(s).

**05-06-05 Request by Jerome Delvin  
State Senator, 8th District**

1) If several contiguous cities have each formed a public facilities district coextensive with boundaries of each city under RCW 35.57, may the cities join together to form another public facilities' district under RCW 35.57 that would be coextensive with the boundaries of all the cities?

2) If the answer to Question 1 is yes, could the voters of the new public facilities district impose a sales and use tax under RCW 82.14.048 and .390(1)?

**WSR 05-13-100**

**NOTICE OF PUBLIC MEETINGS  
WASHINGTON STATE PATROL  
(Fire Protection Policy Board)**

[Memorandum—June 15, 2005]

The July work session of the Washington State Fire Protection Policy Board has been changed from July 26, 2005, back to July 27, 2005, and will be held at the WSP Fire Training Academy, 50810 S.E. Grouse Ridge Road, North Bend, WA 98045.

For further information, please contact Ellen Tombleson at (360) 753-0411.

**WSR 05-13-110**

**NOTICE OF PUBLIC MEETINGS  
FOREST PRACTICES BOARD**

[Memorandum—June 14, 2005]

**Extension Notice for Regular Forest Practices Board Meeting**

Per WAC 222-08-040, the Forest Practices Board will be extending its regular August 10, 2005, meeting to include a wildlife workshop on: August 9, 2005, at 9 a.m. - 5 p.m., regular meeting, Natural Resources Building, 1111 Washington Street S.E., Room 172, Olympia.

Mailing agendas to all individuals and groups on the board's mailing list also provides notice of these meetings. To be added to this distribution list, please contact the Board Coordinator, Department of Natural Resources, Forest Practices Division, P.O. Box 47012, Olympia, WA 98504-7012, phone (360) 902-1758, fax (360) 902-1428, e-mail forest.practicesboard@wadnr.gov.

To view this and other board related information online, log on to the Forest Practices Board's web site at [www.wa.gov/dnr](http://www.wa.gov/dnr).

**WSR 05-13-121**

**NOTICE OF PUBLIC MEETINGS  
BELLEVUE COMMUNITY COLLEGE**

[Memorandum—June 20, 2005]

**MEETING CANCELLATION**

The June 29 regular meeting of the board of trustees of Community College District VIII is cancelled.

**WSR 05-13-122**

**NOTICE OF PUBLIC MEETINGS  
WASHINGTON SCHOOL  
FOR THE DEAF**

[Memorandum—June 16, 2005]

The Washington School for the Deaf (WSD) board of trustees have cancelled their July and August 2005 meetings.

The next regularly scheduled board of trustees meeting will be held on Thursday, September 15, 2005.

**WSR 05-13-123**

**NOTICE OF PUBLIC MEETINGS  
BATES TECHNICAL COLLEGE**

[Memorandum—June 16, 2005]

**Change of Public Meeting Time**

The board of trustees of Bates Technical College has rescheduled its regularly scheduled meeting of June 20, 2005, to begin at 2:00 p.m. in the Clyde Hupp Board Room at Bates Technical College, 1101 South Yakima Avenue, Tacoma, WA 98405.

**WSR 05-13-165**

**INTERPRETIVE STATEMENT  
DEPARTMENT OF REVENUE**

[Filed June 21, 2005, 3:43 p.m.]

**Excise Tax Advisory 2002.16.179 - Low-density light and power utility deduction**

This announcement of the adoption of this interpretive statement is being published in the Washington State Register pursuant to the requirements of RCW 34.05.230(4).

The Department of Revenue has issued a revised Excise Tax Advisory 2002 (Low-density light and power utility deduction). This advisory explains the public utility tax deduction provided by RCW 82.16.053 to qualifying power and light businesses.

RCW 82.16.053 requires that the department determine the state average electric power rate each year and inform taxpayers of this rate. This rate is used by the power and light business to compute the amount of the deduction. This document updates the information to provide the rate to be used for the period of July 2005 through June 2006.

A copy of this advisory is available via the internet at <http://www.dor.wa.gov/content/laws/eta/eta.aspx>. Alternatively, a request for a copy of this advisory may be directed to Roseanna Hodson, Interpretations and Technical Advice Unit, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 570-6119, fax (360) 586-5543.

Alan R. Lynn  
Rules Coordinator

### WSR 05-13-166

## DEPARTMENT OF ECOLOGY

[Filed June 21, 2005, 3:48 p.m.]

### PUBLIC NOTICE

#### Public Workshops and Hearings to Accept Comments on the

#### Revised Construction Stormwater General Permit

**Revising and Reissuing the Construction Stormwater General Permit:** The construction stormwater NPDES and state waste discharge general permit, issued by the Washington State Department of Ecology (ecology) on October 4, 2000, will expire on November 18, 2005. Ecology has revised the permit and is proposing to reissue the permit on November 16, 2005. The proposed draft construction stormwater general permit and fact sheet are available for review and public comment from July 6, 2005 to August 28, 2005. Ecology will host six informational workshops and public hearings on its proposal to reissue the construction stormwater general permit. Ecology will accept written or oral comments on the draft permit and fact sheet.

**Purpose of the Construction Stormwater General Permit:** Under federal and state water quality law (Federal Clean Water Act and State Water Pollution Control Act); a permit is required for the discharge of wastewater, including stormwater. The proposed general permit addresses these legal requirements and controls the discharge of pollutants to protect surface water and ground water quality in Washington state under the authority of RCW 90.48.260. The construction stormwater general permit implements the U.S. Environmental Protection Agency's Phase I and II Stormwater Rule, which regulates stormwater runoff from small and large construction activities. The permit is required for construction activities, which includes clearing, grading and excavation that results in the disturbance of one acre or more total land area and discharge of stormwater to surface waters of the state. The permit is also required for construction activities that involve the disturbance of less than one acre that is a part of a larger common plan of development or sale, if the larger common plan of development or sale will result in the disturbance of one acre or more and discharge stormwater to surface waters of the state.

A general permit is like an individual wastewater discharge permit except that it addresses a group of facilities as a whole and implements the Federal Clean Water Act and State Water Pollution Control Act in a single permit. Construction sites that receive coverage under the general permit are required to implement erosion and sediment control "best management practices" to protect water quality and comply

with the terms and conditions of the permit. Currently, 996 construction sites are covered under the construction stormwater general permit.

**Applying for the Construction Stormwater General Permit:** Sites covered under the existing construction stormwater general permit, who reapplied for permit coverage, will be covered under the proposed general permit unless notified by ecology. New or unpermitted construction sites may obtain coverage under the general permit by submitting a complete permit application to Ecology and satisfying all applicable public notice and State Environmental Policy Act (SEPA) requirements (WAC 173-226-200). The permit application is available online at <http://www.ecy.wa.gov/programs/wq/stormwater/construction>.

**Requesting Copies of the Permit:** Beginning July 6, 2005, you can request copies of the proposed draft general permit and fact sheet, or you can download copies from the internet <http://www.ecy.wa.gov/programs/wq/stormwater/construction>; or by contacting Jeff Killelea, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6127, fax (360) 407-6426, e-mail [jkil461@ecy.wa.gov](mailto:jkil461@ecy.wa.gov).

**Submitting Written and Oral Comments:** Ecology will accept written and oral comments on the draft construction stormwater general permit and fact sheet. Comments should reference specific text when possible. Comments may address the following:

- Technical issues,
- Accuracy and completeness of information,
- The scope of facilities proposed for coverage,
- Adequacy of environmental protection and permit conditions, or
- Any other concern that would result from issuance of the revised permit.

Submit written comments to Jeff Killelea, Department of Ecology, P.O. Box 47600, Olympia, WA 98504-7600.

Written comments must be postmarked no later than midnight, August 26, 2005. Oral comments can be made by attending and testifying at the public hearings.

**Public Workshops/Hearings:** The public workshops and hearings on the draft general permit will be held in six locations in August 2005. The purpose of the workshops is to explain the general permit, what has changed from the previous permit, answer questions, and facilitate meaningful testimony during the hearing. The purpose of the hearings is to provide an opportunity for people to give formal oral testimony and comments on the proposed permit. Six public workshops and hearings will be held as follows:

On August 9, 2005, at 2:00 p.m., at the Country Village Courtyard Hall, 720 238th Street S.E., Suite H, Bothell, WA, (425) 402-9818, driving directions <http://www.countryvillagebothell.com/Directions.htm>; on August 10, 2005, at 2:00 p.m., at the Mount Vernon Chamber of Commerce, Skagit Station Community Meeting Room, 105 East Kincaid Street, Suite 101, Mt. Vernon, WA, (360) 428-8547; on August 11, 2005, at 2:00 p.m., at the Water Resources Education Center, 4600 S.E. Columbia Way, Vancouver, WA, (360) 696-8478, driving directions <http://www.ci.vancouver.wa.us/water-center/wrec/directions.htm>; on August 15, 2005, at 2:00 p.m., at the Northwest Museum of Arts, 2316 West First Avenue,

Spokane, WA, (509) 393-5324, driving directions <http://www.northwestmuseum.org/northwestmuseum/sub.aspx?id=306>; on August 16, 2005, at 2:00 p.m., at the Red Lion Hotel Richland, Hanford House, 802 Washington Way, Richland, WA, (509) 946-7611, driving directions <http://www.redlion.com/WHC/hotels/ShowHotel.asp?ID=167>; and on August 17, 2005, at 2:00 p.m., at the King Oscars Hotel and Conference Center, 8820 South Hosmer, Tacoma, WA, (253) 539-1153 ext. 357, driving directions [http://www.koscar.net/conv\\_ctr/index.html#](http://www.koscar.net/conv_ctr/index.html#).

All public workshops and hearings will begin at 2:00 p.m. and conclude as soon as public testimony is completed.

**Issuing the Final Construction Stormwater General Permit:** The final permit will be issued after ecology receives and considers all public comments. If public comments represent a substantial departure from the scope or conditions in the original draft permit, another public notice of draft and public comment period may ensue.

Ecology expects to issue the general permit on November 16, 2005. It will be effective thirty days later. When issued, a copy of the notice of issuance and ecology's responses to the comments will be sent to all persons who submitted written comment or gave public testimony.

If you have special accommodation needs or require a copy of the permit and fact sheet in an alternative format, please contact Jeff Killelea at (360) 407-6127. If you are a person with a speech or hearing impairment, call 711 or (800) 833-6388 for TTY.

#### WSR 05-13-177

### INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed June 21, 2005, 4:26 p.m.]

#### DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Numbered Memorandum 05-32 MAA.  
Subject: July 1, 2005, fee schedule changes, procedure code updates and program changes.  
Effective Date: July 1, 2005.

Document Description: **On the back of this sheet is a list of Numbered Memoranda that are, or soon will be, published to the Medical Assistance Administration's (MAA) web site.** This memo replaces MAA's usual postcard notification of individual updated publications.

To receive a copy of the interpretive or policy statement, contact Barbara Salmon, Office of Rules and Publications, Department of Social and Health Services, Medical Assistance Administration, Division of Policy and Analysis, P.O. Box 45533, Olympia, WA 98504-5533, phone (360) 725-1349 or go to web site <http://maa.dshs.wa.gov/download/publicationsfees.htm> (click on "Numbered Memos," "Year 2005), TDD 1-800-848-5429, fax (360) 586-9727, e-mail [salmobl@dshs.wa.gov](mailto:salmobl@dshs.wa.gov).

June 20, 2005

Barbara Salmon  
for Ann Myers, Manager  
Rules and Publications Section

#### WSR 05-13-178

### INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed June 21, 2005, 4:27 p.m.]

#### DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: Administrative Policy 1.03 Revision.  
Subject: Confidentiality and data security.  
Effective Date: July 5, 2005.

Document Description: Updated Administrative Policy 1.03 to include more detailed instructions for maintaining child support data confidentiality in the electronic medium and to provide an electronic confidentiality statement for employees to sign stating that they will not disclose any information to unauthorized sources.

To receive a copy of the interpretive or policy statement, contact Susan Reams, Division of Child Support, Mailstop 45860, P.O. Box 9162, Olympia, WA 98507-9162, phone (360) 664-5278, TDD (360) 753-9122, fax (360) 586-3274, e-mail [sreams@dshs.wa.gov](mailto:sreams@dshs.wa.gov).

June 16, 2005

Susan Reams

#### WSR 05-13-179

### INTERPRETIVE OR POLICY STATEMENT DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed June 21, 2005, 4:28 p.m.]

#### DESCRIPTION OF INTERPRETIVE OR POLICY STATEMENT

Document Title: DCS SEO Handbook Chapter 24.  
Subject: Medical.  
Effective Date: June 12, 2005.

Document Description: Existing DCS SEO Handbook Chapter 24, Miscellaneous, is updated and renamed the medical chapter.

To receive a copy of the interpretive or policy statement, contact Susan Reams, Division of Child Support, Mailstop 45860, P.O. Box 9162, Olympia, WA 98507-9162, phone (360) 664-5278, TDD (360) 753-9122, fax (360) 586-3274, e-mail [sreams@dshs.wa.gov](mailto:sreams@dshs.wa.gov).

June 12, 2005

Susan Reams

#### WSR 05-13-180

### DEPARTMENT OF SOCIAL AND HEALTH SERVICES

[Filed June 22, 2005, 8:05 a.m.]

#### FINAL NOTICE OF CHANGES TO STATE OF WASHINGTON NURSING FACILITY MEDICAID PAYMENT RATE METHODOLOGY

The 2005 state legislature has passed changes to the method for determining facility-specific, per resident day Medicaid payment rates for nursing facility care in Washing-

WSR 05-13-190

AGENDA

DEPARTMENT OF CORRECTIONS

[Filed June 22, 2005, 8:52 a.m.]

ton. Unless otherwise indicated the changes are effective July 1, 2005. This notice includes a justification, description, and estimated rate impact of the changes.

These changes were the subject of a notice published in Issue 05-11 of the Washington State Register, distributed on June 1, 2005. No comments were received in response to the notice.

JUSTIFICATION

The changes are mandated by the 2005 Washington state legislature in sections 206, 209, and 1109, chapter 518, Laws of 2005, the State Operating Budget Appropriations Act.

NEW RATES AND PROPOSED CHANGES TO RATE METHODOLOGY

In combination with a variety of other factors, including changes in the allowed costs of care, the methodological changes are estimated to result in a statewide average nursing facility Medicaid payment rate of \$149.14 per resident day, at a maximum, for the state fiscal year 2006, running from July 1, 2005, to June 30, 2006, and \$153.50 for fiscal year 2007, running from July 1, 2006, to June 30, 2007.

These figures include adjustments for economic trends and conditions applied to the direct care, therapy care, support services and operations component rates established in accordance with chapter 74.46 RCW for all nursing facilities. The adjustment effective July 1, 2005, is an increase of 1.3%. The adjustment effective July 1, 2006, is also an increase of 1.3%.

The figure of \$149.14 per resident day for state fiscal year 2006 represents an increase of \$1.03 per resident day over the average facility rate of \$148.11, at a maximum, as of June 30, 2005.

Section 209(6), chapter 518, Laws of 2005, provides \$6,000,000 for supplemental payments to nursing homes operated by public hospital districts in the biennium including state fiscal years 2006 and 2007. These payments are supplemental to payments calculated in accordance with part E of chapter 74.46 RCW. Costs to improve access to healthcare at nursing homes operated by public hospital districts shall not be disallowed solely because such costs were paid by revenues retained by the nursing homes from these supplemental payments.

Section 1109(8), chapter 518, Laws of 2005, amends Section 209, chapter 276, Laws of 2004, to clarify the legislature's intent that: (1) Funds provided for payments to nursing homes operated by public hospital districts in state fiscal years 2004 and 2005 were supplemental to payments calculated in accordance with part E of chapter 74.46 RCW; and (2) costs to improve access to healthcare at such nursing homes otherwise allowable under chapter 74.46 RCW should not be disallowed solely because such costs were paid by revenues retained by the nursing homes from these supplemental payments. This amendment is retroactively effective to July 1, 2003.

Following is the Department of Corrections' semiannual rule development agenda for publication in the Washington State Register pursuant to RCW 34.05.314.

There may be additional rule-making activity not on the agenda as conditions warrant.

RULE DEVELOPMENT CALENDAR

July - December 31, 2005

WAC Chapter or Section	Purpose
WAC 137-28	Prison discipline.
WAC 137-59	Facility siting.
WAC 137-70	Reimbursement for criminal justice costs and contingency plan expenses.

John Nispel  
Rules Coordinator

WSR 05-13-200

AGENDA

DEPARTMENT OF FISH AND WILDLIFE

[Filed June 22, 2005, 11:21 a.m.]

This is the semi-annual rule agenda of the Department of Fish and Wildlife for the period July through December 2005. This agenda is being provided for filing in the Washington State Register as per RCW 34.05.314.

July 7, 2005

- (1) Adopt commercial wild shellfish rules  
CR-102 filed June 1, 2005, WSR 05-12-142

July 19, 2005

- (1) Adopt highly migratory species rules  
CR-105 filed May 17, 2005, WSR 05-11-089

August 2, 2005

- (1) Adopt North of Falcon salmon sport fishing rules  
CR-105 filed May 4, 2005, WSR 05-10-107
- (2) Adopt North of Falcon coastal harbor commercial salmon rules  
CR-105 filed May 4, 2005, WSR 05-10-106
- (3) Adopt North of Falcon Puget Sound commercial salmon rules  
CR-105 filed June 1, 2005, WSR 05-12-153

August 5-6, 2005

- (1) Hearing and possible adoption of 2005 summer hunting rules  
CR-102s filed June 22, 2005, WSR 05-13-192, 05-13-193, 05-13-197, 05-13-198

October 7-8, 2005

- (1) Hearing and possible adoption of coastal crab buoy tag rules

MISC.

CR-101 filed June 13, 2005, WSR 05-13-071

- (2) Hearing and possible adoption of hagfish emerging commercial fishery rules

CR-101 filed April 21, 2005, WSR 05-10-004

- (3) Hearing and possible adoption of commercial crab pot size rules

CR-101 filed May 4, 2005, WSR 05-10-103

- (4) Hearing and possible adoption of crawfish escape panel rules

CR-101 filed May 17, 2005, WSR 05-11-057

- (5) Hearing and possible adoption of exception for divers not to wear shellfish licenses

CR-101 filed June 21, 2005, WSR 05-13-160

- (6) Hearing and possible adoption of scientific collection permit rules

CR-101 filed April 21, 2005, WSR 05-10-006

November 18-19, 2005

- (1) Hearing and possible adoption of coastal spot prawn rules

CR-101 filed June 16, 2005, WSR 05-13-102

- (2) Hearing and possible adoption of shellfish disease rules

CR-101 filed June 16, 2005, WSR 05-13-101

Additions and deletions may be made to this agenda.

Evan Jacoby  
Rules Coordinator





**Table of WAC Sections Affected**

**KEY TO TABLE**

This table covers the current calendar year through this issue of the Register and should be used to locate rules amended, adopted, or repealed subsequent to the publication date of the latest WAC or Supplement.

**Symbols:**

- AMD = Amendment of existing section
- A/R = Amending and recodifying a section
- DECOD = Decodification of an existing section
- NEW = New section not previously codified
- OBJECT = Notice of objection by Joint Administrative Rules Review Committee
- PREP = Preproposal comments
- RE-AD = Readoption of existing section
- RECOD = Recodification of previously codified section
- REP = Repeal of existing section
- RESCIND = Rescind of existing section
- REVIEW = Review of previously adopted rule
- SUSP = Suspending an existing section

**Suffixes:**

- C = Continuance of previous proposal
- E = Emergency action
- P = Proposed action
- S = Supplemental notice
- W = Withdrawal of proposed action
- X = Expedited rule making
- XA = Expedited adoption
- XR = Expedited repeal
- No suffix means permanent action

**WAC #** Shows the section number under which an agency rule is or will be codified in the Washington Administrative Code.

**WSR #** Shows the issue of the Washington State Register where the document may be found; the last three digits identify the document within the issue.

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3-20-390	NEW-W	05-07-126	16-237-195	AMD	05-07-080	16-239-078	REP	05-11-058
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3-20-390	NEW	05-11-046	16-239-010	REP-P	05-07-120	16-239-079	REP	05-11-058
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3-20-400	NEW-W	05-07-126	16-239-020	REP-P	05-07-120	16-239-080	REP	05-11-058
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16-218-02001	REP	05-07-150	16-239-072	REP	05-11-058	16-239-0813	REP-P	05-07-120
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180-46-035	REP	05-08-013	180-82-105	AMD-P	05-04-015	192-32-050	REP-X	05-07-143
180-46-040	REP-P	05-04-017	180-82-105	AMD-W	05-08-069	192-32-050	REP	05-13-155
180-46-040	REP	05-08-013	180-82A	PREP	05-12-162	192-32-085	REP-X	05-07-143
180-46-045	REP-P	05-04-017	180-83	PREP	05-12-163	192-32-085	REP	05-13-155
180-46-045	REP	05-08-013	180-85	PREP	05-12-149	192-32-095	REP-X	05-07-143
180-46-050	REP-P	05-04-017	180-85-025	AMD-P	05-08-047	192-32-095	REP	05-13-155
180-46-050	REP	05-08-013	180-85-025	AMD-C	05-10-023	192-32-100	REP-X	05-07-143
180-46-055	AMD-P	05-04-017	180-85-033	AMD-P	05-08-046	192-32-100	REP	05-13-155
180-46-055	AMD	05-08-013	180-85-033	AMD-C	05-10-022	192-32-115	REP-X	05-07-143
180-46-065	REP-P	05-04-017	180-85-034	NEW-P	05-08-044	192-32-115	REP	05-13-155
180-46-065	REP	05-08-013	180-85-034	NEW-C	05-10-021	192-32-130	REP-X	05-07-143
180-50	PREP	05-12-159	180-85-075	AMD-P	05-08-045	192-32-130	REP	05-13-155
180-51	PREP	05-12-159	180-85-075	AMD-C	05-10-010	192-32-135	REP-X	05-07-143
180-51-035	AMD-E	05-08-011	180-86	PREP	05-12-149	192-32-135	REP	05-13-155
180-51-035	AMD-P	05-08-012	180-87	PREP	05-12-149	192-35-010	NEW	05-02-094
180-51-035	AMD-C	05-10-011	180-88	PREP	05-12-149	192-35-020	NEW	05-02-094
180-52	PREP	05-12-159	180-90	PREP	05-12-150	192-35-030	NEW	05-02-094
180-55	PREP	05-12-159	180-95	PREP	05-12-151	192-35-040	NEW	05-02-094
180-55-005	AMD-P	05-04-075	180-96	PREP	05-12-152	192-35-050	NEW	05-02-094
180-55-005	AMD	05-08-015	180-97	PREP	05-12-153	192-35-060	NEW	05-02-094
180-55-015	AMD-P	05-04-075	181-01	PREP	05-12-115	192-35-070	NEW	05-02-094
180-55-015	AMD	05-08-015	181-01-004	NEW	05-04-024	192-35-080	NEW	05-02-094
180-55-017	NEW-P	05-04-075	182-08-120	AMD-W	05-02-060	192-35-090	NEW	05-02-094
180-55-017	NEW	05-08-015	182-08-196	AMD-P	05-12-050	192-35-100	NEW	05-02-094
180-55-034	REP	05-04-016	182-08-196	AMD-C	05-13-093	192-35-110	NEW	05-02-094
180-56	PREP	05-12-159	182-08-197	NEW-P	05-12-050	192-35-120	NEW	05-02-094
180-57	PREP	05-12-159	182-08-197	NEW-C	05-13-093	192-110-015	AMD-E	05-03-011
180-57-070	AMD-E	05-12-144	182-08-198	NEW-P	05-12-050	192-110-015	AMD-E	05-11-017
180-72	PREP	05-12-160	182-08-198	NEW-C	05-13-093	192-110-015	AMD-P	05-13-158
180-77	PREP	05-12-161	182-12-115	AMD-E	05-10-083	192-110-017	NEW-E	05-03-011
180-77A	PREP	05-12-161	182-12-116	NEW-P	05-12-050	192-110-017	NEW-E	05-11-017
180-78A	PREP	05-12-162	182-12-116	NEW-C	05-13-093	192-110-017	NEW-P	05-13-158
180-78A-100	AMD	05-04-056	182-12-148	AMD-P	05-12-050	192-150-112	NEW-P	05-07-144
180-78A-100	AMD-P	05-08-037	182-12-148	AMD-C	05-13-093	192-150-112	NEW	05-13-156
180-78A-100	AMD-E	05-08-049	182-12-171	AMD-P	05-12-050	192-150-113	NEW-P	05-07-144
180-78A-100	AMD-C	05-10-012	182-12-171	AMD-C	05-13-093	192-150-113	NEW	05-13-156
180-78A-319	AMD-P	05-08-038	182-12-175	NEW-P	05-12-050	192-170-060	NEW-E	05-03-011
180-78A-319	AMD-P	05-10-019	182-12-175	NEW-C	05-13-093	192-170-060	NEW-P	05-07-144
180-78A-505	AMD-P	05-08-039	182-12-205	AMD-P	05-12-050	192-170-060	NEW-E	05-11-017
180-78A-505	AMD-C	05-10-020	182-12-205	AMD-C	05-13-093	192-170-060	NEW	05-13-156
180-78A-535	AMD-P	05-08-040	182-12-260	AMD-P	05-12-050	192-170-070	NEW-P	05-13-158
180-78A-535	AMD-E	05-08-048	182-12-260	AMD-C	05-13-093	192-180-013	NEW-E	05-03-011
180-78A-535	AMD-C	05-10-013	182-12-265	AMD-P	05-12-050	192-180-013	NEW-E	05-11-017
180-79A	PREP	05-12-162	182-12-265	AMD-C	05-13-093	192-180-013	NEW-P	05-13-158
180-79A-011	AMD-P	05-08-043	182-12-270	AMD-P	05-12-050	192-180-014	NEW-P	05-07-144
180-79A-011	AMD-C	05-10-018	182-12-270	AMD-C	05-13-093	192-180-014	NEW	05-13-156
180-79A-030	AMD	05-04-055	182-16-040	AMD-W	05-02-060	192-300-050	AMD-E	05-03-011
180-79A-123	AMD-P	05-08-042	182-16-040	PREP	05-07-158	192-300-050	AMD-E	05-11-017
180-79A-123	AMD-E	05-08-051	182-16-040	AMD-P	05-12-050	192-300-050	AMD-P	05-13-157
180-79A-123	AMD-C	05-10-014	182-16-040	AMD-C	05-13-093	192-310-010	AMD-E	05-11-017
180-79A-130	AMD-P	05-08-035	182-16-050	AMD-W	05-02-060	192-310-010	AMD-P	05-13-157
180-79A-130	AMD-E	05-08-052	182-16-050	PREP	05-07-158	192-310-030	AMD-E	05-03-011
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192-320-005	NEW-E	05-11-017	199- 08-510	NEW	05-07-045	212- 17-21509	AMD	05-12-033
192-320-005	NEW-P	05-13-157	199- 08-515	NEW	05-07-045	212- 17-21511	AMD-P	05-07-102
192-320-010	NEW-E	05-03-011	199- 08-520	NEW	05-07-045	212- 17-21511	AMD	05-12-033
192-320-010	NEW-E	05-11-017	199- 08-525	NEW	05-07-045	212- 17-21513	AMD-P	05-07-102
192-320-010	NEW-P	05-13-157	199- 08-535	NEW-W	05-07-079	212- 17-21513	AMD	05-12-033
192-320-020	NEW-E	05-03-011	199- 08-540	NEW	05-07-045	212- 17-21515	AMD-P	05-07-102
192-320-020	NEW-E	05-11-017	199- 08-545	NEW	05-07-045	212- 17-21515	AMD	05-12-033
192-320-020	NEW-P	05-13-157	199- 08-550	NEW	05-07-045	212- 17-21517	AMD-P	05-07-102
192-320-050	AMD-E	05-11-017	199- 08-555	NEW	05-07-045	212- 17-21517	AMD	05-12-033
192-320-050	AMD-P	05-13-157	199- 08-565	NEW	05-07-045	212- 17-21519	AMD-P	05-07-102
192-320-051	NEW-E	05-11-017	199- 08-570	NEW	05-07-045	212- 17-21519	AMD	05-12-033
192-320-051	NEW-P	05-13-157	199- 08-580	NEW	05-07-045	212- 17-220	AMD-P	05-07-102
192-320-060	REP-E	05-11-017	204- 41	PREP	05-08-115	212- 17-220	AMD	05-12-033
192-320-060	REP-P	05-13-157	204- 41-080	NEW-P	05-12-048	212- 17-230	AMD-P	05-07-102
196- 25-002	AMD-P	05-07-142	204- 50	PREP	05-08-116	212- 17-230	AMD	05-12-033
196- 25-040	AMD-P	05-07-142	204- 50-030	AMD-P	05-12-049	212- 17-235	AMD-P	05-07-102
199- 08-300	NEW	05-07-045	204- 50-040	AMD-P	05-12-049	212- 17-235	AMD	05-12-033
199- 08-305	NEW	05-07-045	204- 50-050	AMD-P	05-12-049	212- 17-250	AMD-P	05-07-102
199- 08-310	NEW	05-07-045	204- 50-070	AMD-P	05-12-049	212- 17-250	AMD	05-12-033
199- 08-315	NEW	05-07-045	204- 50-080	AMD-P	05-12-049	212- 17-255	AMD-P	05-07-102
199- 08-320	NEW	05-07-045	204- 50-090	AMD-P	05-12-049	212- 17-255	AMD	05-12-033
199- 08-325	NEW	05-07-045	204- 50-110	AMD-P	05-12-049	212- 17-260	AMD-P	05-07-102
199- 08-330	NEW	05-07-045	204- 50-120	AMD-P	05-12-049	212- 17-260	AMD	05-12-033
199- 08-335	NEW	05-07-045	204- 50-130	AMD-P	05-12-049	212- 17-265	REP-P	05-07-102
199- 08-340	NEW	05-07-045	208-680A-040	AMD	05-03-038	212- 17-265	REP	05-12-033
199- 08-345	NEW	05-07-045	208-680E-025	NEW	05-03-038	212- 17-270	AMD-P	05-07-102
199- 08-350	NEW	05-07-045	208-680F-020	AMD	05-03-038	212- 17-270	AMD	05-12-033
199- 08-355	NEW	05-07-045	208-680G-050	AMD	05-03-037	212- 17-275	AMD-P	05-07-102
199- 08-360	NEW	05-07-045	212- 17-025	AMD-P	05-07-102	212- 17-275	AMD	05-12-033
199- 08-365	NEW	05-07-045	212- 17-025	AMD	05-12-033	212- 17-280	AMD-P	05-07-102
199- 08-370	NEW	05-07-045	212- 17-030	AMD-P	05-07-102	212- 17-280	AMD	05-12-033
199- 08-375	NEW	05-07-045	212- 17-030	AMD	05-12-033	212- 17-285	AMD-P	05-07-102
199- 08-380	NEW	05-07-045	212- 17-032	NEW-P	05-07-102	212- 17-285	AMD	05-12-033
199- 08-385	NEW	05-07-045	212- 17-032	NEW	05-12-033	212- 17-290	AMD-P	05-07-102
199- 08-390	NEW	05-07-045	212- 17-035	AMD-P	05-07-102	212- 17-290	AMD	05-12-033
199- 08-395	NEW	05-07-045	212- 17-035	AMD	05-12-033	212- 17-295	AMD-P	05-07-102
199- 08-400	NEW	05-07-045	212- 17-040	AMD-P	05-07-102	212- 17-295	AMD	05-12-033
199- 08-405	NEW-W	05-07-079	212- 17-040	AMD	05-12-033	212- 17-300	AMD-P	05-07-102
199- 08-410	NEW-W	05-07-079	212- 17-042	NEW-P	05-07-102	212- 17-300	AMD	05-12-033
199- 08-415	NEW-W	05-07-079	212- 17-042	NEW	05-12-033	212- 17-310	AMD-P	05-07-102
199- 08-420	NEW-W	05-07-079	212- 17-050	AMD-P	05-07-102	212- 17-310	AMD	05-12-033
199- 08-425	NEW	05-07-045	212- 17-050	AMD	05-12-033	212- 17-317	AMD-P	05-07-102
199- 08-426	NEW-W	05-07-079	212- 17-055	AMD-P	05-07-102	212- 17-317	AMD	05-12-033
199- 08-427	NEW-W	05-07-079	212- 17-055	AMD	05-12-033	212- 17-335	AMD-P	05-07-102
199- 08-428	NEW-W	05-07-079	212- 17-060	AMD-P	05-07-102	212- 17-335	AMD	05-12-033
199- 08-429	NEW-W	05-07-079	212- 17-060	AMD	05-12-033	212- 17-342	NEW-P	05-07-102
199- 08-430	NEW	05-07-045	212- 17-070	AMD-P	05-07-102	212- 17-345	AMD-P	05-07-102
199- 08-435	NEW	05-07-045	212- 17-085	AMD-P	05-07-102	212- 17-345	AMD	05-12-033
199- 08-440	NEW	05-07-045	212- 17-085	AMD	05-12-033	212- 17-350	AMD-P	05-07-102
199- 08-445	NEW	05-07-045	212- 17-125	AMD-P	05-07-102	212- 17-350	AMD	05-12-033
199- 08-450	NEW	05-07-045	212- 17-170	AMD-P	05-07-102	212- 17-352	AMD-P	05-07-102
199- 08-455	NEW	05-07-045	212- 17-185	AMD-P	05-07-102	212- 17-355	AMD-P	05-07-102
199- 08-460	NEW	05-07-045	212- 17-185	AMD	05-12-033	212- 17-355	AMD	05-12-033
199- 08-465	NEW	05-07-045	212- 17-198	AMD-P	05-07-102	212- 17-360	AMD-P	05-07-102
199- 08-470	NEW	05-07-045	212- 17-198	AMD	05-12-033	212- 17-360	AMD	05-12-033
199- 08-475	NEW	05-07-045	212- 17-21503	AMD-P	05-07-102	212- 17-365	NEW-P	05-07-102
199- 08-480	NEW	05-07-045	212- 17-21503	AMD	05-12-033	212- 17-365	NEW	05-12-033
199- 08-485	NEW	05-07-045	212- 17-21505	AMD-P	05-07-102	212- 17-370	NEW-P	05-07-102
199- 08-490	NEW	05-07-045	212- 17-21505	AMD	05-12-033	212- 17-370	NEW	05-12-033
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212- 17-380	NEW	05-12-033	212- 80-015	AMD	05-05-006	212- 80-108	RECOD	05-05-006
212- 17-385	NEW-P	05-07-102	212- 80-015	AMD-P	05-11-107	212- 80-110	AMD	05-05-006
212- 17-385	NEW	05-12-033	212- 80-018	NEW	05-05-006	212- 80-110	DECOD	05-05-006
212- 17-390	NEW-P	05-07-102	212- 80-018	AMD-P	05-11-107	212- 80-113	RECOD	05-05-006
212- 17-390	NEW	05-12-033	212- 80-020	AMD-P	05-11-107	212- 80-113	AMD-P	05-11-107
212- 17-395	NEW-P	05-07-102	212- 80-023	RECOD	05-05-006	212- 80-115	AMD	05-05-006
212- 17-395	NEW	05-12-033	212- 80-025	AMD	05-05-006	212- 80-115	DECOD	05-05-006
212- 17-400	NEW-P	05-07-102	212- 80-025	DECOD	05-05-006	212- 80-118	RECOD	05-05-006
212- 17-400	NEW	05-12-033	212- 80-028	RECOD	05-05-006	212- 80-120	AMD	05-05-006
212- 17-405	NEW-P	05-07-102	212- 80-028	AMD-P	05-11-107	212- 80-120	DECOD	05-05-006
212- 17-405	NEW	05-12-033	212- 80-030	AMD	05-05-006	212- 80-123	RECOD	05-05-006
212- 17-410	NEW-P	05-07-102	212- 80-030	DECOD	05-05-006	212- 80-125	AMD	05-05-006
212- 17-410	NEW	05-12-033	212- 80-033	RECOD	05-05-006	212- 80-125	DECOD	05-05-006
212- 17-415	NEW-P	05-07-102	212- 80-035	AMD	05-05-006	212- 80-128	RECOD	05-05-006
212- 17-415	NEW	05-12-033	212- 80-035	DECOD	05-05-006	212- 80-130	AMD	05-05-006
212- 17-420	NEW-P	05-07-102	212- 80-038	RECOD	05-05-006	212- 80-130	DECOD	05-05-006
212- 17-420	NEW	05-12-033	212- 80-038	AMD-P	05-11-107	212- 80-133	NEW-P	05-11-107
212- 17-425	NEW-P	05-07-102	212- 80-040	AMD	05-05-006	212- 80-135	AMD	05-05-006
212- 17-425	NEW	05-12-033	212- 80-040	DECOD	05-05-006	212- 80-135	DECOD	05-05-006
212- 17-430	NEW-P	05-07-102	212- 80-043	RECOD	05-05-006	212- 80-138	NEW-P	05-11-107
212- 17-430	NEW	05-12-033	212- 80-043	AMD-P	05-11-107	212- 80-140	NEW-P	05-11-107
212- 17-435	NEW-P	05-07-102	212- 80-045	AMD	05-05-006	212- 80-145	NEW-P	05-11-107
212- 17-435	NEW	05-12-033	212- 80-045	DECOD	05-05-006	212- 80-150	NEW-P	05-11-107
212- 17-440	NEW-P	05-07-102	212- 80-048	NEW	05-05-006	212- 80-155	NEW-P	05-11-107
212- 17-440	NEW	05-12-033	212- 80-050	AMD	05-05-006	212- 80-160	NEW-P	05-11-107
212- 17-445	NEW-P	05-07-102	212- 80-050	DECOD	05-05-006	212- 80-165	NEW-P	05-11-107
212- 17-445	NEW	05-12-033	212- 80-053	RECOD	05-05-006	212- 80-170	NEW-P	05-11-107
212- 17-450	NEW-P	05-07-102	212- 80-053	AMD-P	05-11-107	212- 80-175	NEW-P	05-11-107
212- 17-450	NEW	05-12-033	212- 80-055	AMD	05-05-006	212- 80-180	NEW-P	05-11-107
212- 17-455	NEW-P	05-07-102	212- 80-055	DECOD	05-05-006	212- 80-185	NEW-P	05-11-107
212- 17-455	NEW	05-12-033	212- 80-058	RECOD	05-05-006	212- 80-188	NEW-P	05-11-107
212- 17-460	NEW-P	05-07-102	212- 80-060	AMD	05-05-006	212- 80-190	NEW-P	05-11-107
212- 17-460	NEW	05-12-033	212- 80-060	DECOD	05-05-006	212- 80-195	NEW-P	05-11-107
212- 17-465	NEW-P	05-07-102	212- 80-063	RECOD	05-05-006	212- 80-200	RECOD	05-05-006
212- 17-465	NEW	05-12-033	212- 80-065	AMD	05-05-006	212- 80-200	AMD-P	05-11-107
212- 17-470	NEW-P	05-07-102	212- 80-065	DECOD	05-05-006	212- 80-205	RECOD	05-05-006
212- 17-470	NEW	05-12-033	212- 80-068	RECOD	05-05-006	212- 80-205	AMD-P	05-11-107
212- 17-475	NEW-P	05-07-102	212- 80-070	AMD	05-05-006	212- 80-210	NEW	05-05-006
212- 17-475	NEW	05-12-033	212- 80-070	DECOD	05-05-006	212- 80-215	NEW	05-05-006
212- 17-480	NEW-P	05-07-102	212- 80-073	RECOD	05-05-006	212- 80-220	NEW	05-05-006
212- 17-480	NEW	05-12-033	212- 80-075	AMD	05-05-006	212- 80-225	NEW	05-05-006
212- 17-485	NEW-P	05-07-102	212- 80-075	DECOD	05-05-006	212- 80-230	NEW	05-05-006
212- 17-485	NEW	05-12-033	212- 80-078	RECOD	05-05-006	212- 80-235	NEW	05-05-006
212- 17-490	NEW-P	05-07-102	212- 80-078	AMD-P	05-11-107	212- 80-240	NEW	05-05-006
212- 17-490	NEW	05-12-033	212- 80-080	AMD	05-05-006	212- 80-245	NEW	05-05-006
212- 17-495	NEW-P	05-07-102	212- 80-080	DECOD	05-05-006	212- 80-250	NEW	05-05-006
212- 17-495	NEW	05-12-033	212- 80-083	RECOD	05-05-006	212- 80-255	NEW	05-05-006
212- 17-500	NEW-P	05-07-102	212- 80-083	AMD-P	05-11-107	212- 80-260	NEW	05-05-006
212- 17-500	NEW	05-12-033	212- 80-085	AMD	05-05-006	212- 80-265	NEW	05-05-006
212- 17-505	NEW-P	05-07-102	212- 80-085	DECOD	05-05-006	212- 80-265	AMD-P	05-11-107
212- 17-505	NEW	05-12-033	212- 80-088	RECOD	05-05-006	220- 16-470	AMD-X	05-10-107
212- 17-510	NEW-P	05-07-102	212- 80-090	AMD	05-05-006	220- 16-47000C	NEW-E	05-10-042
212- 17-510	NEW	05-12-033	212- 80-090	DECOD	05-05-006	220- 16-820	NEW	05-09-009
212- 17-515	NEW-P	05-07-102	212- 80-093	RECOD	05-05-006	220- 16-830	NEW	05-09-009
212- 17-515	NEW	05-12-033	212- 80-093	AMD-P	05-11-107	220- 16-840	NEW	05-09-009
212- 17-900	AMD-P	05-07-102	212- 80-095	AMD	05-05-006	220- 16-850	NEW	05-09-009
212- 17-900	AMD	05-12-033	212- 80-095	DECOD	05-05-006	220- 16-860	NEW	05-09-009
212- 80	PREP	05-07-101	212- 80-098	RECOD	05-05-006	220- 16-870	NEW	05-09-009
212- 80-001	AMD	05-05-006	212- 80-100	DECOD	05-05-006	220- 20-010	AMD-P	05-03-117
212- 80-005	AMD	05-05-006	212- 80-103	RECOD	05-05-006	220- 20-010	AMD	05-08-056

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220-20-05100B	NEW-E	05-03-013	220-47-001	AMD-X	05-12-143	220-52-07300T	NEW-E	05-07-009
220-20-05100B	REP-E	05-03-013	220-47-302	AMD-X	05-12-143	220-52-07300T	REP-E	05-07-103
220-20-100	AMD	05-09-009	220-47-311	AMD-X	05-12-143	220-56-100	AMD-X	05-10-107
220-22-40000G	NEW-E	05-13-092	220-47-325	AMD-X	05-12-143	220-56-10000D	NEW-E	05-10-042
220-24-04000U	NEW-E	05-10-051	220-47-401	AMD-X	05-12-143	220-56-115	AMD	05-05-035
220-24-04000U	REP-E	05-12-021	220-47-411	AMD-X	05-12-143	220-56-118	AMD	05-05-035
220-24-04000V	NEW-E	05-12-021	220-47-428	AMD-X	05-12-143	220-56-118	AMD-X	05-10-107
220-24-04000V	REP-E	05-13-002	220-48-00500I	NEW-E	05-11-027	220-56-123	AMD-X	05-10-107
220-24-04000W	NEW-E	05-13-002	220-48-01500V	NEW-E	05-05-090	220-56-128	AMD	05-05-035
220-24-04000W	REP-E	05-13-068	220-48-01500V	REP-E	05-11-027	220-56-129	AMD	05-05-035
220-24-04000X	NEW-E	05-13-068	220-48-01500W	NEW-E	05-11-027	220-56-130	AMD	05-05-035
220-32-05100G	REP-E	05-04-068	220-48-03200F	NEW-E	05-13-086	220-56-156	AMD	05-05-046
220-32-05100H	NEW-E	05-03-061	220-52-018	AMD-P	05-12-142	220-56-180	AMD-X	05-10-107
220-32-05100H	REP-E	05-03-061	220-52-020	AMD-P	05-12-142	220-56-18000D	NEW-E	05-10-042
220-32-05100H	REP-E	05-04-068	220-52-030	AMD	05-05-027	220-56-195	AMD-X	05-10-107
220-32-05100I	NEW-E	05-04-068	220-52-04000F	REP-E	05-03-039	220-56-19500N	NEW-E	05-10-042
220-32-05100I	REP-E	05-04-068	220-52-04000H	NEW-E	05-03-039	220-56-25000H	NEW-E	05-06-008
220-32-05100I	REP-E	05-07-084	220-52-04000H	REP-E	05-06-034	220-56-255	AMD-X	05-09-033
220-32-05100J	NEW-E	05-07-084	220-52-04000I	NEW-E	05-04-065	220-56-25500S	NEW-E	05-09-025
220-33-01000A	NEW-E	05-08-073	220-52-04000I	REP-E	05-04-065	220-56-25500S	REP-E	05-11-102
220-33-01000A	REP-E	05-09-098	220-52-04000J	NEW-E	05-06-034	220-56-25500T	NEW-E	05-11-102
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220-33-01000B	REP-E	05-11-005	220-52-04000K	NEW-E	05-07-060	220-56-25500U	NEW-E	05-12-038
220-33-01000C	NEW-E	05-11-032	220-52-04000K	REP-E	05-13-092	220-56-25500U	REP-E	05-12-061
220-33-01000C	REP-E	05-11-032	220-52-04000L	NEW-E	05-13-092	220-56-25500V	NEW-E	05-12-061
220-33-01000D	NEW-E	05-13-194	220-52-04600A	NEW-E	05-06-034	220-56-25500V	REP-E	05-13-069
220-33-01000D	REP-E	05-13-194	220-52-04600A	REP-E	05-07-060	220-56-25500W	NEW-E	05-13-069
220-33-01000S	NEW-E	05-05-091	220-52-04600B	NEW-E	05-07-060	220-56-27000W	REP-E	05-06-043
220-33-01000S	REP-E	05-06-010	220-52-04600B	REP-E	05-13-092	220-56-27000X	NEW-E	05-06-043
220-33-01000T	NEW-E	05-06-010	220-52-04600C	NEW-E	05-13-092	220-56-27000X	REP-E	05-06-043
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220-33-01000U	NEW-E	05-06-072	220-52-04600T	REP-E	05-04-065	220-56-28200G	REP-E	05-08-071
220-33-01000U	REP-E	05-07-005	220-52-04600W	REP-E	05-02-048	220-56-28200H	NEW-E	05-06-006
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220-33-01000X	REP-E	05-07-082	220-52-05100K	NEW-E	05-09-039	220-56-310	AMD-P	05-07-042
220-33-01000Y	NEW-E	05-07-082	220-52-05100K	REP-E	05-10-049	220-56-310	AMD	05-12-007
220-33-01000Y	REP-E	05-08-021	220-52-05100L	NEW-E	05-10-049	220-56-31000W	NEW-E	05-12-004
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220-33-01000Z	REP-E	05-08-073	220-52-05100M	NEW-E	05-11-091	220-56-312	AMD-P	05-07-042
220-33-03000V	NEW-E	05-11-031	220-52-05100M	REP-E	05-13-052	220-56-315	AMD	05-05-035
220-33-03000V	REP-E	05-11-031	220-52-05100N	NEW-E	05-13-052	220-56-315	AMD-P	05-07-042
220-33-03000V	REP-E	05-12-003	220-52-05100N	REP-E	05-13-196	220-56-315	AMD	05-12-007
220-33-03000W	NEW-E	05-12-003	220-52-05100P	NEW-E	05-13-196	220-56-31500D	NEW-E	05-12-004
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220-33-03000X	NEW-E	05-13-195	220-52-07100M	NEW-E	05-06-009	220-56-325	AMD	05-05-035
220-33-03000X	REP-E	05-13-195	220-52-07100M	REP-E	05-07-010	220-56-32500A	NEW-E	05-11-090
220-33-04000W	REP-E	05-06-042	220-52-07100N	NEW-E	05-07-010	220-56-32500A	REP-E	05-12-008
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220-36-023	AMD-X	05-10-106	220-52-07100P	REP-E	05-07-083	220-56-32500C	NEW-E	05-12-039
220-40-027	AMD-X	05-10-106	220-52-07100Q	NEW-E	05-07-083	220-56-32500C	REP-E	05-12-104
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220- 56-32500Y	NEW-E	05-11-025	222- 08-160	AMD-S	05-08-085	222- 22-080	AMD	05-12-119
220- 56-32500Y	REP-E	05-11-044	222- 08-160	AMD	05-12-119	222- 22-090	AMD-P	05-06-096
220- 56-32500Z	NEW-E	05-11-044	222- 10-030	AMD-P	05-06-096	222- 22-090	AMD-S	05-08-085
220- 56-32500Z	REP-E	05-11-090	222- 10-030	AMD	05-12-119	222- 22-090	AMD	05-12-119
220- 56-326	AMD	05-05-035	222- 10-040	AMD-P	05-06-096	222- 23-020	AMD-P	05-06-096
220- 56-330	AMD	05-05-035	222- 10-040	AMD	05-12-119	222- 23-020	AMD	05-12-119
220- 56-330	AMD-P	05-07-042	222- 12-010	AMD-S	05-08-085	222- 23-025	AMD-P	05-06-096
220- 56-330	AMD	05-12-007	222- 12-010	AMD	05-12-119	222- 23-025	AMD	05-12-119
220- 56-33000Q	REP-E	05-07-149	222- 12-040	AMD-P	05-06-096	222- 24-010	AMD-P	05-06-096
220- 56-33000R	NEW-E	05-07-008	222- 12-040	AMD	05-12-119	222- 24-010	AMD	05-12-119
220- 56-33000R	REP-E	05-07-149	222- 12-045	AMD-P	05-06-096	222- 24-051	AMD-P	05-06-096
220- 56-33000S	NEW-E	05-07-149	222- 12-045	AMD	05-12-119	222- 24-051	AMD	05-12-119
220- 56-33000S	REP-E	05-12-004	222- 12-046	AMD-P	05-06-096	222- 30-020	AMD-P	05-06-096
220- 56-33000T	NEW-E	05-12-004	222- 12-046	AMD-S	05-08-085	222- 30-020	AMD	05-12-119
220- 56-33000T	REP-E	05-12-004	222- 12-046	AMD	05-12-119	222- 30-021	AMD-P	05-06-096
220- 56-350	AMD	05-05-035	222- 12-080	AMD-P	05-06-096	222- 30-021	AMD	05-12-119
220- 56-35000U	REP-E	05-06-007	222- 12-080	AMD	05-12-119	222- 30-022	AMD-P	05-06-096
220- 56-35000V	NEW-E	05-06-007	222- 12-090	AMD-P	05-06-096	222- 30-022	AMD	05-12-119
220- 56-35000W	NEW-E	05-09-026	222- 12-090	AMD-S	05-08-085	222- 30-023	AMD-P	05-06-096
220- 56-35000W	REP-E	05-09-026	222- 12-090	AMD	05-12-119	222- 30-023	AMD	05-12-119
220- 56-36000E	NEW-E	05-02-047	222- 16-010	AMD-P	05-06-096	222- 30-025	AMD-P	05-06-096
220- 56-36000E	REP-E	05-02-047	222- 16-010	AMD-S	05-08-085	222- 30-025	AMD	05-12-119
220- 56-36000F	NEW-E	05-04-064	222- 16-010	AMD	05-12-119	222- 30-050	AMD-P	05-06-096
220- 56-36000F	REP-E	05-04-064	222- 16-030	AMD-P	05-06-096	222- 30-050	AMD	05-12-119
220- 56-36000G	NEW-E	05-06-071	222- 16-030	AMD	05-12-119	222- 30-110	AMD-P	05-06-096
220- 56-36000G	REP-E	05-06-071	222- 16-031	AMD-P	05-06-096	222- 30-110	AMD	05-12-119
220- 56-36000H	NEW-E	05-08-006	222- 16-031	AMD	05-12-119	222- 34-010	AMD-P	05-06-096
220- 56-36000H	REP-E	05-08-006	222- 16-050	AMD-P	05-06-096	222- 34-010	AMD	05-12-119
220- 56-36000I	NEW-E	05-08-119	222- 16-050	AMD	05-12-119	222- 34-020	AMD-P	05-06-096
220- 56-36000I	REP-E	05-08-119	222- 16-070	AMD-P	05-06-096	222- 34-020	AMD	05-12-119
220- 56-36000J	NEW-E	05-09-068	222- 16-070	AMD	05-12-119	230- 02	PREP	05-13-042
220- 56-36000J	REP-E	05-09-068	222- 16-080	AMD-P	05-06-096	230- 02-205	AMD-W	05-09-052
220- 56-36000K	NEW-E	05-10-079	222- 16-080	AMD	05-12-119	230- 02-505	AMD-P	05-09-065
220- 56-36000K	REP-E	05-10-079	222- 20-010	AMD-P	05-06-096	230- 02-505	AMD-S	05-11-087
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220- 56-38000I	NEW-E	05-09-026	222- 20-020	AMD	05-12-119	230- 04-142	AMD-P	05-07-118
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220- 76-015	AMD-W	05-09-041	222- 20-050	AMD	05-12-119	230- 04-270	AMD-P	05-07-117
220- 76-015	AMD-P	05-09-042	222- 20-060	AMD-P	05-06-096	230- 04-270	AMD	05-11-085
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220- 88C-030	AMD	05-08-056	222- 20-075	NEW-P	05-06-096	230- 08-130	AMD-P	05-07-119
220- 88C-040	AMD-P	05-03-117	222- 20-075	NEW	05-12-119	230- 08-130	AMD	05-11-088
220- 88C-040	AMD	05-08-056	222- 21-030	AMD-P	05-06-096	230- 08-140	AMD-P	05-07-119
220- 88C-050	AMD-P	05-03-117	222- 21-030	AMD	05-12-119	230- 08-140	AMD	05-11-088
220- 88C-050	AMD	05-08-056	222- 22-010	AMD-P	05-06-096	230- 08-150	AMD-P	05-07-119
220- 88D-010	NEW-P	05-12-142	222- 22-010	AMD-S	05-08-085	230- 08-150	AMD	05-11-088
220- 88D-01000A	NEW-E	05-10-005	222- 22-010	AMD	05-12-119	230- 08-160	AMD-P	05-07-119
220- 88D-01000A	REP-E	05-12-060	222- 22-020	AMD-S	05-08-085	230- 08-160	AMD	05-11-088
220- 88D-01000B	NEW-E	05-12-060	222- 22-020	AMD	05-12-119	230- 08-165	AMD-P	05-07-119
220- 88D-020	NEW-P	05-12-142	222- 22-045	NEW-S	05-08-085	230- 08-165	AMD	05-11-088
220- 88D-02000A	NEW-E	05-12-060	222- 22-045	NEW	05-12-119	230- 12	PREP	05-13-042
220- 88D-030	NEW-P	05-12-142	222- 22-050	AMD-S	05-08-085	230- 12-305	AMD-P	05-07-119
220- 88D-03000A	NEW-E	05-12-060	222- 22-050	AMD	05-12-119	230- 12-305	AMD	05-11-088
220- 88D-040	NEW-P	05-12-142	222- 22-060	AMD-S	05-08-085	230- 12-310	AMD-P	05-07-119
220- 88D-04000A	NEW-E	05-12-060	222- 22-060	AMD	05-12-119	230- 12-310	AMD	05-11-088
220- 88D-050	NEW-P	05-12-142	222- 22-070	AMD-P	05-06-096	230- 12-320	REP-P	05-13-116
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230- 12-345	REP-P	05-13-116	232- 28-61900D	REP-E	05-05-002	236- 22-032	DECOD	05-04-072
230- 12-350	AMD-P	05-13-116	232- 28-61900D	REP-E	05-08-072	236- 22-033	DECOD	05-04-072
230- 20-115	AMD-P	05-03-115	232- 28-61900D	NEW-E	05-13-035	236- 22-034	AMD	05-04-072
230- 20-115	AMD	05-07-106	232- 28-61900D	REP-E	05-13-199	236- 22-034	DECOD	05-04-072
230- 20-325	AMD-P	05-13-115	232- 28-61900E	NEW-E	05-05-089	236- 22-035	DECOD	05-04-072
230- 20-335	AMD-P	05-03-114	232- 28-61900E	REP-E	05-05-089	236- 22-036	AMD	05-04-072
230- 20-335	AMD	05-07-107	232- 28-61900E	NEW-E	05-13-053	236- 22-036	DECOD	05-04-072
230- 20-335	AMD-P	05-13-115	232- 28-61900E	REP-E	05-13-053	236- 22-037	AMD	05-04-072
230- 30-033	AMD-W	05-08-105	232- 28-61900F	NEW-E	05-07-077	236- 22-037	DECOD	05-04-072
232- 12-021	AMD	05-02-046	232- 28-61900F	REP-E	05-07-077	236- 22-038	AMD	05-04-072
232- 12-068	AMD-P	05-13-198	232- 28-61900F	REP-E	05-09-097	236- 22-038	DECOD	05-04-072
232- 12-129	AMD	05-05-008	232- 28-61900F	NEW-E	05-13-199	236- 22-040	DECOD	05-04-072
232- 12-421	NEW-P	05-13-193	232- 28-61900G	NEW-E	05-07-061	236- 22-050	AMD	05-04-072
232- 12-422	NEW-P	05-13-193	232- 28-61900H	NEW-E	05-07-078	236- 22-050	DECOD	05-04-072
232- 12-423	NEW-P	05-13-193	232- 28-61900H	REP-E	05-07-078	236- 22-060	AMD	05-04-072
232- 12-619	AMD	05-05-035	232- 28-61900I	NEW-E	05-07-148	236- 22-060	DECOD	05-04-072
232- 12-619	AMD-X	05-10-107	232- 28-61900I	REP-E	05-07-148	236- 22-070	AMD	05-04-072
232- 12-61900W	NEW-E	05-10-042	232- 28-61900J	NEW-E	05-08-071	236- 22-070	DECOD	05-04-072
232- 16-050	AMD-P	05-13-198	232- 28-61900J	REP-E	05-08-071	236- 22-080	AMD	05-04-072
232- 16-740	AMD-P	05-13-198	232- 28-61900J	REP-E	05-13-035	236- 22-080	DECOD	05-04-072
232- 28-248	AMD	05-02-046	232- 28-61900K	NEW-E	05-08-072	236- 22-100	AMD	05-04-072
232- 28-248	AMD-P	05-06-108	232- 28-61900K	REP-E	05-08-072	236- 22-100	DECOD	05-04-072
232- 28-248	AMD	05-11-022	232- 28-61900L	NEW-E	05-08-074	236- 22-200	AMD	05-04-072
232- 28-266	AMD-P	05-06-108	232- 28-61900L	REP-E	05-08-074	236- 22-200	DECOD	05-04-072
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246-272-07001	REP-P	05-02-082	246-272A-0220	NEW-S	05-11-109	246-323-040	REP-P	05-10-063
246-272-08001	REP-P	05-02-082	246-272A-0230	NEW-P	05-02-082	246-323-050	REP-P	05-10-063
246-272-09001	REP-P	05-02-082	246-272A-0230	NEW-S	05-11-109	246-323-060	REP-P	05-10-063
246-272-09501	REP-P	05-02-082	246-272A-0232	NEW-P	05-02-082	246-323-070	REP-P	05-10-063
246-272-11001	REP-P	05-02-082	246-272A-0232	NEW-S	05-11-109	246-323-080	REP-P	05-10-063
246-272-12501	REP-P	05-02-082	246-272A-0234	NEW-P	05-02-082	246-323-090	REP-P	05-10-063
246-272-13501	REP-P	05-02-082	246-272A-0234	NEW-S	05-11-109	246-323-990	REP-P	05-10-063
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246-272-15501	REP-P	05-02-082	246-272A-0238	NEW-S	05-11-109	246-325-012	REP-P	05-10-063
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246-272-17501	REP-P	05-02-082	246-272A-0240	NEW-S	05-11-109	246-325-020	REP-P	05-10-063
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246-272-19501	REP-P	05-02-082	246-272A-0250	NEW-S	05-11-109	246-325-025	REP-P	05-10-063
246-272-20501	REP-P	05-02-082	246-272A-0260	NEW-P	05-02-082	246-325-030	REP-P	05-10-063
246-272-21501	REP-P	05-02-082	246-272A-0260	NEW-S	05-11-109	246-325-035	REP-P	05-10-063
246-272-22501	REP-P	05-02-082	246-272A-0265	NEW-P	05-02-082	246-325-040	REP-P	05-10-063
246-272-23501	REP-P	05-02-082	246-272A-0265	NEW-S	05-11-109	246-325-045	REP-P	05-10-063
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246-272-25001	REP-P	05-02-082	246-272A-0270	NEW-S	05-11-109	246-325-060	REP-P	05-10-063
246-272-26001	REP-P	05-02-082	246-272A-0275	NEW-P	05-02-082	246-325-070	REP-P	05-10-063
246-272-27001	REP-P	05-02-082	246-272A-0275	NEW-S	05-11-109	246-325-100	REP-P	05-10-063
246-272-28001	REP-P	05-02-082	246-272A-0280	NEW-P	05-02-082	246-325-120	REP-P	05-10-063
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246-272A-0005	NEW-S	05-11-109	246-272A-0300	NEW-S	05-11-109	246-326-035	REP-P	05-10-063
246-272A-0010	NEW-P	05-02-082	246-272A-0310	NEW-P	05-02-082	246-326-040	REP-P	05-10-063
246-272A-0010	NEW-S	05-11-109	246-272A-0310	NEW-S	05-11-109	246-326-050	REP-P	05-10-063
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246-272A-0015	NEW-S	05-11-109	246-272A-0320	NEW-S	05-11-109	246-326-070	REP-P	05-10-063
246-272A-0020	NEW-P	05-02-082	246-272A-0340	NEW-P	05-02-082	246-326-080	REP-P	05-10-063
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246-337-035	NEW-P	05-10-063	246-811-990	AMD	05-12-012	246-840-990	PREP-W	05-10-095
246-337-040	NEW-P	05-10-063	246-812-990	AMD-P	05-07-109	246-840-990	AMD	05-12-012
246-337-045	NEW-P	05-10-063	246-812-990	AMD	05-12-012	246-841-990	AMD-P	05-07-109
246-337-050	NEW-P	05-10-063	246-812-995	REP-P	05-07-109	246-841-990	AMD	05-12-012
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246-337-060	NEW-P	05-10-063	246-815-990	AMD-P	05-07-109	246-843-990	AMD	05-12-012
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246-337-155	NEW-P	05-10-063	246-824-995	REP	05-12-012	246-907-995	REP	05-12-012
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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
246-927-990	AMD-P	05-07-109	251-01-055	REP-P	05-09-099	251-01-195	REP-P	05-09-099
246-927-990	AMD	05-12-012	251-01-055	REP	05-12-067	251-01-195	REP	05-12-067
246-928-990	AMD-P	05-07-109	251-01-056	REP-P	05-09-099	251-01-200	REP-P	05-09-099
246-928-990	AMD	05-12-012	251-01-056	REP	05-12-067	251-01-200	REP	05-12-067
246-930-020	AMD	05-12-014	251-01-057	REP-P	05-09-099	251-01-201	REP-P	05-09-099
246-930-200	AMD	05-12-014	251-01-057	REP	05-12-067	251-01-201	REP	05-12-067
246-930-220	AMD	05-12-014	251-01-060	REP-P	05-09-099	251-01-210	REP-P	05-09-099
246-930-301	AMD	05-12-014	251-01-060	REP	05-12-067	251-01-210	REP	05-12-067
246-930-431	AMD	05-12-014	251-01-065	REP-P	05-09-099	251-01-215	REP-P	05-09-099
246-930-490	AMD	05-12-014	251-01-065	REP	05-12-067	251-01-215	REP	05-12-067
246-930-990	AMD-P	05-07-109	251-01-070	REP-P	05-09-099	251-01-220	REP-P	05-09-099
246-930-990	AMD	05-12-012	251-01-070	REP	05-12-067	251-01-220	REP	05-12-067
246-930-990	AMD	05-12-014	251-01-072	REP-P	05-09-099	251-01-225	REP-P	05-09-099
246-930-995	REP-P	05-07-109	251-01-072	REP	05-12-067	251-01-225	REP	05-12-067
246-933-590	AMD-P	05-07-109	251-01-075	REP-P	05-09-099	251-01-230	REP-P	05-09-099
246-933-590	AMD	05-12-012	251-01-075	REP	05-12-067	251-01-230	REP	05-12-067
246-933-990	AMD-P	05-07-109	251-01-077	REP-P	05-09-099	251-01-235	REP-P	05-09-099
246-933-990	AMD	05-12-012	251-01-077	REP	05-12-067	251-01-235	REP	05-12-067
246-935-990	AMD-P	05-07-109	251-01-080	REP-P	05-09-099	251-01-240	REP-P	05-09-099
246-935-990	AMD	05-12-012	251-01-080	REP	05-12-067	251-01-240	REP	05-12-067
246-937-990	AMD-P	05-07-109	251-01-085	REP-P	05-09-099	251-01-245	REP-P	05-09-099
246-937-990	AMD	05-12-012	251-01-085	REP	05-12-067	251-01-245	REP	05-12-067
246-939-990	AMD-P	05-07-109	251-01-100	REP-P	05-09-099	251-01-250	REP-P	05-09-099
246-939-990	AMD	05-12-012	251-01-100	REP	05-12-067	251-01-250	REP	05-12-067
246-976-830	PREP	05-12-015	251-01-105	REP-P	05-09-099	251-01-255	REP-P	05-09-099
246-976-840	PREP	05-12-015	251-01-105	REP	05-12-067	251-01-255	REP	05-12-067
246-976-850	PREP	05-12-015	251-01-110	REP-P	05-09-099	251-01-258	REP-P	05-09-099
246-976-860	PREP	05-12-015	251-01-110	REP	05-12-067	251-01-258	REP	05-12-067
246-976-881	PREP	05-12-015	251-01-115	REP-P	05-09-099	251-01-260	REP-P	05-09-099
247-02-050	AMD-X	05-06-045	251-01-115	REP	05-12-067	251-01-260	REP	05-12-067
247-02-050	AMD	05-11-048	251-01-120	REP-P	05-09-099	251-01-265	REP-P	05-09-099
250-83-010	NEW-P	05-05-073	251-01-120	REP	05-12-067	251-01-265	REP	05-12-067
250-83-020	NEW-P	05-05-073	251-01-125	REP-P	05-09-099	251-01-268	REP-P	05-09-099
250-83-030	NEW-P	05-05-073	251-01-125	REP	05-12-067	251-01-268	REP	05-12-067
250-83-040	NEW-P	05-05-073	251-01-129	REP-P	05-09-099	251-01-270	REP-P	05-09-099
250-83-050	NEW-P	05-05-073	251-01-129	REP	05-12-067	251-01-270	REP	05-12-067
250-83-060	NEW-P	05-05-073	251-01-130	REP-P	05-09-099	251-01-275	REP-P	05-09-099
250-83-070	NEW-P	05-05-073	251-01-130	REP	05-12-067	251-01-275	REP	05-12-067
251-01-005	REP-P	05-09-099	251-01-135	REP-P	05-09-099	251-01-280	REP-P	05-09-099
251-01-005	REP	05-12-067	251-01-135	REP	05-12-067	251-01-280	REP	05-12-067
251-01-014	REP-P	05-09-099	251-01-140	REP-P	05-09-099	251-01-285	REP-P	05-09-099
251-01-014	REP	05-12-067	251-01-140	REP	05-12-067	251-01-285	REP	05-12-067
251-01-015	REP-P	05-09-099	251-01-145	REP-P	05-09-099	251-01-290	REP-P	05-09-099
251-01-015	REP	05-12-067	251-01-145	REP	05-12-067	251-01-290	REP	05-12-067
251-01-018	REP-P	05-09-099	251-01-147	REP-P	05-09-099	251-01-295	REP-P	05-09-099
251-01-018	REP	05-12-067	251-01-147	REP	05-12-067	251-01-295	REP	05-12-067
251-01-020	REP-P	05-09-099	251-01-150	REP-P	05-09-099	251-01-300	REP-P	05-09-099
251-01-020	REP	05-12-067	251-01-150	REP	05-12-067	251-01-300	REP	05-12-067
251-01-025	REP-P	05-09-099	251-01-160	REP-P	05-09-099	251-01-305	REP-P	05-09-099
251-01-025	REP	05-12-067	251-01-160	REP	05-12-067	251-01-305	REP	05-12-067
251-01-028	REP-P	05-09-099	251-01-165	REP-P	05-09-099	251-01-310	REP-P	05-09-099
251-01-028	REP	05-12-067	251-01-165	REP	05-12-067	251-01-310	REP	05-12-067
251-01-030	REP-P	05-09-099	251-01-170	REP-P	05-09-099	251-01-315	REP-P	05-09-099
251-01-030	REP	05-12-067	251-01-170	REP	05-12-067	251-01-315	REP	05-12-067
251-01-035	REP-P	05-09-099	251-01-172	REP-P	05-09-099	251-01-325	REP-P	05-09-099
251-01-035	REP	05-12-067	251-01-172	REP	05-12-067	251-01-325	REP	05-12-067
251-01-040	REP-P	05-09-099	251-01-175	REP-P	05-09-099	251-01-335	REP-P	05-09-099
251-01-040	REP	05-12-067	251-01-175	REP	05-12-067	251-01-335	REP	05-12-067
251-01-045	REP-P	05-09-099	251-01-185	REP-P	05-09-099	251-01-340	REP-P	05-09-099
251-01-045	REP	05-12-067	251-01-185	REP	05-12-067	251-01-340	REP	05-12-067
251-01-050	REP-P	05-09-099	251-01-190	REP-P	05-09-099	251-01-345	REP-P	05-09-099
251-01-050	REP	05-12-067	251-01-190	REP	05-12-067	251-01-345	REP	05-12-067

TABLE



Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
251-01-350	REP-P	05-09-099	251-04-110	REP-P	05-09-099	251-08-021	REP-P	05-09-099
251-01-350	REP	05-12-067	251-04-110	REP	05-12-067	251-08-021	REP	05-12-067
251-01-355	REP-P	05-09-099	251-04-160	REP-P	05-09-099	251-08-031	REP-P	05-09-099
251-01-355	REP	05-12-067	251-04-160	REP	05-12-067	251-08-031	REP	05-12-067
251-01-360	REP-P	05-09-099	251-04-170	REP-P	05-09-099	251-08-070	REP-P	05-09-099
251-01-360	REP	05-12-067	251-04-170	REP	05-12-067	251-08-070	REP	05-12-067
251-01-365	REP-P	05-09-099	251-05-010	REP-P	05-09-099	251-08-075	REP-P	05-09-099
251-01-365	REP	05-12-067	251-05-010	REP	05-12-067	251-08-075	REP	05-12-067
251-01-367	REP-P	05-09-099	251-05-030	REP-P	05-09-099	251-08-080	REP-P	05-09-099
251-01-367	REP	05-12-067	251-05-030	REP	05-12-067	251-08-080	REP	05-12-067
251-01-370	REP-P	05-09-099	251-05-040	REP-P	05-09-099	251-08-090	REP-P	05-09-099
251-01-370	REP	05-12-067	251-05-040	REP	05-12-067	251-08-090	REP	05-12-067
251-01-375	REP-P	05-09-099	251-05-050	REP-P	05-09-099	251-08-100	REP-P	05-09-099
251-01-375	REP	05-12-067	251-05-050	REP	05-12-067	251-08-100	REP	05-12-067
251-01-380	REP-P	05-09-099	251-05-060	REP-P	05-09-099	251-08-110	REP-P	05-09-099
251-01-380	REP	05-12-067	251-05-060	REP	05-12-067	251-08-110	REP	05-12-067
251-01-382	REP-P	05-09-099	251-05-070	REP-P	05-09-099	251-08-112	REP-P	05-09-099
251-01-382	REP	05-12-067	251-05-070	REP	05-12-067	251-08-112	REP	05-12-067
251-01-385	REP-P	05-09-099	251-05-080	REP-P	05-09-099	251-08-115	REP-P	05-09-099
251-01-385	REP	05-12-067	251-05-080	REP	05-12-067	251-08-115	REP	05-12-067
251-01-390	REP-P	05-09-099	251-06-010	REP-P	05-09-099	251-08-120	REP-P	05-09-099
251-01-390	REP	05-12-067	251-06-010	REP	05-12-067	251-08-120	REP	05-12-067
251-01-392	REP-P	05-09-099	251-06-020	REP-P	05-09-099	251-08-130	REP-P	05-09-099
251-01-392	REP	05-12-067	251-06-020	REP	05-12-067	251-08-130	REP	05-12-067
251-01-395	REP-P	05-09-099	251-06-030	REP-P	05-09-099	251-08-150	REP-P	05-09-099
251-01-395	REP	05-12-067	251-06-030	REP	05-12-067	251-08-150	REP	05-12-067
251-01-400	REP-P	05-09-099	251-06-050	REP-P	05-09-099	251-08-160	REP-P	05-09-099
251-01-400	REP	05-12-067	251-06-050	REP	05-12-067	251-08-160	REP	05-12-067
251-01-405	REP-P	05-09-099	251-06-060	REP-P	05-09-099	251-09-010	REP-P	05-09-099
251-01-405	REP	05-12-067	251-06-060	REP	05-12-067	251-09-010	REP	05-12-067
251-01-410	REP-P	05-09-099	251-06-065	REP-P	05-09-099	251-09-020	REP-P	05-09-099
251-01-410	REP	05-12-067	251-06-065	REP	05-12-067	251-09-020	REP	05-12-067
251-01-415	REP-P	05-09-099	251-06-070	AMD	05-04-042	251-09-025	REP-P	05-09-099
251-01-415	REP	05-12-067	251-06-070	REP-P	05-09-099	251-09-025	REP	05-12-067
251-01-425	REP-P	05-09-099	251-06-070	REP	05-12-067	251-09-030	REP-P	05-09-099
251-01-425	REP	05-12-067	251-06-070	NEW	05-04-042	251-09-030	REP	05-12-067
251-01-430	REP-P	05-09-099	251-06-072	REP-P	05-09-099	251-09-035	REP-P	05-09-099
251-01-430	REP	05-12-067	251-06-072	REP	05-12-067	251-09-035	REP	05-12-067
251-01-435	REP-P	05-09-099	251-06-080	REP-P	05-09-099	251-09-040	REP-P	05-09-099
251-01-435	REP	05-12-067	251-06-080	REP	05-12-067	251-09-040	REP	05-12-067
251-01-440	REP-P	05-09-099	251-06-090	REP-P	05-09-099	251-09-060	REP-P	05-09-099
251-01-440	REP	05-12-067	251-06-090	REP	05-12-067	251-09-060	REP	05-12-067
251-01-445	REP-P	05-09-099	251-06-091	REP-P	05-09-099	251-09-070	REP-P	05-09-099
251-01-445	REP	05-12-067	251-06-091	REP	05-12-067	251-09-070	REP	05-12-067
251-01-450	REP-P	05-09-099	251-07-010	REP-P	05-09-099	251-09-080	REP-P	05-09-099
251-01-450	REP	05-12-067	251-07-010	REP	05-12-067	251-09-080	REP	05-12-067
251-01-460	REP-P	05-09-099	251-07-020	REP-P	05-09-099	251-09-090	REP-P	05-09-099
251-01-460	REP	05-12-067	251-07-020	REP	05-12-067	251-09-090	REP	05-12-067
251-04-010	REP-P	05-09-099	251-07-030	REP-P	05-09-099	251-09-092	REP-P	05-09-099
251-04-010	REP	05-12-067	251-07-030	REP	05-12-067	251-09-092	REP	05-12-067
251-04-030	REP-P	05-09-099	251-07-040	REP-P	05-09-099	251-09-094	REP-P	05-09-099
251-04-030	REP	05-12-067	251-07-040	REP	05-12-067	251-09-094	REP	05-12-067
251-04-035	REP-P	05-09-099	251-07-050	REP-P	05-09-099	251-09-100	REP-P	05-09-099
251-04-035	REP	05-12-067	251-07-050	REP	05-12-067	251-09-100	REP	05-12-067
251-04-060	REP-P	05-09-099	251-07-060	REP-P	05-09-099	251-09-110	REP-P	05-09-099
251-04-060	REP	05-12-067	251-07-060	REP	05-12-067	251-09-110	REP	05-12-067
251-04-070	REP-P	05-09-099	251-07-100	REP-P	05-09-099	251-10-020	REP-P	05-09-099
251-04-070	REP	05-12-067	251-07-100	REP	05-12-067	251-10-020	REP	05-12-067
251-04-100	REP-P	05-09-099	251-08-005	REP-P	05-09-099	251-10-025	REP-P	05-09-099
251-04-100	REP	05-12-067	251-08-005	REP	05-12-067	251-10-025	REP	05-12-067
251-04-105	REP-P	05-09-099	251-08-007	REP-P	05-09-099	251-10-030	REP-P	05-09-099
251-04-105	REP	05-12-067	251-08-007	REP	05-12-067	251-10-030	REP	05-12-067

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Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
251-10-034	REP-P	05-09-099	251-12-103	REP-P	05-09-099	251-14-100	REP-P	05-09-099
251-10-034	REP	05-12-067	251-12-103	REP	05-12-067	251-14-100	REP	05-12-067
251-10-035	REP-P	05-09-099	251-12-104	REP-P	05-09-099	251-14-110	REP-P	05-09-099
251-10-035	REP	05-12-067	251-12-104	REP	05-12-067	251-14-110	REP	05-12-067
251-10-045	REP-P	05-09-099	251-12-105	REP-P	05-09-099	251-14-120	REP-P	05-09-099
251-10-045	REP	05-12-067	251-12-105	REP	05-12-067	251-14-120	REP	05-12-067
251-10-055	REP-P	05-09-099	251-12-106	REP-P	05-09-099	251-14-130	REP-P	05-09-099
251-10-055	REP	05-12-067	251-12-106	REP	05-12-067	251-14-130	REP	05-12-067
251-10-060	REP-P	05-09-099	251-12-110	REP-P	05-09-099	251-17-010	REP-P	05-09-099
251-10-060	REP	05-12-067	251-12-110	REP	05-12-067	251-17-010	REP	05-12-067
251-10-061	REP-P	05-09-099	251-12-120	REP-P	05-09-099	251-17-020	REP-P	05-09-099
251-10-061	REP	05-12-067	251-12-120	REP	05-12-067	251-17-020	REP	05-12-067
251-10-070	REP-P	05-09-099	251-12-140	REP-P	05-09-099	251-17-030	REP-P	05-09-099
251-10-070	REP	05-12-067	251-12-140	REP	05-12-067	251-17-030	REP	05-12-067
251-10-080	REP-P	05-09-099	251-12-170	REP-P	05-09-099	251-17-040	REP-P	05-09-099
251-10-080	REP	05-12-067	251-12-170	REP	05-12-067	251-17-040	REP	05-12-067
251-10-090	REP-P	05-09-099	251-12-180	REP-P	05-09-099	251-17-050	REP-P	05-09-099
251-10-090	REP	05-12-067	251-12-180	REP	05-12-067	251-17-050	REP	05-12-067
251-10-112	REP-P	05-09-099	251-12-190	REP-P	05-09-099	251-17-060	REP-P	05-09-099
251-10-112	REP	05-12-067	251-12-190	REP	05-12-067	251-17-060	REP	05-12-067
251-11-010	REP-P	05-09-099	251-12-200	REP-P	05-09-099	251-17-070	REP-P	05-09-099
251-11-010	REP	05-12-067	251-12-200	REP	05-12-067	251-17-070	REP	05-12-067
251-11-020	REP-P	05-09-099	251-12-210	REP-P	05-09-099	251-17-080	REP-P	05-09-099
251-11-020	REP	05-12-067	251-12-210	REP	05-12-067	251-17-080	REP	05-12-067
251-11-030	REP-P	05-09-099	251-12-220	REP-P	05-09-099	251-17-090	REP-P	05-09-099
251-11-030	REP	05-12-067	251-12-220	REP	05-12-067	251-17-090	REP	05-12-067
251-11-040	REP-P	05-09-099	251-12-230	REP-P	05-09-099	251-17-100	REP-P	05-09-099
251-11-040	REP	05-12-067	251-12-230	REP	05-12-067	251-17-100	REP	05-12-067
251-11-050	REP-P	05-09-099	251-12-231	REP-P	05-09-099	251-17-110	REP-P	05-09-099
251-11-050	REP	05-12-067	251-12-231	REP	05-12-067	251-17-110	REP	05-12-067
251-11-060	REP-P	05-09-099	251-12-232	REP-P	05-09-099	251-17-120	REP-P	05-09-099
251-11-060	REP	05-12-067	251-12-232	REP	05-12-067	251-17-120	REP	05-12-067
251-11-070	REP-P	05-09-099	251-12-240	REP-P	05-09-099	251-17-130	REP-P	05-09-099
251-11-070	REP	05-12-067	251-12-240	REP	05-12-067	251-17-130	REP	05-12-067
251-11-080	REP-P	05-09-099	251-12-250	REP-P	05-09-099	251-17-150	REP-P	05-09-099
251-11-080	REP	05-12-067	251-12-250	REP	05-12-067	251-17-150	REP	05-12-067
251-11-090	REP-P	05-09-099	251-12-260	REP-P	05-09-099	251-17-160	REP-P	05-09-099
251-11-090	REP	05-12-067	251-12-260	REP	05-12-067	251-17-160	REP	05-12-067
251-11-100	REP-P	05-09-099	251-12-500	REP-P	05-09-099	251-17-165	REP-P	05-09-099
251-11-100	REP	05-12-067	251-12-500	REP	05-12-067	251-17-165	REP	05-12-067
251-11-110	REP-P	05-09-099	251-12-600	REP-P	05-09-099	251-17-170	REP-P	05-09-099
251-11-110	REP	05-12-067	251-12-600	REP	05-12-067	251-17-170	REP	05-12-067
251-11-120	REP-P	05-09-099	251-14-005	REP-P	05-09-099	251-17-180	REP-P	05-09-099
251-11-120	REP	05-12-067	251-14-005	REP	05-12-067	251-17-180	REP	05-12-067
251-11-130	REP-P	05-09-099	251-14-010	REP-P	05-09-099	251-17-190	REP-P	05-09-099
251-11-130	REP	05-12-067	251-14-010	REP	05-12-067	251-17-190	REP	05-12-067
251-12-071	REP-P	05-09-099	251-14-020	REP-P	05-09-099	251-17-200	REP-P	05-09-099
251-12-071	REP	05-12-067	251-14-020	REP	05-12-067	251-17-200	REP	05-12-067
251-12-072	REP-P	05-09-099	251-14-035	REP-P	05-09-099	251-18-180	REP-P	05-09-099
251-12-072	REP	05-12-067	251-14-035	REP	05-12-067	251-18-180	REP	05-12-067
251-12-075	REP-P	05-09-099	251-14-052	REP-P	05-09-099	251-18-190	REP-P	05-09-099
251-12-075	REP	05-12-067	251-14-052	REP	05-12-067	251-18-190	REP	05-12-067
251-12-076	REP-P	05-09-099	251-14-054	REP-P	05-09-099	251-18-200	REP-P	05-09-099
251-12-076	REP	05-12-067	251-14-054	REP	05-12-067	251-18-200	REP	05-12-067
251-12-080	REP-P	05-09-099	251-14-056	REP-P	05-09-099	251-18-240	REP-P	05-09-099
251-12-080	REP	05-12-067	251-14-056	REP	05-12-067	251-18-240	REP	05-12-067
251-12-099	REP-P	05-09-099	251-14-057	REP-P	05-09-099	251-18-255	REP-P	05-09-099
251-12-099	REP	05-12-067	251-14-057	REP	05-12-067	251-18-255	REP	05-12-067
251-12-100	REP-P	05-09-099	251-14-058	REP-P	05-09-099	251-18-260	REP-P	05-09-099
251-12-100	REP	05-12-067	251-14-058	REP	05-12-067	251-18-260	REP	05-12-067
251-12-102	REP-P	05-09-099	251-14-060	REP-P	05-09-099	251-18-265	REP-P	05-09-099
251-12-102	REP	05-12-067	251-14-060	REP	05-12-067	251-18-265	REP	05-12-067

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
251-18-280	REP-P	05-09-099	251-22-040	REP-P	05-09-099	251-22-250	REP-P	05-09-099
251-18-280	REP	05-12-067	251-22-040	REP	05-12-067	251-22-250	REP	05-12-067
251-18-285	REP-P	05-09-099	251-22-045	REP-P	05-09-099	251-22-260	REP-P	05-09-099
251-18-285	REP	05-12-067	251-22-045	REP	05-12-067	251-22-260	REP	05-12-067
251-19-010	REP-P	05-09-099	251-22-048	REP-P	05-09-099	251-22-270	REP-P	05-09-099
251-19-010	REP	05-12-067	251-22-048	REP	05-12-067	251-22-270	REP	05-12-067
251-19-020	REP-P	05-09-099	251-22-050	REP-P	05-09-099	251-22-280	REP-P	05-09-099
251-19-020	REP	05-12-067	251-22-050	REP	05-12-067	251-22-280	REP	05-12-067
251-19-050	REP-P	05-09-099	251-22-053	REP-P	05-09-099	251-22-290	REP-P	05-09-099
251-19-050	REP	05-12-067	251-22-053	REP	05-12-067	251-22-290	REP	05-12-067
251-19-060	REP-P	05-09-099	251-22-056	REP-P	05-09-099	251-22-300	REP-P	05-09-099
251-19-060	REP	05-12-067	251-22-056	REP	05-12-067	251-22-300	REP	05-12-067
251-19-070	REP-P	05-09-099	251-22-059	REP-P	05-09-099	251-23-010	REP-P	05-09-099
251-19-070	REP	05-12-067	251-22-059	REP	05-12-067	251-23-010	REP	05-12-067
251-19-080	REP-P	05-09-099	251-22-060	REP-P	05-09-099	251-23-015	REP-P	05-09-099
251-19-080	REP	05-12-067	251-22-060	REP	05-12-067	251-23-015	REP	05-12-067
251-19-085	REP-P	05-09-099	251-22-070	REP-P	05-09-099	251-23-020	REP-P	05-09-099
251-19-085	REP	05-12-067	251-22-070	REP	05-12-067	251-23-020	REP	05-12-067
251-19-090	REP-P	05-09-099	251-22-080	REP-P	05-09-099	251-23-030	REP-P	05-09-099
251-19-090	REP	05-12-067	251-22-080	REP	05-12-067	251-23-030	REP	05-12-067
251-19-100	REP-P	05-09-099	251-22-090	REP-P	05-09-099	251-23-040	REP-P	05-09-099
251-19-100	REP	05-12-067	251-22-090	REP	05-12-067	251-23-040	REP	05-12-067
251-19-105	REP-P	05-09-099	251-22-100	REP-P	05-09-099	251-23-050	REP-P	05-09-099
251-19-105	REP	05-12-067	251-22-100	REP	05-12-067	251-23-050	REP	05-12-067
251-19-110	REP-P	05-09-099	251-22-110	REP-P	05-09-099	251-23-060	REP-P	05-09-099
251-19-110	REP	05-12-067	251-22-110	REP	05-12-067	251-23-060	REP	05-12-067
251-19-120	REP-P	05-09-099	251-22-111	REP-P	05-09-099	251-24-010	REP-P	05-09-099
251-19-120	REP	05-12-067	251-22-111	REP	05-12-067	251-24-010	REP	05-12-067
251-19-122	REP-P	05-09-099	251-22-112	REP-P	05-09-099	251-24-030	REP-P	05-09-099
251-19-122	REP	05-12-067	251-22-112	REP	05-12-067	251-24-030	REP	05-12-067
251-19-130	REP-P	05-09-099	251-22-116	REP-P	05-09-099	251-24-035	REP-P	05-09-099
251-19-130	REP	05-12-067	251-22-116	REP	05-12-067	251-24-035	REP	05-12-067
251-19-140	REP-P	05-09-099	251-22-117	REP-P	05-09-099	251-24-050	REP-P	05-09-099
251-19-140	REP	05-12-067	251-22-117	REP	05-12-067	251-24-050	REP	05-12-067
251-19-150	REP-P	05-09-099	251-22-124	REP-P	05-09-099	251-24-200	REP-P	05-09-099
251-19-150	REP	05-12-067	251-22-124	REP	05-12-067	251-24-200	REP	05-12-067
251-19-154	REP-P	05-09-099	251-22-125	REP-P	05-09-099	251-25-010	REP-P	05-09-099
251-19-154	REP	05-12-067	251-22-125	REP	05-12-067	251-25-010	REP	05-12-067
251-19-155	REP-P	05-09-099	251-22-127	REP-P	05-09-099	251-25-020	REP-P	05-09-099
251-19-155	REP	05-12-067	251-22-127	REP	05-12-067	251-25-020	REP	05-12-067
251-19-156	REP-P	05-09-099	251-22-165	REP-P	05-09-099	251-25-030	REP-P	05-09-099
251-19-156	REP	05-12-067	251-22-165	REP	05-12-067	251-25-030	REP	05-12-067
251-19-157	REP-P	05-09-099	251-22-167	REP-P	05-09-099	251-25-040	REP-P	05-09-099
251-19-157	REP	05-12-067	251-22-167	REP	05-12-067	251-25-040	REP	05-12-067
251-19-158	REP-P	05-09-099	251-22-170	REP-P	05-09-099	251-25-050	REP-P	05-09-099
251-19-158	REP	05-12-067	251-22-170	REP	05-12-067	251-25-050	REP	05-12-067
251-19-160	REP-P	05-09-099	251-22-180	REP-P	05-09-099	251-30-010	REP-P	05-09-099
251-19-160	REP	05-12-067	251-22-180	REP	05-12-067	251-30-010	REP	05-12-067
251-19-180	REP-P	05-09-099	251-22-190	REP-P	05-09-099	251-30-020	REP-P	05-09-099
251-19-180	REP	05-12-067	251-22-190	REP	05-12-067	251-30-020	REP	05-12-067
251-20-010	REP-P	05-09-099	251-22-195	REP-P	05-09-099	251-30-030	REP-P	05-09-099
251-20-010	REP	05-12-067	251-22-195	REP	05-12-067	251-30-030	REP	05-12-067
251-20-020	REP-P	05-09-099	251-22-200	REP-P	05-09-099	251-30-032	REP-P	05-09-099
251-20-020	REP	05-12-067	251-22-200	REP	05-12-067	251-30-032	REP	05-12-067
251-20-030	REP-P	05-09-099	251-22-210	REP-P	05-09-099	251-30-034	REP-P	05-09-099
251-20-030	REP	05-12-067	251-22-210	REP	05-12-067	251-30-034	REP	05-12-067
251-20-040	REP-P	05-09-099	251-22-220	REP-P	05-09-099	251-30-055	REP-P	05-09-099
251-20-040	REP	05-12-067	251-22-220	REP	05-12-067	251-30-055	REP	05-12-067
251-20-050	REP-P	05-09-099	251-22-240	REP-P	05-09-099	251-30-057	REP-P	05-09-099
251-20-050	REP	05-12-067	251-22-240	REP	05-12-067	251-30-057	REP	05-12-067
251-20-060	REP-P	05-09-099	251-22-245	REP-P	05-09-099	257-10-020	NEW-P	05-09-126
251-20-060	REP	05-12-067	251-22-245	REP	05-12-067	257-10-040	NEW-P	05-09-126

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
257- 10-060	NEW-P	05-09-126	260- 34-040	REP-P	05-04-085	260- 70-550	AMD-P	05-04-086
257- 10-080	NEW-P	05-09-126	260- 34-040	REP	05-07-066	260- 70-550	AMD	05-07-067
257- 10-100	NEW-P	05-09-126	260- 34-045	NEW-P	05-04-085	260- 70-550	AMD-E	05-07-068
257- 10-120	NEW-P	05-09-126	260- 34-045	NEW	05-07-066	260- 70-560	AMD-P	05-04-086
257- 10-140	NEW-P	05-09-126	260- 34-050	REP-P	05-04-085	260- 70-560	AMD	05-07-067
257- 10-160	NEW-P	05-09-126	260- 34-050	REP	05-07-066	260- 70-560	AMD-E	05-07-068
257- 10-180	NEW-P	05-09-126	260- 34-060	AMD-P	05-04-085	260- 70-570	AMD-P	05-04-086
257- 10-200	NEW-P	05-09-126	260- 34-060	AMD	05-07-066	260- 70-570	AMD	05-07-067
257- 10-220	NEW-P	05-09-126	260- 34-070	AMD-P	05-04-085	260- 70-570	AMD-E	05-07-068
257- 10-240	NEW-P	05-09-126	260- 34-070	AMD	05-07-066	260- 70-580	AMD-P	05-04-086
257- 10-260	NEW-P	05-09-126	260- 34-080	AMD-P	05-04-085	260- 70-580	AMD	05-07-067
257- 10-280	NEW-P	05-09-126	260- 34-080	AMD	05-07-066	260- 70-580	AMD-E	05-07-068
257- 10-300	NEW-P	05-09-126	260- 34-090	AMD-P	05-04-085	260- 70-600	AMD-P	05-04-086
257- 10-320	NEW-P	05-09-126	260- 34-090	AMD	05-07-066	260- 70-600	AMD	05-07-067
257- 10-340	NEW-P	05-09-126	260- 34-100	AMD-P	05-04-085	260- 70-600	AMD-E	05-07-068
257- 10-360	NEW-P	05-09-126	260- 34-100	AMD	05-07-066	260- 70-610	AMD-P	05-04-086
257- 10-380	NEW-P	05-09-126	260- 34-110	REP-P	05-04-085	260- 70-610	AMD	05-07-067
257- 10-400	NEW-P	05-09-126	260- 34-110	REP	05-07-066	260- 70-610	AMD-E	05-07-068
257- 10-420	NEW-P	05-09-126	260- 34-120	REP-P	05-04-085	260- 70-620	AMD-P	05-04-086
260	PREP	05-09-007	260- 34-120	REP	05-07-066	260- 70-620	AMD	05-07-067
260- 08-005	AMD	05-05-049	260- 34-130	REP-P	05-04-085	260- 70-620	AMD-E	05-07-068
260- 08-670	REP	05-05-049	260- 34-130	REP	05-07-066	260- 70-630	AMD-P	05-04-086
260- 08-671	NEW	05-05-049	260- 34-140	REP-P	05-04-085	260- 70-630	AMD	05-07-067
260- 08-673	NEW	05-05-049	260- 34-140	REP	05-07-066	260- 70-630	AMD-E	05-07-068
260- 08-675	NEW	05-05-049	260- 34-150	REP-P	05-04-085	260- 70-640	AMD-P	05-04-086
260- 08-677	NEW	05-05-049	260- 34-150	REP	05-07-066	260- 70-640	AMD	05-07-067
260- 08-680	REP	05-05-049	260- 34-160	REP-P	05-04-085	260- 70-640	AMD-E	05-07-068
260- 08-690	REP	05-05-049	260- 34-160	REP	05-07-066	260- 70-645	NEW-P	05-04-086
260- 08-700	REP	05-05-049	260- 34-170	REP-P	05-04-085	260- 70-645	NEW	05-07-067
260- 08-710	REP	05-05-049	260- 34-170	REP	05-07-066	260- 70-645	NEW-E	05-07-068
260- 08-720	REP	05-05-049	260- 34-180	AMD-P	05-04-085	260- 70-650	AMD-P	05-04-086
260- 08-730	REP	05-05-049	260- 34-180	AMD	05-07-066	260- 70-650	AMD	05-07-067
260- 08-740	REP	05-05-049	260- 34-190	REP-P	05-04-085	260- 70-650	AMD-E	05-07-068
260- 08-750	REP	05-05-049	260- 34-190	REP	05-07-066	260- 70-660	AMD-P	05-04-086
260- 08-760	REP	05-05-049	260- 36	PREP	05-07-093	260- 70-660	AMD	05-07-067
260- 08-770	REP	05-05-049	260- 36-085	AMD-W	05-02-052	260- 70-660	AMD-E	05-07-068
260- 08-780	REP	05-05-049	260- 36-085	PREP	05-05-011	260- 70-670	REP-P	05-04-086
260- 08-790	REP	05-05-049	260- 36-120	AMD	05-05-047	260- 70-670	REP	05-07-067
260- 08-800	REP	05-05-049	260- 36-180	AMD-P	05-02-078	260- 70-670	REP-E	05-07-068
260- 08-810	REP	05-05-049	260- 36-180	AMD	05-05-043	260- 70-675	NEW-E	05-09-096
260- 08-820	REP	05-05-049	260- 36-200	AMD-P	05-05-048	260- 70-680	AMD-P	05-04-086
260- 08-830	REP	05-05-049	260- 36-200	AMD	05-09-045	260- 70-680	AMD	05-07-067
260- 12-250	PREP	05-07-094	260- 40	PREP	05-09-006	260- 70-680	AMD-E	05-07-068
260- 12-250	AMD-P	05-13-107	260- 49	PREP	05-11-113	260- 70-690	REP-P	05-04-086
260- 24-500	AMD-P	05-04-084	260- 56-030	REP	05-05-044	260- 70-690	REP	05-07-067
260- 24-500	AMD	05-07-065	260- 60-300	AMD-P	05-03-028	260- 70-690	REP-E	05-07-068
260- 24-510	AMD-P	05-04-084	260- 60-300	AMD	05-07-063	260- 70-700	REP-P	05-04-086
260- 24-510	AMD	05-07-065	260- 60-320	REP-P	05-03-028	260- 70-700	REP	05-07-067
260- 28	PREP	05-09-008	260- 60-320	REP	05-07-063	260- 70-700	REP-E	05-07-068
260- 28-290	NEW-P	05-13-108	260- 70	PREP	05-07-035	260- 70-720	AMD-P	05-04-086
260- 32-160	PREP	05-09-007	260- 70-520	AMD-P	05-04-086	260- 70-720	AMD	05-07-067
260- 32-160	AMD-P	05-13-109	260- 70-520	AMD	05-07-067	260- 70-720	AMD-E	05-07-068
260- 34	AMD-P	05-04-085	260- 70-520	AMD-E	05-07-068	260- 70-730	AMD-P	05-04-086
260- 34	AMD	05-07-066	260- 70-530	AMD-P	05-04-086	260- 70-730	AMD	05-07-067
260- 34-010	AMD-P	05-04-085	260- 70-530	AMD	05-07-067	260- 70-730	AMD-E	05-07-068
260- 34-010	AMD	05-07-066	260- 70-530	AMD-E	05-07-068	260- 72-050	NEW-P	05-02-077
260- 34-020	AMD-P	05-04-085	260- 70-540	AMD-P	05-04-086	260- 72-050	NEW	05-05-045
260- 34-020	AMD	05-07-066	260- 70-540	AMD	05-07-067	260- 75-030	AMD	05-05-042
260- 34-030	AMD-P	05-04-085	260- 70-540	AMD-E	05-07-068	260- 75-040	NEW	05-05-042
260- 34-030	AMD	05-07-066	260- 70-545	AMD-P	05-04-086	260- 84	AMD-P	05-04-083
260- 34-035	NEW-P	05-04-085	260- 70-545	AMD	05-07-067	260- 84	PREP	05-07-035
260- 34-035	NEW	05-07-066	260- 70-545	AMD-E	05-07-068	260- 84	AMD	05-07-064

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
260- 84	PREP	05-07-093	284- 17-250	AMD-P	05-03-110	284- 17-320	AMD-P	05-03-110
260- 84	PREP	05-07-094	284- 17-250	AMD	05-07-091	284- 17-320	AMD	05-07-091
260- 84-010	REP-P	05-04-083	284- 17-252	NEW-P	05-03-110	284- 24A-005	AMD-W	05-06-054
260- 84-010	REP	05-07-064	284- 17-252	NEW	05-07-091	284- 24A-010	AMD-W	05-06-054
260- 84-020	REP-P	05-04-083	284- 17-254	NEW-P	05-03-110	284- 24A-033	NEW-W	05-06-054
260- 84-020	REP	05-07-064	284- 17-254	NEW	05-07-091	284- 24A-045	AMD-W	05-06-054
260- 84-030	REP-P	05-04-083	284- 17-256	NEW-P	05-03-110	284- 24A-050	AMD-W	05-06-054
260- 84-030	REP	05-07-064	284- 17-256	NEW	05-07-091	284- 24A-055	AMD-W	05-06-054
260- 84-050	AMD-P	05-04-083	284- 17-258	NEW-P	05-03-110	284- 24A-065	AMD-W	05-06-054
260- 84-050	AMD	05-07-064	284- 17-258	NEW	05-07-091	284- 34-010	REP	05-02-076
260- 84-060	AMD-P	05-04-083	284- 17-260	AMD-P	05-03-110	284- 34-020	REP	05-02-076
260- 84-060	AMD	05-07-064	284- 17-260	AMD	05-07-091	284- 34-030	REP	05-02-076
260- 84-070	AMD-P	05-04-083	284- 17-262	NEW-P	05-03-110	284- 34-040	REP	05-02-076
260- 84-070	AMD	05-07-064	284- 17-262	NEW	05-07-091	284- 34-050	REP	05-02-076
260- 84-090	NEW-P	05-04-083	284- 17-264	NEW-P	05-03-110	284- 34-060	REP	05-02-076
260- 84-090	NEW	05-07-064	284- 17-264	NEW	05-07-091	284- 34-070	REP	05-02-076
260- 84-100	NEW-P	05-04-083	284- 17-270	AMD-P	05-03-110	284- 34-100	NEW	05-02-076
260- 84-100	NEW	05-07-064	284- 17-270	AMD	05-07-091	284- 34-110	NEW	05-02-076
260- 84-110	NEW-P	05-04-083	284- 17-272	NEW-P	05-03-110	284- 34-120	NEW	05-02-076
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296-155-525	AMD-X	05-07-125	296-307-69810	NEW-W	05-05-070	296-855-20080	NEW-P	05-10-076
296-155-655	AMD	05-03-093	296-307-69815	NEW-W	05-05-070	296-855-20090	NEW-P	05-10-076
296-155-655	AMD-X	05-07-125	296-307-69820	NEW-W	05-05-070	296-855-300	NEW-P	05-10-076
296-155-730	AMD	05-03-093	296-307-69825	NEW-W	05-05-070	296-855-30010	NEW-P	05-10-076
296-200A	PREP	05-05-066	296-307-69830	NEW-W	05-05-070	296-855-30030	NEW-P	05-10-076
296-200A-900	AMD-P	05-08-111	296-307-700	NEW-W	05-05-070	296-855-30080	NEW-P	05-10-076
296-200A-900	AMD	05-12-032	296-307-70005	NEW-W	05-05-070	296-855-400	NEW-P	05-10-076
296-301-220	AMD	05-03-093	296-307-702	NEW-W	05-05-070	296-855-40010	NEW-P	05-10-076
296-304-01001	AMD-X	05-13-153	296-350	PREP	05-10-074	296-855-40030	NEW-P	05-10-076
296-304-01005	AMD-X	05-13-153	296-400A	PREP	05-05-066	296-855-40040	NEW-P	05-10-076
296-304-01007	NEW-X	05-13-153	296-400A-005	AMD-P	05-06-062	296-855-500	NEW-P	05-10-076
296-304-01009	NEW-X	05-13-153	296-400A-005	AMD	05-11-061	296-865-100	NEW-P	05-08-112
296-304-01011	NEW-X	05-13-153	296-400A-021	AMD-P	05-06-062	296-865-200	NEW-P	05-08-112
296-304-01013	NEW-X	05-13-153	296-400A-021	AMD	05-11-061	296-865-20005	NEW-P	05-08-112
296-304-01015	NEW-X	05-13-153	296-400A-022	NEW-P	05-06-062	296-865-20010	NEW-P	05-08-112
296-304-01017	NEW-X	05-13-153	296-400A-022	NEW	05-11-061	296-865-20015	NEW-P	05-08-112
296-304-01019	NEW-X	05-13-153	296-400A-045	AMD-P	05-06-062	296-865-300	NEW-P	05-08-112
296-304-01021	NEW-X	05-13-153	296-400A-045	AMD	05-11-061	296-865-30005	NEW-P	05-08-112
296-304-02003	AMD	05-03-093	296-800	PREP	05-08-113	296-865-30010	NEW-P	05-08-112
296-304-03001	AMD	05-03-093	296-800	PREP	05-10-072	296-865-30015	NEW-P	05-08-112
296-304-03005	AMD	05-03-093	296-800	PREP	05-10-074	296-865-30020	NEW-P	05-08-112
296-304-03007	AMD	05-03-093	296-800-160	AMD	05-03-093	296-865-400	NEW-P	05-08-112
296-304-04001	AMD	05-03-093	296-800-290	REP-P	05-12-030	296-876-100	NEW-P	05-12-030
296-304-04003	REP-X	05-13-153	296-800-29005	REP-P	05-12-030	296-876-200	NEW-P	05-12-030
296-304-09007	AMD	05-03-093	296-800-29010	REP-P	05-12-030	296-876-20005	NEW-P	05-12-030
296-304-09007	AMD-X	05-07-125	296-800-29015	REP-P	05-12-030	296-876-300	NEW-P	05-12-030
296-305-02501	AMD	05-03-093	296-800-29020	REP-P	05-12-030	296-876-30005	NEW-P	05-12-030
296-305-04001	AMD	05-03-093	296-800-29025	REP-P	05-12-030	296-876-30010	NEW-P	05-12-030
296-305-04001	AMD-X	05-07-125	296-800-29030	REP-P	05-12-030	296-876-30015	NEW-P	05-12-030
296-305-04501	AMD-P	05-08-112	296-800-29035	REP-P	05-12-030	296-876-30020	NEW-P	05-12-030
296-305-04501	PREP-W	05-09-060	296-800-29040	REP-P	05-12-030	296-876-400	NEW-P	05-12-030
296-305-05503	AMD	05-03-093	296-810	PREP	05-10-072	296-876-40005	NEW-P	05-12-030
296-305-05503	AMD-X	05-07-125	296-811	PREP	05-12-112	296-876-40010	NEW-P	05-12-030
296-307	PREP	05-10-074	296-824-20005	AMD	05-03-093	296-876-40015	NEW-P	05-12-030
296-307-688	NEW-W	05-05-070	296-824-40005	AMD	05-03-093	296-876-40020	NEW-P	05-12-030
296-307-68805	NEW-W	05-05-070	296-824-60005	AMD	05-03-093	296-876-40025	NEW-P	05-12-030
296-307-68810	NEW-W	05-05-070	296-824-70005	AMD	05-03-093	296-876-40030	NEW-P	05-12-030
296-307-690	NEW-W	05-05-070	296-824-800	AMD	05-03-093	296-876-40035	NEW-P	05-12-030
296-307-69005	NEW-W	05-05-070	296-826	PREP	05-05-067	296-876-40040	NEW-P	05-12-030
296-307-69010	NEW-W	05-05-070	296-835-11045	AMD	05-03-093	296-876-40045	NEW-P	05-12-030
296-307-69015	NEW-W	05-05-070	296-839-30005	AMD	05-03-093	296-876-40050	NEW-P	05-12-030
296-307-692	NEW-W	05-05-070	296-839-500	AMD	05-03-093	296-876-500	NEW-P	05-12-030
296-307-69205	NEW-W	05-05-070	296-841-100	AMD-P	05-10-076	296-876-50005	NEW-P	05-12-030
296-307-69210	NEW-W	05-05-070	296-849-100	AMD-X	05-07-123	296-876-600	NEW-P	05-12-030
296-307-694	NEW-W	05-05-070	296-849-100	AMD	05-13-152	296-900	PREP	05-10-074
296-307-69405	NEW-W	05-05-070	296-849-11030	AMD-X	05-07-123	308-08	PREP	05-08-001
296-307-69410	NEW-W	05-05-070	296-849-11030	AMD	05-13-152	308-08-535	NEW-P	05-13-119
296-307-69415	NEW-W	05-05-070	296-849-12010	AMD-X	05-07-123	308-08-545	NEW-P	05-13-119
296-307-69420	NEW-W	05-05-070	296-849-12010	AMD	05-13-152	308-13-020	PREP	05-11-012
296-307-69425	NEW-W	05-05-070	296-849-12030	AMD-X	05-07-123	308-13-024	PREP	05-11-012
296-307-69430	NEW-W	05-05-070	296-849-12030	AMD	05-13-152	308-13-100	PREP	05-11-012
296-307-69435	NEW-W	05-05-070	296-849-13045	AMD-X	05-07-123	308-13-150	AMD	05-04-050
296-307-69440	NEW-W	05-05-070	296-849-13045	AMD	05-13-152	308-13-150	PREP	05-09-017
296-307-696	NEW-W	05-05-070	296-855	PREP	05-03-091	308-13-150	AMD-P	05-13-026
296-307-69605	NEW-W	05-05-070	296-855-100	NEW-P	05-10-076	308-18-020	AMD-P	05-06-004
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296-307-69620	NEW-W	05-05-070	296-855-20020	NEW-P	05-10-076	308-18-240	AMD	05-09-036
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308-18-305	NEW	05-09-036	308-19-450	NEW	05-08-027	308-108-130	NEW-W	05-08-106
308-19-010	AMD-P	05-04-105	308-19-455	NEW-P	05-04-105	308-108-130	NEW-P	05-11-099
308-19-010	AMD	05-08-027	308-19-455	NEW	05-08-027	308-108-140	NEW-W	05-08-106
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308-19-030	AMD-P	05-04-105	308-20-010	AMD-P	05-13-114	308-108-150	NEW-P	05-11-099
308-19-030	AMD	05-08-027	308-20-101	AMD-P	05-13-114	308-108-160	NEW-W	05-08-106
308-19-100	AMD-P	05-04-105	308-20-123	NEW	05-04-012	308-108-160	NEW-P	05-11-099
308-19-100	AMD	05-08-027	308-30-100	AMD-P	05-09-028	308-108-170	NEW-W	05-08-106
308-19-101	NEW-P	05-04-105	308-30-100	AMD	05-12-047	308-108-170	NEW-P	05-11-099
308-19-101	NEW	05-08-027	308-48-810	PREP	05-04-106	308-108-180	NEW-W	05-08-106
308-19-102	NEW-P	05-04-105	308-48-820	PREP	05-04-106	308-108-180	NEW-P	05-11-099
308-19-102	NEW	05-08-027	308-48-830	PREP	05-04-106	308-124A-460	PREP	05-03-041
308-19-105	AMD-P	05-04-105	308-56A	PREP	05-10-077	308-124A-460	AMD-P	05-09-038
308-19-105	AMD	05-08-027	308-56A	PREP	05-11-104	308-124A-460	AMD	05-12-057
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308-19-110	AMD-P	05-04-105	308-56A-090	AMD-X	05-13-099	308-300-110	AMD	05-05-029
308-19-110	AMD	05-08-027	308-56A-500	AMD-W	05-02-069A	314-02-010	AMD-P	05-12-141
308-19-120	AMD-P	05-04-105	308-56A-500	AMD-P	05-03-106	314-02-010	AMD-C	05-13-111
308-19-120	AMD	05-08-027	308-56A-500	AMD	05-07-152	314-02-014	NEW-P	05-12-141
308-19-130	AMD-P	05-04-105	308-56A-530	AMD-W	05-02-069A	314-02-014	NEW-C	05-13-111
308-19-130	AMD	05-08-027	308-56A-530	AMD-P	05-03-106	314-02-015	AMD-P	05-12-141
308-19-140	AMD-P	05-04-105	308-56A-530	AMD	05-07-152	314-02-015	AMD-C	05-13-111
308-19-140	AMD	05-08-027	308-66-110	PREP	05-07-044	314-02-020	AMD-P	05-12-141
308-19-150	AMD-P	05-04-105	308-66-155	PREP	05-07-044	314-02-020	AMD-C	05-13-111
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308-19-160	AMD	05-08-027	308-66-160	AMD-P	05-13-120	314-02-030	AMD-P	05-12-141
308-19-200	AMD-P	05-04-105	308-66-180	PREP	05-07-071	314-02-030	AMD-C	05-13-111
308-19-200	AMD	05-08-027	308-66-190	PREP	05-07-044	314-02-033	NEW-P	05-12-141
308-19-210	AMD-P	05-04-105	308-90-120	PREP	05-07-070	314-02-033	NEW-C	05-13-111
308-19-210	AMD	05-08-027	308-93-087	PREP	05-10-067	314-02-035	AMD-P	05-12-141
308-19-220	AMD-P	05-04-105	308-93-089	PREP	05-10-067	314-02-035	AMD-C	05-13-111
308-19-220	AMD	05-08-027	308-96A	PREP	05-10-077	314-02-045	AMD-P	05-12-141
308-19-230	AMD-P	05-04-105	308-96A	PREP	05-11-104	314-02-045	AMD-C	05-13-111
308-19-230	AMD	05-08-027	308-96A	PREP	05-11-105	314-02-050	REP-P	05-12-141
308-19-240	AMD-P	05-04-105	308-96A-026	AMD-X	05-08-096	314-02-050	REP-C	05-13-111
308-19-240	AMD	05-08-027	308-96A-026	AMD	05-13-118	314-02-055	AMD-P	05-12-141
308-19-250	AMD-P	05-04-105	308-96A-077	PREP-W	05-12-124	314-02-055	AMD-C	05-13-111
308-19-250	AMD	05-08-027	308-96A-307	PREP-W	05-03-059	314-02-095	AMD-P	05-12-141
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308-19-300	AMD	05-08-027	308-96A-311	AMD	05-07-151	314-07-010	NEW	05-07-012
308-19-305	NEW-P	05-04-105	308-96A-314	AMD-P	05-03-105	314-07-015	NEW	05-07-012
308-19-305	NEW	05-08-027	308-96A-314	AMD	05-07-151	314-07-020	NEW	05-07-012
308-19-310	NEW-P	05-04-105	308-96A-560	PREP	05-13-181	314-07-035	NEW	05-07-012
308-19-310	NEW	05-08-027	308-104-014	AMD-P	05-12-117	314-07-040	NEW	05-07-012
308-19-315	NEW-P	05-04-105	308-108	PREP	05-07-128	314-07-045	NEW	05-07-012
308-19-315	NEW	05-08-027	308-108-010	NEW-W	05-08-106	314-07-055	NEW	05-07-012
308-19-320	NEW-P	05-04-105	308-108-010	NEW-P	05-11-099	314-07-065	NEW	05-07-012
308-19-320	NEW	05-08-027	308-108-020	NEW-W	05-08-106	314-07-070	NEW	05-07-012
308-19-400	AMD-P	05-04-105	308-108-020	NEW-P	05-11-099	314-07-080	NEW	05-07-012
308-19-400	AMD	05-08-027	308-108-080	NEW-W	05-08-106	314-07-085	NEW	05-07-012
308-19-410	AMD-P	05-04-105	308-108-080	NEW-P	05-11-099	314-07-090	NEW	05-07-012
308-19-410	AMD	05-08-027	308-108-090	NEW-W	05-08-106	314-07-095	NEW	05-07-012
308-19-420	AMD-P	05-04-105	308-108-090	NEW-P	05-11-099	314-07-100	NEW	05-07-012
308-19-420	AMD	05-08-027	308-108-100	AMD-W	05-08-106	314-07-110	NEW	05-07-012
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314- 12-025	REP	05-07-012	315- 33A-060	AMD	05-07-100	315- 36-130	REP-X	05-05-059
314- 12-060	REP	05-07-012	315- 33A-070	REP-E	05-04-019	315- 36-140	REP-X	05-05-059
314- 12-080	REP	05-07-012	315- 33A-070	REP-P	05-04-080	315- 36-150	REP-X	05-05-059
314- 12-100	REP	05-07-012	315- 33A-070	REP	05-07-100	315- 37-010	REP-X	05-03-060
314- 12-110	REP	05-07-012	315- 34-010	AMD-E	05-04-010	315- 37-020	REP-X	05-03-060
314- 16-190	REP-P	05-12-141	315- 34-010	AMD-P	05-04-081	315- 37-030	REP-X	05-03-060
314- 16-190	REP-C	05-13-111	315- 34-010	AMD-C	05-08-095	315- 37-040	REP-X	05-03-060
314- 16-195	AMD-P	05-12-141	315- 34-010	AMD	05-12-005	315- 37-050	REP-X	05-03-060
314- 16-196	REP-P	05-12-141	315- 34-020	AMD-E	05-04-010	315- 37-060	REP-X	05-03-060
314- 16-196	REP-C	05-13-111	315- 34-020	AMD-P	05-04-081	315- 37-070	REP-X	05-03-060
315- 06-125	PREP	05-08-066	315- 34-020	AMD-C	05-08-095	315- 37-080	REP-X	05-03-060
315- 06-125	AMD-P	05-12-009	315- 34-020	AMD	05-12-005	315- 37-090	REP-X	05-03-060
315- 10-010	AMD-P	05-04-079	315- 34-030	AMD-E	05-04-010	315- 37-100	REP-X	05-03-060
315- 10-010	AMD-S	05-08-054	315- 34-030	AMD-P	05-04-081	315- 37-110	REP-X	05-03-060
315- 10-010	AMD	05-11-049	315- 34-030	AMD-C	05-08-095	315- 37-120	REP-X	05-03-060
315- 10-020	AMD-P	05-04-079	315- 34-030	AMD	05-12-005	315- 38	PREP	05-06-026
315- 10-020	AMD-S	05-08-054	315- 34-040	AMD-E	05-04-010	315- 38-010	AMD-P	05-08-100
315- 10-020	AMD	05-11-049	315- 34-040	AMD-P	05-04-081	315- 38-010	AMD	05-11-050
315- 10-022	AMD-P	05-04-079	315- 34-040	AMD-C	05-08-095	315- 38-020	AMD-P	05-08-100
315- 10-022	AMD-S	05-08-054	315- 34-040	AMD-E	05-11-069	315- 38-020	AMD	05-11-050
315- 10-022	AMD	05-11-049	315- 34-040	AMD	05-12-005	315- 38-080	AMD-P	05-08-100
315- 10-023	AMD-P	05-04-079	315- 34-050	AMD-E	05-04-010	315- 38-080	AMD	05-11-050
315- 10-023	AMD-S	05-08-054	315- 34-050	AMD-P	05-04-081	315- 38-090	AMD-P	05-08-100
315- 10-023	AMD	05-11-049	315- 34-050	AMD-C	05-08-095	315- 38-090	AMD	05-11-050
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315- 10-055	AMD-P	05-04-079	315- 34-070	REP-C	05-08-095	332-130-070	AMD-P	05-08-067
315- 10-055	AMD-S	05-08-054	315- 34-070	REP	05-12-005	332-130-070	AMD	05-13-104
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315- 10-070	AMD	05-11-049	315- 34-080	REP	05-12-005	352- 28	PREP	05-06-125
315- 10-075	AMD-P	05-04-079	315- 34-090	REP-E	05-04-010	352- 28	AMD-C	05-11-114
315- 10-075	AMD-S	05-08-054	315- 34-090	REP-P	05-04-081	352- 28-010	AMD-P	05-10-071
315- 10-075	AMD	05-11-049	315- 34-090	REP-C	05-08-095	352- 28-030	NEW-P	05-10-071
315- 33A-010	AMD-E	05-04-019	315- 34-090	REP	05-12-005	352- 32	PREP	05-13-044
315- 33A-010	AMD-P	05-04-080	315- 34-100	REP-E	05-04-010	352- 32-252	REP-W	05-10-066
315- 33A-010	AMD	05-07-100	315- 34-100	REP-P	05-04-081	352- 37	PREP	05-13-044
315- 33A-020	AMD-E	05-04-019	315- 34-100	REP-C	05-08-095	356- 03-010	REP-P	05-09-100
315- 33A-020	AMD-P	05-04-080	315- 34-100	REP	05-12-005	356- 03-010	REP	05-12-066
315- 33A-020	AMD	05-07-100	315- 36-010	REP-X	05-05-059	356- 05-001	REP-P	05-09-100
315- 33A-030	AMD-E	05-04-019	315- 36-020	REP-X	05-05-059	356- 05-001	REP	05-12-066
315- 33A-030	AMD-P	05-04-080	315- 36-030	REP-X	05-05-059	356- 05-010	REP-P	05-09-100
315- 33A-030	AMD	05-07-100	315- 36-040	REP-X	05-05-059	356- 05-010	REP	05-12-066
315- 33A-040	AMD-E	05-04-019	315- 36-050	REP-X	05-05-059	356- 05-012	REP-P	05-09-100
315- 33A-040	AMD-P	05-04-080	315- 36-060	REP-X	05-05-059	356- 05-012	REP	05-12-066
315- 33A-040	AMD	05-07-100	315- 36-070	REP-X	05-05-059	356- 05-013	REP-P	05-09-100
315- 33A-050	AMD-E	05-04-019	315- 36-080	REP-X	05-05-059	356- 05-013	REP	05-12-066
315- 33A-050	AMD-P	05-04-080	315- 36-090	REP-X	05-05-059	356- 05-015	REP-P	05-09-100
315- 33A-050	AMD	05-07-100	315- 36-100	REP-X	05-05-059	356- 05-015	REP	05-12-066

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
356-05-440	REP-P	05-09-100	356-07-010	REP-P	05-09-100	356-14-080	REP-P	05-09-100
356-05-440	REP	05-12-066	356-07-010	REP	05-12-066	356-14-080	REP	05-12-066
356-05-445	REP-P	05-09-100	356-07-020	REP-P	05-09-100	356-14-085	REP-P	05-09-100
356-05-445	REP	05-12-066	356-07-020	REP	05-12-066	356-14-085	REP	05-12-066
356-05-447	REP-P	05-09-100	356-07-030	REP-P	05-09-100	356-14-090	REP-P	05-09-100
356-05-447	REP	05-12-066	356-07-030	REP	05-12-066	356-14-090	REP	05-12-066
356-05-450	REP-P	05-09-100	356-07-040	REP-P	05-09-100	356-14-100	REP-P	05-09-100
356-05-450	REP	05-12-066	356-07-040	REP	05-12-066	356-14-100	REP	05-12-066
356-05-456	REP-P	05-09-100	356-07-050	REP-P	05-09-100	356-14-110	REP-P	05-09-100
356-05-456	REP	05-12-066	356-07-050	REP	05-12-066	356-14-110	REP	05-12-066
356-05-460	REP-P	05-09-100	356-07-055	REP-P	05-09-100	356-14-120	REP-P	05-09-100
356-05-460	REP	05-12-066	356-07-055	REP	05-12-066	356-14-120	REP	05-12-066
356-05-461	REP-P	05-09-100	356-07-060	REP-P	05-09-100	356-14-130	REP-P	05-09-100
356-05-461	REP	05-12-066	356-07-060	REP	05-12-066	356-14-130	REP	05-12-066
356-05-465	REP-P	05-09-100	356-07-070	REP-P	05-09-100	356-14-140	REP-P	05-09-100
356-05-465	REP	05-12-066	356-07-070	REP	05-12-066	356-14-140	REP	05-12-066
356-05-470	REP-P	05-09-100	356-09-010	REP-P	05-09-100	356-14-150	REP-P	05-09-100
356-05-470	REP	05-12-066	356-09-010	REP	05-12-066	356-14-150	REP	05-12-066
356-05-475	REP-P	05-09-100	356-09-020	REP-P	05-09-100	356-14-160	REP-P	05-09-100
356-05-475	REP	05-12-066	356-09-020	REP	05-12-066	356-14-160	REP	05-12-066
356-05-477	REP-P	05-09-100	356-09-030	REP-P	05-09-100	356-14-170	REP-P	05-09-100
356-05-477	REP	05-12-066	356-09-030	REP	05-12-066	356-14-170	REP	05-12-066
356-05-479	REP-P	05-09-100	356-09-040	REP-P	05-09-100	356-14-180	REP-P	05-09-100
356-05-479	REP	05-12-066	356-09-040	REP	05-12-066	356-14-180	REP	05-12-066
356-05-480	REP-P	05-09-100	356-09-050	REP-P	05-09-100	356-14-190	REP-P	05-09-100
356-05-480	REP	05-12-066	356-09-050	REP	05-12-066	356-14-190	REP	05-12-066
356-05-485	REP-P	05-09-100	356-10-010	REP-P	05-09-100	356-14-200	REP-P	05-09-100
356-05-485	REP	05-12-066	356-10-010	REP	05-12-066	356-14-200	REP	05-12-066
356-05-490	REP-P	05-09-100	356-10-020	REP-P	05-09-100	356-14-210	REP-P	05-09-100
356-05-490	REP	05-12-066	356-10-020	REP	05-12-066	356-14-210	REP	05-12-066
356-05-493	REP-P	05-09-100	356-10-030	REP-P	05-09-100	356-14-220	REP-P	05-09-100
356-05-493	REP	05-12-066	356-10-030	REP	05-12-066	356-14-220	REP	05-12-066
356-05-495	REP-P	05-09-100	356-10-040	REP-P	05-09-100	356-14-230	REP-P	05-09-100
356-05-495	REP	05-12-066	356-10-040	REP	05-12-066	356-14-230	REP	05-12-066
356-05-500	REP-P	05-09-100	356-10-045	REP-P	05-09-100	356-14-240	REP-P	05-09-100
356-05-500	REP	05-12-066	356-10-045	REP	05-12-066	356-14-240	REP	05-12-066
356-05-505	REP-P	05-09-100	356-10-050	REP-P	05-09-100	356-14-250	REP-P	05-09-100
356-05-505	REP	05-12-066	356-10-050	REP	05-12-066	356-14-250	REP	05-12-066
356-06-001	REP-P	05-09-100	356-10-060	AMD	05-04-043	356-14-260	REP-P	05-09-100
356-06-001	REP	05-12-066	356-10-060	REP-P	05-09-100	356-14-260	REP	05-12-066
356-06-002	REP-P	05-09-100	356-10-060	REP	05-12-066	356-14-265	REP-P	05-09-100
356-06-002	REP	05-12-066	356-10-065	NEW	05-04-043	356-14-265	REP	05-12-066
356-06-003	REP-P	05-09-100	356-10-065	REP-P	05-09-100	356-14-300	REP-P	05-09-100
356-06-003	REP	05-12-066	356-10-065	REP	05-12-066	356-14-300	REP	05-12-066
356-06-030	REP-P	05-09-100	356-14-010	REP-P	05-09-100	356-15-010	REP-P	05-09-100
356-06-030	REP	05-12-066	356-14-010	REP	05-12-066	356-15-010	REP	05-12-066
356-06-040	REP-P	05-09-100	356-14-026	REP-P	05-09-100	356-15-020	REP-P	05-09-100
356-06-040	REP	05-12-066	356-14-026	REP	05-12-066	356-15-020	REP	05-12-066
356-06-045	REP-P	05-09-100	356-14-031	REP-P	05-09-100	356-15-030	REP-P	05-09-100
356-06-045	REP	05-12-066	356-14-031	REP	05-12-066	356-15-030	REP	05-12-066
356-06-050	REP-P	05-09-100	356-14-045	REP-P	05-09-100	356-15-035	REP-P	05-09-100
356-06-050	REP	05-12-066	356-14-045	REP	05-12-066	356-15-035	REP	05-12-066
356-06-055	REP-P	05-09-100	356-14-062	REP-P	05-09-100	356-15-040	REP-P	05-09-100
356-06-055	REP	05-12-066	356-14-062	REP	05-12-066	356-15-040	REP	05-12-066
356-06-065	REP-P	05-09-100	356-14-065	REP-P	05-09-100	356-15-050	REP-P	05-09-100
356-06-065	REP	05-12-066	356-14-065	REP	05-12-066	356-15-050	REP	05-12-066
356-06-100	REP-P	05-09-100	356-14-067	REP-P	05-09-100	356-15-060	REP-P	05-09-100
356-06-100	REP	05-12-066	356-14-067	REP	05-12-066	356-15-060	REP	05-12-066
356-06-110	REP-P	05-09-100	356-14-070	REP-P	05-09-100	356-15-061	REP-P	05-09-100
356-06-110	REP	05-12-066	356-14-070	REP	05-12-066	356-15-061	REP	05-12-066
356-06-120	REP-P	05-09-100	356-14-075	REP-P	05-09-100	356-15-063	REP-P	05-09-100
356-06-120	REP	05-12-066	356-14-075	REP	05-12-066	356-15-063	REP	05-12-066

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
356-30-135	REP-P	05-09-100	356-34-012	REP-P	05-09-100	356-39-020	REP-P	05-09-100
356-30-135	REP	05-12-066	356-34-012	REP	05-12-066	356-39-020	REP	05-12-066
356-30-140	REP-P	05-09-100	356-34-020	REP-P	05-09-100	356-39-030	REP-P	05-09-100
356-30-140	REP	05-12-066	356-34-020	REP	05-12-066	356-39-030	REP	05-12-066
356-30-143	REP-P	05-09-100	356-34-030	REP-P	05-09-100	356-39-040	REP-P	05-09-100
356-30-143	REP	05-12-066	356-34-030	REP	05-12-066	356-39-040	REP	05-12-066
356-30-145	REP-P	05-09-100	356-34-040	REP-P	05-09-100	356-39-050	REP-P	05-09-100
356-30-145	REP	05-12-066	356-34-040	REP	05-12-066	356-39-050	REP	05-12-066
356-30-150	REP-P	05-09-100	356-34-045	REP-P	05-09-100	356-39-060	REP-P	05-09-100
356-30-150	REP	05-12-066	356-34-045	REP	05-12-066	356-39-060	REP	05-12-066
356-30-160	REP-P	05-09-100	356-34-050	REP-P	05-09-100	356-39-070	REP-P	05-09-100
356-30-160	REP	05-12-066	356-34-050	REP	05-12-066	356-39-070	REP	05-12-066
356-30-170	REP-P	05-09-100	356-34-060	REP-P	05-09-100	356-39-080	REP-P	05-09-100
356-30-170	REP	05-12-066	356-34-060	REP	05-12-066	356-39-080	REP	05-12-066
356-30-180	REP-P	05-09-100	356-34-070	REP-P	05-09-100	356-39-090	REP-P	05-09-100
356-30-180	REP	05-12-066	356-34-070	REP	05-12-066	356-39-090	REP	05-12-066
356-30-190	REP-P	05-09-100	356-34-080	REP-P	05-09-100	356-39-100	REP-P	05-09-100
356-30-190	REP	05-12-066	356-34-080	REP	05-12-066	356-39-100	REP	05-12-066
356-30-200	REP-P	05-09-100	356-34-090	REP-P	05-09-100	356-39-110	REP-P	05-09-100
356-30-200	REP	05-12-066	356-34-090	REP	05-12-066	356-39-110	REP	05-12-066
356-30-210	REP-P	05-09-100	356-34-100	REP-P	05-09-100	356-39-120	REP-P	05-09-100
356-30-210	REP	05-12-066	356-34-100	REP	05-12-066	356-39-120	REP	05-12-066
356-30-220	REP-P	05-09-100	356-34-260	REP-P	05-09-100	356-39-130	REP-P	05-09-100
356-30-220	REP	05-12-066	356-34-260	REP	05-12-066	356-39-130	REP	05-12-066
356-30-230	REP-P	05-09-100	356-35-010	REP-P	05-09-100	356-39-140	REP-P	05-09-100
356-30-230	REP	05-12-066	356-35-010	REP	05-12-066	356-39-140	REP	05-12-066
356-30-240	REP-P	05-09-100	356-37-010	REP-P	05-09-100	356-42-010	REP-P	05-09-100
356-30-240	REP	05-12-066	356-37-010	REP	05-12-066	356-42-010	REP	05-12-066
356-30-250	REP-P	05-09-100	356-37-020	REP-P	05-09-100	356-42-042	REP-P	05-09-100
356-30-250	REP	05-12-066	356-37-020	REP	05-12-066	356-42-042	REP	05-12-066
356-30-255	REP-P	05-09-100	356-37-030	REP-P	05-09-100	356-42-043	REP-P	05-09-100
356-30-255	REP	05-12-066	356-37-030	REP	05-12-066	356-42-043	REP	05-12-066
356-30-260	REP-P	05-09-100	356-37-040	REP-P	05-09-100	356-42-045	REP-P	05-09-100
356-30-260	REP	05-12-066	356-37-040	REP	05-12-066	356-42-045	REP	05-12-066
356-30-270	REP-P	05-09-100	356-37-050	REP-P	05-09-100	356-42-047	REP-P	05-09-100
356-30-270	REP	05-12-066	356-37-050	REP	05-12-066	356-42-047	REP	05-12-066
356-30-280	REP-P	05-09-100	356-37-060	REP-P	05-09-100	356-42-050	REP-P	05-09-100
356-30-280	REP	05-12-066	356-37-060	REP	05-12-066	356-42-050	REP	05-12-066
356-30-285	REP-P	05-09-100	356-37-070	REP-P	05-09-100	356-42-055	REP-P	05-09-100
356-30-285	REP	05-12-066	356-37-070	REP	05-12-066	356-42-055	REP	05-12-066
356-30-290	REP-P	05-09-100	356-37-080	REP-P	05-09-100	356-42-090	REP-P	05-09-100
356-30-290	REP	05-12-066	356-37-080	REP	05-12-066	356-42-090	REP	05-12-066
356-30-300	REP-P	05-09-100	356-37-090	REP-P	05-09-100	356-42-100	REP-P	05-09-100
356-30-300	REP	05-12-066	356-37-090	REP	05-12-066	356-42-100	REP	05-12-066
356-30-305	REP-P	05-09-100	356-37-100	REP-P	05-09-100	356-42-105	REP-P	05-09-100
356-30-305	REP	05-12-066	356-37-100	REP	05-12-066	356-42-105	REP	05-12-066
356-30-310	REP-P	05-09-100	356-37-110	REP-P	05-09-100	356-42-110	REP-P	05-09-100
356-30-310	REP	05-12-066	356-37-110	REP	05-12-066	356-42-110	REP	05-12-066
356-30-315	REP-P	05-09-100	356-37-120	REP-P	05-09-100	356-46-010	REP-P	05-09-100
356-30-315	REP	05-12-066	356-37-120	REP	05-12-066	356-46-010	REP	05-12-066
356-30-320	REP-P	05-09-100	356-37-130	REP-P	05-09-100	356-46-020	REP-P	05-09-100
356-30-320	REP	05-12-066	356-37-130	REP	05-12-066	356-46-020	REP	05-12-066
356-30-330	REP-P	05-09-100	356-37-140	REP-P	05-09-100	356-46-030	REP-P	05-09-100
356-30-330	REP	05-12-066	356-37-140	REP	05-12-066	356-46-030	REP	05-12-066
356-30-331	REP-P	05-09-100	356-37-150	REP-P	05-09-100	356-46-040	REP-P	05-09-100
356-30-331	REP	05-12-066	356-37-150	REP	05-12-066	356-46-040	REP	05-12-066
356-30-335	REP-P	05-09-100	356-37-160	REP-P	05-09-100	356-46-050	REP-P	05-09-100
356-30-335	REP	05-12-066	356-37-160	REP	05-12-066	356-46-050	REP	05-12-066
356-34-010	REP-P	05-09-100	356-37-170	REP-P	05-09-100	356-46-060	REP-P	05-09-100
356-34-010	REP	05-12-066	356-37-170	REP	05-12-066	356-46-060	REP	05-12-066
356-34-011	REP-P	05-09-100	356-39-010	REP-P	05-09-100	356-46-070	REP-P	05-09-100
356-34-011	REP	05-12-066	356-39-010	REP	05-12-066	356-46-070	REP	05-12-066

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
356-46-080	REP-P	05-09-100	356-56-115	REP-P	05-09-100	357-01-072	NEW-P	05-09-120
356-46-080	REP	05-12-066	356-56-115	REP	05-12-066	357-01-072	NEW	05-12-093
356-46-090	REP-P	05-09-100	356-56-118	REP-P	05-09-100	357-01-138	NEW-P	05-09-120
356-46-090	REP	05-12-066	356-56-118	REP	05-12-066	357-01-138	NEW	05-12-093
356-46-100	REP-P	05-09-100	356-56-120	REP-P	05-09-100	357-01-172	NEW-P	05-09-120
356-46-100	REP	05-12-066	356-56-120	REP	05-12-066	357-01-172	NEW	05-12-093
356-46-110	REP-P	05-09-100	356-56-200	REP-P	05-09-100	357-01-173	NEW-P	05-08-128
356-46-110	REP	05-12-066	356-56-200	REP	05-12-066	357-01-173	NEW	05-12-074
356-46-120	REP-P	05-09-100	356-56-203	REP-P	05-09-100	357-01-174	NEW-P	05-09-120
356-46-120	REP	05-12-066	356-56-203	REP	05-12-066	357-01-174	NEW	05-12-093
356-46-125	REP-P	05-09-100	356-56-205	REP-P	05-09-100	357-01-182	NEW-P	05-09-120
356-46-125	REP	05-12-066	356-56-205	REP	05-12-066	357-01-182	NEW	05-12-093
356-46-135	REP-P	05-09-100	356-56-210	REP-P	05-09-100	357-01-202	NEW-P	05-09-120
356-46-135	REP	05-12-066	356-56-210	REP	05-12-066	357-01-202	NEW	05-12-093
356-46-140	REP-P	05-09-100	356-56-215	REP-P	05-09-100	357-01-227	NEW-P	05-09-120
356-46-140	REP	05-12-066	356-56-215	REP	05-12-066	357-01-227	NEW	05-12-093
356-46-145	REP-P	05-09-100	356-56-220	REP-P	05-09-100	357-01-228	NEW-P	05-09-120
356-46-145	REP	05-12-066	356-56-220	REP	05-12-066	357-01-228	NEW	05-12-093
356-46-150	REP-P	05-09-100	356-56-230	REP-P	05-09-100	357-01-229	NEW-P	05-09-120
356-46-150	REP	05-12-066	356-56-230	REP	05-12-066	357-01-229	NEW	05-12-093
356-48-010	REP-P	05-09-100	356-56-255	REP-P	05-09-100	357-01-255	NEW-W	05-02-061
356-48-010	REP	05-12-066	356-56-255	REP	05-12-066	357-01-301	NEW	05-08-134
356-48-020	REP-P	05-09-100	356-56-400	REP-P	05-09-100	357-01-301	AMD-P	05-09-119
356-48-020	REP	05-12-066	356-56-400	REP	05-12-066	357-01-301	AMD	05-12-092
356-48-030	REP-P	05-09-100	356-56-410	REP-P	05-09-100	357-01-348	NEW-P	05-09-120
356-48-030	REP	05-12-066	356-56-410	REP	05-12-066	357-01-348	NEW	05-12-093
356-48-040	REP-P	05-09-100	356-56-420	REP-P	05-09-100	357-01-360	NEW-P	05-09-118
356-48-040	REP	05-12-066	356-56-420	REP	05-12-066	357-01-360	NEW	05-12-091
356-48-050	REP-P	05-09-100	356-56-440	REP-P	05-09-100	357-01-365	NEW-P	05-09-118
356-48-050	REP	05-12-066	356-56-440	REP	05-12-066	357-01-365	NEW	05-12-091
356-48-060	REP-P	05-09-100	356-56-500	REP-P	05-09-100	357-04-105	AMD-P	05-09-103
356-48-060	REP	05-12-066	356-56-500	REP	05-12-066	357-04-105	AMD	05-12-079
356-49-010	REP-P	05-09-100	356-56-550	REP-P	05-09-100	357-13-090	AMD-P	05-09-105
356-49-010	REP	05-12-066	356-56-550	REP	05-12-066	357-13-090	AMD	05-12-088
356-49-020	REP-P	05-09-100	356-56-600	REP-P	05-09-100	357-16-110	AMD-P	05-08-131
356-49-020	REP	05-12-066	356-56-600	REP	05-12-066	357-16-110	AMD	05-12-077
356-49-030	REP-P	05-09-100	356-56-610	REP-P	05-09-100	357-16-130	AMD-P	05-09-109
356-49-030	REP	05-12-066	356-56-610	REP	05-12-066	357-16-130	AMD	05-12-083
356-49-040	REP-P	05-09-100	356-56-630	REP-P	05-09-100	357-16-135	AMD-P	05-12-127
356-49-040	REP	05-12-066	356-56-630	REP	05-12-066	357-19-025	AMD-P	05-08-131
356-56-001	REP-P	05-09-100	356-56-650	REP-P	05-09-100	357-19-025	AMD	05-12-077
356-56-001	REP	05-12-066	356-56-650	REP	05-12-066	357-19-080	AMD-P	05-08-131
356-56-002	REP-P	05-09-100	356-56-660	REP-P	05-09-100	357-19-080	AMD	05-12-077
356-56-002	REP	05-12-066	356-56-660	REP	05-12-066	357-19-115	AMD-P	05-08-131
356-56-010	REP-P	05-09-100	356-60-010	REP-P	05-09-100	357-19-115	AMD	05-12-077
356-56-010	REP	05-12-066	356-60-010	REP	05-12-066	357-19-125	NEW-P	05-09-116
356-56-015	REP-P	05-09-100	356-60-020	REP-P	05-09-100	357-19-125	NEW	05-12-089
356-56-015	REP	05-12-066	356-60-020	REP	05-12-066	357-19-181	NEW-P	05-09-111
356-56-020	REP-P	05-09-100	356-60-030	REP-P	05-09-100	357-19-181	NEW	05-12-085
356-56-020	REP	05-12-066	356-60-030	REP	05-12-066	357-19-183	NEW-P	05-08-126
356-56-030	REP-P	05-09-100	356-60-032	REP-P	05-09-100	357-19-183	NEW-C	05-09-107
356-56-030	REP	05-12-066	356-60-032	REP	05-12-066	357-19-183	NEW	05-12-097
356-56-035	REP-P	05-09-100	356-60-034	REP-P	05-09-100	357-19-184	NEW-P	05-08-126
356-56-035	REP	05-12-066	356-60-034	REP	05-12-066	357-19-184	NEW-C	05-09-107
356-56-050	REP-P	05-09-100	356-60-055	REP-P	05-09-100	357-19-184	NEW	05-12-097
356-56-050	REP	05-12-066	356-60-055	REP	05-12-066	357-19-185	NEW-P	05-08-126
356-56-070	REP-P	05-09-100	356-60-057	REP-P	05-09-100	357-19-185	NEW-C	05-09-107
356-56-070	REP	05-12-066	356-60-057	REP	05-12-066	357-19-185	NEW	05-12-097
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356-56-105	REP-P	05-09-100	357-01-023	NEW-P	05-09-120	357-19-186	NEW	05-12-097
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357-19-188	NEW-P	05-08-126	357-31-100	NEW	05-08-136	357-31-385	NEW-W	05-08-125
357-19-188	NEW-C	05-09-107	357-31-105	NEW	05-08-136	357-31-390	NEW	05-08-139
357-19-188	NEW	05-12-097	357-31-110	NEW	05-08-136	357-31-395	NEW	05-08-139
357-19-189	NEW-P	05-08-126	357-31-115	NEW	05-08-136	357-31-400	NEW	05-08-139
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357-19-189	NEW	05-12-097	357-31-125	NEW	05-08-136	357-31-410	NEW	05-08-139
357-19-190	REP-P	05-09-111	357-31-130	NEW	05-08-136	357-31-415	NEW	05-08-139
357-19-190	REP	05-12-085	357-31-135	NEW	05-08-136	357-31-420	NEW	05-08-139
357-19-191	NEW-P	05-08-126	357-31-140	NEW	05-08-136	357-31-425	NEW	05-08-139
357-19-191	NEW-C	05-09-107	357-31-145	NEW	05-08-136	357-31-430	NEW	05-08-139
357-19-191	NEW	05-12-097	357-31-150	NEW	05-08-136	357-31-435	NEW	05-08-139
357-19-300	NEW-P	05-08-130	357-31-155	NEW	05-08-136	357-31-440	NEW	05-08-139
357-19-300	NEW	05-12-076	357-31-160	NEW	05-08-136	357-31-445	NEW	05-08-139
357-19-301	NEW-P	05-08-130	357-31-165	NEW	05-08-137	357-31-450	NEW	05-08-139
357-19-301	NEW	05-12-076	357-31-165	AMD-P	05-09-104	357-31-455	NEW	05-08-139
357-19-302	NEW-P	05-08-130	357-31-165	AMD	05-12-080	357-31-460	NEW	05-08-140
357-19-302	NEW	05-12-076	357-31-170	NEW	05-08-137	357-31-465	NEW	05-08-140
357-19-303	NEW-P	05-08-130	357-31-175	NEW	05-08-137	357-31-470	NEW	05-08-140
357-19-303	NEW	05-12-076	357-31-180	NEW	05-08-137	357-31-475	NEW	05-08-140
357-19-350	NEW-P	05-09-114	357-31-185	NEW	05-08-137	357-31-480	NEW	05-08-140
357-19-350	NEW	05-12-094	357-31-190	NEW	05-08-137	357-31-485	NEW	05-08-140
357-19-353	NEW-P	05-09-114	357-31-195	NEW	05-08-137	357-31-490	NEW	05-08-140
357-19-353	NEW	05-12-094	357-31-200	NEW	05-08-137	357-31-495	NEW	05-08-140
357-19-375	AMD-P	05-08-130	357-31-205	NEW	05-08-137	357-31-500	NEW	05-08-140
357-19-375	AMD	05-12-076	357-31-210	NEW	05-08-137	357-31-505	NEW	05-08-140
357-19-388	AMD-P	05-08-131	357-31-215	NEW	05-08-137	357-31-510	NEW	05-08-140
357-19-388	AMD	05-12-077	357-31-220	NEW	05-08-137	357-31-515	NEW	05-08-140
357-19-395	AMD-P	05-09-115	357-31-225	NEW	05-08-137	357-31-520	NEW	05-08-140
357-19-395	AMD	05-12-095	357-31-230	NEW	05-08-137	357-31-525	NEW	05-08-140
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357-28-035	AMD-P	05-12-125	357-31-245	NEW	05-08-137	357-31-530	NEW	05-08-140
357-28-070	AMD-P	05-08-131	357-31-250	NEW	05-08-137	357-31-530	AMD-P	05-09-117
357-28-070	AMD	05-12-077	357-31-255	NEW	05-08-137	357-31-530	AMD	05-12-090
357-28-165	AMD-P	05-08-131	357-31-260	NEW	05-08-137	357-31-535	NEW	05-08-140
357-28-165	AMD	05-12-077	357-31-265	NEW	05-08-137	357-31-540	NEW	05-08-140
357-28-200	AMD-P	05-09-110	357-31-270	NEW	05-08-137	357-31-545	NEW	05-08-140
357-28-200	AMD	05-12-084	357-31-275	NEW	05-08-137	357-31-550	NEW	05-08-140
357-28-300	AMD-P	05-08-131	357-31-280	NEW	05-08-137	357-31-555	NEW	05-08-140
357-28-300	AMD	05-12-077	357-31-285	NEW	05-08-137	357-31-560	NEW	05-08-140
357-31-001	NEW	05-08-136	357-31-290	NEW	05-08-137	357-31-565	NEW	05-08-140
357-31-001	REP-P	05-09-120	357-31-295	NEW	05-08-137	357-37-200	NEW-C	05-09-101
357-31-001	REP	05-12-093	357-31-300	NEW	05-08-137	357-37-200	NEW	05-12-096
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357-31-010	NEW	05-08-136	357-31-310	NEW	05-08-138	357-40-050	NEW	05-12-079
357-31-015	NEW	05-08-136	357-31-315	NEW	05-08-138	357-43-008	NEW-W	05-09-053
357-31-020	NEW	05-08-136	357-31-320	NEW	05-08-138	357-43-045	NEW-W	05-02-062
357-31-025	NEW	05-08-136	357-31-325	NEW	05-08-138	357-46-010	AMD-W	05-09-054
357-31-030	NEW	05-08-136	357-31-330	NEW	05-08-138	357-46-012	NEW-W	05-09-054
357-31-035	NEW	05-08-136	357-31-335	NEW	05-08-138	357-46-050	AMD-P	05-09-110
357-31-040	NEW	05-08-136	357-31-340	NEW	05-08-138	357-46-050	AMD	05-12-084
357-31-045	NEW	05-08-136	357-31-345	NEW	05-08-138	357-46-053	NEW-P	05-08-129
357-31-050	NEW	05-08-136	357-31-346	NEW-P	05-09-108	357-46-053	NEW	05-12-075
357-31-055	NEW	05-08-136	357-31-346	NEW	05-12-081	357-46-055	NEW	05-08-135
357-31-060	NEW	05-08-136	357-31-347	NEW-P	05-09-108	357-46-056	NEW	05-08-135
357-31-065	NEW	05-08-136	357-31-347	NEW	05-12-081	357-46-057	NEW-P	05-08-127
357-31-070	NEW	05-08-136	357-31-350	NEW	05-08-138	357-46-057	NEW	05-12-073
357-31-075	NEW	05-08-136	357-31-355	NEW	05-08-138	357-46-058	NEW-P	05-08-127
357-31-080	NEW	05-08-136	357-31-360	NEW	05-08-138	357-46-058	NEW	05-12-073
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357-46-063	NEW-P	05-08-128	357-55-635	NEW	05-08-133	357-58-150	NEW	05-12-069
357-46-063	NEW	05-12-074	357-55-640	NEW	05-08-133	357-58-155	NEW-P	05-04-088
357-46-064	NEW-P	05-08-128	357-55-645	NEW	05-08-133	357-58-155	NEW	05-12-069
357-46-064	NEW	05-12-074	357-58-005	NEW-P	05-04-087	357-58-160	NEW-P	05-04-088
357-46-065	NEW-P	05-08-128	357-58-005	NEW	05-12-068	357-58-160	NEW	05-12-069
357-46-065	NEW	05-12-074	357-58-010	NEW-P	05-04-087	357-58-165	NEW-P	05-04-088
357-46-066	NEW-P	05-08-128	357-58-010	NEW	05-12-068	357-58-165	NEW	05-12-069
357-46-066	NEW	05-12-074	357-58-015	NEW-P	05-04-087	357-58-170	NEW-P	05-04-088
357-46-067	NEW-P	05-08-128	357-58-015	NEW	05-12-068	357-58-170	NEW	05-12-069
357-46-067	NEW	05-12-074	357-58-020	NEW-P	05-04-087	357-58-175	NEW-P	05-04-088
357-46-068	NEW-P	05-08-128	357-58-020	NEW	05-12-068	357-58-175	NEW	05-12-069
357-46-068	NEW	05-12-074	357-58-025	NEW-P	05-04-087	357-58-180	NEW-P	05-04-088
357-46-095	AMD-P	05-08-131	357-58-025	NEW	05-12-068	357-58-180	NEW	05-12-069
357-46-095	AMD	05-12-077	357-58-030	NEW-P	05-04-087	357-58-185	NEW-P	05-04-088
357-46-110	AMD-P	05-08-131	357-58-030	NEW	05-12-068	357-58-185	NEW	05-12-069
357-46-110	AMD	05-12-077	357-58-035	NEW-P	05-04-087	357-58-190	NEW-P	05-04-088
357-46-125	AMD-P	05-09-102	357-58-035	NEW	05-12-068	357-58-190	NEW	05-12-069
357-46-125	AMD	05-12-078	357-58-040	NEW-P	05-04-087	357-58-195	NEW-P	05-04-088
357-46-145	AMD-P	05-12-126	357-58-040	NEW	05-12-068	357-58-195	NEW	05-12-069
357-49-010	AMD-P	05-09-106	357-58-045	NEW-P	05-04-087	357-58-200	NEW-P	05-04-088
357-49-010	AMD	05-12-082	357-58-045	NEW	05-12-068	357-58-200	NEW	05-12-069
357-52-207	NEW-P	05-09-113	357-58-050	NEW-P	05-04-087	357-58-205	NEW-P	05-04-088
357-52-207	NEW	05-12-087	357-58-050	NEW	05-12-068	357-58-205	NEW	05-12-069
357-52-208	NEW-P	05-09-113	357-58-055	NEW-P	05-04-087	357-58-210	NEW-P	05-04-088
357-52-208	NEW	05-12-087	357-58-055	NEW	05-12-068	357-58-210	NEW	05-12-069
357-55-010	NEW	05-08-132	357-58-060	NEW-P	05-04-087	357-58-215	NEW-P	05-04-088
357-55-020	NEW	05-08-132	357-58-060	NEW	05-12-068	357-58-215	NEW	05-12-069
357-55-030	NEW	05-08-132	357-58-065	NEW-P	05-04-087	357-58-220	NEW-P	05-04-088
357-55-040	NEW	05-08-132	357-58-065	NEW	05-12-068	357-58-220	NEW	05-12-069
357-55-110	NEW	05-08-132	357-58-070	NEW-P	05-04-087	357-58-225	NEW-P	05-04-088
357-55-210	NEW	05-08-132	357-58-070	NEW	05-12-068	357-58-225	NEW	05-12-069
357-55-215	NEW	05-08-132	357-58-075	NEW-P	05-04-087	357-58-230	NEW-P	05-04-088
357-55-220	NEW	05-08-132	357-58-075	NEW	05-12-068	357-58-230	NEW	05-12-069
357-55-225	NEW	05-08-132	357-58-080	NEW-P	05-04-087	357-58-235	NEW-P	05-04-088
357-55-230	NEW	05-08-132	357-58-080	NEW	05-12-068	357-58-235	NEW	05-12-069
357-55-235	NEW	05-08-132	357-58-085	NEW-P	05-04-087	357-58-240	NEW-P	05-04-089
357-55-240	NEW	05-08-132	357-58-085	NEW	05-12-068	357-58-240	NEW	05-12-070
357-55-245	NEW	05-08-132	357-58-090	NEW-P	05-04-087	357-58-245	NEW-P	05-04-089
357-55-250	NEW	05-08-132	357-58-090	NEW	05-12-068	357-58-245	NEW	05-12-070
357-55-255	NEW	05-08-132	357-58-095	NEW-P	05-04-087	357-58-250	NEW-P	05-04-089
357-55-260	NEW	05-08-132	357-58-095	NEW	05-12-068	357-58-250	NEW	05-12-070
357-55-265	NEW	05-08-133	357-58-100	NEW-P	05-04-087	357-58-255	NEW-P	05-04-089
357-55-270	NEW	05-08-133	357-58-100	NEW	05-12-068	357-58-255	NEW	05-12-070
357-55-275	NEW	05-08-133	357-58-105	NEW-P	05-04-087	357-58-260	NEW-P	05-04-089
357-55-280	NEW	05-08-133	357-58-105	NEW	05-12-068	357-58-260	NEW	05-12-070
357-55-285	NEW	05-08-133	357-58-110	NEW-P	05-04-087	357-58-265	NEW-P	05-04-089
357-55-310	NEW	05-08-133	357-58-110	NEW	05-12-068	357-58-265	NEW	05-12-070
357-55-320	NEW	05-08-133	357-58-115	NEW-P	05-04-087	357-58-270	NEW-P	05-04-089
357-55-330	NEW	05-08-133	357-58-115	NEW	05-12-068	357-58-270	NEW	05-12-070
357-55-410	NEW	05-08-133	357-58-120	NEW-P	05-04-088	357-58-275	NEW-P	05-04-089
357-55-415	NEW	05-08-133	357-58-120	NEW	05-12-069	357-58-275	NEW	05-12-070
357-55-420	NEW	05-08-133	357-58-125	NEW-P	05-04-088	357-58-280	NEW-P	05-04-089
357-55-425	NEW	05-08-133	357-58-125	NEW	05-12-069	357-58-280	NEW-P	05-09-114
357-55-430	NEW	05-08-133	357-58-130	NEW-P	05-04-088	357-58-280	NEW-W	05-12-065
357-55-510	NEW	05-08-133	357-58-130	NEW	05-12-069	357-58-280	NEW	05-12-094
357-55-515	NEW	05-08-133	357-58-135	NEW-P	05-04-088	357-58-285	NEW-P	05-04-089
357-55-520	NEW	05-08-133	357-58-135	NEW	05-12-069	357-58-285	NEW	05-12-070
357-55-610	NEW	05-08-133	357-58-140	NEW-P	05-04-088	357-58-290	NEW-P	05-04-089
357-55-615	NEW	05-08-133	357-58-140	NEW	05-12-069	357-58-290	NEW	05-12-070
357-55-620	NEW	05-08-133	357-58-145	NEW-P	05-04-088	357-58-295	NEW-P	05-04-089
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357- 58-300	NEW	05-12-070	357- 58-455	NEW	05-12-071	388- 14A-3102	AMD	05-12-136
357- 58-305	NEW-P	05-04-089	357- 58-460	NEW-P	05-04-091	388- 14A-3120	PREP	05-05-078
357- 58-305	NEW	05-12-070	357- 58-460	NEW	05-12-071	388- 14A-3120	AMD-P	05-09-082
357- 58-310	NEW-P	05-04-089	357- 58-465	NEW-P	05-04-091	388- 14A-3120	AMD	05-12-136
357- 58-310	NEW	05-12-070	357- 58-465	NEW	05-12-071	388- 14A-3304	AMD-P	05-03-095
357- 58-315	NEW-P	05-04-089	357- 58-470	NEW-P	05-04-091	388- 14A-3304	AMD	05-07-059
357- 58-315	NEW	05-12-070	357- 58-470	NEW	05-12-071	388- 14A-3310	AMD-P	05-03-095
357- 58-320	NEW-P	05-04-089	357- 58-475	NEW-P	05-04-091	388- 14A-3310	AMD	05-07-059
357- 58-320	NEW	05-12-070	357- 58-475	NEW	05-12-071	388- 14A-3317	NEW-P	05-03-095
357- 58-325	NEW-P	05-04-089	357- 58-480	NEW-P	05-04-091	388- 14A-3317	NEW	05-07-059
357- 58-325	NEW	05-12-070	357- 58-480	NEW	05-12-071	388- 14A-3320	AMD-P	05-03-095
357- 58-330	NEW-P	05-04-089	357- 58-485	NEW-P	05-04-091	388- 14A-3320	AMD	05-07-059
357- 58-330	NEW	05-12-070	357- 58-485	NEW	05-12-071	388- 14A-3321	NEW-E	05-03-095
357- 58-335	NEW-P	05-04-089	357- 58-490	NEW-P	05-04-091	388- 14A-3321	NEW	05-07-059
357- 58-335	NEW	05-12-070	357- 58-490	NEW	05-12-071	388- 14A-3350	AMD-P	05-11-080
357- 58-340	NEW-P	05-04-089	357- 58-495	NEW-P	05-04-091	388- 14A-3600	AMD-P	05-11-079
357- 58-340	NEW	05-12-070	357- 58-495	NEW-W	05-12-098	388- 14A-3810	AMD-P	05-11-081
357- 58-345	NEW-P	05-04-089	357- 58-500	NEW-P	05-04-090	388- 14A-4119	NEW-E	05-03-094
357- 58-345	NEW	05-12-070	357- 58-500	NEW	05-12-072	388- 14A-4119	NEW-P	05-05-082
357- 58-350	NEW-P	05-04-089	357- 58-505	NEW-P	05-04-090	388- 14A-4119	NEW	05-08-060
357- 58-350	NEW	05-12-070	357- 58-505	NEW	05-12-072	388- 14A-4180	NEW-E	05-03-094
357- 58-355	NEW-P	05-04-089	357- 58-510	NEW-P	05-04-090	388- 14A-4180	NEW-P	05-05-082
357- 58-355	NEW	05-12-070	357- 58-510	NEW	05-12-072	388- 14A-4180	NEW	05-08-060
357- 58-360	NEW-P	05-04-089	357- 58-515	NEW-P	05-04-090	388- 14A-4304	AMD	05-07-087
357- 58-360	NEW	05-12-070	357- 58-515	NEW	05-12-072	388- 14A-5000	AMD-P	05-02-063
357- 58-365	NEW-P	05-04-089	357- 58-520	NEW-P	05-04-090	388- 14A-5000	AMD	05-06-014
357- 58-365	NEW	05-12-070	357- 58-520	NEW	05-12-072	388- 14A-5001	AMD-P	05-02-063
357- 58-370	NEW-P	05-04-089	357- 58-525	NEW-P	05-04-090	388- 14A-5001	AMD	05-06-014
357- 58-370	NEW	05-12-070	357- 58-525	NEW	05-12-072	388- 14A-5005	AMD-P	05-02-063
357- 58-375	NEW-P	05-04-089	357- 58-530	NEW-P	05-04-090	388- 14A-5005	AMD	05-06-014
357- 58-375	NEW	05-12-070	357- 58-530	NEW	05-12-072	388- 14A-5008	AMD-P	05-02-063
357- 58-380	NEW-P	05-04-089	357- 58-535	NEW-P	05-04-090	388- 14A-5008	AMD	05-06-014
357- 58-380	NEW-W	05-12-065	357- 58-535	NEW-W	05-12-099	388- 14A-5009	NEW-P	05-02-063
357- 58-385	NEW-P	05-04-089	357- 58-540	NEW-P	05-04-090	388- 14A-5009	NEW	05-06-014
357- 58-385	NEW	05-12-070	357- 58-540	NEW	05-12-072	388- 14A-5010	NEW-P	05-02-063
357- 58-390	NEW-P	05-04-089	357- 58-545	NEW-P	05-04-090	388- 14A-5010	NEW	05-06-014
357- 58-390	NEW	05-12-070	357- 58-545	NEW	05-12-072	388- 14A-6300	AMD-P	05-11-079
357- 58-395	NEW-P	05-04-089	363-116	PREP	05-04-094	388- 14A-7100	AMD-P	05-03-095
357- 58-395	NEW	05-12-070	363-116-082	AMD	05-04-028	388- 14A-7100	AMD	05-07-059
357- 58-400	NEW-P	05-04-089	363-116-185	AMD-P	05-10-069	388- 14A-7110	NEW-E	05-03-095
357- 58-400	NEW	05-12-070	363-116-300	AMD-P	05-08-063	388- 14A-7110	NEW	05-07-059
357- 58-405	NEW-P	05-04-091	363-116-300	AMD	05-12-055	388- 14A-7115	NEW-E	05-03-095
357- 58-405	NEW	05-12-071	365-110-035	AMD-W	05-06-057	388- 14A-7115	NEW	05-07-059
357- 58-410	NEW-P	05-04-091	371- 08-305	AMD-E	05-05-005	388- 14A-7117	NEW-E	05-03-095
357- 58-410	NEW	05-12-071	371- 08-305	AMD-P	05-08-022	388- 14A-7117	NEW	05-07-059
357- 58-415	NEW-P	05-04-091	371- 08-335	AMD-E	05-05-005	388- 14A-7120	NEW-E	05-03-095
357- 58-415	NEW	05-12-071	371- 08-335	AMD-P	05-08-022	388- 14A-7120	NEW	05-07-059
357- 58-420	NEW-P	05-04-091	371- 08-345	AMD-E	05-05-005	388- 14A-8100	AMD-E	05-07-034
357- 58-420	NEW	05-12-071	371- 08-345	AMD-P	05-08-022	388- 14A-8100	AMD-P	05-09-081
357- 58-425	NEW-P	05-04-091	371- 08-445	AMD-P	05-08-022	388- 14A-8100	AMD	05-12-135
357- 58-425	NEW	05-12-071	371- 08-450	AMD-P	05-08-022	388- 14A-8600	NEW-E	05-03-095
357- 58-430	NEW-P	05-04-091	374- 60	PREP	05-11-063	388- 14A-8600	NEW	05-07-059
357- 58-430	NEW	05-12-071	388	PREP	05-08-090	388- 25-0225	AMD-P	05-03-082
357- 58-435	NEW-P	05-04-091	388- 01-180	PREP	05-13-128	388- 25-0225	AMD	05-06-091
357- 58-435	NEW	05-12-071	388- 01-190	PREP	05-13-128	388- 25-0225	AMD-E	05-06-093
357- 58-440	NEW-P	05-04-091	388- 02	PREP	05-13-128	388- 25-0226	NEW-P	05-03-082
357- 58-440	NEW	05-12-071	388- 02-0215	PREP	05-06-081	388- 25-0226	NEW	05-06-091
357- 58-445	NEW-P	05-04-091	388- 14A	PREP	05-08-087	388- 25-0226	NEW-E	05-06-093
357- 58-445	NEW	05-12-071	388- 14A-1020	AMD-P	05-11-081	388- 25-0227	NEW-P	05-03-082
357- 58-450	NEW-P	05-04-091	388- 14A-2160	PREP	05-08-087	388- 25-0227	NEW	05-06-091
357- 58-450	NEW	05-12-071	388- 14A-3102	PREP	05-05-078	388- 25-0227	NEW-E	05-06-093

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-25-0228	NEW-P	05-03-082	388-71-0405	REP-P	05-03-096	388-71-0710	AMD-P	05-03-096
388-25-0228	NEW	05-06-091	388-71-0405	REP	05-11-082	388-71-0710	AMD	05-11-082
388-25-0228	NEW-E	05-06-093	388-71-0410	REP-P	05-03-096	388-71-0716	AMD-P	05-03-096
388-25-0229	NEW-P	05-03-082	388-71-0410	REP	05-11-082	388-71-0716	AMD	05-11-082
388-25-0229	NEW	05-06-091	388-71-0415	REP-P	05-03-096	388-71-0720	AMD-P	05-03-096
388-25-0229	NEW-E	05-06-093	388-71-0415	REP	05-11-082	388-71-0720	AMD	05-11-082
388-25-0230	REP-P	05-03-082	388-71-0420	REP-P	05-03-096	388-71-0734	AMD	05-02-064
388-25-0230	REP	05-06-091	388-71-0420	REP	05-11-082	388-71-0800	REP-P	05-03-096
388-25-0230	REP-E	05-06-093	388-71-0425	REP-P	05-03-096	388-71-0800	REP	05-11-082
388-25-0231	NEW-P	05-03-082	388-71-0425	REP	05-11-082	388-71-0805	REP-P	05-03-096
388-25-0231	NEW	05-06-091	388-71-0430	REP-P	05-03-096	388-71-0805	REP	05-11-082
388-25-0231	NEW-E	05-06-093	388-71-0430	REP	05-11-082	388-71-0810	REP-P	05-03-096
388-25-1000	NEW-P	05-06-086	388-71-0435	REP-P	05-03-096	388-71-0810	REP	05-11-082
388-25-1000	NEW-E	05-06-094	388-71-0435	REP	05-11-082	388-71-0815	REP-P	05-03-096
388-25-1000	NEW	05-11-016	388-71-0440	REP-P	05-03-096	388-71-0815	REP	05-11-082
388-25-1010	NEW-P	05-06-086	388-71-0440	REP	05-11-082	388-71-0820	REP-P	05-03-096
388-25-1010	NEW-E	05-06-094	388-71-0442	REP-P	05-03-096	388-71-0820	REP	05-11-082
388-25-1010	NEW	05-11-016	388-71-0442	REP	05-11-082	388-71-0825	REP-P	05-03-096
388-25-1020	NEW-P	05-06-086	388-71-0445	REP-P	05-03-096	388-71-0825	REP	05-11-082
388-25-1020	NEW-E	05-06-094	388-71-0445	REP	05-11-082	388-71-0830	REP-P	05-03-096
388-25-1020	NEW	05-11-016	388-71-0450	REP-P	05-03-096	388-71-0830	REP	05-11-082
388-25-1030	NEW-P	05-06-086	388-71-0450	REP	05-11-082	388-71-0835	REP-P	05-03-096
388-25-1030	NEW-E	05-06-094	388-71-0455	REP-P	05-03-096	388-71-0835	REP	05-11-082
388-25-1030	NEW	05-11-016	388-71-0455	REP	05-11-082	388-71-0840	REP-P	05-03-096
388-25-1040	NEW-P	05-06-086	388-71-0460	REP-P	05-03-096	388-71-0840	REP	05-11-082
388-25-1040	NEW-E	05-06-094	388-71-0460	REP	05-11-082	388-71-0845	REP-P	05-03-096
388-25-1040	NEW	05-11-016	388-71-0465	REP-P	05-03-096	388-71-0845	REP	05-11-082
388-25-1050	NEW-P	05-06-086	388-71-0465	REP	05-11-082	388-71-0900	REP-P	05-03-096
388-25-1050	NEW-E	05-06-094	388-71-0470	REP-P	05-03-096	388-71-0900	REP-W	05-11-071
388-25-1050	NEW	05-11-016	388-71-0470	REP	05-11-082	388-71-0905	REP-P	05-03-096
388-71-0194	REP-P	05-03-096	388-71-0480	REP-P	05-03-096	388-71-0905	REP-W	05-11-071
388-71-0194	REP	05-11-082	388-71-0480	REP	05-11-082	388-71-0910	REP-P	05-03-096
388-71-0202	REP-P	05-03-096	388-71-0500	AMD-P	05-03-096	388-71-0910	REP-W	05-11-071
388-71-0202	REP	05-11-082	388-71-0500	AMD	05-11-082	388-71-0915	REP-P	05-03-096
388-71-0203	REP-P	05-03-096	388-71-0515	AMD-P	05-03-096	388-71-0915	REP-W	05-11-071
388-71-0203	REP	05-11-082	388-71-0515	AMD	05-11-082	388-71-0920	REP-P	05-03-096
388-71-0205	REP-P	05-03-096	388-71-0520	AMD-P	05-03-096	388-71-0920	REP-W	05-11-071
388-71-0205	REP	05-11-082	388-71-0520	AMD	05-11-082	388-71-0925	REP-P	05-03-096
388-71-0210	NEW-P	05-03-096	388-71-0540	AMD-P	05-03-096	388-71-0925	REP-W	05-11-071
388-71-0210	NEW	05-11-082	388-71-0540	AMD	05-11-082	388-71-0930	REP-P	05-03-096
388-71-0215	NEW-P	05-03-096	388-71-05832	NEW-P	05-03-096	388-71-0930	REP-W	05-11-071
388-71-0215	NEW	05-11-082	388-71-05832	NEW	05-11-082	388-71-0935	REP-P	05-03-096
388-71-0220	NEW-P	05-03-096	388-71-0600	REP-P	05-03-096	388-71-0935	REP-W	05-11-071
388-71-0220	NEW	05-11-082	388-71-0600	REP	05-11-082	388-71-0940	REP-P	05-03-096
388-71-0225	NEW-P	05-03-096	388-71-0605	REP-P	05-03-096	388-71-0940	REP-W	05-11-071
388-71-0225	NEW	05-11-082	388-71-0605	REP	05-11-082	388-71-0945	REP-P	05-03-096
388-71-0230	NEW-P	05-03-096	388-71-0610	REP-P	05-03-096	388-71-0945	REP-W	05-11-071
388-71-0230	NEW	05-11-082	388-71-0610	REP	05-11-082	388-71-0950	REP-P	05-03-096
388-71-0235	NEW-P	05-03-096	388-71-0613	REP-P	05-03-096	388-71-0950	REP-W	05-11-071
388-71-0235	NEW	05-11-082	388-71-0613	REP	05-11-082	388-71-0955	REP-P	05-03-096
388-71-0240	NEW-P	05-03-096	388-71-0615	REP-P	05-03-096	388-71-0955	REP-W	05-11-071
388-71-0240	NEW	05-11-082	388-71-0615	REP	05-11-082	388-71-0960	REP-P	05-03-096
388-71-0245	NEW-P	05-03-096	388-71-0620	REP-P	05-03-096	388-71-0960	REP-W	05-11-071
388-71-0245	NEW	05-11-082	388-71-0620	REP	05-11-082	388-71-0965	REP-P	05-03-096
388-71-0250	NEW-P	05-03-096	388-71-0700	REP-P	05-03-096	388-71-0965	REP-W	05-11-071
388-71-0250	NEW	05-11-082	388-71-0700	REP	05-11-082	388-71-1000	REP-P	05-03-096
388-71-0255	NEW-P	05-03-096	388-71-0704	AMD-P	05-03-096	388-71-1000	REP	05-11-082
388-71-0255	NEW	05-11-082	388-71-0704	AMD	05-11-082	388-71-1005	REP-P	05-03-096
388-71-0260	NEW-P	05-03-096	388-71-0706	AMD-P	05-03-096	388-71-1005	REP	05-11-082
388-71-0260	NEW	05-11-082	388-71-0706	AMD	05-11-082	388-71-1010	REP-P	05-03-096
388-71-0400	REP-P	05-03-096	388-71-0708	AMD-P	05-03-096	388-71-1010	REP	05-11-082
388-71-0400	REP	05-11-082	388-71-0708	AMD	05-11-082	388-71-1015	REP-P	05-03-096

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388- 71-1015	REP	05-11-082	388- 72A-0053	REP	05-11-082	388- 76-9976	REP-P	05-13-126
388- 71-1020	REP-P	05-03-096	388- 72A-0055	REP-P	05-03-096	388- 76-9978	REP-P	05-13-126
388- 71-1020	REP	05-11-082	388- 72A-0055	REP	05-11-082	388- 76-9980	REP-P	05-13-126
388- 71-1025	REP-P	05-03-096	388- 72A-0057	REP-P	05-03-096	388- 78A-2020	PREP	05-10-085
388- 71-1025	REP	05-11-082	388- 72A-0057	REP	05-11-082	388- 78A-2050	PREP	05-10-085
388- 71-1030	REP-P	05-03-096	388- 72A-0058	REP-P	05-03-096	388- 78A-2260	PREP	05-10-085
388- 71-1030	REP	05-11-082	388- 72A-0058	REP	05-11-082	388- 78A-2270	PREP	05-10-085
388- 71-1035	REP-P	05-03-096	388- 72A-0060	REP-P	05-03-096	388- 78A-2280	PREP	05-10-085
388- 71-1035	REP	05-11-082	388- 72A-0060	REP	05-11-082	388- 78A-2300	PREP	05-10-085
388- 71-1065	REP-P	05-03-096	388- 72A-0065	REP-P	05-03-096	388- 78A-2340	PREP	05-10-085
388- 71-1065	REP	05-11-082	388- 72A-0065	REP	05-11-082	388- 78A-2360	PREP	05-10-085
388- 71-1070	REP-P	05-03-096	388- 72A-0069	REP-P	05-03-096	388- 78A-2470	PREP	05-10-085
388- 71-1070	REP	05-11-082	388- 72A-0069	REP	05-11-082	388- 78A-2480	PREP	05-10-085
388- 71-1075	REP-P	05-03-096	388- 72A-0070	REP-P	05-03-096	388- 78A-2490	PREP	05-10-085
388- 71-1075	REP	05-11-082	388- 72A-0070	REP	05-11-082	388- 78A-2500	PREP	05-10-085
388- 71-1080	REP-P	05-03-096	388- 72A-0080	REP-P	05-03-096	388- 78A-2510	PREP	05-10-085
388- 71-1080	REP	05-11-082	388- 72A-0080	REP	05-11-082	388- 78A-2520	PREP	05-10-085
388- 71-1085	REP-P	05-03-096	388- 72A-0081	REP-P	05-03-096	388- 78A-2700	PREP	05-10-085
388- 71-1085	REP	05-11-082	388- 72A-0081	REP	05-11-082	388- 78A-2840	PREP	05-10-085
388- 71-1090	REP-P	05-03-096	388- 72A-0082	REP-P	05-03-096	388- 78A-2910	PREP	05-10-085
388- 71-1090	REP	05-11-082	388- 72A-0082	REP	05-11-082	388- 78A-2930	PREP	05-10-085
388- 71-1095	REP-P	05-03-096	388- 72A-0083	REP-P	05-03-096	388- 78A-2940	PREP	05-10-085
388- 71-1095	REP	05-11-082	388- 72A-0083	REP	05-11-082	388- 78A-2960	PREP	05-10-085
388- 71-1100	REP-P	05-03-096	388- 72A-0084	REP-P	05-03-096	388-101	PREP	05-07-132
388- 71-1100	REP	05-11-082	388- 72A-0084	REP	05-11-082	388-101-1010	RECOD	05-05-077
388- 71-1105	REP-P	05-03-096	388- 72A-0085	REP-P	05-03-096	388-101-1020	RECOD	05-05-077
388- 71-1105	REP	05-11-082	388- 72A-0085	REP	05-11-082	388-101-1020	AMD-P	05-07-136
388- 71-1110	REP-P	05-03-096	388- 72A-0086	REP-P	05-03-096	388-101-1020	AMD	05-10-086
388- 71-1110	REP	05-11-082	388- 72A-0086	REP	05-11-082	388-101-1100	RECOD	05-05-077
388- 72A-0005	REP-P	05-03-096	388- 72A-0087	REP-P	05-03-096	388-101-1180	RECOD	05-05-077
388- 72A-0005	REP	05-11-082	388- 72A-0087	REP	05-11-082	388-101-1190	RECOD	05-05-077
388- 72A-0010	REP-P	05-03-096	388- 72A-0090	REP-P	05-03-096	388-101-1200	RECOD	05-05-077
388- 72A-0010	REP	05-11-082	388- 72A-0090	REP	05-11-082	388-101-1205	RECOD	05-07-138
388- 72A-0015	REP-P	05-03-096	388- 72A-0092	REP-P	05-03-096	388-101-1210	RECOD	05-05-077
388- 72A-0015	REP	05-11-082	388- 72A-0092	REP	05-11-082	388-101-1220	RECOD	05-05-077
388- 72A-0020	REP-P	05-03-096	388- 72A-0095	REP-P	05-03-096	388-101-1220	AMD-P	05-07-136
388- 72A-0020	REP	05-11-082	388- 72A-0095	REP	05-11-082	388-101-1220	AMD	05-10-086
388- 72A-0025	REP-P	05-03-096	388- 72A-0100	REP-P	05-03-096	388-101-1230	RECOD	05-05-077
388- 72A-0025	REP	05-11-082	388- 72A-0100	REP	05-11-082	388-101-1240	RECOD	05-05-077
388- 72A-0030	REP-P	05-03-096	388- 72A-0105	REP-P	05-03-096	388-101-1250	RECOD	05-05-077
388- 72A-0030	REP	05-11-082	388- 72A-0105	REP	05-11-082	388-101-1260	RECOD	05-05-077
388- 72A-0035	REP-P	05-03-096	388- 72A-0110	REP-P	05-03-096	388-101-1260	AMD-P	05-07-136
388- 72A-0035	REP	05-11-082	388- 72A-0110	REP	05-11-082	388-101-1260	AMD	05-10-086
388- 72A-0036	REP-P	05-03-096	388- 72A-0115	REP-P	05-03-096	388-101-1400	RECOD	05-05-077
388- 72A-0036	REP	05-11-082	388- 72A-0115	REP	05-11-082	388-101-1400	AMD-P	05-07-136
388- 72A-0037	REP-P	05-03-096	388- 72A-0120	REP-P	05-03-096	388-101-1400	AMD	05-10-086
388- 72A-0037	REP	05-11-082	388- 72A-0120	REP	05-11-082	388-101-1410	RECOD	05-05-077
388- 72A-0038	REP-P	05-03-096	388- 76-540	AMD-P	05-13-126	388-101-1420	RECOD	05-05-077
388- 72A-0038	REP	05-11-082	388- 76-560	AMD-P	05-13-126	388-101-1420	AMD-P	05-07-136
388- 72A-0039	REP-P	05-03-096	388- 76-575	AMD-P	05-13-126	388-101-1420	AMD	05-10-086
388- 72A-0039	REP	05-11-082	388- 76-585	AMD-P	05-13-126	388-101-1430	RECOD	05-05-077
388- 72A-0041	REP-P	05-03-096	388- 76-59020	REP-P	05-13-126	388-101-1440	RECOD	05-05-077
388- 72A-0041	REP	05-11-082	388- 76-595	AMD-P	05-13-126	388-101-1460	RECOD	05-05-077
388- 72A-0042	REP-P	05-03-096	388- 76-64005	REP-P	05-13-126	388-101-1470	RECOD	05-05-077
388- 72A-0042	REP	05-11-082	388- 76-655	AMD-P	05-13-126	388-101-1470	AMD-P	05-07-136
388- 72A-0043	REP-P	05-03-096	388- 76-685	AMD-P	05-13-126	388-101-1470	AMD	05-10-086
388- 72A-0043	REP	05-11-082	388- 76-715	AMD-P	05-13-126	388-101-1480	RECOD	05-05-077
388- 72A-0045	REP-P	05-03-096	388- 76-76505	AMD-P	05-04-058	388-101-1490	RECOD	05-05-077
388- 72A-0045	REP	05-11-082	388- 76-76505	AMD	05-07-137	388-101-1500	RECOD	05-05-077
388- 72A-0050	REP-P	05-03-096	388- 76-9970	REP-P	05-13-126	388-101-1510	RECOD	05-05-077
388- 72A-0050	REP	05-11-082	388- 76-9972	REP-P	05-13-126	388-101-1520	RECOD	05-05-077
388- 72A-0053	REP-P	05-03-096	388- 76-9974	REP-P	05-13-126	388-101-1530	RECOD	05-05-077

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-101-1540	RECOD	05-05-077	388-101-2330	RECOD	05-05-077	388-106-0095	NEW-P	05-03-096
388-101-1550	RECOD	05-05-077	388-101-2340	RECOD	05-05-077	388-106-0095	NEW	05-11-082
388-101-1600	RECOD	05-05-077	388-101-2350	RECOD	05-05-077	388-106-0100	NEW-P	05-03-096
388-101-1610	RECOD	05-05-077	388-101-2360	RECOD	05-05-077	388-106-0100	NEW	05-11-082
388-101-1620	RECOD	05-05-077	388-101-2370	RECOD	05-05-077	388-106-0105	NEW-P	05-03-096
388-101-1630	RECOD	05-05-077	388-101-2380	RECOD	05-05-077	388-106-0105	NEW	05-11-082
388-101-1640	RECOD	05-05-077	388-101-2400	RECOD	05-07-138	388-106-0110	NEW-P	05-03-096
388-101-1650	RECOD	05-05-077	388-101-2410	RECOD	05-07-138	388-106-0110	NEW	05-11-082
388-101-1660	RECOD	05-05-077	388-101-2410	AMD	05-10-086	388-106-0115	NEW-P	05-03-096
388-101-1670	RECOD	05-05-077	388-101-2420	RECOD	05-07-138	388-106-0115	NEW	05-11-082
388-101-1670	AMD-P	05-07-136	388-101-2430	RECOD	05-07-138	388-106-0120	NEW-P	05-03-096
388-101-1670	AMD	05-10-086	388-101-2440	RECOD	05-07-138	388-106-0120	NEW	05-11-082
388-101-1680	RECOD	05-05-077	388-101-2450	RECOD	05-07-138	388-106-0125	NEW-P	05-03-096
388-101-1690	RECOD	05-05-077	388-101-2460	RECOD	05-07-138	388-106-0125	NEW	05-11-082
388-101-1700	RECOD	05-05-077	388-101-2470	RECOD	05-07-138	388-106-0130	NEW-P	05-03-096
388-101-1710	RECOD	05-05-077	388-101-2480	RECOD	05-07-138	388-106-0130	NEW	05-11-082
388-101-1720	RECOD	05-05-077	388-101-2490	RECOD	05-07-138	388-106-0135	NEW-P	05-03-096
388-101-1730	RECOD	05-05-077	388-101-2500	RECOD	05-07-138	388-106-0135	NEW	05-11-082
388-101-1740	RECOD	05-05-077	388-101-2510	RECOD	05-07-138	388-106-0140	NEW-P	05-03-096
388-101-1750	RECOD	05-05-077	388-101-2520	RECOD	05-07-138	388-106-0140	NEW	05-11-082
388-101-1750	AMD-P	05-07-136	388-101-2530	RECOD	05-07-138	388-106-0200	NEW-P	05-03-096
388-101-1750	AMD	05-10-086	388-101-2540	RECOD	05-07-138	388-106-0200	NEW	05-11-082
388-101-1760	RECOD	05-05-077	388-105	PREP	05-13-127	388-106-0210	NEW-P	05-03-096
388-101-1770	RECOD	05-05-077	388-106	PREP	05-05-080	388-106-0210	NEW	05-11-082
388-101-1780	RECOD	05-05-077	388-106	PREP	05-06-082	388-106-0213	NEW-P	05-03-096
388-101-1790	RECOD	05-05-077	388-106	PREP	05-06-083	388-106-0213	NEW	05-11-082
388-101-1800	RECOD	05-05-077	388-106-0005	NEW-P	05-03-096	388-106-0220	NEW-P	05-03-096
388-101-1810	RECOD	05-05-077	388-106-0005	NEW	05-11-082	388-106-0220	NEW	05-11-082
388-101-1820	RECOD	05-05-077	388-106-0010	NEW-P	05-03-096	388-106-0225	NEW-P	05-03-096
388-101-1830	RECOD	05-05-077	388-106-0010	NEW	05-11-082	388-106-0225	NEW	05-11-082
388-101-1840	RECOD	05-05-077	388-106-0015	NEW-P	05-03-096	388-106-0230	NEW-P	05-03-096
388-101-1850	RECOD	05-05-077	388-106-0015	NEW	05-11-082	388-106-0230	NEW	05-11-082
388-101-1860	RECOD	05-05-077	388-106-0020	NEW-P	05-03-096	388-106-0235	NEW-P	05-03-096
388-101-1870	RECOD	05-05-077	388-106-0020	NEW	05-11-082	388-106-0235	NEW	05-11-082
388-101-1880	RECOD	05-05-077	388-106-0025	NEW-P	05-03-096	388-106-0300	NEW-P	05-03-096
388-101-1890	RECOD	05-05-077	388-106-0025	NEW	05-11-082	388-106-0300	NEW	05-11-082
388-101-1900	RECOD	05-05-077	388-106-0030	NEW-P	05-03-096	388-106-0305	NEW-P	05-03-096
388-101-2000	RECOD	05-05-077	388-106-0030	NEW	05-11-082	388-106-0305	NEW	05-11-082
388-101-2010	RECOD	05-05-077	388-106-0035	NEW-P	05-03-096	388-106-0310	NEW-P	05-03-096
388-101-2020	RECOD	05-05-077	388-106-0035	NEW	05-11-082	388-106-0310	NEW	05-11-082
388-101-2030	RECOD	05-05-077	388-106-0040	NEW-P	05-03-096	388-106-0315	NEW-P	05-03-096
388-101-2040	RECOD	05-05-077	388-106-0040	NEW	05-11-082	388-106-0315	NEW	05-11-082
388-101-2050	RECOD	05-05-077	388-106-0045	NEW-P	05-03-096	388-106-0320	NEW-P	05-03-096
388-101-2060	RECOD	05-05-077	388-106-0045	NEW	05-11-082	388-106-0320	NEW	05-11-082
388-101-2070	RECOD	05-05-077	388-106-0050	NEW-P	05-03-096	388-106-0325	NEW-P	05-03-096
388-101-2080	RECOD	05-05-077	388-106-0050	NEW	05-11-082	388-106-0325	NEW	05-11-082
388-101-2090	RECOD	05-05-077	388-106-0055	NEW-P	05-03-096	388-106-0330	NEW-P	05-03-096
388-101-2100	RECOD	05-05-077	388-106-0055	NEW	05-11-082	388-106-0330	NEW	05-11-082
388-101-2110	RECOD	05-05-077	388-106-0060	NEW-P	05-03-096	388-106-0335	NEW-P	05-03-096
388-101-2120	RECOD	05-05-077	388-106-0060	NEW	05-11-082	388-106-0335	NEW	05-11-082
388-101-2130	RECOD	05-05-077	388-106-0065	NEW-P	05-03-096	388-106-0350	NEW-P	05-03-096
388-101-2140	RECOD	05-05-077	388-106-0065	NEW	05-11-082	388-106-0350	NEW	05-11-082
388-101-2150	RECOD	05-05-077	388-106-0070	NEW-P	05-03-096	388-106-0355	NEW-P	05-03-096
388-101-2150	AMD-P	05-07-136	388-106-0070	NEW	05-11-082	388-106-0355	NEW	05-11-082
388-101-2150	AMD	05-10-086	388-106-0075	NEW-P	05-03-096	388-106-0360	NEW-P	05-03-096
388-101-2160	RECOD	05-05-077	388-106-0075	NEW	05-11-082	388-106-0360	NEW	05-11-082
388-101-2300	RECOD	05-05-077	388-106-0080	NEW-P	05-03-096	388-106-0400	NEW-P	05-03-096
388-101-2310	RECOD	05-05-077	388-106-0080	NEW	05-11-082	388-106-0400	NEW	05-11-082
388-101-2310	AMD-P	05-07-136	388-106-0085	NEW-P	05-03-096	388-106-0410	NEW-P	05-03-096
388-101-2310	DECOD	05-07-138	388-106-0085	NEW	05-11-082	388-106-0410	NEW	05-11-082
388-101-2320	RECOD	05-05-077	388-106-0090	NEW-P	05-03-096	388-106-0415	NEW-P	05-03-096
388-101-2320	DECOD	05-07-138	388-106-0090	NEW	05-11-082	388-106-0415	NEW	05-11-082

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-106-0420	NEW-P	05-03-096	388-106-1000	NEW-P	05-03-096	388-273-0035	AMD-P	05-12-133
388-106-0420	NEW	05-11-082	388-106-1000	NEW-W	05-11-071	388-273-0035	AMD-E	05-13-172
388-106-0425	NEW-P	05-03-096	388-106-1005	NEW-P	05-03-096	388-290-0010	PREP	05-06-078
388-106-0425	NEW	05-11-082	388-106-1005	NEW-W	05-11-071	388-290-0025	PREP	05-06-078
388-106-0430	NEW-P	05-03-096	388-106-1010	NEW-P	05-03-096	388-290-0030	PREP	05-13-176
388-106-0430	NEW	05-11-082	388-106-1010	NEW-W	05-11-071	388-290-0032	PREP	05-13-176
388-106-0435	NEW-P	05-03-096	388-106-1015	NEW-P	05-03-096	388-290-0075	PREP	05-06-078
388-106-0435	NEW	05-11-082	388-106-1015	NEW-W	05-11-071	388-290-0095	PREP	05-06-078
388-106-0500	NEW-P	05-03-096	388-106-1020	NEW-P	05-03-096	388-290-0100	PREP	05-06-078
388-106-0500	NEW	05-11-082	388-106-1020	NEW-W	05-11-071	388-290-0105	PREP	05-06-078
388-106-0510	NEW-P	05-03-096	388-106-1025	NEW-P	05-03-096	388-290-0110	PREP	05-06-078
388-106-0510	NEW	05-11-082	388-106-1025	NEW-W	05-11-071	388-290-0120	PREP	05-06-078
388-106-0515	NEW-P	05-03-096	388-106-1030	NEW-P	05-03-096	388-290-0180	PREP	05-13-175
388-106-0515	NEW	05-11-082	388-106-1030	NEW-W	05-11-071	388-290-0190	PREP	05-13-175
388-106-0520	NEW-P	05-03-096	388-106-1035	NEW-P	05-03-096	388-290-0200	AMD-E	05-05-024
388-106-0520	NEW	05-11-082	388-106-1035	NEW-W	05-11-071	388-290-0200	AMD-E	05-13-040
388-106-0525	NEW-P	05-03-096	388-106-1040	NEW-P	05-03-096	388-290-0200	PREP	05-13-175
388-106-0525	NEW	05-11-082	388-106-1040	NEW-W	05-11-071	388-290-0205	AMD-E	05-05-024
388-106-0530	NEW-P	05-03-096	388-106-1045	NEW-P	05-03-096	388-290-0205	AMD-E	05-13-040
388-106-0530	NEW	05-11-082	388-106-1045	NEW-W	05-11-071	388-290-0205	PREP	05-13-175
388-106-0535	NEW-P	05-03-096	388-106-1050	NEW-P	05-03-096	388-290-0240	PREP	05-13-176
388-106-0535	NEW	05-11-082	388-106-1050	NEW-W	05-11-071	388-290-0245	PREP	05-13-175
388-106-0600	NEW-P	05-03-096	388-106-1055	NEW-P	05-03-096	388-290-0247	PREP	05-13-175
388-106-0600	NEW	05-11-082	388-106-1055	NEW-W	05-11-071	388-290-0250	PREP	05-13-175
388-106-0610	NEW-P	05-03-096	388-106-1100	NEW-P	05-03-096	388-290-0255	PREP	05-13-176
388-106-0610	NEW	05-11-082	388-106-1100	NEW	05-11-082	388-290-0260	PREP	05-13-176
388-106-0615	NEW-P	05-03-096	388-106-1105	NEW-P	05-03-096	388-290-0271	PREP	05-13-176
388-106-0615	NEW	05-11-082	388-106-1105	NEW	05-11-082	388-290-0273	PREP	05-13-176
388-106-0620	NEW-P	05-03-096	388-106-1110	NEW-P	05-03-096	388-295	PREP	05-08-059
388-106-0620	NEW	05-11-082	388-106-1110	NEW	05-11-082	388-296	PREP	05-07-131
388-106-0625	NEW-P	05-03-096	388-106-1115	NEW-P	05-03-096	388-296	PREP-W	05-08-058
388-106-0625	NEW	05-11-082	388-106-1115	NEW	05-11-082	388-310-0600	PREP	05-07-074
388-106-0630	NEW-P	05-03-096	388-106-1120	NEW-P	05-03-096	388-310-0600	AMD-P	05-13-125
388-106-0630	NEW	05-11-082	388-106-1120	NEW	05-11-082	388-310-1400	AMD-P	05-08-121
388-106-0650	NEW-P	05-03-096	388-106-1200	NEW-P	05-03-096	388-310-1400	AMD	05-13-030
388-106-0650	NEW	05-11-082	388-106-1200	NEW	05-11-082	388-400	PREP	05-08-091
388-106-0655	NEW-P	05-03-096	388-106-1205	NEW-P	05-03-096	388-400-0005	AMD-P	05-09-083
388-106-0655	NEW	05-11-082	388-106-1205	NEW	05-11-082	388-400-0010	PREP	05-13-136
388-106-0700	NEW-P	05-03-096	388-106-1210	NEW-P	05-03-096	388-406	PREP	05-08-091
388-106-0700	NEW	05-11-082	388-106-1210	NEW	05-11-082	388-408	PREP	05-08-091
388-106-0705	NEW-P	05-03-096	388-106-1215	NEW-P	05-03-096	388-410	PREP	05-08-091
388-106-0710	NEW-P	05-03-096	388-106-1215	NEW	05-11-082	388-410-0001	AMD-P	05-05-081
388-106-0710	NEW	05-11-082	388-106-1220	NEW-P	05-03-096	388-410-0001	AMD	05-08-124
388-106-0715	NEW-P	05-03-096	388-106-1220	NEW	05-11-082	388-412	PREP	05-08-091
388-106-0715	NEW	05-11-082	388-106-1225	NEW-P	05-03-096	388-412-0025	PREP	05-07-130
388-106-0800	NEW-P	05-03-096	388-106-1225	NEW	05-11-082	388-412-0025	AMD-P	05-13-171
388-106-0800	NEW	05-11-082	388-106-1230	NEW-P	05-03-096	388-414	PREP	05-08-091
388-106-0805	NEW-P	05-03-096	388-106-1230	NEW	05-11-082	388-416-0005	AMD-P	05-05-081
388-106-0805	NEW	05-11-082	388-106-1300	NEW-P	05-03-096	388-416-0005	AMD	05-08-124
388-106-0810	NEW-P	05-03-096	388-106-1300	NEW	05-11-082	388-416-0015	PREP	05-05-079
388-106-0810	NEW	05-11-082	388-106-1305	NEW-P	05-03-096	388-416-0015	AMD-E	05-10-038
388-106-0815	NEW-P	05-03-096	388-106-1305	NEW	05-11-082	388-418	PREP	05-08-091
388-106-0815	NEW	05-11-082	388-106-1310	NEW-P	05-03-096	388-418-0005	AMD-P	05-06-089
388-106-0900	NEW-P	05-03-096	388-106-1310	NEW	05-11-082	388-418-0005	AMD	05-09-021
388-106-0900	NEW	05-11-082	388-145-0100	AMD-P	05-07-134	388-418-0007	AMD-P	05-08-120
388-106-0905	NEW-P	05-03-096	388-145-0100	AMD	05-11-008	388-418-0007	AMD	05-11-074
388-106-0905	NEW	05-11-082	388-145-0230	AMD-P	05-07-134	388-418-0011	PREP	05-05-079
388-106-0950	NEW-P	05-03-096	388-145-0230	AMD	05-11-008	388-418-0011	AMD-P	05-06-088
388-106-0950	NEW	05-11-082	388-160-0075	AMD-P	05-09-079	388-418-0011	AMD	05-09-020
388-106-0955	NEW-P	05-03-096	388-160-0195	AMD-P	05-09-079	388-418-0011	AMD-E	05-10-038
388-106-0955	NEW	05-11-082	388-273-0035	AMD-E	05-06-024	388-418-0020	AMD-P	05-06-088
388-106-0955	NEW	05-11-082	388-273-0035	PREP	05-06-077	388-418-0020	AMD	05-09-020

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-418-0025	PREP	05-13-135	388-492-0070	AMD-P	05-05-086	388-533-0720	AMD-P	05-05-085
388-422	PREP	05-08-091	388-492-0070	AMD	05-08-008	388-533-0720	AMD	05-08-061
388-424	PREP	05-08-091	388-492-0070	PREP	05-12-131	388-533-0730	AMD-P	05-05-085
388-424-0006	AMD-P	05-12-134	388-501-0135	PREP	05-06-079	388-533-0730	AMD	05-08-061
388-424-0010	PREP	05-13-135	388-501-0165	PREP	05-08-088	388-535-1070	AMD-P	05-03-080
388-432	PREP	05-08-091	388-501-0200	PREP-W	05-02-068	388-535-1070	AMD	05-06-092
388-434	PREP	05-08-091	388-503-0510	AMD	05-07-097	388-538	PREP	05-04-082
388-436	PREP	05-08-091	388-505-0210	PREP	05-13-135	388-538-063	AMD-E	05-13-073
388-442-0010	PREP	05-13-136	388-505-0220	AMD-P	05-13-170	388-538-112	AMD-E	05-05-038
388-446	PREP	05-08-091	388-513-1300	RESCIND	05-13-064	388-538-112	AMD-E	05-13-066
388-448	PREP	05-08-091	388-513-1325	PREP-W	05-02-068	388-543	PREP	05-13-132
388-450	PREP	05-08-091	388-513-1340	PREP-W	05-02-068	388-543-1000	PREP-W	05-13-133
388-450-0015	AMD	05-03-078	388-513-1350	AMD-P	05-03-109	388-543-1100	PREP-W	05-13-133
388-450-0020	PREP-W	05-02-068	388-513-1350	AMD	05-07-033	388-543-1150	PREP-W	05-13-133
388-450-0185	PREP	05-12-131	388-513-1350	PREP	05-11-072	388-543-1400	PREP-W	05-13-133
388-450-0190	PREP	05-12-131	388-513-1350	PREP	05-13-139	388-543-1500	PREP-W	05-13-133
388-450-0195	AMD-P	05-06-085	388-513-1350	PREP-W	05-13-140	388-543-2100	PREP-W	05-13-133
388-450-0195	AMD	05-09-087	388-513-1360	PREP	05-13-131	388-543-2500	PREP-W	05-13-133
388-450-0195	PREP	05-12-131	388-513-1380	AMD-P	05-03-109	388-543-2900	PREP-W	05-13-133
388-450-0200	AMD-E	05-03-079	388-513-1380	AMD	05-07-033	388-544-0010	NEW-P	05-08-092
388-450-0200	AMD	05-05-025	388-513-1380	AMD-E	05-10-053	388-544-0010	NEW	05-13-038
388-450-0210	PREP	05-13-135	388-513-1380	PREP	05-11-073	388-544-0050	AMD-P	05-08-092
388-450-0215	AMD-P	05-13-169	388-513-1380	AMD-E	05-13-062	388-544-0050	AMD	05-13-038
388-450A-0010	NEW-P	05-07-133	388-513-1380	PREP	05-13-063	388-544-0100	AMD-P	05-08-092
388-450A-0010	NEW	05-13-029	388-513-1380	PREP-W	05-13-065	388-544-0100	AMD	05-13-038
388-454	PREP	05-08-091	388-513-1380	PREP-W	05-13-137	388-544-0150	AMD-P	05-08-092
388-455	PREP	05-08-091	388-513-1380	PREP	05-13-138	388-544-0150	AMD	05-13-038
388-458	PREP	05-08-091	388-515-1505	AMD	05-03-077	388-544-0200	REP-P	05-08-092
388-462-0015	AMD-P	05-03-081	388-515-1505	PREP	05-06-084	388-544-0200	REP	05-13-038
388-462-0015	AMD	05-07-032	388-515-1505	PREP	05-13-129	388-544-0250	AMD-P	05-08-092
388-464	PREP	05-08-091	388-515-1505	PREP-W	05-13-130	388-544-0250	AMD	05-13-038
388-468	PREP	05-08-091	388-515-1540	AMD-P	05-03-096	388-544-0300	AMD-P	05-08-092
388-470	PREP	05-08-091	388-515-1540	AMD	05-11-082	388-544-0300	AMD	05-13-038
388-474-0012	AMD	05-07-031	388-515-1550	AMD-P	05-03-096	388-544-0350	AMD-P	05-08-092
388-475-0550	AMD-E	05-05-088	388-515-1550	AMD	05-11-082	388-544-0350	AMD	05-13-038
388-475-0550	AMD-E	05-13-074	388-517-0300	AMD-P	05-11-076	388-544-0400	AMD-P	05-08-092
388-475-0700	AMD-E	05-05-088	388-517-0310	NEW-P	05-11-076	388-544-0400	AMD	05-13-038
388-475-0700	AMD-E	05-13-074	388-517-0320	NEW-P	05-11-076	388-544-0450	AMD-P	05-08-092
388-475-0800	AMD-E	05-05-088	388-519-0110	AMD-P	05-05-083	388-544-0450	AMD	05-13-038
388-475-0800	AMD-E	05-13-074	388-519-0110	AMD-E	05-07-057	388-544-0475	NEW-P	05-08-092
388-475-0820	AMD-E	05-05-088	388-519-0110	AMD	05-08-093	388-544-0475	NEW	05-13-038
388-475-0820	AMD-E	05-13-074	388-523-0130	PREP	05-13-135	388-544-0500	AMD-P	05-08-092
388-475-0860	AMD-E	05-05-088	388-530-1280	AMD-X	05-06-095	388-544-0500	AMD	05-13-038
388-475-0860	AMD-E	05-13-074	388-530-1280	AMD	05-11-078	388-544-0550	AMD-P	05-08-092
388-478	PREP	05-08-091	388-531-0150	AMD-E	05-07-058	388-544-0550	AMD	05-13-038
388-478-0055	PREP	05-13-173	388-531-0150	AMD-P	05-07-135	388-544-0600	AMD-P	05-08-092
388-478-0060	PREP	05-12-131	388-531-0150	AMD	05-12-022	388-544-0600	AMD	05-13-038
388-478-0065	AMD-P	05-11-075	388-531-0200	AMD-E	05-07-058	388-546	PREP-W	05-02-068
388-478-0070	AMD-P	05-02-091	388-531-0200	AMD-P	05-07-135	388-550	PREP-W	05-08-086
388-478-0070	AMD	05-06-090	388-531-0200	AMD	05-12-022	388-550	PREP	05-08-089
388-478-0075	PREP	05-07-095	388-531-0250	AMD-E	05-07-058	388-550-1350	PREP	05-13-076
388-478-0075	AMD-E	05-07-098	388-531-0250	AMD-P	05-07-135	388-550-2301	NEW-E	05-07-058
388-478-0075	PREP	05-13-135	388-531-0250	AMD	05-12-022	388-550-2301	NEW-P	05-07-135
388-478-0080	AMD-P	05-02-091	388-531-0650	AMD-E	05-07-058	388-550-2301	NEW	05-12-022
388-478-0080	AMD	05-06-090	388-531-0650	AMD-P	05-07-135	388-550-2600	PREP	05-08-089
388-478-0085	PREP	05-07-095	388-531-0650	AMD	05-12-022	388-550-2800	AMD-E	05-07-058
388-478-0085	AMD-E	05-07-098	388-531-1600	AMD-E	05-07-058	388-550-2800	AMD-P	05-07-135
388-482	PREP	05-08-091	388-531-1600	AMD-P	05-07-135	388-550-2800	AMD	05-12-022
388-492	PREP	05-08-091	388-531-1600	AMD	05-12-022	388-550-3000	AMD-P	05-07-096
388-492-0040	AMD-P	05-05-087	388-531-2000	PREP	05-13-134	388-550-3000	AMD	05-11-077
388-492-0040	AMD	05-08-009	388-533-0710	AMD-P	05-05-085	388-550-3300	PREP	05-06-080
388-492-0040	PREP	05-12-131	388-533-0710	AMD	05-08-061	388-550-3300	AMD-P	05-09-085

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-550-3300	AMD	05-12-132	388-820-120	DECOD	05-05-077	388-820-720	DECOD	05-05-077
388-550-3800	AMD	05-06-044	388-820-130	DECOD	05-05-077	388-820-730	DECOD	05-07-138
388-550-4300	PREP	05-06-080	388-820-140	DECOD	05-05-077	388-820-740	DECOD	05-05-077
388-550-4300	AMD-P	05-09-085	388-820-150	DECOD	05-05-077	388-820-750	DECOD	05-05-077
388-550-4300	AMD	05-12-132	388-820-160	DECOD	05-05-077	388-820-760	DECOD	05-07-138
388-550-4400	AMD-E	05-07-058	388-820-170	DECOD	05-05-077	388-820-770	DECOD	05-07-138
388-550-4400	AMD-P	05-07-135	388-820-180	DECOD	05-05-077	388-820-780	DECOD	05-07-138
388-550-4400	AMD	05-12-022	388-820-190	DECOD	05-05-077	388-820-790	DECOD	05-07-138
388-550-4600	PREP	05-06-080	388-820-200	DECOD	05-05-077	388-820-800	DECOD	05-07-138
388-550-4600	AMD-P	05-09-085	388-820-210	DECOD	05-05-077	388-820-810	DECOD	05-07-138
388-550-4600	AMD	05-12-132	388-820-220	DECOD	05-05-077	388-820-820	DECOD	05-07-138
388-550-4650	NEW-P	05-09-085	388-820-230	DECOD	05-05-077	388-820-830	DECOD	05-07-138
388-550-4650	NEW	05-12-132	388-820-240	DECOD	05-05-077	388-820-840	DECOD	05-07-138
388-550-4800	PREP	05-06-080	388-820-250	DECOD	05-05-077	388-820-850	DECOD	05-07-138
388-550-4800	AMD-P	05-09-085	388-820-260	DECOD	05-05-077	388-820-860	DECOD	05-07-138
388-550-4800	AMD	05-12-132	388-820-270	DECOD	05-05-077	388-820-870	DECOD	05-07-138
388-550-4900	AMD-P	05-09-086	388-820-280	DECOD	05-05-077	388-820-880	DECOD	05-05-077
388-550-4900	AMD	05-12-132	388-820-290	DECOD	05-05-077	388-820-890	DECOD	05-05-077
388-550-5100	REP-P	05-09-086	388-820-300	DECOD	05-05-077	388-820-900	DECOD	05-05-077
388-550-5100	REP	05-12-132	388-820-310	DECOD	05-05-077	388-820-910	DECOD	05-05-077
388-550-5210	AMD-P	05-09-086	388-820-320	DECOD	05-05-077	388-820-920	DECOD	05-05-077
388-550-5210	AMD	05-12-132	388-820-330	DECOD	05-05-077	388-820-930	DECOD	05-05-077
388-550-5220	AMD-P	05-09-086	388-820-340	DECOD	05-05-077	388-823-0010	NEW-P	05-04-057
388-550-5220	AMD	05-12-132	388-820-350	DECOD	05-05-077	388-823-0010	NEW	05-12-130
388-550-5250	REP-P	05-09-086	388-820-360	DECOD	05-05-077	388-823-0020	NEW-P	05-04-057
388-550-5250	REP	05-12-132	388-820-370	DECOD	05-05-077	388-823-0020	NEW	05-12-130
388-550-5300	REP-P	05-09-086	388-820-380	DECOD	05-05-077	388-823-0030	NEW-P	05-04-057
388-550-5300	REP	05-12-132	388-820-390	DECOD	05-05-077	388-823-0030	NEW	05-12-130
388-550-5350	REP-P	05-09-086	388-820-400	DECOD	05-05-077	388-823-0040	NEW-P	05-04-057
388-550-5350	REP	05-12-132	388-820-405	DECOD	05-05-077	388-823-0040	NEW	05-12-130
388-550-5400	AMD-P	05-09-086	388-820-410	DECOD	05-05-077	388-823-0050	NEW-P	05-04-057
388-550-5400	AMD	05-12-132	388-820-420	DECOD	05-05-077	388-823-0050	NEW	05-12-130
388-550-6000	PREP	05-13-076	388-820-430	DECOD	05-05-077	388-823-0060	NEW-P	05-04-057
388-550-6800	AMD-P	05-09-086	388-820-440	DECOD	05-05-077	388-823-0060	NEW	05-12-130
388-550-6800	AMD	05-12-132	388-820-450	DECOD	05-05-077	388-823-0070	NEW-P	05-04-057
388-550-6900	REP-P	05-09-086	388-820-460	DECOD	05-05-077	388-823-0070	NEW	05-12-130
388-550-6900	REP	05-12-132	388-820-470	DECOD	05-05-077	388-823-0080	NEW-P	05-04-057
388-550-7000	PREP	05-13-076	388-820-480	DECOD	05-05-077	388-823-0080	NEW	05-12-130
388-554-100	NEW	05-04-059	388-820-490	DECOD	05-05-077	388-823-0090	NEW-P	05-04-057
388-554-200	NEW	05-04-059	388-820-500	DECOD	05-05-077	388-823-0090	NEW	05-12-130
388-554-300	NEW	05-04-059	388-820-510	DECOD	05-05-077	388-823-0100	NEW-P	05-04-057
388-554-400	NEW	05-04-059	388-820-520	DECOD	05-05-077	388-823-0100	NEW	05-12-130
388-554-500	NEW	05-04-059	388-820-530	DECOD	05-05-077	388-823-0105	NEW-P	05-04-057
388-554-600	NEW	05-04-059	388-820-540	DECOD	05-05-077	388-823-0105	NEW	05-12-130
388-554-700	NEW	05-04-059	388-820-550	DECOD	05-05-077	388-823-0110	NEW-P	05-04-057
388-554-800	NEW	05-04-059	388-820-555	DECOD	05-05-077	388-823-0110	NEW	05-12-130
388-555	PREP-W	05-03-083	388-820-560	DECOD	05-05-077	388-823-0120	NEW-P	05-04-057
388-800	PREP	05-02-065	388-820-570	DECOD	05-05-077	388-823-0120	NEW	05-12-130
388-820-010	DECOD	05-05-077	388-820-580	DECOD	05-05-077	388-823-0130	NEW-P	05-04-057
388-820-020	DECOD	05-05-077	388-820-590	DECOD	05-05-077	388-823-0130	NEW	05-12-130
388-820-030	DECOD	05-05-077	388-820-600	DECOD	05-05-077	388-823-0140	NEW-P	05-04-057
388-820-040	DECOD	05-05-077	388-820-610	DECOD	05-05-077	388-823-0140	NEW	05-12-130
388-820-050	DECOD	05-05-077	388-820-620	DECOD	05-05-077	388-823-0150	NEW-P	05-04-057
388-820-056	DECOD	05-07-138	388-820-630	DECOD	05-05-077	388-823-0150	NEW	05-12-130
388-820-060	DECOD	05-05-077	388-820-640	DECOD	05-05-077	388-823-0160	NEW-P	05-04-057
388-820-070	DECOD	05-05-077	388-820-650	DECOD	05-05-077	388-823-0160	NEW	05-12-130
388-820-076	DECOD	05-05-077	388-820-660	DECOD	05-05-077	388-823-0170	NEW-P	05-04-057
388-820-080	DECOD	05-05-077	388-820-670	DECOD	05-05-077	388-823-0170	NEW	05-12-130
388-820-086	DECOD	05-05-077	388-820-680	DECOD	05-05-077	388-823-0200	NEW-P	05-04-057
388-820-090	DECOD	05-05-077	388-820-690	DECOD	05-05-077	388-823-0200	NEW	05-12-130
388-820-100	DECOD	05-05-077	388-820-700	DECOD	05-05-077	388-823-0210	NEW-P	05-04-057
388-820-110	DECOD	05-05-077	388-820-710	DECOD	05-05-077	388-823-0210	NEW	05-12-130

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-823-0215	NEW-P	05-04-057	388-823-1010	NEW-P	05-04-057	388-825-035	REP-P	05-04-057
388-823-0215	NEW	05-12-130	388-823-1010	NEW	05-12-130	388-825-035	REP	05-12-130
388-823-0220	NEW-P	05-04-057	388-823-1015	NEW-P	05-04-057	388-825-040	REP-P	05-04-057
388-823-0220	NEW	05-12-130	388-823-1015	NEW	05-12-130	388-825-040	REP	05-12-130
388-823-0230	NEW-P	05-04-057	388-823-1020	NEW-P	05-04-057	388-825-055	AMD-P	05-05-084
388-823-0230	NEW	05-12-130	388-823-1020	NEW	05-12-130	388-825-055	AMD-E	05-09-019
388-823-0300	NEW-P	05-04-057	388-823-1030	NEW-P	05-04-057	388-825-055	AMD	05-11-015
388-823-0300	NEW	05-12-130	388-823-1030	NEW	05-12-130	388-825-060	REP-P	05-05-084
388-823-0310	NEW-P	05-04-057	388-823-1040	NEW-P	05-04-057	388-825-060	REP-E	05-09-019
388-823-0310	NEW	05-12-130	388-823-1040	NEW	05-12-130	388-825-060	REP	05-11-015
388-823-0320	NEW-P	05-04-057	388-823-1050	NEW-P	05-04-057	388-825-064	REP-P	05-05-084
388-823-0320	NEW	05-12-130	388-823-1050	NEW	05-12-130	388-825-064	REP-E	05-09-019
388-823-0330	NEW-P	05-04-057	388-823-1060	NEW-P	05-04-057	388-825-064	REP	05-11-015
388-823-0330	NEW	05-12-130	388-823-1060	NEW	05-12-130	388-825-070	REP-P	05-05-084
388-823-0400	NEW-P	05-04-057	388-823-1070	NEW-P	05-04-057	388-825-070	REP-E	05-09-019
388-823-0400	NEW	05-12-130	388-823-1070	NEW	05-12-130	388-825-070	REP	05-11-015
388-823-0410	NEW-P	05-04-057	388-823-1080	NEW-P	05-04-057	388-825-075	REP-P	05-05-084
388-823-0410	NEW	05-12-130	388-823-1080	NEW	05-12-130	388-825-075	REP-E	05-09-019
388-823-0420	NEW-P	05-04-057	388-823-1090	NEW-P	05-04-057	388-825-075	REP	05-11-015
388-823-0420	NEW	05-12-130	388-823-1090	NEW	05-12-130	388-825-076	REP-P	05-05-084
388-823-0500	NEW-P	05-04-057	388-823-1095	NEW-P	05-04-057	388-825-076	REP-E	05-09-019
388-823-0500	NEW	05-12-130	388-823-1095	NEW	05-12-130	388-825-076	REP	05-11-015
388-823-0510	NEW-P	05-04-057	388-823-1100	NEW-P	05-04-057	388-825-077	REP-P	05-05-084
388-823-0510	NEW	05-12-130	388-823-1100	NEW	05-12-130	388-825-077	REP-E	05-09-019
388-823-0515	NEW-P	05-04-057	388-824-0001	NEW-P	05-09-084	388-825-077	REP	05-11-015
388-823-0515	NEW	05-12-130	388-824-0010	NEW-P	05-09-084	388-825-078	REP-P	05-05-084
388-823-0600	NEW-P	05-04-057	388-824-0020	NEW-P	05-09-084	388-825-078	REP-E	05-09-019
388-823-0600	NEW	05-12-130	388-824-0030	NEW-P	05-09-084	388-825-078	REP	05-11-015
388-823-0610	NEW-P	05-04-057	388-824-0040	NEW-P	05-09-084	388-825-085	REP-P	05-05-084
388-823-0610	NEW	05-12-130	388-824-0050	NEW-P	05-09-084	388-825-085	REP-E	05-09-019
388-823-0615	NEW-P	05-04-057	388-824-0060	NEW-P	05-09-084	388-825-085	REP	05-11-015
388-823-0615	NEW	05-12-130	388-824-0070	NEW-P	05-09-084	388-825-086	REP-P	05-05-084
388-823-0700	NEW-P	05-04-057	388-824-0080	NEW-P	05-09-084	388-825-086	REP-E	05-09-019
388-823-0700	NEW	05-12-130	388-824-0090	NEW-P	05-09-084	388-825-086	REP	05-11-015
388-823-0710	NEW-P	05-04-057	388-824-0100	NEW-P	05-09-084	388-825-087	REP-P	05-05-084
388-823-0710	NEW	05-12-130	388-824-0110	NEW-P	05-09-084	388-825-087	REP-E	05-09-019
388-823-0800	NEW-P	05-04-057	388-824-0120	NEW-P	05-09-084	388-825-087	REP	05-11-015
388-823-0800	NEW	05-12-130	388-824-0130	NEW-P	05-09-084	388-825-090	REP-P	05-05-084
388-823-0810	NEW-P	05-04-057	388-824-0140	NEW-P	05-09-084	388-825-090	REP-E	05-09-019
388-823-0810	NEW	05-12-130	388-824-0150	NEW-P	05-09-084	388-825-090	REP	05-11-015
388-823-0820	NEW-P	05-04-057	388-824-0160	NEW-P	05-09-084	388-825-095	REP-P	05-05-084
388-823-0820	NEW	05-12-130	388-824-0170	NEW-P	05-09-084	388-825-095	REP-E	05-09-019
388-823-0830	NEW-P	05-04-057	388-824-0180	NEW-P	05-09-084	388-825-095	REP	05-11-015
388-823-0830	NEW	05-12-130	388-824-0190	NEW-P	05-09-084	388-825-103	AMD-P	05-05-084
388-823-0840	NEW-P	05-04-057	388-824-0200	NEW-P	05-09-084	388-825-103	AMD-E	05-09-019
388-823-0840	NEW	05-12-130	388-824-0210	NEW-P	05-09-084	388-825-103	AMD	05-11-015
388-823-0850	NEW-P	05-04-057	388-824-0220	NEW-P	05-09-084	388-825-120	AMD-E	05-07-075
388-823-0850	NEW	05-12-130	388-824-0230	NEW-P	05-09-084	388-825-120	AMD-P	05-13-041
388-823-0900	NEW-P	05-04-057	388-824-0240	NEW-P	05-09-084	388-825-125	NEW-E	05-07-075
388-823-0900	NEW	05-12-130	388-824-0250	NEW-P	05-09-084	388-825-125	NEW-P	05-13-041
388-823-0910	NEW-P	05-04-057	388-824-0260	NEW-P	05-09-084	388-825-130	NEW-E	05-07-075
388-823-0910	NEW	05-12-130	388-824-0270	NEW-P	05-09-084	388-825-130	NEW-P	05-13-041
388-823-0920	NEW-P	05-04-057	388-824-0280	NEW-P	05-09-084	388-825-135	NEW-E	05-07-075
388-823-0920	NEW	05-12-130	388-824-0290	NEW-P	05-09-084	388-825-135	NEW-P	05-13-041
388-823-0930	NEW-P	05-04-057	388-824-0300	NEW-P	05-09-084	388-825-140	NEW-E	05-07-075
388-823-0930	NEW	05-12-130	388-824-0310	NEW-P	05-09-084	388-825-140	NEW-P	05-13-041
388-823-0940	NEW-P	05-04-057	388-824-0320	NEW-P	05-09-084	388-825-145	NEW-E	05-07-075
388-823-0940	NEW	05-12-130	388-824-0330	NEW-P	05-09-084	388-825-145	NEW-P	05-13-041
388-823-1000	NEW-P	05-04-057	388-825	PREP	05-13-174	388-825-150	NEW-E	05-07-075
388-823-1000	NEW	05-12-130	388-825-030	REP-P	05-04-057	388-825-150	NEW-P	05-13-041
388-823-1005	NEW-P	05-04-057	388-825-030	AMD-E	05-07-081	388-825-155	NEW-E	05-07-075
388-823-1005	NEW	05-12-130	388-825-030	REP	05-12-130	388-825-155	NEW-P	05-13-041

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-825-160	NEW-E	05-07-075	388-825-370	NEW-E	05-07-075	388-845-0080	NEW-E	05-04-020
388-825-160	NEW-P	05-13-041	388-825-370	NEW-P	05-13-041	388-845-0080	NEW-E	05-12-026
388-825-165	NEW-E	05-07-075	388-825-375	NEW-E	05-07-075	388-845-0085	NEW-E	05-04-020
388-825-165	NEW-P	05-13-041	388-825-375	NEW-P	05-13-041	388-845-0085	NEW-E	05-12-026
388-825-170	REP-E	05-07-075	388-825-380	NEW-E	05-07-075	388-845-0090	NEW-E	05-04-020
388-825-170	REP-P	05-13-041	388-825-380	NEW-P	05-13-041	388-845-0090	NEW-E	05-12-026
388-825-180	REP-E	05-07-075	388-825-381	NEW-E	05-07-075	388-845-0095	NEW-E	05-04-020
388-825-180	REP-P	05-13-041	388-825-381	NEW-P	05-13-041	388-845-0095	NEW-E	05-12-026
388-825-190	REP-E	05-07-075	388-825-385	NEW-E	05-07-075	388-845-0096	NEW-E	05-04-020
388-825-190	REP-P	05-13-041	388-825-385	NEW-P	05-13-041	388-845-0096	NEW-E	05-12-026
388-825-260	REP-E	05-07-075	388-825-390	NEW-E	05-07-075	388-845-0100	NEW-E	05-04-020
388-825-260	REP-P	05-13-041	388-825-390	NEW-P	05-13-041	388-845-0100	NEW-E	05-12-026
388-825-262	REP-E	05-07-075	388-825-395	NEW-E	05-07-075	388-845-0105	NEW-E	05-04-020
388-825-262	REP-P	05-13-041	388-825-395	NEW-P	05-13-041	388-845-0105	NEW-E	05-12-026
388-825-264	REP-E	05-07-075	388-825-396	NEW-E	05-07-075	388-845-0110	NEW-E	05-04-020
388-825-264	REP-P	05-13-041	388-825-396	NEW-P	05-13-041	388-845-0110	NEW-E	05-12-026
388-825-266	REP-E	05-07-075	388-825-400	NEW-E	05-07-075	388-845-0115	NEW-E	05-04-020
388-825-266	REP-P	05-13-041	388-825-400	NEW-P	05-13-041	388-845-0115	NEW-E	05-12-026
388-825-268	REP-E	05-07-075	388-827	PREP-W	05-02-066	388-845-0120	NEW-E	05-04-020
388-825-268	REP-P	05-13-041	388-827	PREP	05-02-067	388-845-0120	NEW-E	05-12-026
388-825-270	REP-E	05-07-075	388-827-0115	AMD-E	05-05-023	388-845-0200	NEW-E	05-04-020
388-825-270	REP-P	05-13-041	388-827-0115	AMD-P	05-06-087	388-845-0200	NEW-E	05-12-026
388-825-272	REP-E	05-07-075	388-827-0115	AMD	05-10-039	388-845-0205	NEW-E	05-04-020
388-825-272	REP-P	05-13-041	388-827-0145	AMD-E	05-05-023	388-845-0205	NEW-E	05-12-026
388-825-276	REP-E	05-07-075	388-827-0145	AMD-P	05-06-087	388-845-0210	NEW-E	05-04-020
388-825-276	REP-P	05-13-041	388-827-0145	AMD	05-10-039	388-845-0210	NEW-E	05-12-026
388-825-278	REP-E	05-07-075	388-845-0001	NEW-E	05-12-026	388-845-0215	NEW-E	05-04-020
388-825-278	REP-P	05-13-041	388-845-0005	NEW-E	05-04-020	388-845-0215	NEW-E	05-12-026
388-825-280	REP-E	05-07-075	388-845-0005	NEW-E	05-12-026	388-845-0220	NEW-E	05-04-020
388-825-280	REP-P	05-13-041	388-845-0010	NEW-E	05-04-020	388-845-0220	NEW-E	05-12-026
388-825-282	REP-E	05-07-075	388-845-0010	NEW-E	05-12-026	388-845-0300	NEW-E	05-04-020
388-825-282	REP-P	05-13-041	388-845-0015	NEW-E	05-04-020	388-845-0300	NEW-E	05-12-026
388-825-284	REP-E	05-07-075	388-845-0015	NEW-E	05-12-026	388-845-0305	NEW-E	05-04-020
388-825-284	REP-P	05-13-041	388-845-0020	NEW-E	05-04-020	388-845-0305	NEW-E	05-12-026
388-825-300	NEW-E	05-07-075	388-845-0020	NEW-E	05-12-026	388-845-0310	NEW-E	05-04-020
388-825-300	NEW-P	05-13-041	388-845-0025	NEW-E	05-04-020	388-845-0310	NEW-E	05-12-026
388-825-305	NEW-E	05-07-075	388-845-0025	NEW-E	05-12-026	388-845-0400	NEW-E	05-04-020
388-825-305	NEW-P	05-13-041	388-845-0030	NEW-E	05-04-020	388-845-0400	NEW-E	05-12-026
388-825-310	NEW-E	05-07-075	388-845-0030	NEW-E	05-12-026	388-845-0405	NEW-E	05-04-020
388-825-310	NEW-P	05-13-041	388-845-0035	NEW-E	05-04-020	388-845-0405	NEW-E	05-12-026
388-825-315	NEW-E	05-07-075	388-845-0035	NEW-E	05-12-026	388-845-0410	NEW-E	05-04-020
388-825-315	NEW-P	05-13-041	388-845-0040	NEW-E	05-04-020	388-845-0410	NEW-E	05-12-026
388-825-316	NEW-E	05-07-075	388-845-0040	NEW-E	05-12-026	388-845-0500	NEW-E	05-04-020
388-825-316	NEW-P	05-13-041	388-845-0041	NEW-E	05-04-020	388-845-0500	NEW-E	05-12-026
388-825-320	NEW-E	05-07-075	388-845-0041	NEW-E	05-12-026	388-845-0505	NEW-E	05-04-020
388-825-320	NEW-P	05-13-041	388-845-0045	NEW-E	05-04-020	388-845-0505	NEW-E	05-12-026
388-825-325	NEW-E	05-07-075	388-845-0045	NEW-E	05-12-026	388-845-0510	NEW-E	05-04-020
388-825-325	NEW-P	05-13-041	388-845-0050	NEW-E	05-04-020	388-845-0510	NEW-E	05-12-026
388-825-330	NEW-E	05-07-075	388-845-0050	NEW-E	05-12-026	388-845-0600	NEW-E	05-04-020
388-825-330	NEW-P	05-13-041	388-845-0051	NEW-E	05-04-020	388-845-0600	NEW-E	05-12-026
388-825-335	NEW-E	05-07-075	388-845-0051	NEW-E	05-12-026	388-845-0605	NEW-E	05-04-020
388-825-335	NEW-P	05-13-041	388-845-0055	NEW-E	05-04-020	388-845-0605	NEW-E	05-12-026
388-825-340	NEW-E	05-07-075	388-845-0055	NEW-E	05-12-026	388-845-0610	NEW-E	05-04-020
388-825-340	NEW-P	05-13-041	388-845-0056	NEW-E	05-04-020	388-845-0610	NEW-E	05-12-026
388-825-345	NEW-E	05-07-075	388-845-0060	NEW-E	05-04-020	388-845-0700	NEW-E	05-04-020
388-825-345	NEW-P	05-13-041	388-845-0060	NEW-E	05-12-026	388-845-0700	NEW-E	05-12-026
388-825-355	NEW-E	05-07-075	388-845-0065	NEW-E	05-04-020	388-845-0705	NEW-E	05-04-020
388-825-355	NEW-P	05-13-041	388-845-0065	NEW-E	05-12-026	388-845-0705	NEW-E	05-12-026
388-825-360	NEW-E	05-07-075	388-845-0070	NEW-E	05-04-020	388-845-0710	NEW-E	05-04-020
388-825-360	NEW-P	05-13-041	388-845-0070	NEW-E	05-12-026	388-845-0710	NEW-E	05-12-026
388-825-365	NEW-E	05-07-075	388-845-0075	NEW-E	05-04-020	388-845-0750	NEW-E	05-12-026
388-825-365	NEW-P	05-13-041	388-845-0075	NEW-E	05-12-026	388-845-0755	NEW-E	05-12-026

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Table of WAC Sections Affected

WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
388-845-0760	NEW-E	05-12-026	388-845-1605	NEW-E	05-12-026	388-845-3035	NEW-E	05-04-020
388-845-0800	NEW-E	05-04-020	388-845-1606	NEW-E	05-04-020	388-845-3035	NEW-E	05-12-026
388-845-0800	NEW-E	05-12-026	388-845-1606	NEW-E	05-12-026	388-845-3040	NEW-E	05-04-020
388-845-0805	NEW-E	05-04-020	388-845-1610	NEW-E	05-04-020	388-845-3040	NEW-E	05-12-026
388-845-0805	NEW-E	05-12-026	388-845-1610	NEW-E	05-12-026	388-845-3045	NEW-E	05-04-020
388-845-0810	NEW-E	05-04-020	388-845-1615	NEW-E	05-04-020	388-845-3045	NEW-E	05-12-026
388-845-0810	NEW-E	05-12-026	388-845-1615	NEW-E	05-12-026	388-845-3050	NEW-E	05-04-020
388-845-0820	NEW-E	05-04-020	388-845-1620	NEW-E	05-04-020	388-845-3050	NEW-E	05-12-026
388-845-0820	NEW-E	05-12-026	388-845-1620	NEW-E	05-12-026	388-845-3055	NEW-E	05-04-020
388-845-0900	NEW-E	05-04-020	388-845-1650	NEW-E	05-12-026	388-845-3055	NEW-E	05-12-026
388-845-0900	NEW-E	05-12-026	388-845-1655	NEW-E	05-12-026	388-845-3060	NEW-E	05-04-020
388-845-0905	NEW-E	05-04-020	388-845-1660	NEW-E	05-12-026	388-845-3060	NEW-E	05-12-026
388-845-0905	NEW-E	05-12-026	388-845-1700	NEW-E	05-04-020	388-845-3065	NEW-E	05-04-020
388-845-0910	NEW-E	05-04-020	388-845-1700	NEW-E	05-12-026	388-845-3065	NEW-E	05-12-026
388-845-0910	NEW-E	05-12-026	388-845-1705	NEW-E	05-04-020	388-845-3070	NEW-E	05-04-020
388-845-1000	NEW-E	05-04-020	388-845-1705	NEW-E	05-12-026	388-845-3070	NEW-E	05-12-026
388-845-1000	NEW-E	05-12-026	388-845-1710	NEW-E	05-04-020	388-845-3075	NEW-E	05-04-020
388-845-1010	NEW-E	05-04-020	388-845-1710	NEW-E	05-12-026	388-845-3075	NEW-E	05-12-026
388-845-1010	NEW-E	05-12-026	388-845-1800	NEW-E	05-04-020	388-845-3080	NEW-E	05-04-020
388-845-1015	NEW-E	05-04-020	388-845-1800	NEW-E	05-12-026	388-845-3080	NEW-E	05-12-026
388-845-1015	NEW-E	05-12-026	388-845-1805	NEW-E	05-04-020	388-845-3085	NEW-E	05-04-020
388-845-1100	NEW-E	05-04-020	388-845-1805	NEW-E	05-12-026	388-845-3085	NEW-E	05-12-026
388-845-1100	NEW-E	05-12-026	388-845-1810	NEW-E	05-04-020	388-845-3090	NEW-E	05-04-020
388-845-1105	NEW-E	05-04-020	388-845-1810	NEW-E	05-12-026	388-845-3090	NEW-E	05-12-026
388-845-1105	NEW-E	05-12-026	388-845-1900	NEW-E	05-04-020	388-845-3095	NEW-E	05-04-020
388-845-1110	NEW-E	05-04-020	388-845-1900	NEW-E	05-12-026	388-845-3095	NEW-E	05-12-026
388-845-1110	NEW-E	05-12-026	388-845-1905	NEW-E	05-04-020	388-845-4000	NEW-E	05-04-020
388-845-1150	NEW-E	05-04-020	388-845-1905	NEW-E	05-12-026	388-845-4000	NEW-E	05-12-026
388-845-1150	NEW-E	05-12-026	388-845-1910	NEW-E	05-04-020	388-845-4005	NEW-E	05-04-020
388-845-1155	NEW-E	05-04-020	388-845-1910	NEW-E	05-12-026	388-845-4005	NEW-E	05-12-026
388-845-1155	NEW-E	05-12-026	388-845-2000	NEW-E	05-04-020	388-845-4010	NEW-E	05-04-020
388-845-1160	NEW-E	05-04-020	388-845-2000	NEW-E	05-12-026	388-845-4010	NEW-E	05-12-026
388-845-1160	NEW-E	05-12-026	388-845-2005	NEW-E	05-04-020	388-845-4015	NEW-E	05-04-020
388-845-1200	NEW-E	05-04-020	388-845-2005	NEW-E	05-12-026	388-845-4015	NEW-E	05-12-026
388-845-1200	NEW-E	05-12-026	388-845-2010	NEW-E	05-04-020	388-850-035	AMD-P	05-05-084
388-845-1205	NEW-E	05-04-020	388-845-2010	NEW-E	05-12-026	388-850-035	AMD-E	05-09-019
388-845-1205	NEW-E	05-12-026	388-845-2100	NEW-E	05-04-020	388-850-035	AMD	05-11-015
388-845-1210	NEW-E	05-04-020	388-845-2100	NEW-E	05-12-026	388-850-045	AMD-P	05-05-084
388-845-1210	NEW-E	05-12-026	388-845-2105	NEW-E	05-04-020	388-850-045	AMD-E	05-09-019
388-845-1300	NEW-E	05-04-020	388-845-2105	NEW-E	05-12-026	388-850-045	AMD	05-11-015
388-845-1300	NEW-E	05-12-026	388-845-2110	NEW-E	05-04-020	388-850-0610	NEW-P	05-08-123
388-845-1305	NEW-E	05-04-020	388-845-2110	NEW-E	05-12-026	388-865-0150	AMD-P	05-08-123
388-845-1305	NEW-E	05-12-026	388-845-2200	NEW-E	05-04-020	388-865-0230	AMD-P	05-08-123
388-845-1310	NEW-E	05-04-020	388-845-2200	NEW-E	05-12-026	388-865-0335	AMD-P	05-08-122
388-845-1310	NEW-E	05-12-026	388-845-2205	NEW-E	05-04-020	388-865-0340	REP-P	05-08-122
388-845-1400	NEW-E	05-04-020	388-845-2205	NEW-E	05-12-026	388-865-0400	AMD-P	05-08-123
388-845-1400	NEW-E	05-12-026	388-845-2210	NEW-E	05-04-020	388-865-0420	AMD-P	05-09-080
388-845-1405	NEW-E	05-04-020	388-845-2210	NEW-E	05-12-026	388-865-0430	AMD-P	05-09-080
388-845-1405	NEW-E	05-12-026	388-845-3000	NEW-E	05-04-020	388-865-0453	NEW-P	05-08-123
388-845-1410	NEW-E	05-04-020	388-845-3000	NEW-E	05-12-026	388-865-0610	AMD-P	05-09-080
388-845-1410	NEW-E	05-12-026	388-845-3005	NEW-E	05-04-020	388-865-0620	AMD-P	05-09-080
388-845-1500	NEW-E	05-04-020	388-845-3005	NEW-E	05-12-026	388-865-0630	AMD-P	05-09-080
388-845-1500	NEW-E	05-12-026	388-845-3010	NEW-E	05-04-020	390	PREP	05-04-037
388-845-1505	NEW-E	05-04-020	388-845-3010	NEW-E	05-12-026	390- 16-011	AMD	05-06-070
388-845-1505	NEW-E	05-12-026	388-845-3015	NEW-E	05-04-020	390- 16-012	AMD	05-06-070
388-845-1510	NEW-E	05-04-020	388-845-3015	NEW-E	05-12-026	390- 16-105	AMD-P	05-06-068
388-845-1510	NEW-E	05-12-026	388-845-3020	NEW-E	05-04-020	390- 16-105	AMD	05-11-001
388-845-1515	NEW-E	05-04-020	388-845-3020	NEW-E	05-12-026	390- 16-125	AMD-P	05-06-068
388-845-1515	NEW-E	05-12-026	388-845-3025	NEW-E	05-04-020	390- 16-125	AMD	05-11-001
388-845-1600	NEW-E	05-04-020	388-845-3025	NEW-E	05-12-026	390- 16-310	AMD	05-06-070
388-845-1600	NEW-E	05-12-026	388-845-3030	NEW-E	05-04-020	390- 16-311	REP	05-06-070
388-845-1605	NEW-E	05-04-020	388-845-3030	NEW-E	05-12-026	390- 17-310	AMD	05-04-039

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WAC #	ACTION	WSR #	WAC #	ACTION	WSR #	WAC #	ACTION	WSR #
390-19-030	AMD-P	05-06-068	392-140-912	PREP	05-08-029	415-112-120	AMD	05-12-042
390-19-030	AMD	05-11-001	392-140-912	AMD-P	05-13-095	415-112-122	NEW-P	05-08-031
390-20-0101	AMD	05-06-070	392-140-913	PREP	05-08-029	415-112-122	NEW	05-12-042
390-20-110	AMD	05-06-070	392-142	PREP	05-10-027	415-112-125	AMD-P	05-08-031
390-20-130	AMD-P	05-06-069	392-153	PREP	05-11-055	415-112-125	AMD	05-12-042
390-20-130	AMD	05-11-002	392-168-110	AMD-P	05-06-066	415-112-130	AMD-P	05-08-031
390-24-010	AMD	05-06-070	392-168-115	AMD-P	05-06-066	415-112-130	AMD	05-12-042
390-24-020	AMD	05-06-070	392-168-120	REP-P	05-06-066	415-112-135	REP-P	05-08-031
390-37-060	AMD-P	05-06-068	392-168-125	AMD-P	05-06-066	415-112-135	REP	05-12-042
390-37-060	AMD	05-11-001	392-168-132	AMD-P	05-06-066	415-112-145	AMD-P	05-08-031
390-37-090	AMD-P	05-06-068	392-168-135	AMD-P	05-06-066	415-112-145	AMD	05-12-042
390-37-090	AMD	05-11-001	392-168-140	AMD-P	05-06-066	415-112-155	AMD	05-03-001
390-37-160	AMD	05-04-038	392-168-145	AMD-P	05-06-066	415-112-240	AMD-P	05-08-031
390-37-165	AMD	05-04-038	392-168-155	AMD-P	05-06-066	415-112-240	AMD	05-12-042
390-37-170	AMD	05-04-038	392-168-160	REP-P	05-06-066	415-112-250	AMD-P	05-08-031
390-37-175	AMD	05-04-038	392-168-165	REP-P	05-06-066	415-112-250	AMD	05-12-042
392-109	PREP	05-10-028	392-168-167	REP-P	05-06-066	415-112-260	AMD-P	05-08-031
392-121	PREP	05-06-065	392-168-170	REP-P	05-06-066	415-112-260	AMD	05-12-042
392-121-108	PREP	05-10-048	392-168-180	AMD-P	05-06-066	415-112-270	AMD-P	05-08-031
392-121-108	AMD-P	05-13-096	415-02-140	AMD-P	05-08-034	415-112-270	AMD	05-12-042
392-121-182	AMD-P	05-09-088	415-02-140	AMD	05-12-107	415-112-290	AMD-P	05-08-031
392-121-182	AMD	05-13-154	415-02-180	NEW-P	05-10-009	415-112-290	AMD	05-12-042
392-121-262	PREP	05-13-098	415-02-180	NEW	05-13-045	415-112-300	AMD-P	05-08-031
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456-09-610	REP-P	05-09-125	456-09-935	REP-P	05-09-125	456-10-420	REP-P	05-09-125
456-09-610	REP	05-13-141	456-09-935	REP	05-13-141	456-10-420	REP	05-13-141
456-09-615	REP-P	05-09-125	456-09-940	REP-P	05-09-125	456-10-430	REP-P	05-09-125
456-09-615	REP	05-13-141	456-09-940	REP	05-13-141	456-10-430	REP	05-13-141
456-09-620	REP-P	05-09-125	456-09-945	REP-P	05-09-125	456-10-440	REP-P	05-09-125
456-09-620	REP	05-13-141	456-09-945	REP	05-13-141	456-10-440	REP	05-13-141
456-09-625	REP-P	05-09-125	456-09-950	REP-P	05-09-125	456-10-500	NEW-P	05-09-125
456-09-625	REP	05-13-141	456-09-950	REP	05-13-141	456-10-500	NEW	05-13-141
456-09-635	REP-P	05-09-125	456-09-955	AMD-P	05-09-125	456-10-501	NEW-P	05-09-125
456-09-635	REP	05-13-141	456-09-955	AMD	05-13-141	456-10-501	NEW	05-13-141
456-09-640	REP-P	05-09-125	456-09-960	AMD-P	05-09-125	456-10-503	NEW-P	05-09-125
456-09-640	REP	05-13-141	456-09-960	AMD	05-13-141	456-10-503	NEW	05-13-141
456-09-645	REP-P	05-09-125	456-10-001	NEW-P	05-09-125	456-10-505	AMD-P	05-09-125
456-09-645	REP	05-13-141	456-10-001	NEW	05-13-141	456-10-505	AMD	05-13-141
456-09-650	REP-P	05-09-125	456-10-010	AMD-P	05-09-125	456-10-507	NEW-P	05-09-125
456-09-650	REP	05-13-141	456-10-010	AMD	05-13-141	456-10-507	NEW	05-13-141
456-09-655	REP-P	05-09-125	456-10-110	AMD-P	05-09-125	456-10-510	AMD-P	05-09-125
456-09-655	REP	05-13-141	456-10-110	AMD	05-13-141	456-10-510	AMD	05-13-141
456-09-705	REP-P	05-09-125	456-10-120	AMD-P	05-09-125	456-10-515	AMD-P	05-09-125
456-09-705	REP	05-13-141	456-10-120	AMD	05-13-141	456-10-515	AMD	05-13-141
456-09-710	REP-P	05-09-125	456-10-130	REP-P	05-09-125	456-10-525	REP-P	05-09-125
456-09-710	REP	05-13-141	456-10-130	REP	05-13-141	456-10-525	REP	05-13-141
456-09-715	REP-P	05-09-125	456-10-140	AMD-P	05-09-125	456-10-530	AMD-P	05-09-125
456-09-715	REP	05-13-141	456-10-140	AMD	05-13-141	456-10-530	AMD	05-13-141
456-09-720	REP-P	05-09-125	456-10-150	AMD-P	05-09-125	456-10-535	REP-P	05-09-125
456-09-720	REP	05-13-141	456-10-150	AMD	05-13-141	456-10-535	REP	05-13-141
456-09-725	REP-P	05-09-125	456-10-160	AMD-P	05-09-125	456-10-540	AMD-P	05-09-125
456-09-725	REP	05-13-141	456-10-160	AMD	05-13-141	456-10-540	AMD	05-13-141
456-09-730	REP-P	05-09-125	456-10-170	REP-P	05-09-125	456-10-545	AMD-P	05-09-125
456-09-730	REP	05-13-141	456-10-170	REP	05-13-141	456-10-545	AMD	05-13-141
456-09-732	REP-P	05-09-125	456-10-180	REP-P	05-09-125	456-10-547	AMD-P	05-09-125
456-09-732	REP	05-13-141	456-10-180	REP	05-13-141	456-10-547	AMD	05-13-141
456-09-735	REP-P	05-09-125	456-10-210	AMD-P	05-09-125	456-10-550	AMD-P	05-09-125
456-09-735	REP	05-13-141	456-10-210	AMD	05-13-141	456-10-550	AMD	05-13-141
456-09-740	AMD-P	05-09-125	456-10-215	NEW-P	05-09-125	456-10-555	AMD-P	05-09-125
456-09-740	AMD	05-13-141	456-10-215	NEW	05-13-141	456-10-555	AMD	05-13-141
456-09-742	AMD-P	05-09-125	456-10-220	AMD-P	05-09-125	456-10-560	AMD-P	05-09-125
456-09-742	AMD	05-13-141	456-10-220	AMD	05-13-141	456-10-560	AMD	05-13-141
456-09-745	AMD-P	05-09-125	456-10-300	NEW-P	05-09-125	456-10-565	AMD-P	05-09-125
456-09-745	AMD	05-13-141	456-10-300	NEW	05-13-141	456-10-565	AMD	05-13-141
456-09-750	AMD-P	05-09-125	456-10-310	AMD-P	05-09-125	456-10-570	REP-P	05-09-125
456-09-750	AMD	05-13-141	456-10-310	AMD	05-13-141	456-10-570	REP	05-13-141
456-09-755	AMD-P	05-09-125	456-10-315	AMD-P	05-09-125	456-10-710	AMD-P	05-09-125
456-09-755	AMD	05-13-141	456-10-315	AMD	05-13-141	456-10-710	AMD	05-13-141
456-09-760	REP-P	05-09-125	456-10-320	REP-P	05-09-125	456-10-720	REP-P	05-09-125
456-09-760	REP	05-13-141	456-10-320	REP	05-13-141	456-10-720	REP	05-13-141
456-09-765	AMD-P	05-09-125	456-10-325	AMD-P	05-09-125	456-10-725	AMD-P	05-09-125
456-09-765	AMD	05-13-141	456-10-325	AMD	05-13-141	456-10-725	AMD	05-13-141
456-09-770	REP-P	05-09-125	456-10-330	AMD-P	05-09-125	456-10-730	AMD-P	05-09-125
456-09-770	REP	05-13-141	456-10-330	AMD	05-13-141	456-10-730	AMD	05-13-141
456-09-775	REP-P	05-09-125	456-10-335	AMD-P	05-09-125	456-10-735	REP-P	05-09-125
456-09-775	REP	05-13-141	456-10-335	AMD	05-13-141	456-10-735	REP	05-13-141
456-09-910	AMD-P	05-09-125	456-10-340	REP-P	05-09-125	456-10-740	REP-P	05-09-125
456-09-910	AMD	05-13-141	456-10-340	REP	05-13-141	456-10-740	REP	05-13-141
456-09-915	AMD-P	05-09-125	456-10-345	REP-P	05-09-125	456-10-745	REP-P	05-09-125
456-09-915	AMD	05-13-141	456-10-345	REP	05-13-141	456-10-745	REP	05-13-141
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456- 10-755	AMD	05-13-141	468- 38-005	NEW	05-04-053	478-116-431	AMD	05-08-064
458- 12-342	PREP	05-06-017	468- 38-010	REP	05-04-053	478-118-010	AMD-P	05-03-071
458- 12-342	AMD-P	05-11-007	468- 38-020	REP	05-04-053	478-118-010	AMD	05-08-017
458- 16-1000	NEW-E	05-04-047	468- 38-030	AMD	05-04-053	478-118-020	AMD-P	05-03-071
458- 16-1000	NEW-P	05-05-063	468- 38-040	REP	05-04-053	478-118-020	AMD	05-08-017
458- 16-1000	NEW-S	05-12-101	468- 38-050	AMD	05-04-053	478-118-045	NEW-P	05-03-071
458- 16-1000	NEW-E	05-12-102	468- 38-060	REP	05-04-053	478-118-045	NEW	05-08-017
458- 20-100	PREP	05-07-156	468- 38-070	AMD	05-04-053	478-118-050	AMD-P	05-03-071
458- 20-141	AMD	05-03-053	468- 38-071	AMD	05-04-053	478-118-050	AMD	05-08-017
458- 20-144	AMD	05-03-052	468- 38-073	NEW-P	05-07-085	478-118-055	NEW-P	05-03-071
458- 20-168	AMD-P	05-06-019	468- 38-073	NEW	05-12-002	478-118-055	NEW	05-08-017
458- 20-173	PREP	05-12-138	468- 38-075	AMD	05-04-053	478-118-060	AMD-P	05-03-071
458- 20-177	AMD-P	05-06-018	468- 38-080	AMD	05-04-053	478-118-060	AMD	05-08-017
458- 20-17803	NEW	05-03-051	468- 38-080	AMD	05-04-053	478-118-060	AMD	05-08-017
458- 20-190	AMD	05-03-002	468- 38-095	NEW	05-04-053	478-118-080	AMD-P	05-03-071
458- 20-191	REP	05-03-002	468- 38-100	AMD	05-04-053	478-118-080	AMD	05-08-017
458- 20-193	PREP	05-11-096	468- 38-110	REP	05-04-053	478-118-100	AMD-P	05-03-071
458- 20-193C	PREP	05-11-096	468- 38-120	AMD	05-04-053	478-118-100	AMD	05-08-017
458- 20-194	PREP	05-06-124	468- 38-130	REP	05-04-053	478-118-200	AMD-P	05-03-071
458- 20-196	AMD	05-04-048	468- 38-135	REP	05-04-053	478-118-200	AMD	05-08-017
458- 20-198	AMD	05-04-048	468- 38-140	REP	05-04-053	478-118-210	AMD-P	05-03-071
458- 20-216	AMD-P	05-09-032	468- 38-155	NEW	05-04-053	478-118-210	AMD	05-08-017
458- 20-229	PREP	05-12-137	468- 38-160	REP	05-04-053	478-118-270	AMD-P	05-03-071
458- 20-24001	PREP	05-05-061	468- 38-175	NEW	05-04-053	478-118-270	AMD	05-08-017
458- 20-24001A	PREP	05-05-061	468- 38-180	REP	05-04-053	478-118-290	NEW-P	05-03-071
458- 20-24003	PREP	05-05-062	468- 38-190	REP	05-04-053	478-118-290	NEW	05-08-017
458- 20-261	PREP	05-08-118	468- 38-200	REP	05-04-053	478-118-300	NEW-P	05-03-071
458- 20-267	NEW-E	05-03-016	468- 38-220	REP	05-04-053	478-118-300	NEW	05-08-017
458- 20-268	NEW-E	05-03-017	468- 38-230	REP	05-04-053	478-118-400	AMD-P	05-03-071
458- 20-268	PREP	05-09-121	468- 38-235	REP	05-04-053	478-118-400	AMD	05-08-017
458- 20-268	NEW-E	05-11-020	468- 38-240	REP	05-04-053	478-118-410	AMD-P	05-03-071
458- 20-270	NEW-X	05-13-163	468- 38-250	REP	05-04-053	478-118-410	AMD	05-08-017
458- 20-270	NEW-E	05-13-164	468- 38-260	REP	05-04-053	478-118-420	AMD-P	05-03-071
458- 20-99999	REP	05-03-002	468- 38-270	AMD-P	05-08-016	478-118-420	AMD	05-08-017
458- 40-610	AMD	05-08-070	468- 38-270	AMD	05-12-001	478-118-510	REP-P	05-03-071
458- 40-660	PREP	05-06-059	468- 38-280	AMD	05-04-053	478-118-510	REP	05-08-017
458- 40-660	AMD-P	05-11-052	468- 38-290	AMD	05-04-053	478-137	PREP	05-11-011
458- 40-680	AMD	05-08-070	468- 38-300	REP	05-04-053	478-250-050	AMD	05-08-064
458- 61	PREP	05-12-100	468- 38-310	REP	05-04-053	478-250-060	AMD	05-08-064
460- 24A-105	PREP	05-03-104	468- 38-320	REP	05-04-053	479- 12-150	AMD	05-05-004
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463- 60-385	RECOD-W	05-03-087	468- 38-340	REP	05-04-053	480- 60-035	PREP-W	05-07-007
463- 60-435	RECOD-W	05-03-087	468- 38-350	REP	05-04-053	480- 62-218	NEW-W	05-04-008
463- 60-525	RECOD-W	05-03-087	468- 38-360	AMD	05-04-053	480- 70-041	AMD	05-06-051
463- 60-625	RECOD-W	05-03-087	468- 38-390	REP	05-04-053	480- 70-051	AMD	05-06-051
463- 60-645	RECOD-W	05-03-087	468- 38-405	AMD	05-04-053	480- 70-077	NEW	05-06-051
463- 60-655	RECOD-W	05-03-087	468- 38-420	AMD	05-04-053	480- 70-078	NEW	05-06-051
463- 60-665	RECOD-W	05-03-087	468-300-010	AMD-P	05-05-058	480- 70-079	NEW	05-06-051
463- 60-675	RECOD-W	05-03-087	468-300-010	AMD-S	05-07-159	480- 73-010	NEW	05-06-051
463- 60-680	RECOD-W	05-03-087	468-300-010	AMD	05-10-041	480- 73-020	NEW	05-06-051
463- 60-685	RECOD-W	05-03-087	468-300-020	AMD-P	05-05-058	480- 73-030	NEW	05-06-051
463- 60-690	RECOD-W	05-03-087	468-300-020	AMD-S	05-07-159	480- 73-040	NEW	05-06-051
463- 64-060	NEW-W	05-03-087	468-300-020	AMD	05-10-041	480- 73-050	NEW	05-06-051
463- 66-010	RECOD-W	05-03-087	468-300-040	AMD-P	05-05-058	480- 73-060	NEW	05-06-051
463- 70-080	RECOD-W	05-03-087	468-300-040	AMD-S	05-07-159	480- 73-110	NEW	05-06-051
463- 76-020	RECOD-W	05-03-087	468-300-040	AMD	05-10-041	480- 73-110	AMD-S	05-10-099
463- 76-030	RECOD-W	05-03-087	468-300-220	AMD-P	05-05-058	480- 73-120	NEW	05-06-051
463- 76-040	RECOD-W	05-03-087	468-300-220	AMD-S	05-07-159	480- 73-130	NEW	05-06-051
463- 76-050	RECOD-W	05-03-087	468-300-220	AMD	05-10-041	480- 73-140	NEW	05-06-051
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480- 73-190	NEW	05-06-051	480- 93-080	AMD	05-10-055	480- 93-240	AMD-C	05-13-070
480- 73-200	NEW-S	05-10-099	480- 93-082	REP-S	05-02-096	480- 93-240	AMD-S	05-13-103
480- 73-210	NEW	05-06-051	480- 93-082	REP	05-10-055	480- 93-999	AMD-S	05-02-096
480- 73-999	NEW	05-06-051	480- 93-100	AMD-S	05-02-096	480- 93-999	AMD	05-10-055
480- 75-240	AMD-P	05-09-122	480- 93-100	AMD	05-10-055	480-100-008	AMD	05-06-051
480- 75-240	AMD-C	05-13-070	480- 93-110	AMD-S	05-02-096	480-100-023	AMD	05-06-051
480- 75-240	AMD-S	05-13-103	480- 93-110	AMD	05-10-055	480-100-207	NEW	05-06-051
480- 80-123	AMD	05-03-031	480- 93-111	REP-S	05-02-096	480-100-207	AMD-S	05-10-099
480- 80-204	AMD	05-03-031	480- 93-111	REP	05-10-055	480-100-208	REP	05-06-051
480- 80-206	AMD	05-03-031	480- 93-112	REP-S	05-02-096	480-100-209	NEW	05-06-051
480- 90-008	AMD	05-06-051	480- 93-112	REP	05-10-055	480-100-218	REP	05-06-051
480- 90-023	AMD	05-06-051	480- 93-115	AMD-S	05-02-096	480-100-242	NEW-S	05-10-099
480- 90-207	NEW	05-06-051	480- 93-115	AMD	05-10-055	480-100-244	NEW	05-06-051
480- 90-207	AMD-S	05-10-099	480- 93-120	REP-S	05-02-096	480-100-245	NEW	05-06-051
480- 90-208	REP	05-06-051	480- 93-120	REP	05-10-055	480-100-248	NEW	05-06-051
480- 90-209	NEW	05-06-051	480- 93-124	AMD-S	05-02-096	480-100-248	AMD-S	05-10-099
480- 90-218	REP	05-06-051	480- 93-124	AMD	05-10-055	480-100-252	NEW	05-06-051
480- 90-242	NEW-S	05-10-099	480- 93-130	AMD-S	05-02-096	480-100-257	NEW	05-06-051
480- 90-244	NEW	05-06-051	480- 93-130	AMD	05-10-055	480-100-262	NEW-S	05-10-099
480- 90-245	NEW	05-06-051	480- 93-140	AMD-S	05-02-096	480-100-264	NEW	05-06-051
480- 90-248	NEW	05-06-051	480- 93-140	AMD	05-10-055	480-100-268	NEW	05-06-051
480- 90-248	AMD-S	05-10-099	480- 93-150	REP-S	05-02-096	480-100-275	NEW	05-06-051
480- 90-252	NEW	05-06-051	480- 93-150	REP	05-10-055	480-100-282	NEW-S	05-10-099
480- 90-257	NEW	05-06-051	480- 93-155	AMD-S	05-02-096	480-100-287	NEW-S	05-10-099
480- 90-262	NEW-S	05-10-099	480- 93-155	AMD	05-10-055	480-100-999	AMD	05-06-051
480- 90-264	NEW	05-06-051	480- 93-160	AMD-S	05-02-096	480-110-205	AMD-P	05-04-063
480- 90-268	NEW	05-06-051	480- 93-160	AMD	05-10-055	480-110-205	AMD	05-06-051
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480- 90-999	AMD	05-06-051	480- 93-170	AMD	05-10-055	480-110-215	AMD	05-06-051
480- 92-016	AMD	05-06-051	480- 93-175	AMD-S	05-02-096	480-110-225	AMD	05-06-051
480- 92-021	AMD	05-06-051	480- 93-175	AMD	05-10-055	480-110-227	NEW	05-06-051
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480- 93-005	AMD-S	05-02-096	480- 93-183	REP	05-10-055	480-110-265	REP	05-06-051
480- 93-005	AMD	05-10-055	480- 93-184	REP-S	05-02-096	480-110-275	REP	05-06-051
480- 93-007	NEW-S	05-02-096	480- 93-184	REP	05-10-055	480-110-285	REP	05-06-051
480- 93-007	NEW	05-10-055	480- 93-185	AMD-S	05-02-096	480-110-295	REP	05-06-051
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480- 93-008	NEW	05-10-055	480- 93-186	AMD-S	05-02-096	480-110-355	AMD	05-06-051
480- 93-009	NEW-S	05-02-096	480- 93-186	AMD	05-10-055	480-110-365	AMD	05-06-051
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480- 93-010	REP-S	05-02-096	480- 93-18601	AMD	05-10-055	480-110-385	AMD	05-06-051
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